

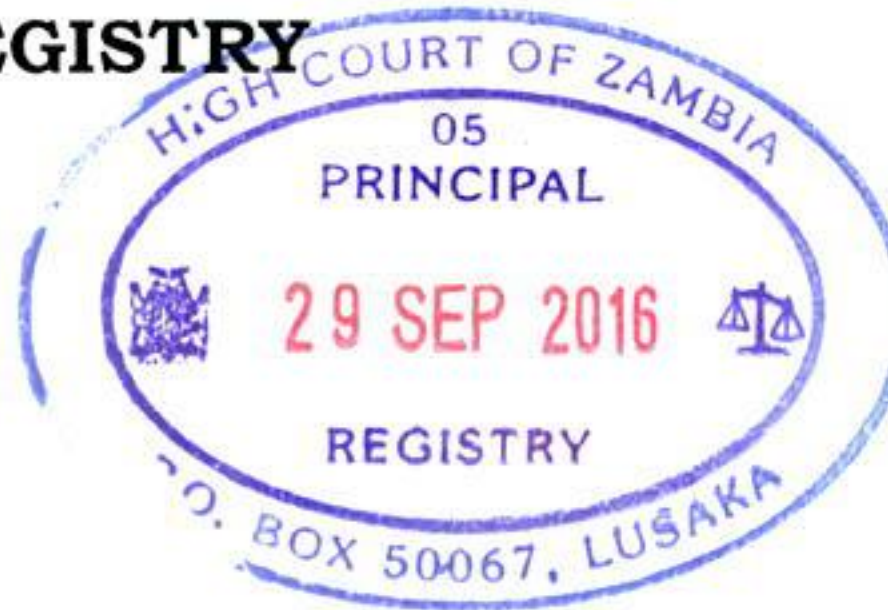
IN THE HIGH COURT FOR ZAMBIA

2016/HP/D.062

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Divorce Jurisdiction)



B E T W E E N :

ESNART ZULU MWANZA

PETITIONER

AND

JOHN EZRA MWANZA

RESPONDENT

Before Honorable Mrs. Justice M. Mapani-Kawimbe on 29th September 2016

For the Petitioner : *Ms. B. Musukwa, National Legal Aid Clinic For Women*
For the Respondent : *Mrs. S. Chisanga-Miti, Messrs KMG Chisanga Advocates*

J U D G M E N T

LEGISLATION REFERRED TO:

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

This is a Petition for dissolution of marriage filed on 7th March, 2016, by Esnart Zulu Mwanza, the Petitioner. The Petition is

presented pursuant to **Sections 8 and 9 (1) (e) of the Matrimonial Causes Act No. 20 of 2007.**

It is common cause that the Petitioner, Esnart Zulu Mwanza, then a spinster and the Respondent, John Ezra Mwanza, were lawfully married on 25th February, 1994, before the Registrar of Marriages, in Lusaka. The Petitioner and the Respondent last lived as husband and wife at Plot no. 13442, off Kasama Road Chalala, Lusaka.

The Petitioner is unemployed and resides at House no. 106/3, Washama Road, Villa Elizabetha, Lusaka while the Respondent is employed as an Accountant at Parmalat Zambia, Limited, Head Office in Lusaka. There are four children now living that have been born to the Petitioner and the Respondent during the subsistence of their marriage namely Morris Mwanza aged twenty- three, Kennedy Mwanza aged twenty, Hope Mwanza aged sixteen and Blessings Mwanza aged eight. There are no other children now living that have been born to the Respondent before and 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 five years immediately preceding the presentation of this Petition, from the 17th day of December, 2010 to date.

At the trial the Petitioner in her testimony confirmed the contents of the Petition. The Respondent did not appear and but gave instructions to his advocates that he would not contest the divorce petition.

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) (e) 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:

(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition".

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 her 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 five years immediately preceding the presentation of this petition from the 17th day of December, 2010 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 25th February, 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.

I will determine the question of custody of the children of the family upon application by either party. 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 29th day of September, 2016.

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