

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

2017/HP/D0043



BETWEEN:

HERBERT CHUNGU SIKANYIKA

PETITIONER

AND

MWENGWE MULWANDA SIKANYIKA

RESPONDENT

BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Petitioner:

*Mr. K. Musaila of Messrs Chonta Musaila
and Pindani Advocates*

For the Respondent:

*Mr. S. Mulengeshi and Ms G. Chilekwa of
Messrs AB & David*

J U D G M E N T

Legislation referred to:

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

This is an amended Petition for dissolution of marriage launched by the Petitioner **Mwengwe Mulwanda Sikanyika** against the Respondent **Herbert Sikanyika**.

PW1 was the Petitioner herself. She testified that on 8th September, 2012 she was lawfully married to the Respondent at the Civic Centre at Lusaka under the Marriage Act as evidenced by exhibit P1 which is the marriage certificate.

After the marriage, the parties cohabited off Ngwerere road, in Lusaka. Presently the Petitioner works at Equator Engineering and runs her own business, whilst the Respondent is an Operations Manager with Emirates Airlines.

Both parties are domiciled in Zambia.

There are 2 children of the family namely:

- (i) Ryan Raphael Sikanyika (male) born on 9th August, 2013;
- (ii) Gionna Nakanyika (female) born on 9th August, 2015.

Both children are attending school at Fradon Primary School. There is one child born of the Respondent after the parties separated. No arrangement has been made for the parties and the children.

It was her evidence that there no proceedings in Zambia or elsewhere in the world that might affect the validity of the marriage. No arrangement has been made for the children and it was her evidence that the marriage has irretrievably broken down on account of the fact that the parties have lived apart as man and wife for atleast 2 years immediately preceding the presentation of the amended Matrimonial Petition as evidenced by the Consent Order filed on 19th July, 2017 being **Exhibit P2**.

She therefore prayed for a decree nisi. The witness was not cross examined and the Petitioner rested her case.

RW1 was the Respondent himself. He confirmed the evidence of the Petitioner as correct and that he consents to the decree nisi. Indeed there is a child born of him namely Alinaswe Sikanyika (male) born on 7th September, 2016.

Having read the Petition and **UPON** hearing the evidence of the parties, I am satisfied that the marriage which was celebrated on 8th September, 2012 under the provisions of the **Marriage Act1**, has irretrievably broken down pursuant to Section 9 (i) (a) of the Matrimonial Causes Act², on the situational fact that the parties have lived apart as man and wife for a continuous period of at least 2 years immediately preceding the presentation of the Matrimonial Petition as evidence by the Consent Order being Exhibit P2.

I therefore invoke the provisions of Section 41 of the Matrimonial Causes Act² and hereby grant the decree nisi and I make the following orders:-

- (1)The decree nisi shall become absolute after 6 weeks unless cause is shown why the same should not be made absolute.
- (2)The issue of custody of the children of the family is referred to this Court for continued hearing of custody application on a date to be appointed by the Court on application by either party in default of agreement within 30 days from the date hereof.

(3) The issues of

- (a) Maintenance of the parties;
- (b) Maintenance of the children of the family;
- (c) Property settlement if any

is referred to the Learned Deputy Registrar for hearing and determination on application by either party within 30 days from the date hereof in default of agreement.

(4) Each party is to bear its own costs.

Given under my hand and seal this 19th day of August, 2017



Mwila Chitabo, SC
Judge