



2017/HPF/294

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Family Jurisdiction)

BETWEEN:

LENGANJI SIMFUKWE MUWOWO**PETITIONER**

AND

ERNEST MUWOWO**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 22nd DAY OF
FEBRUARY, 2018**

For the Petitioner : In person

For the Respondent : In person

J U D G M E N T

LEGISLATION REFERRED TO:

1. *The Matrimonial Causes Act No 20 of 2007*

This petition for the dissolution of marriage was filed pursuant to Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007, on 22nd November, 2017. The petition states that the Petitioner, Lenganji Simfukwe Muwowo was lawfully married to the Respondent, Ernest Muwowo on 25th November, 2009, at the office of the Registrar of Marriages at the Luanshya Civic Centre.

That the parties who are both domiciled in Zambia last lived as husband and wife at Flat 3 Esheni Road at the town centre in Luanshya, and that the Petitioner is a banker at Barclays Bank, while the Respondent is a

businessman. It is also stated that there are two children of the family now living, namely Kondwani Muwowo, a boy born on 29th May, 2011, and is in grade one at Luanshya Trust School, and Taonga Muwowo, a girl born on 26th April, 2014, and is in baby class at Luanshya Trust School.

That there are no other children born to the Respondent during the subsistence of the marriage, so far as is known to the Petitioner, and that there have been no previous proceedings in any court in Zambia with reference to the marriage or the property of either or both of them. Further that there are no proceedings continuing in any court outside Zambia with respect to the marriage, that are capable of affecting its validity or substance, and no arrangements have been made with regard to the support of the parties.

The Petitioner contends that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, having separated sometime in April, 2015, and the Respondent consents to divorce being granted. The Petitioner prays that the marriage be dissolved, and that the parties be granted joint custody of the children, and that there be adjustment of property. Further that each party bears their own costs of the proceedings.

The Respondent did not file an answer, but completed the acknowledgement form in which he stated that he did not intend to defend the petition, and he consented to divorce being granted based on the fact that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition. He also signed the consent to the dissolution of the marriage.

At the hearing, both parties testified and did not call any witnesses. The Petitioner in her evidence repeated the contents of the petition, and added that the first born child Kondwani is in now in grade two at Luanshya Trust School, and that Taonga also attends the same school. She confirmed that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, having separated in April, 2015, and that the Respondent consents to divorce being granted. She asked the court to dissolve the marriage, and that there be an order for joint custody of the children of the family, and added that they had already shared the property. She stated that she would however like to be heard on maintenance.

When cross examined, the Petitioner stated that there was no document indicating that the children should remain in Luanshya or that the Respondent should have custody of them.

The Respondent in his testimony stated that he consented to divorce being granted as the parties had lived apart for a continuous period of two years immediately preceding the presentation of the petition. That the parties had lived apart since April, 2015, and he signed the consent to divorce freely and voluntarily. He also stated that he would like to be heard custody of the children, and that he be granted the said custody, as the children had been in his care and been well looked after, and had adjusted to the school that they attend. That removing them from there would have a negative impact. He was not cross examined.

I have considered the petition. It was brought pursuant to Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007. Section 8 provides for the ground for divorce, while Section 9 provides for the facts that

need to be proved in order to establish that a marriage has broken down irretrievably. The said Sections state and I quote;

“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.

(a) that the 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 the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(d) that the 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 a decree being granted; or

(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.

The Petitioner relies on the fact that the parties have lived apart for a continuous period of two years immediately preceding the presentation of

the petition, and the Respondent consents to divorce being granted. As can be seen from the Petitioner's evidence, the parties started living apart in April 2015. The petition was presented on 22nd November 2017, which is a period of two years and seven months after the parties started living apart. The Respondent confirmed this position, and told the court that he consents to divorce being granted. Therefore the Petitioner has proved the fact that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, and the Respondent consents to divorce being granted.

I accordingly grant a decree nisi for the dissolution of the marriage, which shall become absolute after a period of six weeks. The parties are at liberty to agree on the custody of the children of the family, and file a consent order to that effect. In default of agreement, either party may make the application to me at chambers. The application for maintenance is referred to the Learned Registrar for determination. Each party shall bear their own costs of the proceedings.

DATED THE 22nd DAY OF FEBRUARY, 2018

 S. Kaunda
S, KAUNDA NEWA
HIGH COURT JUDGE