

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

2017/HPF/D200

BETWEEN:

QUEEN CHOLA MULANDO

AND

SAVIOUR BWALYA MWAMBA



PETITIONER

RESPONDENT

BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Petitioner: Mr. L. Mudenda of Messrs Kalokoni & Company

For the Respondent: In Person

J U D G M E N T

Legislation referred to:

- (i) *The Marriage Act Chapter 50 of the Laws of Zambia*
- (ii) *The Matrimonial Causes Rules No.20 of 2007 of the Laws of Zambia*

This is a matrimonial petition filed by **Queen Chola Mulando** against **Saviour Bwalya Mwamba** for the dissolution of marriage pursuant to Section 8 and 9 (b) of the Matrimonial Causes Act² on

the ground that the marriage had broken down irretrievably and the Petitioner cannot reasonably be expected to stay with the Petitioner.

At the hearing of the Petition, I was satisfied that the Respondent had been duly served with the Petition and the accompanying documents by the presence of the Respondent. I therefore signaled the hearing of the Petition.

At that time, learned Counsel for the Petitioner Mr. L. Mudenda informed the Court that the parties have opted for the dissolution of marriage on the ground of 2 years separation and that the Respondent consents pursuant to Section 8 and 9 (d) of the Matrimonial Causes Act².

Counsel then applied for leave to amend the petition pursuant to Rule 17 (2) of the Matrimonial Rules of England³ to that effect.

There was no objection to the Respondent who confirmed that in fact he had executed a consent indicating his agreement with the divorce proceedings.

I therefore granted the order as prayed. This petition therefore proceeded as uncontested Petition with the Respondent depositing the consent.

PW1 was the Petitioner herself **Queen Chola Mulando**. She testified that on 12th September, 2009, she was lawfully married to Respondent Saviour Bwalya Mwamba under the Marriage Act¹ at the Livingstone Civic Centre.

The parties thereafter lived as man and wife and last cohabited at Plot 3052 Harry Mwanga Nkumbula, Lusaka. Both the Petitioner and the Respondent are domiciled in Zambia. The Petitioner is a registered Midwife and employed in the Ministry of Health of the Republic of Zambia, whilst the Respondent is a pilot.

It was her evidence that there are two children of the family now living namely:-

- (i) Savior Kombe Mwamba (male) born on the 2nd January, 2010 and is attending school at Kidsark academy and doing grade III.
- (ii) Michael Chomba Mwamba (male) born on 15th June, 2012 and is attending reception at Vernlanders School.

Apart from the said 2 children of the family, there is a girl by the name of Mutale Mwamba born of the Respondent and she is aged 11 years.

No agreement has been made between the parties to support the children of the family.

It was her evidence that the marriage has broken down irretrievably on the ground that the parties have lived apart for a continuous period of 3 years and the Respondent consents to the decree nisi.

The witness was not cross examined and she rested her case.

RW1 was the Respondent himself **Saviour Bwalya Mwamba**. In his brief testimony, he confirmed the evidence of the Petitioner and informed the Court that he infact consents to the decree nisi being granted.

The witness was not cross examined and he rested his case.

I have considered the evidence of the parties. I am satisfied that the marriage which was lawfully celebrated and contracted under the **Marriage Act**¹ by the parties on 12th September, 2009 at the Livingstone Civic Centre as evidenced by a Marriage Certificate exhibit P1 has irretrievably broken down on the ground that the parties have continuously lived apart for a continuous period of 3 years immediately preceding the filing of the Matrimonial Petition pursuant to Section 8 and 9 (d) of the Matrimonial Causes Act².

I am also satisfied that the Respondent consents to the decree as evidenced by the written consent filed into Court vide **Exhibit P2**.

I therefore hereby grant a decree nisi pursuant to Section 41 of the Matrimonial Causes Act², dissolving the marriage and I make the following orders:

- (1) The decree nisi shall become absolute after six weeks unless cause is shown why it should not be made absolute.
- (2) I refer the issue of custody of the children to myself in Chambers within 30 days from the date hereof in default of agreement.

(3) I refer the issues of maintenance of the children, the parties and property settlement to the Learned Deputy Registrar within 30 days from date hereof on application of either party in default of agreement.

(4) I order that each party bears its own costs.

Leave to appeal to the superior Court of Appeal granted.

Delivered under my hand and seal this 23rd day of October, 2017



Mwila Chitabo, SC
Judge