

IN THE HIGH COURT FOR ZAMBIA

2017/HPF/D229

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Divorce Jurisdiction)

BETWEEN:

CHISULO PHIRI

AND

ASHABEL PHIRI

RESPONDENT



BEFORE HONOURABLE MADAM JUSTICE P. K. YANGAILO ON THE 27TH DAY OF OCTOBER, 2017.

For the Petitioner: Mr. Chisulo Phiri - In Person

For the Respondent: Ms. K. Chisala - Legal Aid Board

JUDGMENT

LEGISLATION AND OTHER MATERIALS REFERRED TO:

1. *The Matrimonial Causes Act, Act No. 20 of 2007; and*
2. *The Marriage Act, Chapter 50 of the Laws of Zambia.*

The Petitioner CHISULO PHIRI Petitioned for the Dissolution of Marriage pursuant to **Sections 8 & 9 (1) (e) of the Matrimonial Causes Act**¹ on the ground that the marriage has broken down irretrievably by reason of the fact that the parties have lived apart for a continuous period of five (5) years immediately preceding the presentation of this Petition.

Sections 8 and 9 (1) (e) of the **Matrimonial Causes Act**¹ provides that: -

"8. A petition for divorce may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.

9. (1) For 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 continuous period of at least five years immediately preceding the presentation of the petition...."

I refer to **Section 9 (2)** of the **Matrimonial Causes Act**,¹ which provides that: -

"(2) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent." (emphasis mine)

In accordance with the said **Section 9 (2)**,¹ I set this matter down for the hearing of the Petition for Dissolution of Marriage on 27th October 2017, in order for me to inquire into the facts alleged in the Petition for Dissolution of Marriage presented before this Court by the Petitioner. At the hearing of the petition, I was satisfied that the Respondent had been duly served with the Petition and other supporting documents by the filing of the Acknowledgment of Service. I was further fortified in my view by

the fact that the Respondent and her Advocate were in attendance. I therefore allowed the Petitioner to present his Petition for Dissolution of Marriage.

At the hearing, the Petitioner gave sworn evidence. He testified that he was married to the Respondent ASHABEL PHIRI on 21st August 2010, at the Bread of Life Church International in Lusaka in the Lusaka Province of the Republic of Zambia. He produced an original copy of his marriage certificate, which was identified as "**ID1**" and there being no objection raised by the Respondent, it was admitted into evidence as exhibit "**P1**". It was his testimony that both the Petitioner and Respondent are domiciled in Zambia. According to the Petitioner, he is a teacher at Matula Day Secondary School in Mfuwe, Eastern Province of Zambia and that the parties last cohabited together as husband and wife, in March 2011, in Matero East in Lusaka, Zambia. That there is one child of the family, a boy born named EPHRAIM CHISULO PHIRI who was born on 30th January, 2011. The said child is enrolled in Grade 1 at Sonshine Private School in Lusaka, Zambia. It was the Petitioner's testimony that arrangements have been proposed for the custody and support of the child of the family. There are no previous proceedings continuing in Zambia or elsewhere in relation to the said marriage or which are capable of affecting its validity or subsistence. The Petitioner further testified that the said marriage has broken down irretrievably, such that the parties can no longer be expected to live together based on the fact that the parties have lived apart for more than five (5) years immediately preceding the presentation of the Petition for Dissolution of the Marriage.

The Petitioner prayed therefore for the dissolution of marriage and that a *Decree Nisi* be granted; that custody of the child of the family be granted to the Respondent with reasonable access to the Petitioner; and that each party bears its own costs.

There were no questions put to the Petitioner in cross-examination and that marked the close of the Petitioner's case.

The Respondent ASHABEL PHIRI gave sworn evidence. She testified that she has lived apart from the Petitioner since March, 2011 and will not oppose the Petition for dissolution of marriage on the ground that marriage has broken down irretrievably due to the fact that the parties have lived apart for 5 years. She further testified that there is one child of the family EPHRAIM CHISULO PHIRI, a boy born on 30th January, 2011, who is under her care custody and control. The said child is enrolled in Grade 1 at Sonshine Private School, aforesaid, where she is also employed as a teacher. It was also the Respondent's testimony that the Petitioner has not been supporting the child of the family and she proposed that the Petitioner contributes towards the maintenance of the said child of the family by paying his school fees, which amount to K3,100.00 per term. She prayed that the marriage be dissolved and that custody of the child of the family be given to her with reasonable access to the Petitioner. She further prayed for property settlement and maintenance for the child of the family.

