

IN THE HIGH COURT OF ZAMBIA

2024/HPF/D. 434

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Divorce Jurisdiction)

BETWEEN:



SHARON MUBANGA

PETITIONER

AND

CHOMBA MUTALE CHILESHE

RESPONDENT

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

For the Petitioner : Mrs. C.M. Katemangwe of Messrs. Legal Aid Board

For the Respondent : In person

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) Yoyo v. Yoyo SCZ Judgment No. 78 of 1998**1. INTRODUCTION**

- 1.1 This Court has before it a Petition filed by **Sharon Mubanga**, the Petitioner herein on 12th July 2024 seeking the dissolution of her marriage to the Respondent, **Chomba Mutale Chileshe**, on the ground that it has irretrievably broken down. The Petitioner alleges that the Respondent has behaved unreasonably, and she cannot be expected to continue living with him.
- 1.2 The Petitioner seeks the following orders:
- (i) That the said marriage be dissolved;
 - (ii) That custody of the children of the family be granted to the Petitioner with reasonable access to the Respondent;
 - (iii) That there be an order for maintenance of the children of the family;
 - (iv) That each party bears its own costs;
 - (v) Any other relief the court may deem fit.
- 1.3 The Respondent acknowledged service of the Petition on 15th July 2024 and indicated his intention not to defend the Petition.
- 1.4 When he appeared before Court today, he reiterated his intention not to defend the Petition.
- 1.5 It is undisputed that the parties, both domiciled in Zambia married on 24th September 2016, at the Office of the Registrar, Lusaka Civic Centre Salvation Army, Kanyama Citadel, in Lusaka, Zambia.
- 1.6 They were issued with a Marriage Certificate, exhibit **"P1"**, pursuant to the **Marriage Act, Chapter 50 of the Laws of Zambia**. The marriage did not produce any children.

- 1.7 Pursuant to **Section 4(3) of the Matrimonial Causes Act, No. 20 of 2007 (“MCA 2007”)**, I had jurisdiction to hear this matter, as both the Petitioner and Respondent are domiciled in Zambia.
- 1.8 I also had jurisdiction over these proceedings, as the parties contracted a valid statutory marriage under the **Marriage Act**.
- 1.9 At the hearing both parties appeared.

2. SUMMARY OF THE EVIDENCE

The Petitioner’s case

- 2.1 The Petitioner’s evidence in support of her Petition is as follows:
- 2.2 The Respondent has a history of alcohol abuse, frequently drinking any time from questionable places and becoming verbally abusive especially towards the Petitioner. He also vomits around household furniture, among other despicable actions.
- 2.3 He furthermore, habitually deserts the matrimonial home for days and even months and goes to live with his parents.
- 2.4 The Respondent has failed to positively respond to the Petitioner’s efforts to help him rehabilitate for the benefit of his health. Further efforts to help the Respondent by his family, and church, have proved futile. Additionally, the Respondent has refused to seek professional help, stating that there is nothing wrong with him.
- 2.5 He has also failed provide financial support to the Petitioner, and shouts at her whenever he does not find food at home. He demands that she borrows money to for his meals.
- 2.6 As a result of the Respondent’s conduct, the Petitioner is constantly stressed, and this had negatively affected her performance at work.
- 2.7 According to the Petitioner, the Respondent’s conduct persisted from January 2022 until August 2024, when he left the matrimonial home.
- 2.8 Given the circumstances outlined, the Petitioner seeks the dissolution of her marriage to the Respondent.

The Respondent’s case

- 2.9 As a result of the Respondent's decision not to file an Answer to the Petition, he was unable to present any evidence and participate in these proceedings.

3. ISSUES FOR DETERMINATION

- 3.1 The main issues for determination in this Petition are:
- (i) Whether the Petitioner has proved that the Respondent behaved in such a way that she cannot reasonably be expected to live with him; and
 - (ii) Whether the Petitioner is entitled to the reliefs sought.

4. THE LAW

- 4.1 **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.

- 4.2 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;

4.3 **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.

4.4 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.

4.5 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?

4.6 Drawing from the above position, the Court must assess whether the effect of the Respondent's behaviour has made it unreasonable for the Petitioner to continue living with the Respondent. The conduct of a Respondent must be something more serious than the normal disputes inherent in married life.

4.7 Furthermore, the Court must consider the entirety of the matrimonial history of the parties and consider any excuse or explanation offered by the Respondent in the circumstances. The

Court must evaluate whether the conduct was such that the Petitioner ought not to be called upon to endure it (See **Welfare v. Welfare (3)**).

