

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



2019/HP F/D/378

MICHELLE MWANSA MUMBA

PETITIONER

AND

WEZI A NGULUBE

RESPONDENT

Before Honourable Mr Justice M.D. Bowa on 4th March 2020

For the Petitioner: Miss A Muma from National legal Aid Clinic for Women

For the Respondent: In person

JUDGMENT

Legislation referred to:

1. *The Matrimonial Causes Act, No. 20 of 2007*
2. *The High Court Act Cap 27 of the Laws of Zambia*

This action was commenced by petition for dissolution of marriage dated 5th of November 2019 and presented pursuant to section 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007 of the Laws of Zambia. By her petition, the Petitioner contends that she and the Respondent were lawfully wed on the 6th of November 2010 at Mary Immaculate Church in the Lusaka. Following the celebration of the marriage the Petitioner and Respondent lived in Nyumba Yanga along Robert Watyakeni Road Lusaka. They last lived together as husband and wife in

February 2017. Both the Petitioner and the Respondent are domiciled in Zambia.

The Petitioner resides in Makeni Konga off Makeni Road and the Respondent resides in Kabwata along Fisi Road. The petition further discloses that the Petitioner is a Human resources assistant with the Food Reserve Agency while the Respondent is a businessman.

There is one child of the family now living named Jamilia Ngulube born on 11th September 2016. There are no other children born to the Respondent as far as is known to the Petitioner. The Petitioner averred further that there are no proceedings in Zambia or elsewhere with reference to the marriage or between the Petitioner and the Respondent regarding any property of either or both of them. In addition, that there are no proceedings continuing in any country outside Zambia in respect of the marriage which are capable of affecting its validity or subsistence.

No agreement has been reached or proposed to be made between the parties regarding the support of the Petitioner and child of the family. The Petitioner finally contended that the marriage has broken down irretrievably as the couple have lived apart for a

continuous period of at least 2 years immediately preceding the presentation of the petition and that the Respondent has consented to the dissolution of the marriage.

She prayed for the following reliefs.

- 1. That the marriage be dissolved*
- 2. That she be granted custody of the child of the family with liberal access to the Respondent.*
- 3. That the court makes an order for maintenance of the child of the family and the Petitioner.*
- 4. That there be an order for property settlement.*
- 5. That each party bear his/her own costs.*

At trial held on the 15th of January 2020 the Petitioner confirmed the contents of her petition. She reiterated her position that the marriage had broken down irretrievably. She explained that the couple separated in February of 2017 and have not resumed cohabitation since. The Petitioner disclosed further that there has not been any attempt made to foster reconciliation and believed a resumption of cohabitation was not feasible and both parties wanted to go their separate ways. She prayed for the marriage to

be dissolved accordingly and that each party should bear their own costs.

In his sworn evidence, the Respondent informed the court that he was not contesting the petition. He further confirmed that he had consented to the dissolution of the marriage. The Respondent further asserted as true that he and the Petitioner have lived apart for a continuous period of at least 2 years immediately preceding the presentation of the petition. He agreed that they separated in February 2017 and that there has not since been a resumption of cohabitation. He also agreed that the marriage had broken down irretrievably on account of the period of separation and prayed that the divorce be granted.

I have considered the petition and the evidence before me. Section 8 of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia prescribes the only ground by which a petition for divorce may be presented. The section reads:

“A petition for divorce may be presented to the court by either party to the marriage on the ground that the marriage broken down irretrievably”

In order to prove that the marriage has broken down irretrievably, a Petitioner should satisfy the court of one or more of the facts set out in Section 9 (1) (a) to (e) of the Act. Section 9 (1) (d) in particular which is relevant to the petition under consideration provides as follows:

“ 9 (i) for the purposes of section eight, 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.”

In considering the petition before me I reminded myself that Section 9 (2) of the Act places a duty on the court to inquire so far as it reasonably can into the facts alleged by the Petitioner or those by the Respondent. Furthermore section 9 (4) makes clear that a decree for dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

Based on the evidence before me I find as a fact that the Petitioner and Respondent were lawfully wed on the 6th of

November 2010 as per copy of the marriage certificate on record. I am also satisfied that the Petitioner and Respondent have lived apart for a continuous period of not less than 2 years immediately preceding the presentation of the petition. There is uncontroverted evidence that the couple had in fact lived apart for about 2 years and 9 months at the time of the presentation of the petition having separated in February 2017.

I am further satisfied that the Respondent has duly consented to the dissolution of the marriage. I questioned both parties in terms of section 9(2) and (4) of the Matrimonial causes Act and was left with no doubt that both would like to see the marriage dissolved and importantly, that there are no prospects of salvaging the union.

On the whole therefore, I find that the conditions in section 8 and (9) (1) (d) of the Matrimonial Causes Act have been met and I dissolve the marriage between the Petitioner and Respondent celebrated on the 6th of November 2010. I accordingly grant a decree nisi which will be made absolute six weeks from the date of judgment unless sufficient cause is shown to the court why it should not be made so and the custody of the child is resolved. I further order that in terms of Statutory Instrument number 72 of

2018 and regulation 4 (4) in particular, the question of custody, property settlement and or maintenance will be referred to mediation on application by either party.

Each party will bear their own costs for this petition.

Dated at Lusaka this ^{4th}..... day of ^{March}..... 2020.



JUDGE