In cross-examination the Respondent, testified that the Petitioner has never supported the child of the family from the time that they started living apart. It was her testimony that in 2011 after

giving birth she became sick and asked to move in with her parents so that they can help her with the baby. When asked why she did not return to the matrimonial home after she got better, the Respondent testified that during her stay in hospital the Petitioner rarely visited her and when she was discharged, the Petitioner neglected to fetch her from her parents' house. It was also her testimony that the Petitioner told her to return to the matrimonial home on condition that she never gets sick again. She further testified that a meeting was held to reconcile the parties but it was never concluded in a proper manner as the Petitioner and his relatives never failed to get back to the Respondent and her family.

When re-examined, the Respondent confirmed that the Petitioner rarely visited her in hospital and that when she attempted to return to the matrimonial home upon being requested to do so by the Petitioner, the Petitioner's sister refused her to return to the matrimonial home and suggested that the parties proceed to just share the matrimonial property as the Petitioner had been transferred to Mfuwe. The Respondent further testified that the Petitioner stopped answering her calls when he moved to Mfuwe and that the Petitioner last bought clothes for the child of the family when he was two years old. She also testified that the child of the family does not remember the Petitioner as he has never had a relationship with the said child.

That marked the close of the Respondent's testimony.

Having heard and inquired into the Petitioner's Petition for the Dissolution of Marriage in accordance with the above cited provision, I am satisfied that the Petitioner was lawfully married to the Respondent at the Bread of Life Church International in Lusaka, in the Lusaka Province of the Republic of Zambia on 21st August, 2010 under the **Marriage Act**.²

I refer to **Section 90** of the **Matrimonial Causes Act**,¹ which provides that: -

"90. Proof of marriage, etc.

In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Zambia or elsewhere."

The evidence of fact that the Petitioner was married to the Respondent as per his testimony is the original Certificate of Marriage admitted as exhibit marked "**P1**", which was obtained from the Bread of Life Church International in Lusaka after the marriage was solemnised and was issued in accordance with **Section 25** of the **Marriage Act**.²

I am satisfied that there is one children of the family namely EPHRAIM CHISULO PHIRI. I am further satisfied that there are no proceedings either in Zambia or elsewhere in the world subsisting which might affect the validity of the marriage or property settlement.

I refer to **Section 9 (3)** of the **Matrimonial Causes Act**,¹ which provides that: -

"(3) If the Court is satisfied on the evidence of any fact mentioned in subsection (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably it shall grant a decree of dissolution of marriage."

It was the Petitioner's testimony that the parties herein last lived together in March, 2011, which fact was confirmed by the Respondent. Therefore, I am satisfied and hereby hold that the marriage solemnised between CHISULO PHIRI and ASHABEL PHIRI has indeed broken down irretrievably due to the fact that the parties have lived apart for a continuous period of 5 years immediately preceding the presentation of this Petition.

I refer to **Section 71 (1) (b) (i)** of the **Matrimonial Causes Act**,¹ which provides that: -

"71. Restrictions on decrees for dissolution, annulment or separation affecting children

(1) The court shall not make absolute a decree of divorce or nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied—

(b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—

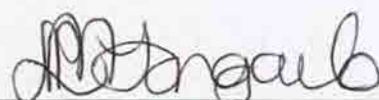
- (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; ..."
(emphasis mine)

Accordingly, it is hereby **ORDERED** that the Marriage solemnised by the Petitioner and the Respondent on the 21st August, 2010 **BE** and is **HEREBY DISSOLVED** and a **DECREE NISI** is granted to be made Absolute within six weeks from date of the **DECREE NISI**, provided the issues relating to the custody of the child of the family EPHRAIM CHISULO PHIRI are heard and determined. Either party may formally make an application before this Court for the custody of the said child of the family.

It is **FURTHER ORDERED** that the issues of property settlement and maintenance are referred for hearing and determination by the District Registrar.

Each party will each bear its own costs.

Delivered on the 27th day of October, 2017



P. K. YANGAILO
HIGH COURT JUDGE