

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPLE REGISTRY  
HOLDEN AT LUSAKA**  
*(Divorce Jurisdiction)*

2015/HP/D0253

**BETWEEN:**

**DOROTHY CHISANGA KAMEKO**



**PETITIONER**

**AND**

**LEWIS MUSONDA CHILANGWA**

**RESPONDENT**

*For the Petitioner : In Person*

*For the Respondent : In Person*

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***RULING***

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**AUTHORITIES REFERRED TO:**

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

The Petitioner Dorothy Chisanga Kameko and the Respondent Lewis Musonda Chilangwa were joined in holy matrimony on the 31<sup>st</sup> day of May 1997. A certificate of marriage was exhibited as proof.

The Petitioner in a petition filed on the 1<sup>st</sup> October, 2015 is seeking dissolution of her marriage to the Respondent. According to the Petitioner the marriage has broken down

irretrievably due to the fact that the couple have lived apart for a continuous period of more than five years preceding the filing of this petition.

The parties were heard on the 10<sup>th</sup> November, 2015.

The Petitioner informed the court that the couple last lived together at plot number 547 Jacaranda Road in Lilanda, Lusaka.

Four children were born to the couple during the subsistence of their marriage; namely Nancy Musonda and Wendy Musonda (female twins) aged 22 years. Chola Musonda aged 20 and Lewis Musonda.

It was her testimony that the Respondent took her back to her parent's home and never came forth to state why he took her back. This happened in 2003.

According to the Petitioner the Respondent has not communicated to the Petitioner hence she has reached the conclusion that their marriage is over and saw no reason to remain married. According to her the Respondent did not seem to be interested in the marriage. The Petitioner seeks access to the children who have remained with the Respondent. She also desires that there be property settlement as there was property

that the couple acquired during the subsistence of their marriage.

She prayed that:

- 1) *The court grants her a divorce*
- 2) *Access to her children*
- 3) *Property settlement*
- 4) *Cost be borne by the Respondent*

The Respondent confirmed to the court that the marriage between him and the Petitioner has broken down irretrievably. He confirmed that the couple has lived apart since 2003. During the period that the couple have been apart the Respondent informed the court that he was the one who has had custody of the children and attending to their needs. He informed the court that he will not suffer any hardship whatsoever should this court grant the Petitioner the divorce she seeks. He further informed the court that attempts to reconcile through family discussions bore no fruit.

The *Law in Section 8 of the Matrimonial Causes Act No. 20 of (2007)* provides that:

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

**Section 9(1) of the Matrimonial Causes Act No. 20 of (2007)** provides that:

*“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 five.”*

**Section 9(1) of the Matrimonial Causes Act No. 20 of (2007)**

- a) *That the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent;*
- b) *That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent;*
- c) *That the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;*
- 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; or*
- e) *That the parties to the marriage have live apart for a continuous period of at least five years immediately preceding the presentation of the petition.*

The other provision of the same act is **Section 18(1) of the Matrimonial Causes Act No. 20 of (2007)** which states:

***“That 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 hardships to the Respondent and that it would in all the circumstances be wrong to dissolve the marriage.”***

In the matter before me it is clear that at the date of the institution of the proceedings the couple have lived apart from one another for a period of over five years. Both the Petitioner and the Respondent under oath stated so. In fact under oath both informed the court that they have lived apart since 2003. Although they could not recall the month even assuming it was December. The couple would have lived apart for 14 years and 11 months.

I am satisfied that the Petitioner has established that she and the Respondent have been living apart for a continuous period of at least five years immediately preceding the presentation of the petition thus she is entitled to a decree. I am also satisfied that the Respondent does not seek to hold up the decree absolute by an application to have his financial position considered. Thus I am satisfied that the dissolution of the marriage will not result in grave financial or other hardships for the Respondent. It would in all circumstances not be wrong to dissolve the marriage.

In accordance with provisions of ***Section 41 of the Matrimonial Causes Act No. 20 of (2007)*** of the same Act which states:

*“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.*

I hereby grant a decree nisi for the dissolution of marriage between the Petitioner and Respondent. The decree nisi will be made absolute six weeks after this decision provided the issues of custody, maintenance and property settlement are dealt with in which case either party can apply that the decree nisi be made absolute.

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

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