

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

2017/HP/D.238



B E T W E E N :

MAYBIN MWENYA

PETITIONER

AND

IDAH MWALE

RESPONDENT

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
29th day of January, 2018**

For the Petitioner : *Mrs. M.K. Liswaniso, Legal Aid Counsel, Legal
Aid Board*
For the Respondent : *In Person*

J U D G M E N T

Legislation Referred To:

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

The Petition for dissolution of marriage was filed on 26th September, 2017, by **Maybin Mwenya**. The Petition is presented pursuant to sections 8 and 9 (1) (e) of the Matrimonial Causes Act.

It is common cause that the Petitioner, Maybin Mwenya, then a bachelor and the Respondent, Idah Mwale were lawfully married on 28th June, 2008, before the Registrar of Marriages, in Lusaka. The Petitioner and Respondent last lived as husband and wife at House No. 5, Diala Kaimba Basic School, Teachers Houses Chunga, Lusaka on 1st May, 2012.

The Petitioner is a Pastor and resides at Line No. 2, Matero East, Lusaka while the Respondent is a Teacher at Diala Kaimba Basic School, Lusaka and resides at House No. 5, Chunga, Teachers Compound, Diala Kaimba Basic School, Lusaka. There was a child born to the Petitioner and Respondent during the subsistence of their marriage but is no longer living.

There are no other proceedings in any Court in Zambia or elsewhere regarding the marriage or between the Petitioner and the Respondent regarding any property of either or both of them and there is no proceedings continuing in any Court outside Zambia

which are in respect of the marriage or are capable of affecting its validity or subsistence.

It is the Petitioner's testimony that the marriage has broken down irretrievably by reason of the fact that the parties have lived separate and apart for a continuous period of at least five years immediately preceding the presentation of this Petition, from 1st May, 2012, to date.

At trial, the Petitioner confirmed the contents of his Petition. The Respondent confirmed that she was not contesting the Petition and she consents to the dissolution of the marriage.

I have seriously considered the Petition filed in this matter. The only ground upon which a petition for divorce may be presented to the Court is provided in section 8 of the Matrimonial Causes Act which states thus:

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

In order to prove that the marriage has broken down irretrievably, the Petitioner should satisfy the Court of one or more of the facts set out in section 9 (1) (a) to (e) of the Act. Section 9 (1) (e) which is relevant to the Petition under consideration provides as follows:

“9 (1) 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:

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the of the petition and the Respondent consents to a decree being granted.”

This is an undefended Petition, and I will not give a lengthy judgment. Suffice it to state that upon the facts stated in the Petition and confirmed by the Petitioner in his oral testimony, I am satisfied that the marriage has broken down irretrievably on the ground that the Petitioner and the Respondent have lived separate and apart for a continuous period of at least five years immediately preceding the presentation of this Petition, that is from 1st May, 2012 to date. They are not willing to reconcile.

I am satisfied that the Respondent does not oppose the granting of a decree nisi.

I therefore, dissolve the marriage between the Petitioner and Respondent celebrated on 28th June, 2008 as prayed by the Petitioner and accordingly grant a decree nisi. The decree nisi will be made absolute six weeks from the date of this judgment.

The question of property settlement will be determined by the Learned Deputy Registrar upon application by either party.

Each party will bear their costs.

Dated this 29th day of January, 2018


M. Mapani-Kawimbe
HIGH COURT JUDGE