

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Divorce Jurisdiction)

2018/HPF/D/373

**BETWEEN:**

**JACOB CHIGALI**

**AND**

**HERAH KHUMALO CHIGALI**



**Before Honourable Mr Justice M.D. Bowa on 7<sup>th</sup> May 2019**

*For the Petitioner: MR H M Mweemba Principal Legal Aid Counsel*

*For the Respondent: Mrs BC Mulenga National Legal Aid Clinic for Women.*

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## **JUDGMENT**

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**Legislation referred to:**

1. *The Matrimonial Causes Act, No. 20 of 2007*

This action was commenced by petition for dissolution of marriage dated 30<sup>th</sup> of November 2018. The petition is presented pursuant to section 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007 of the Laws of Zambia.

By his petition and oral testimony at trial, the Petitioner contends that he lawfully wed the Respondent on the 12<sup>th</sup> of December 2010 at the New Apostolic Church Kaunda Square Main Congregation in Lusaka. After the celebration of their



marriage the newlyweds lived at House number 106/05 Kaunda square Stage 1 in Lusaka.

Both the Petitioner and Respondent are domiciled in Zambia.

The Petitioner is a Stores Officer at the Ministry of Mines whilst the Respondent is a businesswoman. The court learnt that there are two children of the family now living. A son aged 7 and named Chabota Chigali and a daughter aged 2 years named Mwaka Chigali. The Petitioner has one child of his own born before the union named Luyanda Chigali. He is 10 years old. He contended that arrangements have been made between the parties regarding the maintenance of the children of the family.

The Petitioner further testified that there are no proceedings in Zambia or elsewhere with reference to the marriage or between the Petitioner and the Respondent regarding any property of either or both of them. He further testified that there are no proceedings continuing in any country outside Zambia in respect of the marriage which are capable of affecting its validity or subsistence.

It was the Petitioner's testimony that the marriage has broken down irretrievably as the couple have lived apart for a continuous



period of at least 2 years immediately preceding the presentation of the petition and that the Respondent has consented to the dissolution of the marriage. He recalled that they separated on the 10<sup>th</sup> of May 2016 and has not resumed cohabitation since. He ruled out the possibility of reconciliation and that attempts to do so through the church had failed. He prayed for the marriage to be dissolved and other reliefs as set out in his petition that included custody of the older of the children.

In her evidence, the Respondent testified that she presently resides at house no 29/03 Kaunda Square in Lusaka. She confirmed that the details presented by the Petitioner regarding when and where they got married were correct. She further confirmed that the couple have lived apart for a continuous period of more than 2 years immediately preceding the presentation of the petition. She testified that they separated on the 10<sup>th</sup> of May 2016.

The Respondent agreed that the marriage had broken down irretrievably on account of the period of separation and that she had duly consented to the dissolution of the marriage. She disagreed that the parties had made any arrangement for the maintenance of the children as testified by the Petitioner. She



prayed that the marriage be dissolved and for custody of both of the children.

That was the evidence given by both parties

I have considered the petition and the evidence before me. Section 8 of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia prescribes the only ground by which a petition for divorce may be presented. The section reads:

***“A petition for divorce may be presented to the court by either party to the marriage on the ground that broken down irretrievably”***

In order to prove that the marriage has broken down irretrievably, a Petitioner should satisfy the court of one or more of the facts set out in Section 9 (1) (a) to (e) of the Act. Section 9 (1) (d) in particular which is relevant to the petition under consideration provides as follows:

***“ 9 (i) for the purposes of section eight, the court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the court of one or more of the following facts.***

***(d) That the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to a decree being granted.”***



Section 9 (2) of the Act places a duty on the court to inquire so far as it reasonably can into the facts alleged by the Petitioner or those by the Respondent. Furthermore section 9 (4) makes clear that a decree for dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

Based on the evidence before me I find as a fact that the Petitioner and Respondent were lawfully wed on the 12<sup>th</sup> of December 2010. I am also satisfied that they have lived apart for a continuous period exceeding 2 years immediately preceding the presentation of the amended petition on the 30<sup>th</sup> of November 2018 which I find was from the 10<sup>th</sup> of May 2016. This effectively means the Petitioner and Respondent have lived apart for 2 years and 6 months at the time of the presentation of the petition. There is no evidence there has been a resumption of cohabitation since the couple separated.

I am further satisfied that the Respondent has duly consented to the dissolution of the marriage. I questioned both parties in terms of section 9(2) and (4) of the Matrimonial causes Act and was left with no doubt that both would like to see the marriage at



an end and importantly, that there are no prospects of salvaging the union.

On the whole therefore, I find that the conditions in section 9 (1) (d) of the Matrimonial Causes Act have been met and I dissolve the marriage between the Petitioner and Respondent celebrated on the 12th of December 2010. I accordingly grant a decree nisi which will be made absolute six weeks from the date of judgment unless sufficient cause is shown to the court why it should not be made so.

I further order that in terms of Statutory Instrument number 72 of 2018 and regulation 4 (4) in particular, the question of property settlement, maintenance and custody of the children of the family will be referred to mediation on application by either party.

Each party will bear their own costs for this petition.

**Dated at Lusaka this <sup>JR</sup>..... day of <sup>May</sup>..... 2019**

  
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**JUDGE**