

I.T.

IN THE HIGH COURT FOR ZAMBIA 2017/HP/D0048
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

OBED MUBANGA



PETITIONER

AND

BARBARA W. MUBANGA

RESPONDENT

Before the Hon. Mr. Justice M.L. Zulu
in Chambers on the 2nd day of August, 2017

For the Petitioner: In Person

For the Respondent: In Person

J U D G M E N T

Legislation referred to:

- 1. Matrimonial Causes Act, No. 20 of 2007, Section 9(1)(d).**

This Petition for dissolution of marriage between the Petitioner **Obed Mubanga** and the Respondent, **Barbara Witola Mubanga** shows that the parties were lawfully married on the 26th day of December, 1998 at the Registrar of Marriages in the City and Province of Lusaka of the Republic of Zambia and lived together as husband and wife at House no. 236/12, Kaunda Square, Stage 2, Chilenje, Lusaka.

At trial of this Petition, the Petitioner testified that he is a Businessman and resides at House no. 331, Musi Road, Kabulonga.

The Petitioner said that there were three Children born to the parties during the subsistence of the marriage; Debora Mubanga aged 16 years; Joy Mubanga aged 12 years; and Emmanuel Mubanga aged 7 years as per Petition filed into Court. There is no other child living born to the Petitioner or Respondent during the subsistence of the marriage.

The Petitioner testified that there were no previous proceedings in any court in Zambia with reference to the said marriage between the Petitioner and the Respondent with reference to any property of either or both of them. Further, there are no proceedings continuing in any country outside Zambia, which are, in respect of the marriage, capable of affecting its validity or substance

There is no agreement or arrangement made or proposed to be made between the parties for the support of the Respondent except the arrangement for the support of the children of the family.

The Petitioner testified that his marriage to the Respondent has broken down irretrievably by reason of the fact that the parties to the marriage have lived apart for a continuous period of atleast two years immediately proceeding the presentation of the Petition. The Petitioner reiterated that the parties have lived apart since July, 2011 and the Respondent consents to a **decree nisi** being granted.

The Petitioner prayed – that the marriage be dissolved; that the Petitioner be granted custody of the Children of the family with reasonable access to the Respondent; that each party shall own free of

any claim or right of the other, all of the items or property, matrimonial, personal and joint, of any kind, nature in description and where ever so situated, which are now in his or her name, control or possession, with full power to him or her to dispose of the same as fully and effectually in all respects and for all purposes; that neither party be granted an order of maintenance; and that there be no order as to costs.

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**).

Section 9 of the said Act provide-

“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

- (a) That Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.
- (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.
- (c) That Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.
- (d) That parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the decree being granted.
- (e) That parties to the marriage have lived apart for a continuous period of at least five years

immediately preceding the presentation of the Petition.

The Petitioner has relied on Section 9(d) of the Matrimonial Causes Act, in the Petition, which states:

That parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the decree being granted.

The Respondent did not file any Answer to the Petition and did not contest the dissolution of the Marriage as evidenced by the Consent filed into court.

At hearing the Petitioner told the court that he married the Respondent in 1998, but problems in the marriage only started in 2004, when the Respondent started spending nights out during weekends claiming to have been with her sisters in Kafue. It was his testimony that when he complained over the behaviour he received a message purportedly from the sisters in 2005 advising him that if he was not happy that the Respondent spent nights in Kafue, then he should split with his wife.

The Petitioner testified that after receiving the message above, he attempted to resolve the matter using the elders at church and 'Ba Shibukombe' but that the Respondents relatives were not interested in resolving the matter.

It was the Petitioner's further testimony that in 2006, he had a heated argument with the Respondent as two months passed without sleeping with her, and when he complained, she responded that her job was too demanding and suggested that he finds a girl friend or maid.

The Petitioner stated that in 2011, he had another bitter argument when the church transferred him to Kitwe in a senior capacity, but the

Respondent didn't want, until his appointment was revoked in 2016. It was the Petitioners evidence that in 2011, he came across two documents hidden by the the Respondent in the house. One of the documents related to the property in Kafue they had built and was in their daughter's name, but that the Respondent changed the title into her name without his consent. It was the Petitioners testimony that before they could discuss the matter, the Respondent packed her belongings and went to stay with her sister, the point the parties separated and all efforts aimed at reconciling with the the Respondent have been futile.

The Respondent did not cross examine the Petitioner. She testified on oath that the marriage had broken down irretrievably and that they had lived apart for six years.

The Respondent expressed her reservation that Petitioner be granted custody of the children of the family. It was her testimony that the last time the Petitioner had picked their second born daughter, he sent her to live with his brother.

The Respondent eventually changed her mind and agreed that the Petitioner be granted custody of the children of the family.

I have considered the Petition and oral evidence adduced by the parties in court. I am satisfied that the marriage solemnized under the Marriage Act at the Marriage Registry in Lusaka on 26th day of December, 1998 between the Petitioner, **Obed Mubanga** and the Respondent **Barbara Witola Mubanga** has broken down irretrievably by reason of the fact that the parties to the Marriage have lived apart for a continuous period of atleast two years immediately preceding the presentation of the Petition and the Respondent Consents to the dissolution of the marriage.

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

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.

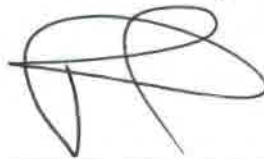
I, grant the Petitioner custody of the children of the family with reasonable access to the Respondent.

I, further Order and refer all issues pertaining to the assessment of Maintenance or Property settlement, if any, to the Learned Registrar of the High Court for determination.

Each party shall bear their own legal costs relating to this action.

Leave to appeal is granted.

Delivered at Lusaka this 2nd day of August, 2017.



M.L. ZULU
HIGH COURT JUDGE