

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

2022/HPF/D469

BETWEEN:

EXILDAH SAKALA CHIPILIPILI

PETITIONER

AND

DAVIES CHIPILIPILI

RESPONDENT

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

For the Petitioner: Mrs. Bwila. M. Mulenga of National Legal Aid
Clinic for Women.

For the Respondent: Mr. Davies Chipilipili (In Person)

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.***

Exildah Sakala Chipilipili (the Petitioner) filed this Petition for dissolution of her marriage on 19th September, 2022 seeking to dissolve her marriage to ***Davies Chipilipili (the Respondent)***.

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

The Petition reveals that the Petitioner was married to the Respondent on 16th February, 2003 under Zambian Customary Law and that the Parties proceeded to convert their marriage to a statutory marriage on 17th May, 2014 before the Registrar of Marriages at the Civic Centre Lusaka District in the Lusaka Province in the Republic of Zambia; that both parties are domiciled in Zambia, that immediately after the marriage the Petitioner and the Respondent lived as wife and husband in Chilenje Lusaka aforesaid, that the Petitioner and Respondent last lived together as wife and husband in Avondale, Lusaka; that the Petitioner is employed as an Accountant at JTI Leaf Zambia and currently resides at House No. 96A Northgate Complex, Lusaka while the Respondent is a Businessman and currently resides at Plot No. 555 Vona Valley Mean Wood, Lusaka.

The Petition further reveals that there are two (2) children of the family now living namely:

1. **Mapesho Chipilipili** (male) aged 18 years and born on 24th November, 2003 and a first year student at the University of Zambia.
2. **Wantaanga Chipilipili** (female) aged 13 years and born on 25th July, 2009 and in Grade 8 at Riverside Secondary School.

That there is one child born to the Petitioner before the subsistence of the marriage to the Respondent namely **William Siame**(Male) aged 25 and born on 12th February, 1997 while there are no other children born to the Respondent in so far as it is known to the Petitioner.

It also reveals that there are no proceedings in any Court outside Zambia which are in respect to the marriage or which are capable of affecting its validity and subsistence. That there have been previous proceedings for dissolution of marriage in the High Court for Zambia under Cause Number D123 which were discontinued. That no agreement has been made between the Petitioner and the Respondent in relation to the maintenance of the children of the family.

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 the Petition namely since 18th December, 2016. That the parties have not resumed cohabitation and there is no hope of the parties reconciling and that that the Respondent is not contesting the Divorce.

The Petitioner prayed that her marriage to the Respondent be dissolved; that the Petitioner be granted an Order for custody of the youngest child of the family namely **Wantaana Chipilipili** with reasonable access to the Respondent that there be an Order for Maintenance of the children of the family and their educational needs; that there be an Order for property settlement and that each party bears their own costs of the suit.

On 12th October 2023 the Petitioners Counsel, Messrs National Legal Aid Clinic for Women 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 33(3) of the Matrimonial Causes Rules 1973**.

On 18th January, 2024 the learned Deputy Registrar directed that the matter be entered in the Special Procedure List after being satisfied that the requirements of **Rule 33(3) of the Matrimonial Causes Rules 1973** had been met.

The Honourable Deputy Registrar further certified that the Petitioner had sufficiently proved the contents of her Petition and is entitled to a Decree Nisi particularly that the Respondent did not contest the divorce. The matter is referred to this Court for pronouncement of the Decree Nisi.

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 plus consent 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 learned Deputy Registrar has certified that the Petitioner has sufficiently proved the contents of her Petition. I have also noted that the Respondent is not contesting the divorce.

I am accordingly satisfied that the marriage solemnized between **Davies Chipilipili** and **Exildah Sakala Chipilipili** on 17th May, 2014 at the office of the Registrar of Marriages at the Lusaka Civic Centre, in the Lusaka Province of the Republic of Zambia has broken down irretrievably in terms of **Sections 8 and 9(1)(e) of the**

Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia.

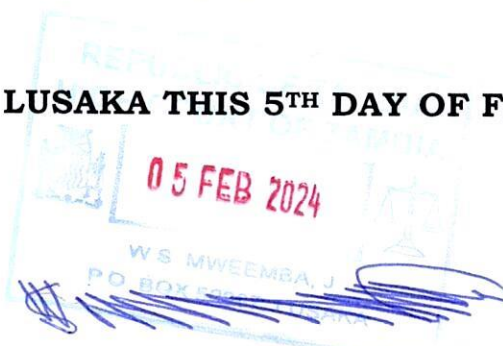
I am further satisfied that granting a Decree Nisi will not cause grave financial or other hardship to the Respondent.

I accordingly *Decree Nisi* that the said marriage be dissolved and a *Decree Nisi* is hereby pronounced dissolving the marriage and I make the following Orders:

1. The *Decree Nisi* 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. The Petitioner shall have custody care and control of the youngest child of the family namely ***Wantaana Chipilipili*** with liberal and reasonable access being granted to the Respondent.
3. The Petitioner and the Respondent shall each contribute towards the maintenance of the Children of the family.
4. 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.***
5. Each party is to bear their own legal costs of this action.

No appeal lies against a consented Decree Nisi.

DELIVERED AT LUSAKA THIS 5TH DAY OF FEBRUARY, 2024.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**