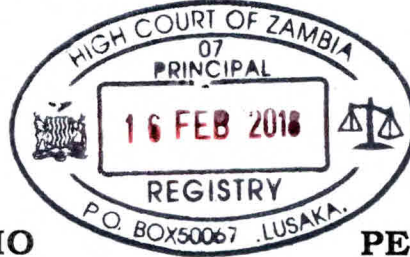


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2017/HPF/D147**

*(Divorce Jurisdiction)*



**BETWEEN:**

**DONATO GIOVANNI ELICIO**

**PETITIONER**

**AND**

**FILOMENA BERNOCCO**

**RESPONDENT**

**CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC**

*For the Petitioner: Ms T. Marietta of Messrs sharpe & Howard Legal Practitioners*

*For the Respondent: N/A*

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**J U D G M E N T**

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***Legislation referred to:***

*(i) Matrimonial Causes Act No.20 of 2007 of the Laws of Zambia*

This is a matrimonial petition launched on 14<sup>th</sup> June, 2017 by **Donato Giovanni Elicio** (the Petitioner) against **Filomena Bernocco** (the Respondent).

At the hearing of the Petition, I was satisfied that the Respondent who is outside jurisdiction as demonstrated by 2 affidavit of service

of process via the affidavit of service of 6<sup>th</sup> December, 2017 and proof of service of return date of 19<sup>th</sup> January, 2018.

I therefore granted leave to the Petitioner to present his petition.

**PW1** was the Petitioner himself. He gave sworn evidence and wholly placed reliance on his petition which was uncontroverted. The petition revealed that the Petitioner and the Respondent celebrated a civil marriage ceremony at **RUVO di Puglia, Bari, Italy** on 1<sup>st</sup> August, 1995 as evidenced by marriage certificate exhibit P1.

After the celebration of the marriage the Petitioner lived together as husband and wife at **Vila Mendozza, 78 Ruvo du Puglia, Bari, Italy**.

The Petitioner is a businessman by profession and resides at 51/D Roan road, Kabulonga, Lusaka whilst the Respondent is a house wife and resides at **Vila Mendozza, 78 Ruvo du Puglia, Bari, Italy**.

There are two children of the family namely (1) Vito Elicio born on 24<sup>th</sup> day of July, 1998, and (2) Francesca Elicio born on 27<sup>th</sup> day of May, 2003. To the best of the Petitioner's knowledge there are no other children now living born to the Respondent during the subsistence of marriage.

There have been no previous proceedings in any Court in Zambia or elsewhere with reference to the marriage or between the Petitioner and the Respondent with reference to any property or either or both of them save that 8<sup>th</sup> February, 2008, the Petitioner herein did petition the Court of Trani, Italy for legal separation from the

Respondent which separation was granted by the Court on 10<sup>th</sup> June, 2008 on such terms and conditions as regards custody, maintenance and property settlement as set out in the order of the Court and save further that the Petitioner did petition the Court of Trani for dissolution of marriage to the Respondent in 2017 which petition has since been drawn at the instance of the Petitioner.

There are no proceedings continuing in any Court outside Zambia which are in respect of the said marriage capable of affecting its validity or subsistence.

An agreement has been made between the parties for settlement of property. That the said marriage has broken down irretrievably by reason of the fact that the Petitioner and Respondent have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of the petition namely 10<sup>th</sup> June, 2008 to date.

He then prayed for

- (i) the dissolution of the said marriage
- (ii) that each party bears its own costs,
- (iii) any other relief that the Court will deem fit.

There being no appearance from the Respondent, I treated this as undefended petition.

Upon reading the Petition and upon hearing the Petitioner, I am satisfied that the civil ceremony of marriage celebrated on 1<sup>st</sup> August, 1995 between the Petitioner and the Respondent has

irretrievably broken down on account of the fact that the parties have lived apart continuously for a period of 5 years immediately preceding the commencement of the petition.

I therefore hereby grant a **decree nisi** pursuant to Section 41 of the Matrimonial Causes Act<sup>1</sup> and make the following orders:

- (1) The decree nisi shall become absolute after 6 weeks from the date hereof unless cause is shown why the same cannot be made absolute.
- (2) This decree nisi is subject to the custody orders of the Court of Trani Italy given on 10<sup>th</sup> June, 2008 and in respect of maintenance and property settlement.
- (3) The costs shall be in the cause.

**Delivered under my hand and seal this 16<sup>th</sup> day of February, 2018**



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**Mwila Chitabo, SC  
Judge**