

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

2023/HPF/D678

BETWEEN:

PAMELA INGWE CHIPOTE
AND



PETITIONER

COLLINS CHONGO CHIPOTE

RESPONDENT

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

For the Petitioner: Mrs. P. I. Chipote (In Person).

For the Respondent: No Appearance.

J U D G M E N T

LEGISLATION REFERRED TO:

- 1. 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 at 77.**

PAMELA INGWE CHIPOTE (the Petitioner) filed this Petition for dissolution of her marriage on 23rd November, 2023 seeking to dissolve her marriage to **COLLINS CHONGO CHIPOTE** (the Respondent).

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

The Petition reveals that the Petitioner was married to the Respondent on 29th October, 2008 at the Office of the Registrar of Marriages, Civic Centre, in the City and Province of Lusaka of the Republic of Zambia; that both parties are domiciled in Zambia; that immediately after the marriage the Petitioner and the Respondent lived together as husband and wife at House No. 22B, 10th Street, Chudleigh, Lusaka aforesaid; that the Petitioner is a Nurse by profession while the Respondent is a Lawyer by profession.

The Petition further reveals that there are no children of the family born during the subsistence of the marriage.

That there have been previous proceedings in the Lusaka High Court for the dissolution of marriage which case was withdrawn after the reconciliation of the Petitioner and Respondent.

There has been no agreement or arrangement made between the parties for the support of either the Petitioner or Respondent in the event of a decree being granted.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of Petition namely from 3rd March, 2018.

The Petitioner alleged the particulars of the irretrievable breakdown as follows;

- a. *The Respondent exhibited adulterous behavior.*
- b. *The Respondent behaved unreasonably by demeaning and disrespecting the Petitioner and her relatives who he insults as being uneducated fools.*

The Petitioner prayed;

- i. *That the marriage be dissolved.*
- ii. *That there be an order for property settlement.*
- iii. *That costs incidental to the application be borne by the Respondent.*

There was no Defence filed by the Respondent.

I have considered the evidence of the Petitioner and I am satisfied that this matter is one that is suitable to be determined by Special Procedure particularly on the ground that the Petitioner and Respondent have lived separately for over a period of five years.

Although the Petitioner in her Petition states that (a) the Respondent exhibited adulterous behaviour and (b) the Respondent behaved unreasonably by demeaning and disrespecting the Petitioner and her relatives who he insults as being uneducated fools, the particulars are irrelevant because the ground for dissolution of the marriage is five (5) years separation.

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 five years' separation 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 am satisfied that the Petition in this case can be disposed of on the basis of the documents on the Record without the attendance of the parties or their Advocates.

I am accordingly satisfied that the marriage solemnized between **PAMELA INGWE CHIPOTE** and **COLLINS CHONGO CHIPOTE** on 29th October, 2008 at the Office of the Registrar of Marriages, Civic Centre, 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)(e) 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 accordingly Decree that the said marriage be dissolved and a Decree Nisi is hereby pronounced dissolving the marriage.

I hereby make the following orders;

1. The said Decree is to be made absolute within six (6) weeks from the date of this pronouncement unless sufficient cause be shown why it shall not be so made.
2. I refer the issue of property settlement to mediation pursuant to **Order 31 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia**.
3. The Respondent shall bear the costs incidental to this application.

DELIVERED AT LUSAKA THIS 22ND DAY OF JANUARY, 2024.

REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
22 JAN 2024
W S MWEEMBA
PO BOX 50067, LUSAKA

WILLIAM S. MWEEMBA
HIGH COURT JUDGE