

**IN THE HIGH COURT FOR ZAMBIA**  
**AT THE KITWE DISTRICT REGISTRY**  
**HOLDEN AT KITWE**  
**(DIVORCE JURISDICTION)**

2017/HK/D.32

**IN THE MATTER OF: A SUIT FOR THE DISSOLUTION OF MARRIAGE.**

**AND**

**IN THE MATTER OF: THE MATRIMONIAL CAUSES ACT NO. 20 OF 2007  
OF THE LAWS OF ZAMBIA.**

**BETWEEN:**

**FOSTER KUNDA MUTONDO**

**AND**

**GIBSON MUTONDO**

**MARGARET MUTWALE**

**PETITIONER**

**RESPONDENT**

**CO-RESPONDENT**

**Before; Hon. Mrs. Justice C. B. Maka-Phiri on 26<sup>th</sup> June, 2017.**

**For the Petitioner: In person**

**For the Respondent: In person**

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**J U D G M E N T**

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**Legislation referred to:**

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

This is a petition for dissolution of Marriage filed into court on 3<sup>rd</sup> May, 2017 pursuant to the provisions of section 8 and 9 (1) (b) of the Matrimonial Causes Act.

The petitioner and the respondent got married on 12<sup>th</sup> April, 2014 at Winners Chapel International at Kitwe. The Certificate of Marriage issued under the provisions of the Marriage Act was filed together with the petition. There are no children born during the subsistence of the marriage.

The Petitioner's averment as contained in the petition is that the marriage has broken down irretrievably on account of the Respondent's unreasonable behaviour. The particulars of the unreasonable behaviour are outlined in the petition, the gist being that the respondent has a child with the co-respondent and he has been mocking the petitioner for failing to conceive. The parties have lived apart since December, 2015.

The Respondent filed answer to petition on the 12<sup>th</sup> June, 2017. The respondent denied the assertion that the marriage has broken down irretrievably and prayed that they be reconciled as the parties have been living apart since 1<sup>st</sup> January, 2016.

At the hearing of the petition, the petitioner testified that a few months in their marriage the respondent started coming home late and later she learnt that he was seeing another woman. This was also evidenced by messages in the respondent's phone. The petitioner confronted the respondent over his affair but his response was that he wanted a child as the petitioner could not conceive. The respondent and the co-respondent eventually had a child and since then the petitioner has never known peace as the

respondent continued to tease her for failure to conceive. The petitioner testified further that the respondent even stopped supporting her as all his love and care had shifted to the other woman and the child. It was the petitioner's prayer that she be granted divorce.

The respondent denied coming home late but that as a miner he worked at different shifts which the petitioner did not understand. Further that the issue of the child born from the co-respondent was discussed between the parties and the petitioner was fully aware and had even suggested that the child should be kept by them after 3 months. The respondent further testified that he still loved the petitioner and all he wanted was reconciliation. He believed the petitioner was being influenced by her mother as the two of them get along well. He urged the court not to dissolve the marriage.

I have considered the evidence adduced in this matter. It is not in dispute that the respondent and co-respondent have a child together. The child was born during the subsistence of the marriage between the petitioner and respondent. In the meantime, the petitioner has not been able to conceive for the respondent. The respondent has been mocking the petitioner for failing to conceive and publicly engaged in an extra marital affair. The respondent does not love the petitioner and he has no respect for her. Otherwise he should not have sired a child with another woman whilst in holy matrimony with the petitioner. It is unacceptable and an affront to the tenets of marriage for the respondent to engage in

extra marital affairs whilst in marriage. I am satisfied that the behaviour of the respondent has been unreasonable.

The petitioner has been traumatised as a result of which she left the matrimonial house. The parties have been living apart for over one year an indication that the petitioner finds the respondents behaviour repulsive.

I am satisfied on the evidence that the marriage contracted between the parties has broken down irretrievably on account of the respondent's unreasonable behaviour. I therefore grant the Petitioner a decree nisi dissolving the marriage between the parties to be made absolute after six weeks.

Delivered at Kitwe this 29<sup>th</sup> day of June, 2017.



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**C. B. Maka-Phiri (Mrs.)**  
**Judge**