

Divorce Single Petition vs. Joint Petition: Which is the better option?

by Nurarissa Erina / February 2025

Joint Petition: Uncontested Divorce

Joint petitions arise in cases of uncontested divorce wherein the parties do not have to prove that their marriage has been irretrievably broken down. In this type of petition, neither party is required to provide evidence of the breakdown of the marriage; instead, both parties simply agree to end the marriage and no longer wish to continue the marriage.

Divorce by way of a joint petition is governed by **Section 52 of the Law Reform Act (Marriage and Divorce) Act 1976 ("the Act")** may be commenced if there is a mutual consensus that their marriage should be dissolved, and the parties may present a joint petition after the expiration of two (2) years from the date of their marriage. The court may make a decree of divorce after being satisfied that both parties' consent and should there be a need to make a proper provision for the wife and arrangements for the children (if any).

However, the court has been receptive towards situations where the marriage has not received the 2-year threshold as stipulated in **Section 50 of the Act**. If the applicants wish to proceed with joint petition, this is a risk they are willing to take.

What are the requirements of a joint petition?

- i. Both parties must agree to the divorce;
- ii. Both parties must agree to all terms and arrangements regarding the maintenance of wife and children, matrimonial assets, custody, care and control and access to children (where applicable);
- iii. The marriage has been subsisting for at least two (2) years;
- iv. The marriage must have been registered under the Act or under any law providing for a monogamous marriage; and
- v. The parties must domicile in Malaysia at the time of presenting the petition.

What are the documents you need file a joint petition?

- i. Both parties' Identification Cards;
- ii. Marriage Register/Certificate;
- iii. Child's Birth Certificate (if any); and
- iv. The documents to prove the existence of matrimonial assets (if any) (eg: Land Title)

What are the cause papers involved?

- i. Joint Petition;
- ii. Notice of Appointment of Solicitors;
- iii. Affidavit in Support of the Petition;
- iv. Statement as to Arrangements for Children (if any);
- v. Statement for Matrimonial Assets (if any)
- vi. Decree Nisi;
- vii. Notice of Application for Decree Nisi to be Made Absolute; and
- viii. Certificate of Making Decree Nisi Made Absolute.

Making a decree nisi absolute

It is established that a marriage is not dissolved until the decree nisi is made absolute. At any period of time between when the decree nisi is granted until the point where it has been absolute, the parties are still considered married. This position has been widely accepted as can be seen in the case of *Sl v Anesan Shymala* [1986] 1 MLJ 400.

Therefore, the decree nisi must be made absolute within three (3) years from the date the decree nisi was granted by the court, otherwise the party against whom the decree was granted may apply to either: (a) make the decree absolute; or (b) rescind the decree nisi; or (c) require further inquiry; or (d) otherwise deal with the case as it thinks fit.

Single Petition: Contested Divorce

In the event where both parties do not agree on the divorce, either party may file a single petition, provided that they first show that the marriage has been irretrievably broken down under **Section 53 of the Act**.

Proof of Breakdown

In a single petition, the petitioner is required to prove that the marriage has been irretrievably broken down with one or more of the grounds as provided under **Section 54 of the Act**. The grounds are as follows:-

- i. Adultery;
- ii. Unreasonable behaviour;
- iii. Desertion for at least two (2) years preceding the presentation of a petition; and/or
- iv. Living apart from each other for at least two (2) years preceding the presentation of a petition.

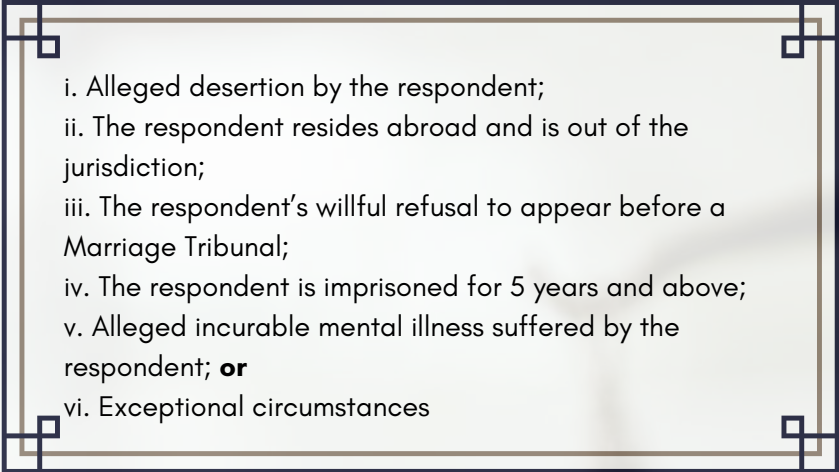
What are the requirements of a single petition?

- i. The parties have been married for at least two (2) years;
- ii. The marriage must have been registered under the Act or under any law providing for a monogamous marriage;
- iii. The parties must be domiciled in Malaysia at the time of presenting the petition;
- iv. Proof of breakdown of marriage; and
- v. The matrimonial difficulty must first be referred to a conciliatory body.

The requirement to refer the marriage to a conciliatory body

Under **Section 106(1) of the Act**, it is mandatory that parties attend at least three (3) counselling sessions at the National Registration Department and if the conciliatory body is unable to resolve the matrimonial difficulty, it shall then issue a certificate to that effect.

