

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

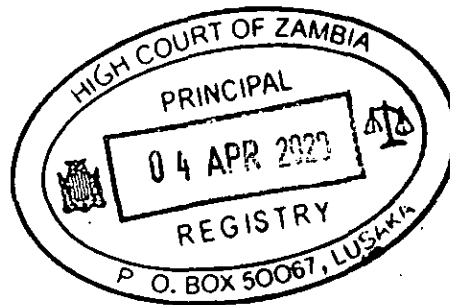
2017/HP/D0026

BETWEEN:

DOUGLAS TEMBO

AND

MAKUNGU MWANGE TEMBO



PETITIONER

RESPONDENT

Before the Hon. Mr. Justice E. M. Sikazwe in Chambers.

For the Petitioner : None

For the Defendant : Mr Z. Simposya - Messrs MSK Advocates

RULING

WORKS REFERRED TO:

1. *Rule 11 of the Matrimonial Causes Rules 1973 of England and Wales.*

The Petitioner filed a Petition for Judicial Separation on 1st February, 2017 pursuant to Section 34 and 91 (b) of the Matrimonial Causes Rules seeking for a decree Nisi to be granted. On 12th May, 2017 the Respondent filed a Notice to raise Preliminary issues pursuant to Order 14A of the Rules of the Supreme Court, White Book (1999 Edition). The issues raised were as follows:

1. *The Petition for Judicial Separation is incompetently and irregularly before the Court as it was filed without the Original Certificate of Marriage duly issued on the 4th day of June 2011, and further that the said Petition was filed without the Leave of Court which leave is required whenever such a Petition without the Original Marriage certificate, which goes to the Jurisdiction of the Honourable Court.*

2. *That the Petition for Judicial Separation is null and void as the same is not signed by the Petitioner.*

At the hearing, the Respondents Advocate, submitted that the Petition should not be entertained at all by this Court because it was improperly before the Court, in that the Petition was filed without the Original Certificate of Marriage which was issued on the 4th day of June 2011 and further that the said Petition was filed without the Leave of Court which leave is required if any other copy is to be filed into Court if the Original Certificate is not available.

The Petition for Judicial Separation is null and void as the same is not signed by the Petitioner. To support this Rule 11 of the Matrimonial Causes Rules of England 1973 was quoted which states that:

“every Petition shall be signed by Counsel if settled by him, and if not by the Petitioners Solicitor in his own name or the name of the firm, or by the Petitioner if he sues in person.”

The said signature on the Petitioner did not resemble the one which the Petitioner signed on the Original Certificate of Marriage and there is no proof that it has been changed to indicate the one in the Petition. It was therefore submitted that this leads to the Petition to be set aside and expunged from the record meaning therefore that the proceedings are irregular and cannot be entertained and heard by this Court.

I have considered the preliminary issues raised by the Respondent as well as the arguments in support. It is trite law that when the Petitioner is using other than the Original Certificate of Marriage, the Petitioner must seek leave of the Court to file the Petition with a photocopy. I find that the copy filed together with the Petition is a Duplicate of the Original Copy and it has been accepted to be filed with the Petition.

Therefore there is no need to seek leave of the Court to file the Duplicate Certificate of Marriage

Regarding the issue of the signature which appears on the Petition and the Duplicate Certificate of Marriage, it is true that they do not match and are completely different from each other. There is no justification shown to this Court why the Petitioner's signature is so different from each other on these two documents and bares no resemblance at all. This shows that the Petition was not signed by the Petitioner himself but by somebody who does not fall under Rule 11 of the Matrimonial Causes Rules of England 1973 edition.

I therefore, direct the Petitioner to withdraw the Petition and re-file a properly sworn Petition in support of the application for Judicial Separation pursuant to Section 34 and 91 (b) of the Matrimonial Causes Act No. 20 of 2007 or show cause and proof that his signature has been changed from the time he signed the Marriage Certificate and attach a certified Copy of his Natural Registration Card or Passport.

The preliminary issues raised are partly upheld and I Order costs to the Respondent to be taxed in default of agreement.

Leave to appeal is hereby granted.

Delivered in chambers this 4th day of **April, 2020.**



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E. M. SIKAZWE
JUDGE