

IN THE HIGH COURT FOR ZAMBIA

2019/HPF/D333

AT THE PRINCIPAL REGISTRY

HOLDEN AT LUSAKA

(Divorce Jurisdiction)



BETWEEN:

MWAKA K P MTONGA MUSUKUMA

PETITIONER

AND

MUSONDA J MUSUKUMA

RESPONDENT

BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO, ON THE 14TH DAY OF SEPTEMBER, 2020, IN OPEN COURT.

For the Petitioner: Ms. A. Chimuka - Abigail & Chama Advocates

For the Respondent: N/A

JUDGMENT

LEGISLATION REFERRED TO:

1. *The Matrimonial Causes Act, Act No. 20 of 2007*
2. *The Matrimonial Causes Rules 1973*

1 INTRODUCTION

1.1 This matter comes before this Court for pronouncement of a *decree nisi*, having been entered in the Special Procedure List.

2 BACKGROUND

- 2.1 The Petitioner filed herein a Petition for the dissolution of her marriage to the Respondent pursuant to **Sections 8 and 9 (1) (d)** of **The Matrimonial Causes Act**¹ on the ground that it has irretrievably broken down. She relied on the fact 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.
- 2.2 On 8th September 2020, the Deputy Registrar issued a Registrar's Certificate certifying that the Petitioner has sufficiently proved the contents of the Petition herein and is entitled to a decree. That there is one child of the family. Pursuant to **Rule 33 (3) (ii)** of **The Matrimonial Causes Rules 1973**², this cause was entered in the Special Procedure List. I set the matter down for pronouncement of a decree on 14th September, 2020.

3 HEARING OF THE MATTER

- 3.1 On the return date, only the Petitioner's Advocate was in attendance. Counsel for the Petitioner submitted that both the Petitioner and Respondent dispensed with appearing in person before the Court for the pronouncement of the *Decree Nisi*. She prayed that the *decree nisi* be pronounced.

4 THE LAW

4.1 **Section 9 (1) (d)** of **The Matrimonial Causes Act**¹, provides that in a petition for divorce, a marriage shall be found to have broken down irretrievably where the Petitioner satisfies the Court 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.

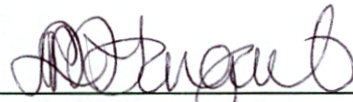
5 PRONOUNCEMENT

- 5.1 Pursuant to **Rule 33 (3) (ii)** of **The Matrimonial Causes Rules**², this cause was entered in the Special Procedure List as shown by the Certificate of the Registrar certifying that the Petitioner has sufficiently proved the contents of the Petitioner and is entitled to a decree.
- 5.2 I have perused the record herein and the Petition evidence establishes that the parties last lived together as husband and wife on 1st February, 2015. The Petition was filed on 15th October, 2019, thus a period of over 2 years has passed since they last lived together.
- 5.3 I am satisfied that the Petitioner has proved that the marriage solemnised between MWAKA K P MTONGA MUSUKUMA and MUSONDA J MUSUKUMA has irretrievably broken down.
- 5.4 I **DECREE** that the said marriage be dissolved and a **DECREE NISI IS HEREBY GRANTED**, to be made absolute within six (6) weeks of the date hereof, upon

application by either party to the Deputy Registrar, provided the issues relating to the welfare of the child of the family are heard and determined. Either party may formally make an application before this Court for the welfare of the child of the family.

5.5 The parties shall bear their own costs.

Delivered in Open Court this 14th day of September, 2020.



**P. K. YANGAILO
HIGH COURT JUDGE**