

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

2019/HPF/D/347



BETWEEN:

SHY CHILESHE MASWAHU

PETITIONER

AND

DR. DANIEL KONGWA MASWAHU

RESPONDENT

BEFORE THE HONOURABLE MRS. JUSTICE M.C. KOMBE

For the Petitioner : *In person*

For the Respondent : *No appearance*

J U D G M E N T

Legislation referred to:

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

The petition filed by the Petitioner **SHY CHILESHE MASWAHU** on 10th October, 2019 shows that she lawfully got married to **DR. DANIEL KONGWA MASWAHU** at Office of the Registrar in the

Lusaka District of the Lusaka Province of the Republic of Zambia; that the parties last lived together as husband and wife in Villa Wanga Doctor's compound in Avondale.

The Petitioner and the Respondent are both domiciled in Zambia and there are no marital children of the family.

The Petitioner alleges that the marriage has broken down irretrievably as the Petitioner and the Respondent have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of the petition.

She prayed that the marriage be dissolved.

At the first hearing of the petition on 6th December, 2019 the Petitioner was in attendance but the Respondent was not. The Petitioner explained to the Court that she didn't know the whereabouts of the Respondent as he left her twenty years ago.

After reading the record, I noted that the Petitioner had obtained leave of the Court to serve the petition by way of substituted service and that she had filed proof of service of the petition. However,

there was no proof that the Respondent had been notified of the date of hearing.

Thus, the matter was adjourned to enable the Petitioner serve on the Respondent the Notice of hearing.

At the hearing of the petition on 19th February, 2020, the Petitioner informed the Court that she was not able to locate the whereabouts of the Respondent even after being told that he used to work at the University Teaching Hospital (UTH) and that he was at one point incarcerated at Kamwala Remand Prison.

Furthermore, she stated that when she went to the Health Professional Council of Zambia (HPCZ), the Respondent's records were not found. That she had therefore advertised in the Daily Mail informing the Respondent of the new date of hearing.

After considering the Petitioner's explanation, I came to the conclusion that the Respondent had been served and no reasons were advanced for his non- appearance. I therefore proceeded in the absence of the Respondent.

During the hearing, the Petitioner aged forty-nine (49) years old told the Court that she was relying on the petition which she filed into Court on 10th October, 2019.

She further stated that one year or so after she got married to the Respondent, he went to pursue further studies in the United Kingdom (UK) but he left her at the matrimonial home in Avondale. When he came back, he told her that he no longer wanted to be with her as she was not educated. From that time, they started facing a lot of problems in the marriage and she was chased from the matrimonial home.

The Petitioner testified that their parents tried to help them reconcile but to no avail; that they had now lived apart for over twenty-one years. She prayed that the marriage be dissolved as it had broken down irretrievably; that the Respondent whom she had loved so much did not love her as they had not been living together as a family.

There was no cross examination as the Respondent was not in attendance.

This is a petition for the dissolution of marriage solemnized under the Marriage Act, Chapter 50 of the Laws of Zambia. According to Section 8 of the Matrimonial Causes Act No. 20 of 2007, the sole ground on which divorce may be presented to court is on the ground that the marriage has broken down irretrievably.

A Petitioner has to prove one of the five facts outlined under Section 9(1). In the present case, the Petitioner has relied on Section 9(1) (e) which provides as follows:

9 (1) “For the purpose 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)**
- (b)**
- (c)**
- (d)**
- (e) That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.**

I have considered the evidence adduced by the Petitioner. The Petitioner has alleged in her petition that the parties to the marriage have lived apart for a continuous period of at least five

years (5) years. In Court the Petitioner testified that they have lived apart for a long time, that is over twenty one years.

As I have mentioned the Respondent was not in attendance even after being served with the court process and the notice of hearing through substituted service. The Respondent did not respond to the process. The petition is therefore undefended.

In view of the uncontroverted evidence adduced by the Petitioner, I am satisfied that the Petitioner has proved her case that the parties have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of the petition and there is no hope that the parties will resume cohabitation.

For the foregoing reasons, I hold that the marriage contracted under the provisions of the Marriage Act, Chapter 50 of the Laws of Zambia between **SHY CHILESHE MASWAHU** and **DR. DANIEL KONGWA MASWAHU** 27TH June, 1997 at the Office of the Registrar in the Lusaka District of the Lusaka Province of the Republic of Zambia has broken down irretrievably in terms of Section 9(1) (e) of the Matrimonial Causes Act No. 20 of 2007.

I accordingly decree that the said marriage be dissolved and a decree nisi is hereby granted dissolving the marriage. The said decree is to be made absolute within six (6) weeks of the date hereof unless sufficient cause is shown to the Court why it should not be so made.

I order that either party is at liberty to file a formal application before the learned Deputy Registrar for the determination of the issue of maintenance or property settlement.

Considering the circumstances of this case, I order that each party shall bear their own costs of the petition.

Leave to appeal granted.

Delivered at Lusaka this 28th day of February, 2020.



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M.C. KOMBE
JUDGE