

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

2014/HPD/351

BETWEEN:

TINENENJI B CHEMBE

AND

PATRICK P CHEMBE



PETITIONER

RESPONDENT

Before Honourable Mr Justice M.D. Bowa on 13th December 2019

For the Petitioner: Mr I Mulubara from legal Aid Board

For the Respondent: In person

JUDGMENT

Legislation referred to:

The Matrimonial Causes Act, No. 20 of 2007

Other works referred to

Passingham B, Law and Practice in Matrimonial Causes 4th edition London, Butterworth 1995

This is a petition for dissolution of marriage filed into court on the 14th of December 2016. The petition is presented pursuant to **section 8 and 9 (1) (e)** of the **Matrimonial Causes Act No 20 of 2007** of the Laws of Zambia. By her petition the Petitioner contends that she and the Respondent were lawfully wed on the 3rd of June 2004 at the office of the Registrar of Marriages Ndola

City Council. Following the celebration of their marriage the couple lived at 1 Commando Unit in Ndola. Both the Petitioner and Respondent are domiciled in Zambia.

The Petitioner averred further that she is presently unemployed and resides at A 43 Mandevu compound in Lusaka whilst the Respondent is a physiotherapist at Maina Soko Military hospital in Lusaka. The petition discloses that there is one child of the family named Ryan Chembe a son, born on 22nd March 2004 and doing his 6th Grade at Damito Primary School. There is no other child born to the Respondent that is known to the Petitioner.

The Petitioner averred further that there are no previous proceedings in any court in Zambia or elsewhere with reference to the marriage or property of either or both of them. In addition, that there are no proceedings continuing outside Zambia in respect of the marriage capable of affecting its validity or subsistence. The Petitioner averred further that there are no arrangements or agreement that has been made or proposed to be made regarding the maintenance of either the Petitioner or Respondent.

It was the Petitioner's contention that the marriage has broken down irretrievably as the couple have lived apart for a period exceeding 5 years immediately preceding the presentation of the Petition. She prayed that:

1. *The said marriage be dissolved.*
2. *The Petitioner be granted custody of the child and the Respondent be given reasonable access.*
3. *That there be an order as to maintenance.*
4. *That each party bears its costs.*

The Respondent did not file an answer.

At the hearing the Petitioner confirmed the contents of her petition. She clarified that the child of the family is now aged 15 and schools at Matero boys Secondary school. She reiterated her belief that the marriage had broken down irretrievably on account of the fact that she and the Respondent had lived apart for more than 5 years immediately preceding the presentation of the petition. From her recollection, they started living apart in October of 2006. She added that the couple have not resumed cohabitation at any point throughout this period.

She ruled out the possibility of a resumption of cohabitation and asked the court to grant her prayers for a divorce, custody of the child of the family, a maintenance order for the child and that each party bears his/her own costs.

The Respondent in giving his evidence testified that he is a Major in the Zambia Army and resides at MCI 245 Military camp. He agreed that the details given by the Petitioner regarding when and where they wed and last lived together as husband and wife were accurate. He confirmed that he was not contesting the divorce proceedings. He further agreed that the marriage had broken down irretrievably on account of the fact relied upon by the Petitioner. The Respondent confirmed that he and the Petitioner have lived apart from late 2006. He prayed that the marriage be dissolved and that custody be granted to the Petitioner with reasonable access to him. He further informed the court that he was prepared to continue supporting the child of the family.

There was no cross examination.

I have considered the petition and the evidence given by both parties. 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 the marriage has 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) (e) in particular which is relevant to the petition before me 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.

(e) That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition”

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. I am also mindful of section 9 (4) which states 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.

Turning to the evidence before me, I am satisfied that the Petitioner and the Respondent were lawfully wed on the 3rd of June 2004 as per copy of the marriage certificate on record .I am also satisfied that the couple have lived apart for a continuous period exceeding five years immediately preceding the presentation of the petition. I find as a fact that the couple have lived apart from October 2006 which amounts to 10 years separation immediately preceding the filing of the petition on the 14th December 2016.

I entertain no doubt that the Petitioner has no desire to resume cohabitation and is determined to end the marriage. She made it emphatically clear that there is no possibility of the couple resuming cohabitation. I am therefore satisfied that the conditions as laid out under section 8 and 9 (1) (e) of the Act have been met.

Section 18 (1) of the Act provides that the only basis on which the court can refuse to grant a decree nisi in a petition based on a five year separation is if the Respondent opposes the grant on the

ground that the dissolution of the marriage will result in grave financial or other hardship to the Respondent and that it would in all the circumstances be wrong to dissolve the marriage.

There was no such contention made in this case as the matter is uncontested. The Respondent further confirmed that he was not making such a claim when asked by the court. The Learned authors of **Law and Practice in Matrimonial causes 4th edition at page 27** writing on the effect of a five year separation state that:

“....since the Act is based on the principle that irretrievable breakdown is the sole ground of divorce, there can hardly be clearer evidence that there is no hope of retrieving the marriage...”

I adopt this view and find that the marriage has broken down irretrievably on account of the prescribed period of separation relied upon. I accordingly dissolve the marriage between the Petitioner and Respondent celebrated on the 3rd of June 2004 and 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 child 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 13th day of December 2019



JUDGE

