

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

2023/HPF/D.505

BETWEEN:

CHENGO MUSAKANYA

AND

GRACE CHIBELA



PETITIONER

RESPONDENT

Before The Hon. Mrs. Justice T.S. Musonda

For the Petitioner : In person

For the Respondent : Mrs. Precious K. Chibwe from the National
Legal Aid Clinic for Women

JUDGMENT

Legislation referred to:

- (1) The Marriage Act, Chapter 50 of the Laws of Zambia
- (2) The Matrimonial Causes Act, No. 20 of 2007
- (3) Statutory Instrument No. 72 of 2018, The High Court (Amendment) Rules, Chapter 27 of the Laws of Zambia

Cases referred to:

- (1) Katz v. Katz, (1972) 3 ALL ER 219
- (2) Livingstone-Stallard v. Livingstone-Stallard, (1974) 2 ALL ER 766
- (3) Welfare v. Welfare, (FD 12 Oct 1977)
- (4) Sangeetha vs Jitendra Bhandari, Civil Miscellaneous Appeal Nos. 168 and 169 of 2012

1. INTRODUCTION

- 1.1 **Chengo Musakanya** (“**Petitioner**”) and **Grace Chibela** (“**Respondent**”), were married on 30th November 2013 at the Bread of Life Church International, in Lusaka, Zambia, as per their Marriage Certificate (exhibit “**P1**”) issued under the **Marriage Act**, Chapter 50 of the Laws of Zambia.
- 1.2 The parties have one child together: F.L.M, born on 19th February 2017. Prior to the marriage, the Petitioner had one child, C.J.M, born on 21st August 2007. The Respondent also had two children prior to the marriage: D.C, born on 5th April 2002, and A.K, born on 12th December 2002.
- 1.3 The Petitioner filed this Petition for dissolution of marriage on 14th September 2023. He asserted that the marriage had irretrievably broken down on the ground that the Respondent had behaved in a manner that made it unreasonable for him to continue living with her.
- 1.4 The Petitioner sought the following orders:
- (i) That the parties’ marriage be dissolved;
 - (ii) That the Petitioner be granted custody of the child of the family, with reasonable access to the Respondent;
 - (iii) That there be an order for property settlement; and
 - (iv) That each party bears their own costs.
- 1.5 In response, the Respondent filed an Answer on 23rd January 2024, in which she denied the allegations against her. Furthermore, she asserted that the marriage had not broken down irretrievably.
- 1.6 Accordingly, she prayed as follows:
- (i) That the marriage should not be dissolved;
 - (ii) That the parties have joint custody of the child of the family, should the marriage be dissolved;
 - (iii) That there be an order for maintenance for the child and the Respondent, should the marriage be dissolved;
 - (iv) That there be an order for property settlement; and
 - (v) That each party bears their own costs.

1.7 It is undisputed that the Petitioner and the Respondent are both domiciled in Zambia. I, therefore had jurisdiction to entertain these proceedings pursuant to **Section 4 (3)** of the Matrimonial Causes Act, No. 20 of 2007 (“MCA 2007”).

1.8 I also had jurisdiction over these proceedings on the ground that the parties contracted a valid statutory marriage under the **Marriage Act**.

1.9 During the hearing, both parties appeared and testified, without calling any additional witnesses.

2. THE PETITIONER’S CASE

2.1 The Petitioner testified in support of his Petition as follows:

2.2 The Petitioner asserted that the Respondent had engaged in acts of infidelity, and that as a result, she had behaved in a manner that made it unreasonable for him to continue residing with her.

2.3 He claimed that in July 2023, he discovered disturbing messages on the Respondent’s phone. According to him, this was the third such incident.

2.4 The Petitioner stated that the Respondent had planned to meet a man, and it appeared that the meeting was of an intimate nature. He convened a family meeting to address the matter, during which the issues were discussed. He noted that the Respondent showed no remorse, and consequently, he left the matrimonial home in February 2024. The parties had not cohabited since that time, and the Petitioner maintained that there was no prospect of reconciliation.

3. THE RESPONDENT’S CASE

3.1 In response, the Respondent denied that the messages referred to by the Petitioner were disturbing. She acknowledged that the messages were sent in July 2023 but explained that they were exchanged while preparations were underway for a show. According to her, the messages were from a man who greeted her and inquired when she would be at the show grounds. After she informed him that she would be there on a Friday, he offered to deliver a bottle of wine.

3.2 The Respondent admitted that there had been previous misunderstandings between the parties, which she stated had been

resolved. She claimed that the Petitioner had tracked her phone and assumed that anyone she communicated with was her boyfriend.

3.3 Following the July 2023 incident, she maintained that the parties got along well. She further stated that she attempted to initiate discussions to resolve the matter, and that she had assured him there was no relationship between her and the other man. She apologized for the incident and continued to do so until the Petitioner left the matrimonial home.

3.4 The Respondent added that she was aware the Petitioner had a relationship with another woman, and in her view, the Petition had nothing to do with the messages in question.

3.5 The Respondent reiterated her opposition to the divorce and expressed her willingness to reconcile with the Petitioner, should he also be inclined to do so.

4. ISSUES FOR DETERMINATION

4.1 The main issues for determination in this Petition are:

- (i) Whether the Petitioner has proved that the Respondent behaved in such a way that he cannot reasonably be expected to live with her; and
- (ii) Whether the Petitioner is entitled to the reliefs sought.

