

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

2017/HP/D.277

(Divorce Jurisdiction)



BETWEEN :

SOLOMON ANDREW MVULA

PETITIONER

AND

EMMA MWAMBA CHISHIMBA MVULA

RESPONDENT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 9th day of February, 2018

For the Petitioner : *Mr. K. M. Shepande, Messrs Shepande & Company*
For the Respondent : *Mrs. B. M Banda, National Legal Aid Clinic for Women*

J U D G M E N T

Legislation Referred To:

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

The Amended Petition for dissolution of marriage was filed on 8th February, 2018, by **Solomon Andrew Mvula**. The Petition is presented pursuant to sections 8 and 9 (1) (d) of the Matrimonial Causes Act.

It is common cause that the Petitioner, Solomon Andrew Mvula, then a Bachelor and the Respondent, Emma Mwamba Chishimba Mvula, were lawfully married on 16th October, 2010, at the Registrar's office, in Lusaka. The Petitioner and the Respondent last lived as husband and wife at House No. 13 Mayanganyanga Street, Libala Stage 4A, Lusaka in April, 2015.

The Petitioner is a Businessman in Lusaka and resides at Flat No. 18, Monze Court, Chelstone, Lusaka, the Respondent is self-employed and resides at House No. 13 Mayangayanga Street, Libala Stage 4A, Lusaka. There is one child born to the Petitioner and the Respondent during the subsistence of their marriage. No other child now living has been born to the Respondent during the subsistence of the marriage so far as is known to the Petitioner.

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 are 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 two years immediately preceding the presentation of this Petition, from April, 2015, to date.

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

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 that:

"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) (d) 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:**
- (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."**

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 two years immediately preceding the presentation of this Petition, that is from April, 2015 to date. They are not willing to reconcile.

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

I therefore, dissolve the marriage between the Petitioner and the Respondent celebrated on 16th October, 2010 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.

I will determine the question of custody while the learned Deputy Registrar will determine the question of property settlement and maintenance upon application by either party.

Each party will bear their costs.

Dated this 9th day of February, 2018.


M. Mapani-Kawimbe
HIGH COURT JUDGE