

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

**2015/HP/D323**

**BETWEEN:**

**BEENZU CHOONGO**



**PETITIONER**

**AND**

**SILPA DUDU PHIRI CHOONGO**

**RESPONDENT**

**Before the Hon. Mr. Justice M.L. Zulu  
in Chambers on the.....day of August, 2017**

*For the Petitioner: In Person.*

*For the Respondent: Ms. C. Jere, National Legal Aid Clinic for Women.*

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## **J U D G M E N T**

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**Legislation referred to:**

1. *Matrimonial Causes Act, No. 20 of 2007, Section 9(1)(d)*

This Petition for dissolution of marriage between the Petitioner **Beenzu Choongo** and the Respondent, **Silpa Dudu Phiri Choongo** shows that the parties were lawfully married on the 6<sup>th</sup> day of

November, 2009 at the Civic Centre in the City and Province of Lusaka of the Republic of Zambia and lived together as husband and wife at House no. 17, Delele Street, Libala Stage II, Lusaka.

At the hearing of this Petition, the Petitioner testified that he is an Engineer and resides at Plot no. 54489, Lusaka West.

The Petitioner told the court that there was one Child born to the parties during the subsistence of the marriage; Luyando Choongo, a girl aged 3 at the time of the Petition. There are two other children living born to the Petitioner outside wedlock and prior to the subsistence of the marriage.

The Petitioner testified that there were no previous proceedings in any court in Zambia with reference to the said marriage between the Petitioner and the Respondent or with reference to any property of either or both of them. Further, there are no proceedings continuing in any country outside Zambia, which are, in respect of the marriage, capable of affecting its validity or substance.

There is no agreement or arrangement made or proposed to be made between the parties for the support of the Respondent.

The Petitioner testified that his marriage to the Respondent has broken down irretrievably by reason of the fact that the parties to the marriage have lived apart for a continuous period of atleast two

years immediately preceding the presentation of the Petition and the Respondent consents to a ***decree nisi*** being granted.

The Petitioner prayed – that the marriage be dissolved; that the Petitioner be granted liberal access to the Child, that the Petitioner maintains the Child, and that each party bears their own costs of the suit.

The sole ground upon which this court can dissolve a marriage is to find that the marriage has broken down irretrievably (**Section 8, Matrimonial Causes Act, 2007**).

Further, Section 9 of the said Act provide-

**“For the 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**

- (a) That Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.**
- (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.**
- (c) That Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.**
- (d) That parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the decree being granted.**

- (e) That parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition.**

The Petitioner has relied on **Section 9 (1)(d) of the Matrimonial Causes Act**, in the Petition, which states:

**That parties to the marriage have lived apart for a continuous period of atleast two years immediately preceding the presentation of the Petition and the Respondent consents to the decree being granted.**

The Respondent filed an Answer and Cross Petition on 5<sup>th</sup> July, 2017, and denied that the Parties have lived apart for a period of atleast two years. The Responded averred that they last cohabited in the first week of March, 2017 but admits that the marriage has broken down irretrievably for the unreasonable behaviour of the Petitioner and therefore, she cannot reasonably be expected to live with him.

The Respondent alleges that the Petitioner contracted another marriage to Catherine Maleta in 2014, and that he was even arrested for bigamy but the matter didn't go to court. The Respondent also alleges that the Petitioner has not been supporting the family financially. The Respondent prayed that the marriage be dissolved; that she be granted custody of the Child; that the Court makes an order for property settlement; and that the Petitioner bears the cost of this suit.

At hearing the Respondent told the court that she is a Student and currently staying at House no. 3 Handsworth, Great East. She largely repeated what is contained in her Cross Petition, and maintained that that the Petitioner had married another woman. In support of her allegation she produced photographs of the the alleged marriage ceremony. It was her submission that the only reason the Petitioner was not arrested for bigamy is because she failed to produce a marriage certificate to support her claim.

I have considered the Petition, Answer, Cross Petition and oral evidence adduced by the parties in court. Its worth noting that the Respondent also filed a Consent to the dissolution of the marriage on 5<sup>th</sup> July 2017, in Response to the Petition, as well as a Cross Petition.

The evidence of the Respondent alleging that the Petitioner contracted a second marriage is not supported by any tangible evidence, as the alleged second wife Catherine Maleta was not joined to the proceedings so that she could defend herself. Further the Respondent has not produced any marriage certificate to support the claim. The court is further at the loss as to why the Respondent filed a Consent order to the dissolution of the marriage and indicated that she would not be defending the Petition on 5<sup>th</sup> July, 2017, but at the same time filed a Cross Petition, which I accordingly for lack of merit.

This being the case

I am satisfied that the marriage solemnized under the Marriage Act at the Marriage Registry in Lusaka on 6<sup>th</sup> day of November, 2009 between the Petitioner, **Beenzu Choongo** and the Respondent **Silpa Dudu Phiri Choongo** has broken down irretrievably by reason of the fact that the parties to the Marriage have lived apart for a continuous period of atleast two years immediately preceding the presentation of the Petition and the Respondent Consents to the dissolution of the marriage. I am also satisfied that there is no likelihood of the parties resulting cohabitation.

I, accordingly, find that the provisions of the law under **Section 9(1)(d) of the Matrimonial Causes Act, 2007** have been satisfied by the Petitioner.

In circumstances, I order that the said marriage be dissolved and a decree nisi is hereby granted. I direct that the decree shall be made absolute at the expiration of six (6) weeks from the date of this judgment upon application by either party unless sufficient cause be shown to the court why it should not be made so.

I, grant the Respondent custody of the child of the family with reasonable to the Petitioner.

I, further Order and refer all issues pertaining to the assessment of Maintenance or Property settlement, to the Learned Registrar of the High Court for determination.

Each party shall bear their own legal costs relating to this action.

Leave to appeal is granted.

Delivered at Lusaka this 14<sup>th</sup> day of November, 2017.

A handwritten signature in blue ink, consisting of a large, stylized 'Z' followed by a loop and a vertical stroke.

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**M.L. ZULU**  
**HIGH COURT JUDGE**