

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

2014/HP/D.234

(Divorce Jurisdiction)

BETWEEN:

MYRA KAPISHA KAKOMPE

PETITIONER

AND

SAMSON KAKOMPE

RESPONDENT



Before the Hon. Mrs. Justice A. M. Sitali on the 10th day of April, 2015.

For the Petitioner : In Person

For the Respondent : In Person

J U D G M E N T

Legislation referred to:

The Matrimonial Causes Act No. 20 of 2007, sections 8, 9 (1) (d) and 9 (3).

This is a petition for dissolution of marriage filed by Myra Kapisha Kakompe, the Petitioner on 7th October, 2014. It is presented pursuant to section 8 and section 9 (1) (d) of the Matrimonial Causes Act No. 20 of 2007. The Petitioner seeks to have her marriage to Samson Kakompe, the Respondent, dissolved.

At the trial of the petition, the petitioner, Myra Kapisha Kakompe testified that she was lawfully married to the Respondent Samson Kakompe on 31st October 2004 at the office of the Registrar of marriages at the Civic Centre in Lusaka. The petitioner further testified that she and the respondent last lived together

as husband and wife at Farm No. 1652 in Choma, and that both she and the Respondent are domiciled in Zambia. The petitioner went on to testify that she is an Administrative Executive at Tulip Printpak in Lusaka. The petitioner stated that there are no children born to the parties during the subsistence of the marriage and that there are no other children born to either party outside wedlock.

The Petitioner further testified that there are currently no other proceedings in any court in Zambia or elsewhere regarding the marriage which are capable of affecting its validity or subsistence or between the petitioner and the respondent regarding any property of either or both of them.

It is the petitioner's testimony that the marriage has broken down irretrievably as the parties have lived apart since 26th November 2010, which is a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted. The Petitioner prays that the marriage be dissolved on that basis. She also prays that the respondent be ordered to maintain her.

The Respondent Samson Kakompe was present at the trial of the petition. He confirmed to the Court that he is not contesting the petition and that he consents to the marriage being dissolved. The consent to the dissolution of marriage duly signed by the Respondent was filed on 7th October, 2014 and is on record.

I have considered the petition filed in this matter as well as the Petitioner's testimony in support of her petition.

In terms of section 8 of the Matrimonial Causes Act No 20 of 2007 (hereinafter referred to as the Act), the only ground upon which a petition for divorce may be presented to the Court by either party to a marriage is that the marriage has

broken down irretrievably. In order for the Court to determine that the marriage has indeed broken down irretrievably, the petitioner must satisfy the court of one or more of the facts specified in paragraphs (a) to (e) of section 9 (1) of the Act. In the present case, the Petitioner relies on paragraph (d) of section 9 (1) of the Act to prove that her marriage to the Respondent has broken down irretrievably. Section 9 (1) (d) of the Act provides as follows:

“9. (1) For purposes of section eight, the Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts:

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;.”

Section 9 (3) of the Act further provides that if the court is satisfied on the evidence of any of the facts mentioned in subsection (1) of section nine, the court shall grant a decree for the dissolution of the marriage, unless the court is satisfied on all the evidence that the marriage has not broken down irretrievably.

In the present case, the evidence adduced by the Petitioner is that the parties separated on 26th November, 2010 and they have not since that time resumed cohabiting. It should be noted that because the fact the Petitioner relies upon to prove that the marriage between the parties has broken down irretrievably is that the parties have lived apart for at least two years prior to the presentation of the petition and the respondent consents to a decree for the dissolution of the marriage being granted, there is no requirement for the petitioner to state the reasons that caused her to initiate her separation from the Respondent. This is because the Act is silent on the question of the reason why parties have lived apart. Suffice it to note that the law stipulates that a marriage will be

held to have broken down irretrievably if, among other facts, the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition for divorce and the Respondent consents to a decree being granted. In the present case, I am satisfied on the evidence before me that the Petitioner has proved that the marriage has broken down irretrievably as the parties to the marriage have lived apart continuously for period of four years to date and the Respondent has willingly given his consent to the dissolution of the marriage. I, accordingly, hold that the marriage of the parties has broken down irretrievably.

I, therefore, dissolve the marriage between Myra Kapisha Kakompe, the petitioner and Samson Kakompe, the Respondent, as prayed and I grant a decree nisi to the Petitioner in accordance with section 9 (3) of the Act. The decree nisi may be made absolute within six weeks of the date of this judgment.

As there are no children of the family I make no order with regard to custody. The question of maintenance of the petitioner will be determined by the learned Deputy Registrar upon application. Each party will bear their own costs.

Dated this 10th day of April, 2015.



.....
A. M. SITALI
JUDGE