5. ANALYSIS AND DETERMINATION

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

- 5.1 In summary, the Petitioner's case revolves around the following key issues:
- 5.2
- (i) The Respondent's habit of returning home late without providing proper reasons.
 - (ii) The Respondent's habit of engaging in text message communication with other women.
- 5.3
- (iii) The Respondent's use of abusive language toward the Petitioner.
 - (iv) The Respondent's habit of leaving home after arguments and returning the following day.
 - (v) The Respondent's habit of threatening to commit suicide following disputes.
- 5.4 Despite the Respondent's failure to file an Answer, the Court must determine whether the Petitioner has proven these allegations on a balance of probabilities.
- 5.5 The Petitioner has not called independent witnesses to support her case. However, based on her demeanor and testimony, she appeared sincere, openly stating that her mental health was adversely affected by the Respondent's actions. After careful consideration and in light of the Respondent's failure to rebut the allegations, the Court finds the Petitioner's testimony credible.

- 5.6 Accordingly, although the Petitioner did not present independent witnesses, it is more probable than not that the Respondent engaged in the conduct described above.
- 5.7 By electing not to participate in these proceedings, the Respondent has failed to offer any explanation for his actions.
- 5.8 The Petitioner lamented that the Respondent's conduct had severely affected her mental well-being, prompting her to seek legal aid to file this Petition in pursuit of peace. This demonstrates that she could no longer tolerate his behavior.
- 5.9 Upon review, it is evident that the Petitioner endured conduct from a spouse who repeatedly threatened to commit suicide following arguments and showed no remorse for his interactions with other women. Additionally, he failed to provide explanations for his late nights away from home.
- 5.10 Given the Respondent's actions, the Petitioner cannot be faulted for seeking the dissolution of her marriage. Furthermore, his lack of interest in the marriage is evident from his decision not to defend the Petition.
- 5.11 I have no difficulty in holding that the Respondent's established conduct falls squarely within the scope of **Section 9(1)(b) of the MCA 2007**.
- 5.12 In the final analysis, I find that the Petitioner has proved that the marriage has broken down irretrievably because the Respondent behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

Issue 2: Whether the Petitioner is entitled to the reliefs sought

- 5.13 Notwithstanding my finding that the parties' marriage had irretrievably broken down, I am mandated to consider **Section 9 (4) of the MCA 2007**. This provision mandates that a Court refrain from making a Decree of dissolution of marriage where it is satisfied

that there is a likelihood of cohabitation being resumed by the parties.

- 5.14 I have considered that the Respondent opted not to defend the Petition, a sign of lack of interest in these proceedings. The Petitioner's decision to prosecute this Petition demonstrates her wish to be permanently separated from the Respondent. Consequently, there is no reasonable likelihood of the parties resuming normal married life under the current circumstances.
- 5.15 I have also considered **Section 20 of the MCA 2007**, which grants the Court discretion to refuse a Decree in cases where collusion is evident in filing or prosecuting the Petition. In this case, I find no evidence of collusion between the parties.

6. CONCLUSION

- 6.1 Under the circumstances, I find no bar to granting the Petition and dissolving the marriage between the Petitioner and the Respondent.
- 6.2 Consequently, it is hereby ordered that:
- (i) **A Decree Nisi for the dissolution of the marriage between the Petitioner and Respondent, celebrated on 24th September 2016, at the Office of the Registrar, Lusaka Civic Centre, in Lusaka, Zambia, is hereby issued pursuant to Sections 9 (3) and 41 of the MCA 2007.**
 - (ii) **The Decree Nisi is a conditional order, which shall become absolute, pursuant to Section 43 (1) of the MCA 2007, upon the expiration of a period of six weeks from today, 12th June 2025, unless cause be shown to the Court within six weeks from the making of this Decree, why such Decree should not be made absolute.**
 - (iii) **Any ancillary matters such as maintenance and property settlement shall be referred to mediation, in default of agreement upon application by either party, pursuant to**

Rule 4 (4) of Statutory Instrument No. 72 of 2018, The High Court (Amendment) Rules, Chapter 27 of the Laws of Zambia.

- (iv) This being a family matter, each party shall bear their own costs.**

DATED THIS 12TH DAY OF JUNE 2025

A handwritten signature in black ink, appearing to read 'T.S. Musonda', is written over a horizontal dashed line.

T.S. MUSONDA

JUDGE