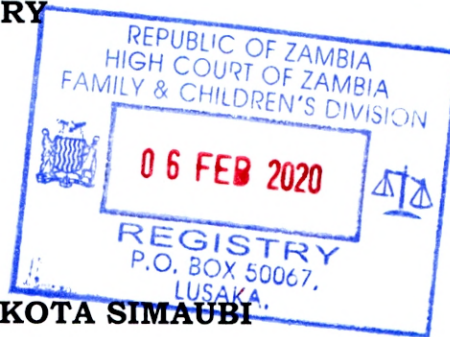


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Divorce Jurisdiction)

2018/HPF/D224



BETWEEN:

JACQUELINE MALUNGA MAKOTA SIMAUBI

PETITIONER

AND

CHARLES SIMAUBI

RESPONDENT

CORAM: HONORABLE MRS. JUSTICE C.LOMBE PHIRI

For the Petitioner:

Mr M. Sitali – Ellis & Co

For the Respondent:

Mr. B. Banda – LAC -LAB

JUDGMENT

Legislation referred to:

- (i) *The Marriage Act Chapter 50 of the Laws of Zambia*
- (ii) *Matrimonial Causes Act No.20 of 2007 of the Laws of Zambia*

This is a matrimonial Petition launched by the Petitioner **JACQUELINE MALUNGA MAKOTA SIMAUBI** against the Respondent **CHARLES SIMAUBI** for the dissolution of marriage alleging that the marriage which was lawfully celebrated on the 23rd

June, 1999 at the office of the Registrar of Marriages under the Marriage Act had irretrievably broken down.

The ground is that the Petitioner and the Respondent have continuously lived apart as man and wife for a period of at least 2 years immediately preceding the presentation of the matrimonial petition and the Respondent consents.

At the hearing of the Petition, I was satisfied that the Respondent had been duly served with process as evidenced by the acknowledgement of service by the Respondent and also by the consent to the decree nisi filed into Court on 6th February, 2020.

I was fortified in my view by the fact that the Respondent's Advocates appeared on the hearing. I therefore signaled the Petitioner to present her matrimonial petition.

PW1 was **Jacqueline Malunga Makota Simaubi**, the Petitioner herself. She gave sworn evidence. It was her testimony that the Petitioner was on 23rd day of June, 1999 lawfully married to the Respondent under the Marriage Act¹ at the office of the Registrar of Marriages at the Civic Center, Lusaka as evidenced by the Marriage certificate admitted as exhibit P1.

After the celebration of marriage, the parties lived as husband and wife at Plot 106/4 Washama Road Villa Elizabetha.

The Petitioner is unemployed whilst the Respondent is an accountant.

Both parties are domiciled in Zambia.

There are three (3) children of the family namely:

- (i) Charlene Tibeth Simaubi (female), born on 12th August, 1999;
- (ii) Cherel Mukuni Simaubi (female), born on 24th November, 2000; and
- (iii) Charmaine Nchimunya Simaubi (female), born on 20th September, 2002.

There is one child born of the Petitioner before the subsistence of the marriage namely Samuel Makota aged 25 years.

There is one child born of the Respondent during the subsistence of the marriage namely Daniel Mweembe aged 11 years.

There are no proceedings subsisting in Zambia or elsewhere in the world that might affect the validity of the marriage and property settlement.

It was her testimony that the marriage has broken down irretrievably on the ground that the parties have continuously lived apart as man and wife for a continuous period of at least 2 years immediately preceding the presentation of the Petition and the Respondent consents to the dissolution of marriage as evidenced by the Consent dated 6th February, 2020 admitted as exhibit P2.

The Petitioner concluded by praying for the dissolution of the marriage. The Petitioner was not cross examined. The Petitioner then rested her case.

UPON reading the Matrimonial Petition of the Petitioner and UPON hearing the evidence of the Petitioner and UPON sight and perusal of the Marriage Certificate being exhibit P1

AND UPON sight and perusal of the Respondent's Consent to the decree filed on 6th February, 2020 I am satisfied that the marriage which was lawfully celebrated on the 23rd day of June, 1999 under the Marriage Act at Civic Center, Lusaka has irretrievably broken down on account of the fact that the parties have continuously lived apart as husband and wife for at least 2 years immediately preceding the presentation of the Matrimonial Petition pursuant to Section 8 and 9 (1) (d) of the Matrimonial Causes Act² as evidenced by exhibit P2.

I accordingly grant a decree nisi pursuant to Section 41 of the Matrimonial Causes Act and I make the following orders:-

- (i) The Decree nisi shall become absolute after 6 weeks unless cause is shown why the same cannot be made absolute.
- (ii) I refer the following issues to the Learned Deputy Registrar for determination
 - (a) maintenance of the children of the family;
 - (b) maintenance of the parties;

(c) property settlement (if any);

The application should be made within 30 days from the date hereof on application by either party in default of agreement.

(iii) Each party to pay their own costs.

No appeal lies against a consented to decree nisi dissolving the marriage.

Delivered under my hand and seal this 6th day of February, 2020.



**C. LOMBE PHIRI
JUDGE**