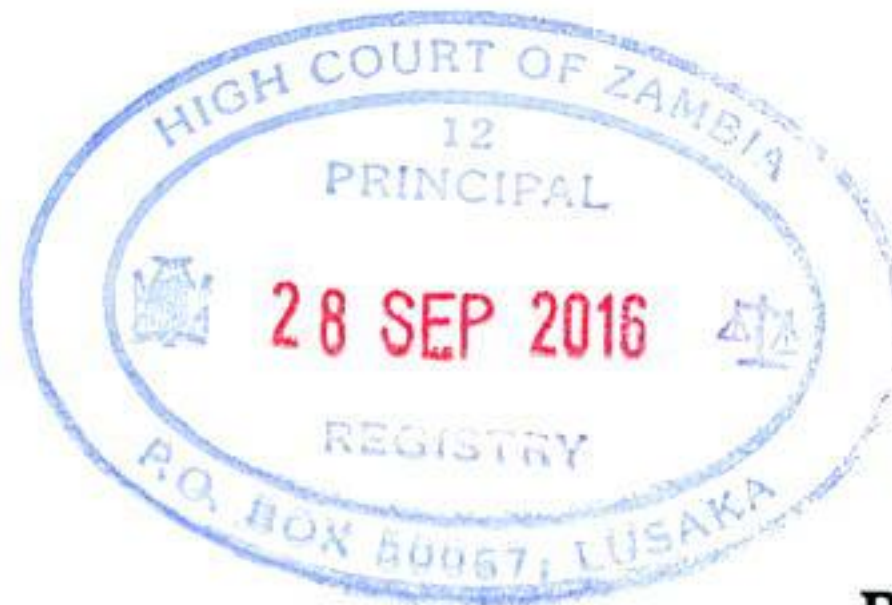


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2015/HP/D.321**

*(Divorce Jurisdiction)*



**B E T W E E N :**

EMMANUEL MUNAILE

**PETITIONER**

**AND**

MARIA C. KAOMA MUNAILE

**RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe on 28<sup>th</sup> September, 2016**

*For the Petitioner* : *Mr. F. Lungu, Messrs Andrew and Partners*  
*For the Respondent* : *Mr. H. Kabwe, Mr. M. Kabuka, Messrs Hobday  
Kabwe & Company*

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

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**LEGISLATION REFERRED TO:**

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

This is a Petition for dissolution of marriage filed on 7<sup>th</sup> December, 2016, by Emmanuel Munaile, the Petitioner. The Petition is presented pursuant to **Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No. 20 of 2007.**

It is common cause that the Petitioner, Emmanuel Munaile and the Respondent, Maria C. Kaoma Munaile, then a spinster were lawfully married on 26<sup>th</sup> January, 1994, before the Registrar of Marriages, in Lusaka. The Petitioner and the Respondent last lived as husband and wife at Plot 1831/M, Ibex Hill, Lusaka.

The Petitioner is self employed and resides at Plot 1831/M, Ibex Hill, Lusaka, while the Respondent is self employed and resides at House no. 27132, Libala South, Lusaka. There are three children now living that has been born to the Petitioner and the Respondent during the subsistence of their marriage aged thirty-two (32), twenty-six (26) and twenty-one (21) years. No other child now living has been born to the Respondent during the subsistence of the marriage so far as is known to the Petitioner.

There are no other proceedings in any court in Zambia or elsewhere regarding the marriage or between the Petitioner and the Respondent regarding any property of either or both of them and there are no proceedings continuing in any court outside Zambia which are in respect of the marriage or are capable of affecting its validity or subsistence.

It is the Petitioner's testimony that the marriage has broken down irretrievably by reason of the fact that the parties have lived separate and apart for a continuous period of at least two years

immediately preceding the presentation of this Petition, from the 7<sup>th</sup> day of December, 2015 to date.

At the trial the Petitioner in his testimony confirmed the contents of the Petition. The Respondent was present and confirmed that she is not contesting the Petition and that she consents to the marriage being dissolved.

I have considered the Petition filed in this matter. The only ground upon which a petition for divorce may be presented to the Court is provided in **Section 8 of the Matrimonial Causes Act No. 20 of 2007** which provides that:

*"A petition for divorce may be presented to the Court by either party to the marriage on the ground that the marriage has broken down irretrievably".*

In order to prove that the marriage has broken down irretrievably, the Petitioner should satisfy the court of one or more of the facts set out in **Section 9 (1) (a) to (e) of the Act. Section 9 (1) (d)** which is relevant to the petition under consideration provides as follows:

**"9. (1) For the 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;"***

This being an undefended petition, it is not necessary for me to give a lengthy judgment. Suffice it to say that on the facts stated in the petition and confirmed by the Petitioner in his oral testimony, I am satisfied that the marriage has broken down irretrievably as the Petitioner and the Respondent have lived separate and apart for a continuous period of at least two years immediately preceding the presentation of this petition from the 7<sup>th</sup> day of December, 2015 to date and are not willing to reconcile.

I am also satisfied that the Respondent does not oppose the granting of a decree nisi.

I therefore dissolve the marriage between the Petitioner and the Respondent celebrated on 26<sup>th</sup> January, 1994 as prayed by the Petitioner and accordingly grant a decree nisi. The decree nisi will be made absolute six weeks from the date of this judgment.

The children of the family are all adults therefore there is no need for me to determine the question of the custody of the children. The question of property settlement will be determined by the learned Deputy Registrar upon application by either party.

Each party will bear their own costs.

**Dated this 28<sup>th</sup> day of September, 2016.**

.....*M. Mapani*.....  
Hon. Mrs. Justice M. Mapani-Kawimbe  
**HIGH COURT JUDGE**