

**IN THE HIGH COURT FOR ZAMBIA** 2013/HP/D082  
**AT THE PRINCIPAL REGISTRY**  
**HOLDEN AT LUSAKA**  
(Divorce Jurisdiction)



**B E T W E E N:**

MAURICE SEYUBA

PETITIONER

**AND**

KALUBA ESTHER CHIMFWEMBE  
SEYUBA

RESPONDENT

**BEFORE HON. MADAM JUSTICE P. K. YANGAILO ON THE 3<sup>RD</sup>  
DAY OF MARCH, 2017**

*For the Petitioner:*

*Mr. Maurice Seyuba - In person*

*For the Respondent:*

*Mrs. Kaluba Esther Chimfwembe  
Seyuba - 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, Act No. 20 of 2007*

The Petitioner **MAURICE SEYUBA** has Petitioned for the Dissolution of Marriage pursuant to **Section 8 & 9 (1) (e) of the Matrimonial Causes Act** on the ground that the marriage has broken down irretrievably by reason of the fact that the parties have lived apart for a continuous period of five (5) years immediately preceding the presentation of this Petition.

**Sections 8 and 9 (1) (e)** of the **Matrimonial Causes Act** provides that: -

**"8. A petition for divorce may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.**

**9. (1) For 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...**

**(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition."**

I refer to **Section 9 (2)** of the **Matrimonial Causes Act**, which provides that: -

**"(2) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent."** (emphasis mine)

In accordance with **Section 9 (2)**, I set this matter down for hearing on 3<sup>rd</sup> March 2017, in order for me to inquire into the facts alleged in the Petition for Dissolution of Marriage presented before this Court by the Petitioner. At the hearing, the Petitioner testified that he was married to the Respondent **KALUBA ESTHER CHIMFWEMBE SEYUBA** on 30<sup>th</sup> June 2007, at Woodlands Baptist Church in the Lusaka District of the Lusaka Province of the Republic of Zambia. He produced his marriage certificate, which was identified as **"ID1"** and admitted into

evidence marked "**P1**". According to the Petitioner, the parties last cohabited together as husband and wife at Flat No. 3 High Street, North Fineley, North London, in the United Kingdom. That there is one male child of the family now living born to the Petitioner and the Respondent, born on 4<sup>th</sup> October 2008 and in Grade Three at Amazing Primary School in Lusaka. The Petitioner further testified that the said marriage has broken down irretrievably, such that the parties can no longer be expected to live together based on the fact that the parties have lived apart for more than five (5) years immediately preceding the presentation of the Petition for Dissolution of the Marriage.

In response to the question put to the Petitioner in cross-examination, the Petitioner testified that the marriage vows that the parties made to each other have changed and he can no longer live by his vows, having lived apart from the Respondent for more than five (5) years immediately preceding the presentation of the Petition for Dissolution of Marriage.

The Petitioner prayed therefore for the dissolution of marriage; custody of the child of the family with reasonable access to the Respondent; maintenance for the child of the family; and that each party bears its own costs.

The Respondent **KALUBA ESTHER CHIMFWEMBE SEYUBA** testified that she is the Respondent mentioned in the Petition for Dissolution of Marriage presented to this Court by the Petitioner **MAURICE SEYUBA**, who married her on 30<sup>th</sup> June 2007, at

Woodlands Baptist Church in the Lusaka District of the Lusaka Province of the Republic of Zambia. That she was served with the Petition for Dissolution of Marriage and Acknowledgement of Service where she indicated that she does not intend to defend the Petition for Dissolution of Marriage based on the fact that they have lived apart for more than five (5) years. She further testified that she only wishes to be heard on custody of the child of the family. She prayed that the marriage be dissolved and she be granted full custody of the child of the family with reasonable access to the Petitioner.

There were no questions put to the Respondent in cross-examination.

I refer to **Section 9 (3)** of the **Matrimonial Causes Act**, which provides that: -

***"(3) If the Court is satisfied on the evidence of any fact mentioned in subsection (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably it shall grant a decree of dissolution of marriage."***

Having heard and inquired into the Petitioner's application for the Dissolution of Marriage in accordance with the above cited provision, I am satisfied and hereby hold that the marriage has indeed broken down irretrievably due to the fact that the parties have lived part for a continuous period of five (5) years immediately preceding the presentation of this Petition.

Accordingly, it is hereby **ORDERED** that the Marriage solemnised by the Petitioner and the Respondent on the 30<sup>th</sup> June, 2007 **BE** and is **HEREBY DISSOLVED** and a **DECREE NISI** is granted to be made Absolute within six weeks from date of the **DECREE NISI** and after the custody of the child of the family has been heard and determined. The hearing of the application for custody of the child of the family is adjourned to 31<sup>st</sup> March, 2017 at 09:00 hours in Chambers.

It is **FURTHER ORDERED** that the Petitioner and the Respondent will each bear their own costs.

**Delivered on the 3<sup>rd</sup> day of March, 2017**



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**P. K. YANGAILO**  
**HIGH COURT JUDGE**