

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

**2012/HP/D.259**

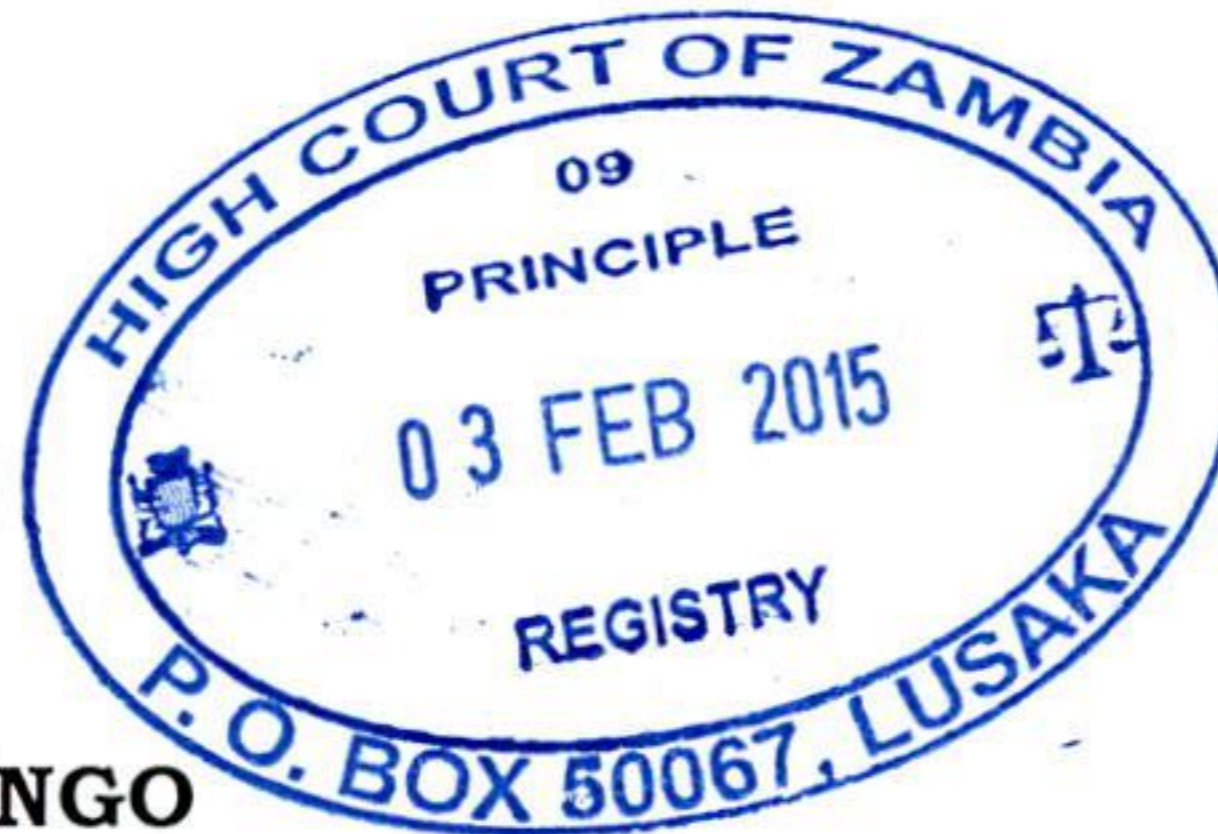
**(Divorce Jurisdiction)**

**BETWEEN:**

**AGNESS NTHANGA**

**AND**

**DAVID WALLACE KAMPANGO**



**PETITIONER**

**RESPONDENT**

**Before the Hon. Mrs. Justice A. M. Sitali on the 3<sup>rd</sup> day of February, 2015.**

***For the Petitioner* : *Mr. H. H. Ndhlovu of*  
*Messrs H. H. Ndhlovu and Company***

***For the Respondent* : *No appearance***

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**J U D G M E N T**

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**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 Agness Nthanga, the Petitioner on 20<sup>th</sup> December, 2012 pursuant to section 8 and section 9 (1) (d) of the Matrimonial Causes Act No. 20 of 2007. The petition was amended on 1<sup>st</sup> December, 2014. The Petitioner seeks to have her marriage to David Wallace Kampango, the Respondent, dissolved.

At the trial of the petition, the petitioner, Agness Nthanga testified that she was lawfully married to the Respondent David Wallace Kampango on 8<sup>th</sup> July, 2009, at the office of the Registrar of Marriages at the Civic Centre in Livingstone.

The petitioner testified that after the celebration of the said marriage, she and the respondent have not lived together as husband and wife and that both she and the Respondent are domiciled in Zambia. The petitioner went on to testify that she is employed as a field officer in the office of the President Special Division and resides at House No. 08 Tukongote Street, in Senanga while the respondent is a retired Army Captain from Zambia Air Force and resides at House No. 472 Avondale, Lusaka. There are no children of the family.

The Petitioner further testified that there have been no previous proceedings in any court in Zambia or elsewhere with reference to the said marriage or between the petitioner and the respondent with reference to any property of either or both of them. The Petitioner further stated that there are no proceedings continuing in any country outside of Zambia in respect of the said marriage or which are capable of affecting its validity or subsistence.

The Petitioner stated that no agreement has been formalized between the parties for the support of either one of them.

It is the petitioner's testimony that the marriage has broken down irretrievably as 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 nisi being granted. The petitioner stated that immediately after the celebration of the marriage on 8<sup>th</sup> July, 2009, she left for Sesheke where she has been working whilst the respondent went back for training at the ZAF Base in Livingstone.

The Respondent, David Wallace Kampango, was not present at the trial of the petition. The consent to the dissolution of marriage duly signed by the Respondent was filed on 14<sup>th</sup> March, 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 9, 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 never lived together as husband and wife after the celebration of their marriage on 8<sup>th</sup> July 2009. The reason given by the petitioner is that she lives and

works in Sesheke while the respondent lives in Lusaka. This testimony is not disputed by the Respondent and he has not rebutted it.

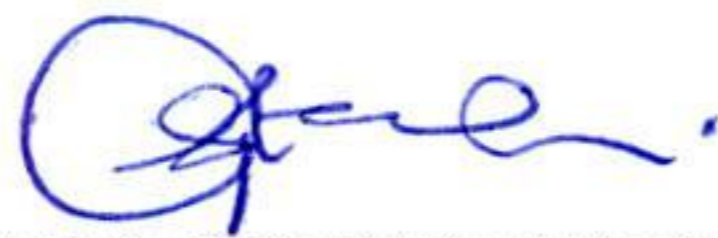
The law stipulates that a marriage will be held to have broken down irretrievably if, among other facts, the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition for divorce and the Respondent consents to a decree being granted.

I am satisfied on the evidence before me that the Petitioner has proved that her marriage to the respondent has broken down irretrievably as the parties to the marriage have lived apart continuously for a period of over two 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 Agness Nthanga, the petitioner and David Wallace Kampango, 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.

Each party will bear their own costs.

Dated this 3<sup>rd</sup> day of February, 2015.



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**A. M. SITALI**  
**JUDGE**