

## **FAMILY LAW**

# **UNCONTESTED DIVORCE IN ZIMBABWE: A COMPLETE GUIDE FOR EVERYDAY PEOPLE**

## **Introduction**

Divorce is never easy. It marks the end of what was once a cherished relationship, and the legal process that accompanies it can feel overwhelming, confusing, and emotionally draining. However, not all divorces have to be bitter, costly, and drawn-out courtroom battles. Where both spouses are willing to cooperate and reach mutual agreement, the law in Zimbabwe provides a simpler, more dignified path known as an uncontested divorce.

This guide is written in plain, everyday language to help ordinary Zimbabweans understand exactly what an uncontested divorce is, how the process works, what documents are involved, and why this route may be the best option for families going through the painful but sometimes necessary process of ending a marriage.

## **SECTION A**

### **UNDERSTANDING UNCONTESTED DIVORCE**

#### **What Exactly is an Uncontested Divorce?**

Simply put, an uncontested divorce is a divorce where both husband and wife agree on everything. There is no fighting, no courtroom drama, and no judge having to decide who gets what or who looks after the children. Both parties sit down, have honest and mature conversations, and reach agreement on all the important issues before the matter even goes to court. For a divorce to qualify as uncontested in Zimbabwe, both spouses must be in full agreement on the following five key issues:

#### **1. That the Marriage Has Irretrievably Broken Down**

This is the only ground for divorce recognized in Zimbabwe. The law does not require you to prove that your spouse cheated, was abusive, or did something wrong. What the law requires is that both of you honestly acknowledge that your marriage has

broken down to such an extent that there is no reasonable prospect of it being saved, and that continuing it as a normal marital relationship is simply not possible.

In plain terms, you are both saying: **"This marriage is over, and there is no going back."**

## **2. Who Will Have Custody of the Minor Children (if any)**

If you and your spouse have minor children together, you must agree on who will have primary custody of those children after the divorce. Custody refers to who the children will live with on a day-to-day basis and who will be responsible for their daily care, upbringing, and welfare.

It is important to note that custody arrangements must always prioritize the best interests of the children. The law in Zimbabwe places the welfare of children above the preferences of either parent.

## **3. Access and Visitation Rights**

Just because one parent has custody does not mean the other parent disappears from the children's lives. Both parents must agree on a clear and practical arrangement that allows the non-custodian parent to spend meaningful time with the children. This includes specifying:

- Which days and weekends the children will visit the non-custodian parent
- How school holidays will be shared
- Arrangements for special occasions such as birthdays and public holidays
- Any other access arrangements that work for the specific family

## **4. Child Maintenance**

Money matters, especially when it comes to raising children. Both spouses must agree on how much the non-custodian parent will contribute every month towards the

financial upkeep of the children. This monthly contribution is called maintenance, and it covers everyday expenses such as food, clothing, school fees, medical costs, and other necessities.

Maintenance continues until each child either reaches the age of majority or becomes self-sufficient, whichever happens first.

## **5. Division of Assets**

Everything that the couple accumulated during the marriage, including property, vehicles, furniture, bank accounts, investments, and any other assets, must be divided between them in a manner that both parties agree is fair. This agreement must be clearly spelled out so that there are no disputes after the divorce is finalized.

## **SECTION B**

### **HOW TO START THE DIVORCE PROCESS**

#### **1. Divorce is Started by Action Proceedings**

Many people are surprised to learn that divorce in Zimbabwe is not started by simply filing a court application. Instead, divorce is initiated through what lawyers call action proceedings. In practical terms, this means the process begins with a legal document called a Summons, not a simple application.

The spouse who initiates the divorce is called the Plaintiff. The other spouse, against whom the divorce is brought, is called the Defendant. These are simply legal labels and do not imply that one party is at fault or is being blamed for anything.

#### **2. The Summons and the Declaration**

The Summons is the formal document that officially starts the divorce proceedings. Attached to the Summons is a very important document called a Declaration.

Think of the Declaration as the Plaintiff's written story to the court. It is a formal written statement that sets out all the important details of the marriage and the divorce. Specifically, the Declaration must contain the following information:

- a) Personal Details of Both Parties:** The full names and physical addresses of both the Plaintiff and the Defendant must be clearly stated.
  
- b) Details of the Marriage:** The Declaration must state what type of marriage the parties have. In Zimbabwe, marriages are out of community of property, and this distinction has a significant impact on how assets are divided. The Declaration must also state when and where the marriage took place.
  
- c) Why the Court Has Jurisdiction:** The court must have the legal authority, known as jurisdiction, to hear the matter. The Declaration must explain why the High Court of Zimbabwe has the right to deal with this particular divorce. This is usually based on where the parties live or where the marriage took place.
  
