

Florence Chanika v Joseph MacNewton Mwalilino

Summary

Court:	High Court of Malawi
Registry:	Family and Probate Division
Bench:	Honourable Justice Fiona Atupele Mwale.
Cause Number:	Matrimonial Cause No. 15 of 2023
Date of Judgment:	April 18, 2024
Bar:	Milanzie, counsel for the petitioner Salima, counsel for the respondent

The Petitioner sought the dissolution of her relationship with the Respondent through a Petition for Divorce, alongside ancillary reliefs including child custody, maintenance, and a share of matrimonial property. The parties began their relationship in 2013 and cohabited from 2017, having conceived two children. The relationship was never formally officiated. The Petitioner alleged that the relationship broke down due to the Respondent's disdainful treatment of her children from a previous relationship and repeated physical abuse. Although the Respondent entered a memorandum of appearance, the proceedings were undefended as he filed no subsequent process.

The principal legal question before the Court was whether a marriage by repute or permanent cohabitation could be dissolved by the courts, and whether a Petition for divorce was the correct procedure for obtaining the sought reliefs.

The Court observed that while the Constitution and the Marriage, Divorce and Family Relations Act recognise informal unions (marriages by repute or permanent cohabitation) to ensure parties are not excluded from ancillary reliefs, this recognition does not formalise the union in a way that makes it dissolvable by the court. The Court affirmed the principle that it can only dissolve a union that was once formally bound, which requires a marriage certificate or proof of formal entry. The jurisdiction of the Court in such relationships is only limited to **determine** if the relationship qualifies as a marriage by repute or permanent cohabitation in accordance with the law, and consequently, to settle the rights and obligations of the parties upon breakdown. The Petition was dismissed. The Court ruled that the correct procedure for the Petitioner was not a Petition for Divorce, but an application to the Court to have her relationship declared a marriage by repute or permanent cohabitation, and only then seek the ancillary orders thereto.