

IN THE HIGH COURT FOR ZAMBIA

2016/HP/D 165

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(DIVORCE JURISDICTION)



BETWEEN:

CHOLA KULYA

PETITIONER

AND

AGATHA NAMBELA KAYOMBO

RESPONDENT

***Before The Honourable Mrs Justice P.C.M. Ngulube in Chambers.***

FOR THE PETITIONER:

MR. J. ZIMBA, MESSRS MAKEBI ZULU

AND COMPANY

FOR THE RESPONDENT:

MS JERE NLACW.

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## J U D G M E N T

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### ***Case referred to:***

#### ***1. Yoyo vs. Yoyo SCZ Judgment Number 78 of 1998***

This is a Petition for dissolution of marriage. The Petition of Chola Kulya shows that on the 10<sup>th</sup> of November, 2012, he got married to the Respondent Agatha Nambela Kayombo at St Peter's Anglican Church, Kabwata, Lusaka.

The Petition further shows that after the celebration of the marriage, the Petitioner remained in Lusaka while the Respondent went to Kasama where she worked at the time. The Petitioner and the Respondent are both domiciled in Zambia. The Petitioner is a Monitoring and Evaluation Specialist while the Respondent is a social worker. The Petitioner resides at Flat Number 17, Roan Road Kabulonga and the Respondent resides at Kaseba, Kafue Town Centre, Kafue.



The Petition further shows that there is one child of the family now living, Kasongo Natasha Kulya, aged three years. The Petition further states that there have been no proceedings in any court in Zambia or elsewhere with reference to the marriage or any child of the family or with reference to any property of either the Petitioner or the Respondent. There are no proceedings continuing in any country outside Zambia in respect to the said marriage which are capable of affecting its validity or subsistence. The Petitioner states that the marriage has broken down irretrievably by reasons of the fact that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition. The Petitioner prays that the marriage be dissolved and that the parties have joint custody of the one child of the family, Kasongo Natasha Kulya. He further prays that there be no order for property settlement and that each party bears their cost of the Petition. On the 21<sup>st</sup> of June, 2016, the Respondent filed a written consent to the dissolution of the marriage and stated that she had no objection to the granting of the decree nisi. She further stated that she did not intend to defend the matter.

At the hearing of the matter, the Petitioner Chola Kulya, aged 39 years of Kabulonga, Lusaka gave sworn evidence that he got married to the Respondent at Kabwata Anglican Church on the 10<sup>th</sup> of November, 2012. He stated that after the marriage, the parties lived apart and that there is one child of the family now living, who lives with the Respondent. The Petitioner stated that he provides monthly financial support to the child.

He prayed that the marriage be dissolved since the parties have lived apart for over two years. The Petitioner was not cross-examined. This was the close of the Petitioner's case.

The Respondent, Agatha Nambela Kayombo, aged 30 years of Chilenje South, Lusaka gave sworn evidence that she did not agree with the Petitioner's testimony. She denied the assertion by the Petitioner that they did not live together after they got married. She stated that they did live together for about one month after the marriage was solemnized and that



she then went to Kasama to work and made efforts to obtain a transfer so that she could join her husband. The Respondent stated that when she returned home to deliver since she was expecting a baby, the Petitioner chased her away from the matrimonial home because he stated that she had not informed him that she was returning home. She testified that during the time when she worked in Kasama, she would return to see her husband at least once a month so it was not true when he said that they did not live together after they got married.

The Respondent stated that after the Petitioner chased her away from home, she went to stay at her brother's house and that the baby was born while she lived with her brother.

The Respondent testified that the Petitioner and his family went to see the baby at the Respondent's brother's home but did not take her back to the matrimonial home. She testified that when the baby was six weeks old, she tried to go back to the matrimonial home but the Petitioner still chased her away. She went back to Kafue where she stayed for the duration of the four months maternity leave. When she asked for financial support for the baby from the Petitioner, he did not give her any. She stated that he stopped communicating with her and this made her family get concerned. They called for a meeting at which both families met and reconciliation was suggested. However, before this could be done, the Respondent got a job out of town and since she was the one who was sustaining the baby without the Petitioner's contribution, she took the job and went out of town where she was posted. She stated that upon her return, the Petitioner had shifted from the matrimonial home to another house and he told her not to go there. She stated that he blocked her phone number from accessing his mobile phone and he was unreachable.

The Respondent testified that they last lived together as husband and wife in January, 2013. She stated that the marriage has broken down irretrievably because the parties have not communicated for over two years and that the Petitioner has continued to chase her away. She prayed that the marriage



be dissolved and that she be granted sole custody of the child of the family who is under seven years and that the Petitioner be compelled to maintain the child. The Respondent was not cross-examined. This was the close of the Respondent's case.

The Learned Counsel for the Petitioner and the Learned Counsel for the Respondent did not file any submissions.

I have considered the evidence on record as well as the testimonies of the parties in this matter. Section 8 of the Matrimonial Causes Act enacts that-

***“A Petition for divorce may be present to the court by either party to a marriage on the grounds that the marriage has broken down irretrievably.”***

The Petitioner has presented this Petition on the fact of the parties having lived apart for over two years and that the Respondent has consented to the grant of the decree nisi.

The Respondent gave sworn evidence stating that the parties did live together when they got married but she went back to Kasama where she worked. Upon her return to visit her husband the Petitioner has kept pushing her away and even moved to an unknown location. He also blocked his wife's number from accessing his mobile phone. In the case of ***Yoyo vs. Yoyo<sup>1</sup> SCZ Judgment Number 78*** of 1998, the Supreme Court stated that in order to refuse to grant a decree of dissolutions of marriage, there must be mutual love between the parties. In the present case, I find that the Petitioner has lost love for the Respondent and has since moved on with his life without including his wife and young child.

I am satisfied that the marriage has indeed broken down irretrievably due to the parties having lived apart for over two years and the Petitioner's unreasonable behaviour. It is rather strange for a married man to push away his young wife and child and even cut ties with them for no apparent reason.



Having had sight of the Marriage Certificate, I am satisfied that the parties were married under the provisions of the Marriage Act.

The totality of the evidence shows that the marriage has broken down irretrievably. I decree that the marriage between Chola Kulya and Agatha Nambela Kayombo be dissolved. I grant the parties a decree nisi which shall be made absolute within six weeks. Either party is at liberty to apply.

I further grant sole custody to the Respondent who has looked after the child single handedly since birth.

The Respondent shall make an application for maintenance before the Deputy Registrar.

Leave to appeal is granted.

***Delivered this 8<sup>th</sup> day of September, 2016.***



**HONOURABLE MRS JUSTICE P.C.M. NGULUBE  
HIGH COURT JUDGE**

