

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

2015/HP/D0148

BETWEEN:

**CHILESHE MUBITANA MUBITANA**

**AND**

**CATHERINE NAMAKAU WALUBITA**



**PETITIONER**

**RESPONDENT**

**BEFORE** : **HON. G.C. CHAWATAMA - IN CHAMBERS**

*For the Petitioner* : *Mr. Phiri - Messrs Mwack Associates*

*For the Respondent* : *Absent*

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***RULING***

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AUTHORITIES REFERRED TO:

1. **Section 8, 9 (1) (e), 18(1) and 41 of the Matrimonial Causes Act No. 20 of 2007**

The Petitioner and Respondent were joined in holy matrimony on the 26<sup>th</sup> December, 1994. Two children namely Kasonde Mubitana and Chileshe Mubitana were born during the subsistence of their marriage.

On the 8<sup>th</sup> June, 2015, the Petitioner filed a petition in which he states that the marriage between himself and the Respondent

had broken down irretrievably. The Petitioner and the Respondent have lived apart for a continuous period of more than five years.

The Petitioner prays that:

1. *The said marriage be dissolved*
2. *Each party bears their own cost.*

The Petitioner was heard on the 21<sup>st</sup> January, 2016. The court was informed that the Respondent now resides in South Africa and that she has been there since 1999. The court was further informed that the couple have been apart since 2009. The court heard that the couple lived in Zambia as husband and wife from 1994 to 1999. The couple then moved to South Africa in 1999. They lived as husband and wife up to 2008. Whilst in South Africa, the Petitioner and Respondent separated in 2009. Efforts to reconcile them did not bear fruit. The Petitioner informed the court that he came back to Zambia in 2011, the Respondent remained in South Africa where she is still residing. According to the Petitioner the Respondent is in a relationship and has a child from that relationship.

The Respondent waived her right to be heard. She was not able or willing to travel from South Africa. The Respondent did file the acknowledgement of service in which she agreed that she was

the person named as the Respondent in the petition. She also stated that she did not intend to defend this case. The Respondent indicated that she would not oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardships to her and that in all the circumstances it would not be wrong to dissolve the marriage.

Although the court would have preferred to hear the Respondent in person it is not prudent to delay the matter. I am satisfied with the testimony of the Petitioner given on oath.

**Section 8 of the Matrimonial Causes Act No. 20 of 2007<sup>1</sup>** states as follows:

***“A petition for divorce may be presented to the court by either party to a marriage on the grounds that the marriage has broken down irretrievably.”***

**Section 9(1) (e)** the provision which the Petitioner relied on states as follows:

*“For the purpose 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:-*

- ***That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.***

The other provision that the court took into consideration was **Section 18(1)<sup>2</sup>** of the same act which narrates as follows:-

***“The Respondent to a petition for divorce in which the Petitioner alleges five years separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to the Respondent and that it would in all the circumstances be wrong to dissolve the marriage.”***

I am satisfied that the Respondent upon her own admission does not oppose the granting of a decree on the ground that the dissolution of the marriage will not result in grave financial or other hardship.

**Section 41 of the Matrimonial Causes Act** states that:

***“A decree of dissolution of marriage or nullity of marriage of a voidable marriage under that act shall in the first instance be in a decree nisi.)***

In accordance with the above provision, I hereby grant the decree nisi for the dissolution of the marriage between the Petitioner and Respondent. The decree nisi will be made absolute six weeks after this decision.

It is clear that the parties have made arrangements as to the custody of the children and I believe that as parents there are in a position to make decisions in the best interest of their children bearing in mind that each parent has a role to play in the children's lives. There is an indication on the part of the Respondent that she did not want to be heard on any other issue other than the divorce.

**DELIVERED AT LUSAKA THIS 18<sup>TH</sup> DAY OF FEBRUARY 2016**

  
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**G.C.M CHAWATAMA**  
**JUDGE**