

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

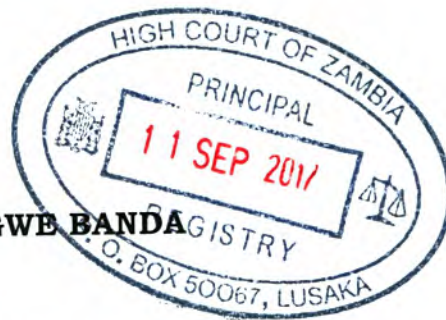
2016/HP/D045

BETWEEN:

PATRICIA MWENYA LENGWE BANDA

AND

MARK CHIKUMBUTSO BANDA



PETITIONER

RESPONDENT

Before the Honourable Mrs. Justice M.C. Kombe

For the Petitioner : *Mrs. Natasha Chilambwe - Zimba- Senior Legal Officer- National Legal Aid Clinic for Women*

For the Respondent : *In person*

J U D G M E N T

Legislation referred to:

- 1. The Matrimonial Causes Act No. 20 of 2007.**
- 2. The Marriage Act, Chapter 50 of the Laws of Zambia.**

On 17th February, 2016 the Petitioner **PATRICIA MWENYA LENGWE** filed a petition for the dissolution of the marriage with the Respondent **MARK CHIKUMBUTSO BANDA**. She alleged that the marriage had broken down irretrievably as the parties had lived apart for a continuous period of five (5) years immediately preceding the presentation of the petition.

She therefore prayed that the marriage be dissolved and costs be in the cause.

At the hearing of the petition on 23rd August, 2017, the Petitioner aged 43 years old of House No. 53 Masa Street, Libala Stage 4B confirmed the contents of the petition that on 25th March, 1995 she got married to the Respondent at the Office of the Registrar in Lusaka. In court, she identified a copy of the Marriage Certificate issued to them and the same was admitted in evidence and marked **P1**. She further told the court that they last cohabited together as Husband and Wife in August, 1996 in Lusaka West, Lusaka.

She added that there was one child of the family by the name of Tichitenje Banda, a female born on 29th December, 1994. The Petitioner further told the court that she had a child, who was not the Respondent's child by the name of Temwani Kazilimani born on 5th January, 2015; that the Respondent also had a child who was not her child but did not know the name.

The Petitioner also told the court that there were no other court proceedings in or outside Zambia in relation to the marriage that could affect the validity of the marriage; that the parties had lived apart for more than twenty (20) years and there was no hope that they would resume cohabitation. She therefore prayed that the marriage to be dissolved as the marriage had broken down irretrievably.

In his evidence, the Respondent aged 47 years old of Plot 687, Villa Lucia in Lusaka West confirmed the contents of the petition filed by the Petitioner and also what the Petitioner had told the court. He added that he had a son not with the Petitioner by the name of Chikumbutso Mark Banda Jnr, born on 18th July, 1999. He also confirmed that they had lived apart for more than twenty (20) years and he had no objection to the marriage being dissolved.

I have carefully considered the contents of the petition and the evidence adduced by both parties.

The sole ground upon which a marriage may be dissolved is that the marriage has broken down irretrievably. This is in accordance with Section 8 of the Matrimonial Causes Act No. 20 of 2007 (the 'Act') which sets out the sole ground for divorce as being irretrievable breakdown of the marriage. The said section reads as follows:

8. 'A Petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.'

The Petitioner has presented this Petition on the basis that her marriage to the Respondent has broken down irretrievably. On the issue of proof of the breakdown of marriage, the Petitioner relies on Section 9(1) (e) of the Act which provides as follows:

9 (1) "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:

(a)

(b) ...

(c) ...

(d) ...

(e) 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."

From the contents of the petition and the uncontroverted evidence adduced by the parties, I am satisfied that the Petitioner and the Respondent have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of the petition and that there is no possibility that they will resume cohabitation as they have lived apart for over twenty (20) years.

In view of the foregoing, I find that the Petitioner has proved her case that the marriage contracted under the Marriage Act, Chapter 50 of the Laws of Zambia between **PATRICIA MWENYA LENGWE** and **MARK CHIKUMBUTSO BANDA** on the 25th March, 1995 in the Office of the Registrar of Marriages at the Lusaka Civic Center in the Lusaka District of the Lusaka Province of the Republic of Zambia has broken down irretrievably in terms of Section 9 (1) (e) of the Matrimonial Causes Act No.20 of 2007.

I accordingly order that the said marriage be dissolved and a **DECREE NISI** is hereby granted dissolving the marriage. The said decree is to be made absolute within six (6) weeks of the date hereof unless sufficient cause is shown to the court why it should not be so made.

I order that should the question of maintenance or property settlement arise, the same shall be heard before the learned Deputy Registrar upon filing of a formal application by either party.

Each party shall bear their own costs of the petition.

Delivered at Lusaka this 11th day of September, 2017.

