

THE HIGH COURT FOR ZAMBIA
AT DISTRICT REGISTRY
HOLDEN NDOLA
(Divorce Jurisdiction)

2017/HN/45

BETWEEN:

NOAH CHILINDA



PETITIONER

AND

CHARITY NAMAUKAU MUYUMBAN

RESPONDENT

Before Hon. Mr. Justice M.L. Zulu, at Ndola the ^{Zulu}.....day of July, 2020.

For the Petitioner: Ms. K. Kaoma, Messrs Legal Aid Board.

For the Respondent: In Person

JUDGMENT

Legislation referred to:

1. Matrimonial Causes Act, No. 20 of 2007

This Petition for dissolution of marriage between the Petitioner, **Noah Chilinda** and the Respondent, **Charity Namakau Muyumbana Chilinda** shows that the parties were lawfully married on the 20th day of January, 2004 at the Registry office, in Ndola, Zambia.

According to the pleadings filed into court, both the Petitioner and Respondent are Teachers.

The parties have three children of the family and there is no other child now living born to the Respondent during the marriage.

On the 17th August, 2017, the Petitioner filed for the dissolution of the marriage that it had broken down irretrievably by reason that the Petitioner and the Respondent have lived apart for a period of 2 years and the Respondent consents.

It is contained in the petition that there are no proceedings continuing in any court of Zambia or outside in respect of the marriage that are capable of affecting its validity or subsistence.

The Petitioner prayed that: the marriage be dissolved; that he be granted custody of the children of the family; and that each party bears their costs.

At the hearing the Petitioner was represented by Counsel as he is currently out of jurisdiction. He relied on the petition filed into court.

In response, the Respondent testified that she consents to the dissolution of marriage on account of the irretrievable break down. She added that she seeks custody of the youngest child of the family.

The sole ground upon which this court can dissolve a marriage is to find that the marriage has broken down irretrievably (**section 8, Matrimonial Cases Act, 2007**).

There is evidence that the parties have lived apart for a continuous period of atleast two years immediately preceding the filing of the petition.

Section 9 (1) (d) of the Matrimonial Causes Act provides:

“For the purposes of section 8, 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.”

The Respondent states that the Petitioner is working in Seychelles and has custody of all the three children of the family. The Respondent also consents to have the marriage dissolved.

On the totality of the evidence before me, I am satisfied that the marriage solemnised under the Marriage Act at the Office of the Registrar, Ndola on 20th January, 2004, between **Noah Chilinda** and **Charity Muyumbana Chilinda** has broken down irretrievably by reason of the fact that the parties have lived apart for a continuous period of atleast two years and the Respondent consents to a Decree Nisi being granted.

I accordingly find that the provisions of the law under **section 9 (1) (d) of the Matrimonial Causes Act, 2007** have been satisfied.

In the circumstances, I hereby grant the Petitioner a Decree Nisi and the same to be made absolute at the expiry of six weeks from the date of this Judgment upon application by either party, unless sufficient cause be shown to court why it should not be made so.

The parties are at liberty to file a consent order relating to the custody of the children of the family. In the event, parties are unable to agree, either party is at liberty to apply.

I further order and refer all matters relating to maintenance, property settlement, if any, to the learned Registrar for consideration and determination.

Each party to bears their own costs.

Dated at Ndola, the 30th day of July..... 2020



Mathew L Zulu
HIGH COURT JUDGE