5. THE LAW

5.1 **Section 8 of the MCA 2007** provides the sole ground for the dissolution of a marriage in the following terms:

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.

5.2 The Petitioner must satisfy the Court on one or more facts set out in **Section 9 (1)** to establish the ground for dissolution of marriage. The Petitioner's case is anchored on **Section 9 (1) (b)**, which states:

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: (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

- 5.3 **Section 9 (2)** imposes a duty on the Court to inquire, so far as it reasonably can, into the facts alleged by the Petitioner and any facts alleged by the Respondent during the hearing of a Petition.
- 5.4 The case of **Katz v. Katz (1)** established elements that constitute behaviour in proceedings such as the present case. It was held that:

.....Behavior in this context is action or conduct by the one which affects the other. Such conduct may take either acts or the form of an act or omission or may be a course of conduct and, in my view, it must have some reference to the marriage.

- 5.5 The aforementioned elements are self-explanatory. Furthermore, for the purposes of **Section 9 (1)(b) of the MCA 2007**, the correct test to be applied was set out by Dunn J in the case of **Livingstone-Stallard v. Livingstone-Stallard (2)**:

Would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole circumstances and characters and the personalities of the parties?

- 5.6 Drawing from the above position, I must assess whether the effect of the Respondent's behaviour has made it unreasonable for the Petitioner

to continue living with her. The conduct in question must amount to something more serious than the ordinary disputes that arise in married life.

- 5.7 I am required to consider the entirety of the matrimonial history between the parties, including any excuse or explanation offered by the Respondent in the circumstances. The evaluation must focus on whether the conduct was such that the Petitioner ought not to be expected to endure it. (See **Welfare v. Welfare (3)**)

6. ANALYSIS AND DETERMINATION

Issue 1: Whether the Petitioner has proved that the Respondent behaved in such a way that he cannot reasonably be expected to live with her

- 6.1 Marriage is a solemn and sacred union between a man and a woman. It is far more than a mere social arrangement; it is a lifelong commitment founded on love, affection, and, most importantly, mutual respect.
- 6.2 The **MCA 2007** recognizes the seriousness of this institution and imposes a duty on the courts to preserve and protect it. The Act encourages reconciliation where there is a reasonable possibility of restoring the marital relationship, as provided under **Section 9(3), 9(4), and 25(2)(a) and (b)**.
- 6.3 In **Sangeetha v. Jitrenda Bhandri (4)**, the Indian Court observed at paragraph 14 that matrimonial courts are not tasked with resolving marital disputes between ideal spouses. Rather, they must address the real and specific issues presented by the parties before them. An ideal couple would not require the intervention of a matrimonial court.
- 6.4 This principle underscores the importance of addressing the realities of each case, rather than holding parties to unattainable standards. It is well understood that no two individuals are entirely alike, and differences between spouses are a natural part of married life.
- 6.5 In the present matter, the Petitioner testified that he was compelled to file the Petition after discovering messages on the Respondent's phone

in July 2023. These messages, which he found disturbing, suggested an intimate relationship between the Respondent and another man. This was reportedly the third such incident.

- 6.6 He asserted that the recurrence of similar behaviour left him unable to continue in the marriage. He eventually moved out of the matrimonial home in February 2024, citing the Respondent's lack of remorse, including during family meetings.
- 6.7 In my view, such conduct, if established would fall within the scope of **Section 9 (1)(b) of the MCA 2007**, which addresses behaviour that renders continued cohabitation unreasonable or unendurable.
- 6.8 It is trite law that the burden of proof lies with the Petitioner, who must establish that the marriage has irretrievably broken down due to the Respondent's conduct - conduct that no reasonable person in the Petitioner's position would be expected to endure. This requires the presentation of cogent evidence to support the allegations made.
- 6.9 In this case, the Petitioner did not produce the alleged disturbing messages, which formed the core of his complaint. Considering that the Petition was premised on those messages, it was incumbent upon him to submit them as evidence.
- 6.10 Furthermore, under cross-examination, the Petitioner conceded that he continued to engage in intimate relations with the Respondent after the July 2023 incident, including as recently as January 2024, one month before leaving the matrimonial home. This conduct suggests that despite his claims, the Petitioner voluntarily chose to maintain the marital relationship. He cannot now rely on past incidents that he had previously forgiven and moved beyond. His assertion that the marriage had broken down due to the Respondent's alleged conduct is undermined by his own behaviour, which was inconsistent with a relationship that had reached such a point.
- 6.11 Considering the foregoing, I find that the Petitioner has failed to prove his case.
- 6.12 In my view, to grant a dissolution in these circumstances would undermine the legislative intent of the **MCA 2007**, which seeks to

ensure that marriages are not dissolved lightly or without adequate consideration.

6.13 It follows that the Petitioner is not entitled to the reliefs sought in the Petition.

7. CONCLUSION

7.1 In light of the foregoing findings, I issue the following orders:

- (i) **The Petitioner's Petition dated 14th September 2023 is hereby dismissed.**
- (ii) **The Petitioner is not entitled to the reliefs sought therein.**
- (iii) **This being a family matter, each party shall bear their own costs.**
- (iv) **Leave to appeal is hereby granted.**

DATED THIS 14TH DAY OF AUGUST 2025


T.S. MUSONDA
JUDGE

