

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(DIVORCE JURISDICTION)

2016/HP/D308

BETWEEN:

MWANGALA BERTHA MUBIANA

AND

KANYANTA CHANDA. KAPWEPWE



PETITIONER

RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE M.L ZULU
ON THE 6TH DAY OF JUNE 2017

For the Petitioner:

Mrs. S. Mulozi of National Legal Aid Clinic for Women

For the Respondent:

In Person

J U D G M E N T

Legislation referred to:

1. *Matrimonial Causes Act, No. 20 of 2007*

This Petition for dissolution of marriage between the Petitioner, **MWANGALA BERTHA MUBIANA** and the Respondent, **KANYANTA CHANDA KAPWEPWE** shows that the parties were lawfully married on the 25th day of December, 2007 at the Civic Centre in the city and Province of Lusaka of the Republic of Zambia.

At the trial of this Petition, the Petitioner, testified that she is a Marketing Executive employed by Madison Health Solutions and that the Respondent is an Accountant. She said there are two children of the marriage namely:

- Natwange Kapwepwe, female aged 9, born on 6th May 2008; and
- Wankumbu Kapwepwe, female aged 5, born on 26th February, 2012.

It is contained in the Petition that there are no proceedings continuing in any court in Zambia or outside in respect of the marriage that are capable of affecting its validity or substance.

The Petitioner testified that his marriage to the Respondent has broken down irretrievably citing the fact that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition. She said the Respondent's whereabouts have not been known since February, 2015 and his contact numbers are no longer in use and emails to him are not responded to. Further the Petitioner testified that the Respondent has been unsupportive towards the family through out his absence and was believed to be living with another woman. The Petitioner testified that the couple first separated in July 2013 and next had contact in February, 2015 when he said he was leaving for South Africa. It was the Petitioner's evidence that even though she was aware of the Respondent's whereabouts, she had never been to where he was staying and only contacted him via the social media. It was her further evidence that the parties met in February, 2016 and later in April, 2017 when the Respondent was demanding custody of the children but refused to give him because she didn't know where he lived.

In cross-examination, the Petitioner said didn't know where the Respondent worked but knows his profession is Accountancy and had seen two pay slips sent to her.

On the other hand, the Respondent did not address the issue that he deserted the matrimonial home but stated that he was staying with his Mother in Chimwemwe in Kitwe.

The Respondent agreed that the marriage had broken down irretrievably and wanted the marriage dissolved. The Respondent stated that he had no capacity to take care of the Children of the family

The sole ground upon which this court can dissolve a marriage is to find that the marriage has broken down irretrievably (Section 8, Matrimonial Causes Act, 2007).

In this matter, I find and hold that the Respondent left his Matrimonial home without any known or justifiable excuse to go to unknown destinations since 2013. The evidence of the Petitioner was unchallenged that when he left in July 2013, he only reappeared in February, 2015 when he said he was going to unknown place in South Africa. The Respondent only reappeared in February, 2015 before he again disappeared until April, 2017. I find the actions of the Respondent to disappear from his matrimonial home and family without an explanation unreasonable behavior. I also find and hold this action to amount to desertion of the Petitioner.

On the other hand, the Respondent admits that the marriage has broken down irretrievably. There is further evidence that the parties have lived apart for a continuous period of at least two years immediately from February, 2015.

“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”:

Section 9 (1) (c) of the Matrimonial Causes Act in particular provides:

That Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.

The Respondent in his testimony admitted that the marriage has broken down irretrievably without rebating the evidence of the Petitioner. He further prayed for the marriage to be dissolved.

On the totality of the evidence before me, I am satisfied that the marriage solemnized under the Marriage Act at the Civic Centre of Lusaka on 25th December, 2007 between the Petitioner **Mwangala Bertha Mubiana** and the Respondent **Kanyanta Chanda Kapwepwe** has broken down irretrievably by reason of the fact that the Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.

I accordingly find that the provisions of the law under **Section 9(1) (c) of the Matrimonial Causes Act, 2007** have been satisfied.


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

I grant custody of the children of the marriage to the Petitioner with reasonable access to the Petitioner.

I hereby refer all issues pertaining to the assessment of Maintenance and Property settlement that may arise to the Learned Registrar of the High Court for determination. Each party is at liberty to apply.

I order that each party bears their own legal costs.

Dated this 6th day of June, 2017.



M. L. ZULU
JUDGE