The requirement under **Section 106(1)** shall not apply in cases that fall within any of the exceptions outlined in the proviso to the provision, which include the following considerations:

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- i. Alleged desertion by the respondent;
 - ii. The respondent resides abroad and is out of the jurisdiction;
 - iii. The respondent's willful refusal to appear before a Marriage Tribunal;
 - iv. The respondent is imprisoned for 5 years and above;
 - v. Alleged incurable mental illness suffered by the respondent; **or**
 - vi. Exceptional circumstances

Reference can be made to the case of *Khoo Kay Peng v. Pauline Chai Siew Phin* [2015] MLJU 158, in which the court had asserted, in the following passage, that exceptional circumstances include an evident irretrievable breakdown of marriage:

"[127] I am of the view that the words ***"exceptional circumstances which render it impracticable"*** are wide enough to cover not only the situations mentioned by learned Counsel for the Wife i.e. the practical or even logistical aspects e.g. whether it is too costly, too inconvenient, or not practical to be carried out, ***but it can also cover situations, as in the present case, where both parties confirm that there is an irretrievable breakdown of the marriage*** and it would be a failure, and therefore "not able to be done or put into practice successfully" the conciliatory process required by s.106(1)(vi) of the LRA."

What are the documents you need file a single petition?

- i. Marriage Register/Certificate;
- ii. The parties' Identification Cards;
- iii. Child's Birth Certificate (if any);
- iv. Certificate from the conciliatory body at NRD;
- v. Any documents to support the existence of matrimonial assets (if any); and
- vi. Any evidence to support the breakdown of marriage.

The Differences Between Joint Petition and Single Petition

	Joint Petition	Single Petition
Who may apply?	Both parties must apply together	Either party may apply
Time (How long the process would be)	1-3 months	1-2 years depending on the complexity of the case
Counselling sessions	Not required.	Mandatory before presenting the petition unless the requirement is exempted by way of an application to court
Cost	No order as to costs	Will be decided by the court depending on the case
Advantages	i. Less acrimonious ii. Cost-effective iii. Matter will be resolved quickly iv. Proving the breakdown of marriage is not necessary	Each party may separately present their claims concerning the division of matrimonial assets, maintenance and the custody of children to be fully given to them
Disadvantages	-	i. The outcome is decided by the court and is binding on all parties ii. Costly iii. The matter will likely become acrimonious, leading to a more time-consuming resolution

Discussion: Which is the better option?

For most couples, a joint petition is preferable due to its efficiency, lower cost, and reduced emotional toll. However, a single petition remains essential in high-conflict scenarios where mutual agreement is impossible. The parties' underlying concerns should be taken into consideration when opting for either a joint or single petition. Opting for a single petition may cause an emotional toll on all parties and the children involved as private and personal grievances in the marriage would have to be revealed in court.

There is a misconception that a joint petition is only for perfect agreements where there is no disagreement between parties – but in reality, as long as both parties are willing to negotiate, even some disagreements can be resolved without court intervention. The collaborative nature of joint petitions preserves relationships, and which is crucial for co-parenting as parents who maintain civility can better manage shared custody arrangements in cases where there are children in the marriage.

While joint petitions are generally more advantageous, they may not be suitable in cases where they could result in severe injustice to one party, or the children involved. In such situations, a single petition becomes the more appropriate and tenable option. For instance, in cases involving domestic violence or child abuse, court intervention through a single petition becomes necessary to ensure the safety and protection of parties.

As established in the case of *CCKY v CCT* [2021] 9 MLJ 518, **Section 103 of the Act** allows the court to grant an injunction against molestation, among others, during the pendency of any matrimonial proceedings. As the evidence showed, there had been numerous occasions of violence inflicted on her by the defendant, which caused her to leave the matrimonial home and the luxurious and expensive lifestyle she shared with the defendant.

Not to mention, single petitions ensure that matrimonial assets are distributed fairly in accordance with each party's contribution to the marriage. This is particularly important in cases where one spouse's non-financial contributions (e.g., homemaking, childcare, or supporting the other's career) may not be adequately recognized in a joint petition. In the case of *HLC v PTL & Anor* [2024] 10 MLJ 640, Justice Evrol Mariette Peters took into consideration the duration of the marriage and the wife's contributions to the household and family life when dividing the assets.

Further, divorce proceedings through a single petition would impose an obligation under the LRA and the Divorce and Matrimonial Proceedings Rule 1980 for the parties to disclose all his means and sources of income. In *Ng Say Chuan (h) v Lim Szu Ling (w) and another application* [2010] 4 MLJ 796, the court took cognizance of the father's luxurious lifestyle to infer that he had other sources of income, which enabled him to financially maintain his three children. This principle is particularly significant in cases where a wife is financially dependent on the husband and seeks court intervention to uncover the assets and means that may not be disclosed in a joint petition.

Conclusion

Ultimately, the choice between a joint or single petition should reflect the unique circumstances of the marriage, with a focus on safeguarding both parties' interests and ensuring a fair and just outcome for all involved. It is thus advisable to consult a lawyer to gain a proper understanding of the legal options available for your case.

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