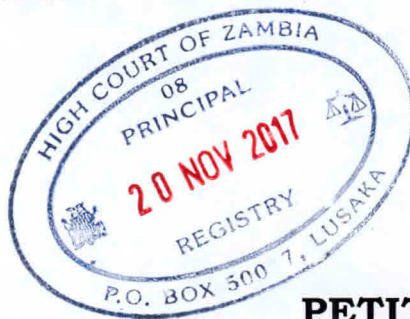


**IN THE HIGH COURT FOR ZAMBIA 2017/HPF/D192
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(DIVORCE JURISDICTION)**



BETWEEN:

JULIE DEBEER ZULU

PETITIONER

AND

DAIMAN ZULU

RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE M.L. ZULU

AT LUSAKA THIS 20TH DAY OF NOVEMBER, 2017

For the Petitioner: In Person

For the Respondent: Mr. N. Inambao of Messrs. ICN Legal Practitioners.

J U D G M E N T

Legislation referred to:

- 1. Matrimonial Causes Act, No. 20 of 2007.**

This Petition for dissolution of marriage presented by the Petitioner **Julie Debeer Zulu** was filed on the 4th day of August, 2017. The Respondent to the Petitioner is **Daiman Zulu**. The Petition shows that the parties were lawfully married on the 5th day of January, 2003 at the Civic Centre, at the Registrar of Marriages Office in the City and Province of Lusaka of the Republic of Zambia. The Petitioner and the Respondent last co-habited as husband and wife at House No. 11, Mayanganga Road, Libala Stage 4, in Lusaka. They are both domiciled in Zambia.

There are no children of the marriage between them namely, however there are two children known to the Petitioner born to the Respondent now living.

The Petition shows that there have been no previous proceedings in any Court in Zambia or elsewhere with reference to the said marriage or between the parties with reference to any property of either or both of them. It further states that there are no proceedings continuing in any Court outside Zambia which are in respect of the said marriage or which are capable of affecting its validity or substance.

It is stated in the Petition that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue living with the Respondent.

The Petitioner's evidence was that the Respondent has an adulterous behavior, which resulted in him fathering a child with his girlfriend Nchimunya Mujika of Mongu and boasts about it. The petition also alleges that the Respondent suspects the Petitioner of infidelity and at one point called her sister that she had been caught red handed committing adultery when in fact not. The Petitioner further alleges that ever since she left the matrimonial home in August, 2016, the Respondent has not attended any meetings aimed at reconciliation and had been denied her right to be his wife causing her to lose the love and affection for the Respondent.

At a hearing on 9th November, 2017, Counsel for the Respondent informed the court that the Respondent would not contest the dissolution of the marriage. The Petitioner testified that she wanted the marriage dissolved. She stated that the marriage had broken down irretrievably as because every time they quarreled the Respondent chased her from from the matrimonial home and

accused her of being a prostitute. It was her further oral evidence that the Respondent does not respect her and her family.

I have carefully considered the Petition, and note the position of the Respondent who does not wish to contest the dissolution of the marriage.

The sole ground upon which this court can dissolve a marriage is to find that the marriage has broken down irretrievably. While the Petitioner failed to bring evidence to support the allegation of adultery made against the Respondent, its clear from the testimony of the Petitioner that since leaving the matrimonial home on 19th August, 2016, the Respondent has not shown any interests at reconciliation with the Petitioner. Further, the position made by the Respondent that he would not be contesting the dissolution of the marriage point to the fact that he is longer interested in the marriage, and does not intent to respond to the allegations levelled against him in the Petition despite being serious.

The Petitioner also cites incidents of unreasonable behavior including chasing her from the matrimonial home whenever they quarreled and being accused of having committed adultery. It was

her testimony that she did not believe that the marriage could work out because she had lost the love and affection for the Respondent. This evidence coupled with the fact that the Respondent does not wish to contest the evidence and has not made any efforts to reconcile with the Petitioner. It is unreasonable behavior for the Respondent to keep the Petitioner away from the matrimonial home since 19th August, 2016, and is sufficient to warrant this court to consider dissolution under **Section 9 (1) (b) of the Matrimonial Causes Act, 2007** which provides:

“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:

(b) that the respondent had behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.”

The considerations of these facts are not an objective test but a subjective one based on the Petitioner's own perception of reasonable expectations. On the totality of the evidence before this court, I am satisfied that the marriage solemnized under the Marriage Act at the Registrar of Marriages on the 5th day of January, 2003 between the Petitioner, **Julie Debeer Zulu** and the Respondent **Daiman Zulu** has broken down irretrievably by reason of the fact that the Respondent cannot reasonably be expected to live with the Petitioner as presented in the cross petition.

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

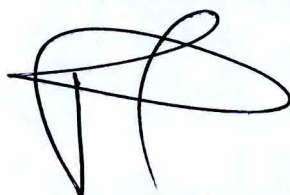
I accordingly, order that the said marriage be dissolved and a **DECREE NISI** is hereby granted which decree shall be made absolute at the expiration of (6) weeks of the date of this judgment unless sufficient cause be shown to the court why it should not be made so.

I hereby refer all issues pertaining to the assessment of maintenance or property settlement that may arise to the learned

Registrar of the High Court for determination. Either party is at liberty to apply.

I order that each party bears its own costs of the Petition.

Dated this 20th day of November, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, positioned above a horizontal line.

M.L. ZULU
HIGH COURT JUDGE