

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

2014/HP/D.075

(Divorce jurisdiction)

BETWEEN

BALDWIN MANUWELE MWANZA

PETITIONER

AND

SHIRLEY SINKALA MWANZA

RESPONDENT

Before: Hon. Justice Mrs. B.M.M. Mung'omba in Chambers on this 15th day of July, 2014.

For the Petitioner - Mr. N. Ng'andu of Messrs Shamwana and Company

For the Respondent - Ms. A. Chimuka of Messrs Musa Dudhia & Co.

JUDGMENT

Legislation Referred To:

1. The Matrimonial Causes Act No. 20 of 2007; Section 9 (1) (E).

On 10th April, 2014, the Petitioner, **BALDWIN MANUWELE MWANZA**, took out of the Principal Registry, a petition for dissolution of his marriage to the Respondent, **SHIRLEY SINKALA MWANZA**. The petition is made pursuant to **Section 9 (1) (e)** of the **Matrimonial Causes Act, 2007**.

The Petitioner avers that he was lawfully married to the Respondent on 6th September, 1991 at the Office of the Registrar of Marriages at Kabwe Urban District Council of the Central Province in the Republic of Zambia. They last cohabited as husband and wife in 2006. Both are domiciled in Zambia.

The Petitioner avers that he is an Electrical Technician and resides at House No. 24403, Libala South, Lusaka, whilst the Respondent is a Secretary and resides at House No. 983, New Avondale Lusaka. The petition reveals that there are now living three children of the marriage; **TUMBA MWAKA MWANZA** born on 23rd February, 1991, **KEJI SOMBO MWANZA** born on 26th October, 1994 and **NKUMBU ZUKANJI MWANZA** born on 4th March, 2001. The Petitioner further states that all the three children reside with the Respondent. That no other child now living has been born to the Respondent during the marriage so far as is known to the Petitioner.

The petition discloses further that there have been previous proceedings in the High Court of Zambia under Cause No. 2003/HP/D.032 which matter was discontinued. The Petitioner contends that there are no proceedings continuing in any country outside Zambia which are in respect of the marriage or are capable of affecting its validity or subsistence.

The petition also reveals that the Petitioner and the Respondent have agreed to have joint custody of the children and that the children will continue to reside with the Respondent.

The Petitioner claims that the said marriage has broken down irretrievably as the Petitioner and the Respondent have lived apart for a continuous period of 5 years preceding the presentation of this petition. He therefore prays for a decree of dissolution of marriage and that each party bears own costs to this suit.

In essence, the preceding contents of the petition were also the evidence of the Petitioner given at the hearing of the petition on 1st July, 2014. The Marriage Certificate was exhibited and marked “**BMM1**”. The Respondent, who was in attendance and represented by Ms. Chimuka her Counsel, did not contest the petition. However, Ms. Chimuka submitted that the Respondent is praying for costs. She further submitted that the Respondent will be making appropriate application for periodical payments [or maintenance] for children as well as for the settlement or transfer of property.

Mr. Ng’andu, Counsel for the Petitioner, reacted by stating that it is the Petitioner’s desire that each party bears own costs. Further, Counsel submitted that periodical payments for the children as well as settlement or transfer of property are issues that are currently under *ex curia* discussions. He however concurred with Ms. Chimuka that in the event of failure by parties to reach the *ex curia* settlement, appropriate application will be filed into Court for determination of issues aforesaid. At the conclusion of the hearing, I adjourned the matter to 15th July, 2014 for Judgment.

Having heard the Petitioner on the contents of his petition and on the strength of the Marriage Certificate marked “**BMM1**”, and the Respondent having not contested the petition, I am satisfied the Petitioner has proved the said petition under the provisions of the law in **Section 9 (1) (e)** of the **Matrimonial Causes Act, 2007**. I therefore find that the marriage solemnized under the provisions of the Marriage Act Chapter 50 of the Laws of Zambia, at the Office of the Registrar of Marriages on 6th September, 1991, at Kabwe Urban District Council of the Central Province in the Republic of Zambia between **BALDWIN MANUWELE MWANZA** the Petitioner herein, and **SHIRLEY SINKALA MWANZA**, the Respondent, has broken down irretrievably; by reason that parties have lived apart from about 2006 to date

hereof; which is a continuous period of more than 5 years immediately preceding the presentation of the petition on 10th April, 2014.

I accordingly *decree* that the said marriage be dissolved and a *Decree Nisi* shall therefore issue. The same is to be made *absolute* unless application is made to Court in these proceedings within 6 weeks of the date hereof, to show cause why such *decree* should not be made *absolute*.

The question of maintenance generally, and property settlement, if not sooner settled by consent of the parties, are adjourned for hearing before the learned Deputy Registrar and either party is at liberty to apply.

Costs of the suit will be borne by respective parties.

Leave to appeal granted.

DELIVERED AT LUSAKA THIS DAY OF..... 2014

Hon. Judge B.M.M. Mung'omba
HIGH COURT