

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2019/HPF/D287

(Divorce Jurisdiction)

BETWEEN:

SOPHIE TONGA MOYO

AND

CLEVER MOYO



PETITIONER

RESPONDENT

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO,
IN OPEN COURT, ON THE 10TH DAY OF FEBRUARY, 2020.**

For the Petitioner: Mrs. Sophie T. Moyo - In Person

For the Respondent: N/A

JUDGMENT

LEGISLATION REFERRED TO:

1. *The Matrimonial Causes Act, Act No. 20 of 2007; and*
2. *The Marriage Act, Chapter 50 of the Laws of Zambia.*

1 BACKGROUND

1.1 On 26th August, 2019, the Petitioner SOPHIE TONGA MOYO Petitioned for the Dissolution of Marriage pursuant to **Sections 8 & 9 (1) (e)** of **The Matrimonial Causes Act**¹ on the ground that the marriage has broken down irretrievably by reason of the fact that the parties have lived apart for a

continuous period of five (5) years immediately preceding the presentation of this Petition.

2 THE LAW

2.1 **Sections 8 and 9 (1) (e)** of **The Matrimonial Causes Act¹** provides that: -

"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.

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...

(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition..."

(Court's emphasis)

2.2 I refer to **Section 9 (2)** of the **Matrimonial Causes Act¹**, which provides that: -

"On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent." (Court's emphasis)

3 EVIDENCE

3.1 In accordance with the said **Section 9 (2)¹**, I set this matter down for the hearing of the Petition for Dissolution of Marriage on 10th February, 2020, in

order for me to inquire into the facts alleged in the Petition for Dissolution of Marriage presented before this Court by the Petitioner.

- 3.2 On the return date, the Respondent was absent and no reason was advanced for his absence. I was satisfied that the Respondent had been duly served with the Petition, other supporting documents and Notice of Hearing as per proof of service filed herein on 7th February, 2020. I therefore allowed the Petitioner to present her Petition for Dissolution of Marriage.
- 3.3 The Petitioner gave sworn evidence. She testified that she was married to the Respondent CLEVER MOYO, on 26th February, 2012, at Chelston SDA Church, in Lusaka, in the Lusaka Province of the Republic of Zambia. She produced an original copy of her marriage certificate, which was identified as "**ID1**" and was admitted into evidence as exhibit "**P1**".
- 3.4 It was her testimony that both the Petitioner and Respondent are domiciled in Zambia. According to the Petitioner, she is a Teacher and resides at House No. 20/279, Chelston, Lusaka, while the Respondent is a Driver, whose last known address is Plot No. 62, Chelston, Lusaka.
- 3.5 There are no previous proceedings in any Court or continuing in Zambia or elsewhere, in reference to the said marriage, which are capable of affecting its validity or subsistence. No arrangements have been made between the parties.

- 3.6 The parties last cohabited together as husband and wife, on 22nd December, 2012, in Lusaka, Zambia. There are no children of the family.
- 3.7 The Petitioner further testified that the said marriage has broken down irretrievably, such that the parties can no longer be expected to live together based on the fact that the parties have lived apart for more than five (5) years immediately preceding the presentation of the Petition for Dissolution of the Marriage.
- 3.8 The Petitioner prayed therefore for the dissolution of marriage and that a *Decree Nisi* be granted; and that each party bears its own costs.
- 3.9 That marked the close of the Petitioner's case.

4 ANALYSIS AND FINDINGS

- 4.1 Having heard and inquired into the Petitioner's Petition for the Dissolution of Marriage in accordance with the above cited provision, I am satisfied that the Petitioner was lawfully married to the Respondent at Seventh Day Adventist Church, Chelston, in the Lusaka Province of the Republic of Zambia on 26th February, 2012, under ***The Marriage Act***².
- 4.2 I refer to **Section 90** of ***The Matrimonial Causes Act***¹, which provides that: -

"Proof of marriage, etc.

In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or certified copy of a certificate, entry or record of a birth, death or

marriage alleged to have taken place whether in Zambia or elsewhere."

- 4.3 The evidence of fact that the Petitioner was married to the Respondent as per her testimony is the original Certificate of Marriage admitted into evidence marked "P1", which was obtained from Seventh Day Adventist Church, Chelston, in Lusaka after the marriage was solemnised and was issued in accordance with **Section 25 of The Marriage Act²**.
- 4.4 I am satisfied that there are no children of the family. I am further satisfied that there are no proceedings either in Zambia or elsewhere in the world subsisting which might affect the validity of the marriage.
- 4.5 I refer to **Section 9 (3) of The Matrimonial Causes Act¹**, which provides that: -

"If the Court is satisfied on the evidence of any fact mentioned in subsection (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably it shall grant a decree of dissolution of marriage."

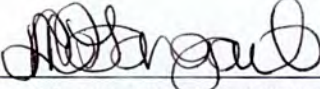
- 4.6 It was the Petitioner's testimony that the parties herein last lived together on 22nd December, 2012. Therefore, I am satisfied and hereby find that the marriage solemnised between SOPHIE TONGA MOYO and CLEVER MOYO has indeed broken down irretrievably due to the fact that the parties have lived apart for a continuous period of 5 years immediately preceding the presentation of this Petition.

5 CONCLUSION

5.1 Accordingly, it is hereby **ORDERED** that the Marriage solemnised by the Petitioner and the Respondent on the 26th February, 2012, **BE** and is **HEREBY DISSOLVED** and a **DECREE NISI** is granted to be made Absolute within six weeks from date of the **DECREE NISI**, upon application to the Registrar of the High Court, by either party.

5.2 Each party will each bear its own costs.

Delivered at Lusaka, on the 10th day of February, 2020.



P. K. YANGAILO
HIGH COURT JUDGE