

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Divorce Jurisdiction)

2022/HPF/D095



BETWEEN:

ROSEMARY INONGE CHINIKA CHISOWA

PETITIONER

AND

STANSLIOUS CHISOWA

RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE W. S. MWEEMBA AT LUSAKA.

For the Petitioner: Mrs Ireen C. Lamba– Messrs Chongo, Manda & Associates.

For the Respondent: Mr. Felix Mutale- Messrs FM Chambers.

JUDGMENT

LEGISLATION REFERRED TO:

- 1. The Matrimonial Causes Act, No. 20 of 2007 of the Laws of Zambia.***
- 2. The High Court (Amendment) Rules 2020, Chapter 27 of the Laws of Zambia.***
- 3. The Matrimonial Causes Rules of England of 1973.***
- 4. Family Proceedings Rules 1991 of England.***

CASES REFERRED TO:

- 1. Pounds V. Pounds (1994) 1 F.L.R. 775***

ROSEMARY INONGE CHINIKA CHISOWA (the Petitioner) filed this Petition for dissolution of marriage on 24th February, 2022, seeking to dissolve her marriage to **STANSLIOUS CHISOWA** (the Respondent).

The Petition was brought pursuant to **Section 8 and Section 9(1)(b) of the Matrimonial Causes Act No. 20 of 2007.**

The Petition reveals that the Petitioner was married to the Respondent on 4th October, 1997 at St. Ignatius, in the City and Province of Lusaka of the Republic of Zambia; that both parties are domiciled in Zambia; that the Petitioner and Respondent last cohabited at Farm No. 5943/M Lusaka Zambia; that the Petitioner was currently residing at Mwema Flats Meanwood in Lusaka Zambia whilst the Respondent was still residing at Farm No. 5943/M Lusaka; that the Petitioner is an Accountant employed as such at Prestige Bearings and Engineering Supplies Limited and the Respondent is a Businessman.

The petition further shows that there are three children of the family now living namely: -

- i. *Samuel Chisowa born on 4th March, 1993*
- ii. *Nicholas Chisowa born on 30th April, 2000*
- iii. *Limpo Luyando Chisowa born on 9th March, 2008*

There is one child that was born to the Respondent during the subsistence of their marriage in 2004.

The Petition also reveals that there are or have been no previous proceedings in Zambia or elsewhere with reference to the same marriage or between the Petitioner and the Respondent with reference to any property of either or both of them; there are no proceedings continuing in any country outside Zambia which are in respect of the marriage capable of affecting its validity or subsistence.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent and that the Respondent consents to a Decree *Nisi* being granted.

The Petitioner prays for the following:

- i. *That the marriage be dissolved.*
- ii. *That the Petitioner be granted custody of the minor child of the family namely Limpo Luyando Chisowa with reasonable access to the Respondent.*
- iii. *That there be property settlement.*
- iv. *That the Respondent should maintain all the children.*
- v. *That each party bears its own legal costs.*

The Respondent Consented to the dissolution of the Marriage on 27th January, 2022 in a letter addressed to the Petitioners Advocates which was exhibited as “**RICCI**” in the Petitioners Further Affidavit in Support of Application for Directions for Special Procedure Trial. He confirmed that the parties had lived apart for some time preceding the presentation of the Petition herein.

On 13th September, 2022 the Petitioner filed an application before the Learned Deputy Registrar for Directions for Trial of the matter by entry of the cause in the Special Procedure List Pursuant to **Rule 37(1)(b) of the Matrimonial Causes Rule, 2018.**

By Special Procedure Directions for Trial the Deputy Registrar stated that she was satisfied that the requirements of **Rule 37 (1) (b) of the Matrimonial Causes Rules, 2018** were satisfied and she directed that the matter be entered in the Special Procedure List. By Special Procedure:

Registrars Certificate dated 13th September, 2022 the Honourable Deputy Registrar certified that the Petitioner had sufficiently proved her Petition and is entitled to a Decree because the Respondent had not given any intention to defend the Petition within the 29 days given to respond to the Petition and he consents to the Decree being granted. further that the Petitioner and the Respondent had made adequate arrangements for the children of the family.

The Petitioner's Advocates Messrs Chongo Manda and Associates applied for Special Procedure: Directions relying on **Rule 37(1)(b) of the Matrimonial Causes Rules, 2018**. These Rules do not apply to the Republic of Zambia.

