

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA

2017/HP/D.150

*(Divorce Jurisdiction)*



BETWEEN:

**SANDRA MUKWAVI TENFWE**

Petitioner

and

**PATRICK TENFWE**

Respondent

***Before the Hon. Mrs. Justice N.A. Sharpe-Phiri on 7<sup>th</sup> September 2017***

For the Petitioner: Ms. C. Jere of National Legal Aid Clinic for women

For the Respondent: No appearance.

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## J U D G M E N T

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Authority referred to:

*Matrimonial Causes Act, Number 20 of 2007 of the Laws of Zambia.*

Sandra Mukwavi Tenfwe filed a Petition for Judicial Separation on 19<sup>th</sup> June 2017 seeking a judicial separation from Patrick Tenfwe. The application was brought pursuant to **Section 34 of the Matrimonial Causes Act, Number 20 of 2007 of the Laws of Zambia.**

In her Petition, the Petitioner contends that she was lawfully married to the Respondent on 26<sup>th</sup> January 2000 at the Office of the Registrar of Marriages at the Civic Centre in Ndola in the Copperbelt Province of the Republic of Zambia.

She contends further that the parties lived together as husband and wife at Plot 42/201/9013 Garden Overspill and that they are both domiciled in Zambia. The Petitioner further reveals that there are two children of the family namely: Chansa Tenfwe born on 2<sup>nd</sup> April 2000 and Kachinfya Tenfwe born on 10<sup>th</sup> May 2010; that there have been no previous proceedings in any court of law in Zambia or elsewhere with reference to the said marriage or between them or with reference to any property of either or both of them and that there are no proceedings continuing in any country outside Zambia which are in respect of the marriage or are capable of affecting its validity or subsistence. It also states that there have been no arrangements or agreements made between the parties for the support of the either party or the children of the marriage. In conclusion, the Petition contends that the Respondent has behaved unreasonably and that the Petitioner cannot reasonably be expected to live with him.

The particulars of the unreasonable behavior are that the Respondent is an alcoholic, and when under the influence of alcohol becomes destructive and verbally abusive towards the Petitioner. It states further that the Respondent has been having extra marital affairs with other women and in July 2015 contracted a sexually transmitted disease. It also states that the Respondent has failed to render any financial and emotional support to the family. The Petitioner concludes by praying for the following reliefs namely:

- 1. That an Order for Judicial Separation be made.**
- 2. That there be a Maintenance Order.**

**3. That the Petitioner be granted custody of the children of the family with reasonable access to the Respondent.**

**4. That costs be in the cause.**

The Respondent did not file an Answer nor did he complete the acknowledgement of service of 19<sup>th</sup> June 2017.

The matter was heard before me on 6<sup>th</sup> September 2017. On that date, the Petitioner and her Counsel were in attendance but the Respondent was absent. Counsel for the Petitioner, Ms. C. Jere confirmed that the Respondent had been duly notified of the date of hearing and that it was unlikely that he would attend Court. Service of Court process was evidenced by a letter of service, acknowledged by the Respondent and produced as 'SMT1' in the affidavit of service of 5<sup>th</sup> September 2017. Being satisfied that the Respondent was fully aware of these proceedings, I allowed the Petitioner to proceed with her Petition.

The Petitioner testified and repeated, in substance, the contents of her Petition. She reiterated that the Respondent was an alcoholic and had become destructive and abusive towards her. She stated further that the Respondent was having extra marital affairs with other women and had refused to render any financial and emotional support to the family. She reiterated that she could no longer tolerate living with the Respondent and urged the Court to grant her an order for judicial separation.

I have carefully considered the evidence of the Petitioner.

The question for my determination is whether to grant an order for a legal separation of the parties.

The petition for Judicial Separation has been brought pursuant to **Section 34 of the Matrimonial Causes Act**. The said **Section 34 (1)** states as follows:

*'A petition for judicial separation may be presented to the Court by a party to a marriage on the ground that one or more of the facts specified in paragraphs (a) to (e) of subsection (1) of section nine exists and the provisions of section ten shall apply for the purpose of a petition for judicial separation alleging any such fact, as they apply in relation to a petition for divorce alleging that fact.'*

The foregoing provision empowers a party to a marriage to apply to the Court for Judicial Separation of their marriage on the ground that one or more of any of the facts specified in **Section 9 of the Act** exists.

Further, **Section 34 (2) of the said Act** provides that the Court hearing a petition for judicial separation shall inquire into the facts alleged by the Petitioner and into any facts alleged by the Respondent, but shall not be concerned to consider whether the marriage has broken down irretrievably. Clearly, a Court hearing a petition for judicial separation should not be concerned with whether there is a permanent or irreversible break down of the marriage.

The question is whether the Petitioner has proved the breakdown of the marriage in terms of **Section 9 (1) (b) of the Matrimonial Causes Act.**

The said section provides as follows:

***‘For purpose 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) .....***

***(b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.***

From the provisions of **Subsection 3 of Section 34 of the Act**, a Court hearing a petition for judicial separation must be satisfied that the Petitioner has adduced sufficient evidence to support the facts alleged under **Section 9 of the Act.**

The evidence of the Petitioner was to the effect that the Respondent drinks excessively and whilst under the influence of alcohol is destructive and abusive towards her. That, although they live in the same house, from July 2016 to date, they are not living as husband and wife on account of the Respondent’s improper and unreasonable behaviour. On the totality of the evidence, I am satisfied that the Petitioner has proved the allegations that the Respondent has acted in such a way that she cannot reasonably be expected to live with him.

I accordingly grant a decree of judicial separation authorizing the parties to live apart from each other whilst still remaining married.

With regard to the issue of custody of the children whilst the parties are on separation, I order that the Petitioner shall have custody, care and control of the children of the family named Chansa Tenfwe and Kachinfya Tenfwe. The Respondent shall have reasonable and liberal access to the said children of the family.

The issues of maintenance are referred to the learned Deputy Registrar for hearing, and either party is at liberty to apply in this regard.

I further order that the Respondent shall bear the costs of and incidental to this suit.

**Delivered at Lusaka this 7<sup>th</sup> day of September 2016**

  
**N.A. Sharpe-Phiri**  
**HIGH COURT JUDGE**