- d) The Grounds for Divorce:** As mentioned earlier, the only ground for divorce in Zimbabwe is the irretrievable breakdown of the marriage. The Declaration must clearly state this.
  
- e) Details of Minor Children:** The full names and dates of birth of all minor children born of the marriage must be listed in the Declaration.
  
- f) Custody Arrangements:** The Declaration must clearly state which parent will have custody of the minor children after the divorce.

**g) Maintenance:** The Declaration must specify exactly how much the non-custodian parent will pay every month towards the upkeep of the children, and for how long.

**h) Access and Visitation:** The specific access and visitation arrangements agreed upon by the parties must be set out in detail.

**i) Division of Assets:** The Declaration must clearly explain how the couple's assets will be divided upon divorce.

## **SECTION C**

### **SERVING THE DIVORCE SUMMONS**

#### **1. Why Personal Service is Required**

Once the Summons and Declaration are prepared, the Summons must be formally delivered to the Defendant. This delivery process is called service, and in divorce matters, the law in Zimbabwe requires that service be done personally. This means the Summons must be physically handed to the Defendant in person.

Personal service is required in divorce matters because divorce affects a person's legal status in a very fundamental way. It changes a person from being married to being single, with all the legal consequences that flow from that change. The law therefore insists that the Defendant personally receives the Summons so that there can be no doubt that they were properly informed of the proceedings.

The person responsible for serving the Summons is the Sheriff of the High Court, who is an official of the court appointed specifically for this purpose.

#### **2. What Happens When the Defendant Cannot Be Found?**

Life is not always straightforward, and sometimes the Defendant's whereabouts are simply unknown. Perhaps they have moved away without leaving a forwarding address, or contact has been completely lost. In such cases, the Plaintiff cannot simply serve the Summons on a neighbour or a family member and hope for the best.

Instead, a separate application must be made to the court. This application is called an

**Application for Substituted Service.** The court, if satisfied that the Defendant genuinely cannot be located, may grant permission for the Summons to be served by alternative means. One common method is having the Summons published in a widely circulating daily newspaper, giving the Defendant a reasonable opportunity to become aware of the proceedings even if their physical whereabouts are unknown.

### **3. What If the Defendant Lives Outside Zimbabwe?**

If the Defendant is living in another country, yet another separate application must be made to court. This application is called an **Application for Edictal Citation.** The court must grant permission before the Summons can be served outside Zimbabwe's borders. This ensures that the process remains legally sound even when dealing with cross-border situations.



## **WHAT HAPPENS AFTER THE SUMMONS IS SERVED**

Once the Defendant has been served with the divorce Summons, the following steps take place in an uncontested divorce:

### **Step 1: The Consent Paper**

Both the Plaintiff and the Defendant sit down and prepare a document called a **Consent Paper**. This document formally records everything that the parties have agreed upon, covering all five key issues discussed earlier, namely the breakdown of

the marriage, custody, access, maintenance, and division of assets. Both parties must sign the Consent Paper to confirm their agreement.

### **Step 2: The Defendant's Affidavit of Waiver**

The Defendant then signs a sworn statement called an **Affidavit of Waiver**. In this affidavit, the Defendant formally declares three important things:

- That they do not wish to defend the divorce proceedings
- That they do not wish to be notified of or attend the court hearing
- That they have signed the Consent Paper and they confirm and identify their signatures on both the Consent Paper and the Marriage Certificate

This affidavit is a critical document because it confirms that the Defendant is participating willingly and voluntarily in the uncontested process.

### **Step 3: The Plaintiff's Affidavit of Evidence**

After the Plaintiff has seen and is satisfied with the Defendant's Affidavit of Waiver, the Plaintiff then swears their own affidavit called an **Affidavit of Evidence**. This affidavit incorporates both the Consent Paper and the Defendant's Affidavit of Waiver, effectively presenting the entire agreed case to the court in a single sworn document.

### **Step 4: Setting the Matter Down for Hearing**

Once all the affidavits and documents are in order, the matter is set down for a court hearing.

### **Conclusion**

An uncontested divorce represents the most civilized, cost-effective, and emotionally responsible way to end a marriage in Zimbabwe. It allows two people who have decided that their marriage is over to part ways with dignity, mutual respect, and a shared commitment to the wellbeing of their children and their own futures. The process, while still a formal legal proceeding that must be handled correctly, is far less daunting than many people fear. With proper legal guidance, open communication, and a genuine willingness to cooperate, an uncontested divorce can

bring closure and allow both parties to move forward into the next chapter of their lives.

**ARTICLE BY: Takudzwa T. Chipango**

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*This article is intended for general informational purposes only and does not constitute legal advice. Every divorce situation is unique, and it is strongly recommended that you seek advice from a qualified legal practitioner before taking any legal steps.*