The applicable Rule in relation to the Deputy Registrar's Certificate is **Rule 33(3)(i) of the Matrimonial Causes Rules 1973**. Messrs Chongo Manda and Associates had on 11th April, 2022 made an application relying on this Rule but for unknown reasons that application was not attended to. Later they made a second application which was then attended to by the Honourable Deputy Registrar but it was citing Rules which do not apply to Zambia and for that reason I was unable to deal with the Special Procedure Notice of Date of Pronouncement filed on 13th September, 2022.

I have now considered the Petition.

I find that the Petitioner has sufficiently proved the contents of her Petition and is entitled to a *Decree Nisi* on the ground of two years separation with consent given that the parties have lived apart from June, 2021 and particularly that the Respondent is not contesting the

divorce. I will therefore deal with the Petition in the way that Petitions in the Special Procedure List are dealt with.

The Special Procedure was introduced in 1973 in England and Wales for undefended divorces based on the fact of two years' separation plus consent, although only where the couple did not have children.

This procedure allowed a divorce to be granted on the basis of Affidavit evidence alone. In 1977 it was extended to all undefended divorces, and the "Special Procedure" became the norm-see the ***Family Proceedings Rules 1991 (Statutory Instrument 1991/1247) Rule 2. 36***. The Procedure was summarized by Waite L.J in the case of **POUNDS V POUNDS (1)**.

Whilst the ***English Family Proceedings Rules 1991*** do not apply to Zambia, I am of the firm view that undefended divorces based on the fact of two years' separation plus consent and indeed any uncontested divorce petition should be dealt with using the Special Procedure i.e on the basis of Affidavit evidence alone without the need for the parties to attend Court for their case to be heard. I am of the considered view that the Court is empowered to determine such a divorce on the documents before it pursuant to ***Order 30 Rule 6A of the High Court Rules, Chapter 27 of the Laws of Zambia*** as amended by ***the High Court (Amendment) Rules 2020. Rule 6 A of Order 30*** provides as follows:

"6A. (1) Where the Court is satisfied that the application can be disposed of on the basis of the documents before it, the Court may determine the matter without the attendance of the parties or their advocates and shall issue a notice of the date of delivery.

(2) This Rule shall apply to –

(a) An interlocutory application;

(b) An application under 11(a);

(c) An application for determination on questions of law or construction of documents; or

(d) Any other application as may be directed by the Court.”

I have considered the evidence of the Petitioner and noted that the Respondent has given his consent to dissolution of the marriage.

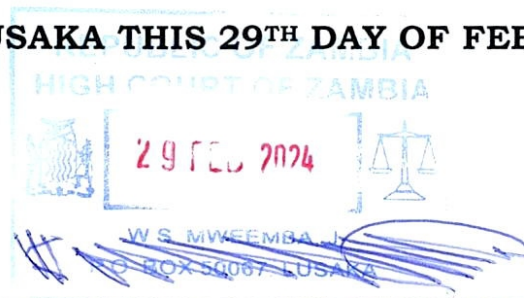
I am satisfied that the marriage solemnized between **ROSEMARY INONGE CHINIKA CHISOWA** and **STANSLOUS CHISOWA** on 4th October, 1997 at St. Ignatius Catholic Parish in the City and Province of Lusaka of the Republic of Zambia has broken down irretrievably in terms of **Section 8 and Section 9(1)(d) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia**. I am further satisfied that granting a *Decree Nisi* will not cause grave financial or other hardship to the Respondent.

I therefore hereby invoke the provisions of **Section 41 of the Matrimonial Causes Act, No. 20 of 2007** and grant the *Decree Nisi* and I make the following Orders:

1. The *Decree Nisi* shall become Absolute Six (6) weeks from the date hereof unless cause be shown why the same cannot be made Absolute.
2. The Petitioner and the Respondent shall have joint custody of the elder children of the family namely **Samuel Chisowa** and **Nicholas Chisowa**.
3. The Petitioner shall have custody of the minor child of the family namely **Limpo Luyando Chisowa** with liberal and reasonable access to the Respondent.

4. The Petitioner and the Respondent shall each contribute towards the maintenance of the children of the family.
5. I refer the issue of property settlement to mediation pursuant to ***Order 30 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia.***
6. Each party is to bear their own legal costs of this action.

DELIVERED AT LUSAKA THIS 29TH DAY OF FEBRUARY, 2024.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**