



FAMILY LAW GROUP WORK

GROUP 2

1) Jurisdiction of the court- to consider the type of a marriage where if it is the statutory marriage the High Court has the jurisdiction to hear such matters as **per section 4 of the Matrimonial Causes Act of 2007**. The Local Court has the jurisdiction to hear matters arising from a customary law marriage and to inquire if both parties are Zambian citizens.

2) The marriage has broken down irretrievably by proving one of the five factors stipulated in **section 9 (1) of the Matrimonial Causes Act**. Failure to prove one or more of the grounds will not be sufficient to terminate the legal relationship as it was illustrated in **Buffery v Buffery** where the Petitioner failed to show that the marriage has broken down irretrievably by proving one of the five facts.

It was held that she could not succeed on her petition notwithstanding the fact that they had grown apart and no longer had anything in common and could not communicate.

3) A marriage which stood no chance because parties to the marriage have ceased cohabiting and one or both parties intend not to continue cohabiting as it was stated by **Mckenna B**.

4) By proving one of the five grounds and that the petitioner finds it unreasonable to continue living with the respondent. The test used is objective and the question is answered by the court after assessing the history of the marriage and their relationship.

5) Somanje v Somanje

After the last occasion that was complained of the, the petitioner continued living with the respondent for a couple of months of which in a legal sense it meant that the marriage had not broken down irretrievably and following the fact UNHAPPINESS is not a ground for divorce the petition was dismissed.

6) Adultery is an extramarital sex that is considered objectionable on social, religious, moral or legal grounds. This was illustrated in the case of **Sikazwe v Sikazwe where** the petitioner petitioned for a divorce on the ground that the marriage had irretrievably broken down on accounts of the respondent's adultery with Jennifer Nkonde who is the co-respondent and she found it intolerable to live with him.

7) In order to succeed on the ground of adultery the petitioner must prove that the respondent committed adultery and there was sexual intercourse between the respondent and the co-respondent who might be sighted. As these elements must be proved together not separately. It was stated in **Goodrich v Goodrich** that it is not enough for the petitioner just to say 'I find it intolerable', there should be a reason, explanation or justification for this assertion so that the court can be satisfied of the truth of the petition.

8) C v C and H

Based on the evidence that was adduced by the petitioner to support the fact that the respondent was violent towards her the court considered the fact that the petitioner found it intolerable to live with the respondent as it was unreasonable to expect the petitioner to continue living with the respondent. The respondent could not rely on the ground of adultery committed by the petitioner as it was forgiven and forgotten.

9) The petitioner shall not be entitled to rely on an act of adultery committed by the respondent if it became known to the petitioner that the respondent had committed adultery but the parties have lived with each other for a period of exceeding 6 months as per **section 12 of the matrimonial causes act**.

10) A party either a Husband or wife, may claim damages on the ground that the respondent has committed adultery with the other person who is a co-respondent and the court may award

damages accordingly as per **section 11(1) of the Matrimonial Causes Act of 2007**. However in section 11(2) states that damages shall not be awarded where an act of adultery has been condoned, (3) damages shall not be awarded under this Act in respect of adultery committed more than three years before the date of the petition, (4) the courts has a discretion in what manner the damages awarded may be paid or applied if it thinks fit.

11) The question before the court is not whether the behavior is unreasonable but whether it is unreasonable to expect the petitioner to continue living with the respondent and the test is objective since the court assesses the history and the circumstances to answer the question.

12) Since the test which is used is an objective test which is 'can the petitioner reasonably be expected to live with the respondent', if the answer is no then the petitioner has found it intolerable to live with the respondent. But if the petitioner is not seeking any legal recourse against the respondent within the period of 6 months, then the court will take a view that the petitioner has condoned the behavior which is stated in section 9(1)(b) and the petitioner will not rely on this ground.

13) Willful abandonment of a person's duties or obligations especially to a spouse. As per the case of **Pizey v Pizey** where it was stated that the frequent visits by the petitioner to the respondent showed that the separation too had been condoned.

14) – They should be separation of the parties for at least two years.

- Intention on the part of the respondent to remain separated permanently.
- Absence of consent on the part of the petitioner.
- Absence of any reasonable ground on part of the respondent for withdrawing from cohabitation.

15) Constructive Desertion- Section 14 of the Matrimonial Causes Act-A party to the marriage whose conduct makes the other party to the marriage live separately or apart without the just cause or excuse shall be deemed to have willfully deserted the other part without just cause or excuse.

Refusal to Resume Cohabitation- Section 15 of the Matrimonial Causes Act-where parties to the marriage agrees to separate whether oral, in writing or by conduct the refusal by one of them to resume cohabitation without a reasonable justification to comply to the other party's request also constitutes willful desertion on the party refusing.

16)As per **section 8 of the Matrimonial Causes Act**, the petitioner may present the petition for a divorce on the ground that the marriage has broken down irretrievably to the court.

17) The Court may in its discretion refuse to make a decree of dissolution of marriage upon the ground specified in **section 8 of the MCA** if the marriage is falling on any of the grounds stipulated in **Section 21 of the Matrimonial Causes Act of 2007**.

18) The Presumption maybe raised after 7 years absence and the test applied is the petitioner's belief.

19) A judicial separation is a legal process by which a married couple is formally separated, despite being legally married. As per **section 34 of the MATRIMONIAL CAUSE ACT**.

20) The five grounds stipulated under **section 9(1)(a)** that the divorce petition may be based on are the same grounds that the Judicial Separation can be based on only that on judicial separation there is no need to show that the marriage has broken down irretrievably.

- 21) a-Both Judicial Separation and Divorce is based on the five factors on **section 9(1)(a)**.
b-in Judicial Separation there is no need to prove that the marriage has broken down irretrievably while in a Divorce there is need to show that the marriage has broken down irretrievably by proving one or more of the five factors.
-The effect of Judicial Separation is to relieve the petitioner from the obligation to cohabit with the other party to the marriage as per **section 35 of the Matrimonial Causes Act of 2007** while the effect of a divorce is to permanently dissolve the marriage once the decree has been made absolute by the court.
- 22) The effect of nullity is to either render the marriage void as per **section 27 of the MCA** or to render it voidable as per **section 29 of the MCA** while a divorce is to permanently dissolve the marriage.