

**N THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Family Jurisdiction)

2019/HPF/D397



BETWEEN:

LUFafa PATRICK LUFafa

PETITIONER

AND

CLARA NALISHEBO KANCHELE LUFafa

RESPONDENT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 10th DAY OF
FEBRUARY, 2020**

For the Petitioner : in person

For the Respondent : in person

J U D G M E N T

LEGISLATION REFERRED TO:

1. *The Matrimonial Causes Act No 20 of 2007*

This petition for the dissolution of marriage was filed on 5th November, 2019, pursuant to the provisions of Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007.

The petition states that the petitioner, Lufafa Patrick Lufafa, was lawfully married to the respondent, Clara Nalishebo Kanchele Lufafa, on 18th May, 2013 at the New Apostolic Church, Woodlands Congregation, Lusaka. After the solemnization of the marriage, the parties lived at House No 64, Mosi-o-Tunya Road in Kabulonga Extension in Lusaka.

The parties last lived as husband and wife at House No MC2126B Zambia Airforce, Twin Palm Base, Ibex Hill, Lusaka.

It is stated that both parties are domiciled in Zambia, and the petitioner is an ITC Specialist and is currently unemployed. He lives at House No 41 Malata Compound in Kabulonga, while the respondent is a teacher at Arise Africa, Salama Park in Ibex Hill, and she resides at MC2126B Zambia Airforce, Twin Palm Base, Ibex Hill, Lusaka.

There is one (1) child of the family now living, namely Namatama Venus Lufafa, a girl, who was born on 31st January, 2014. There are no other children now living, born to the either to the petitioner or the respondent during the marriage, so far as is known to the petitioner.

It is stated that there have been no previous proceedings in any court in Zambia or elsewhere with reference to the marriage or the property of either or both of them. That no proceedings are continuing in any court outside Zambia with respect to the marriage, that are capable of affecting its' validity or substance. The petition further states that no arrangements have been made with regard to the maintenance of the respondent or the child of the family.

The petitioner alleges that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, having separated in July, 2017. He prays that the marriage be dissolved, and that costs be in the cause.

The respondent did not file an answer but she completed the acknowledgment of service form. In that document she confirms that she

is the person that is named as the respondent in the petition, and she states that she does not intend to defend the petition.

At the hearing, both parties were present and testified. The petitioner in his evidence repeated the contents of the petition, and stated that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition. He testified that the parties separated on 17th July, 2017.

He prayed that the marriage be dissolved, and that he be granted custody of the child of the family. He further prayed that there be an order for property settlement, and that he be heard on the child's maintenance.

In cross examination, the petitioner told the court that he would be able to look after the child even though he had not been supporting the child on a regular basis. That marked the close of the case for the petitioner.

The respondent in her evidence confirmed that she is the person that had been cited as the respondent in this matter. She confirmed that the parties have lived apart for a continuous period of two (2) years immediately preceding the presentation of the petition, and that she consents to divorce being granted. It was her evidence that the parties separated on 16th July, 2017, and that she had signed the consent to divorce freely and voluntarily, adding that she understood the consequences of signing the consent to divorce.

The respondent prayed that she be heard on the custody of the child of the family and property settlement, as well as maintenance.

In cross examination, the respondent maintained that the petitioner had failed to maintain the child of the family, and that he was not capable of looking after the said child, because even if he was not working, there was more that he could have done to maintain the child. Her evidence was that the petitioner goes to visit the child at school as he avoids going to her respondent's parent's house, where the child lives.

I have considered the matter. The petition was brought pursuant to Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007. Section 8 of the Act provides for the ground for divorce. It states that;

“8. A petition for divorce may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably”.

Section 9 of the said Act on the other hand provides for the facts that need to be proved in order to establish that a marriage has broken down irretrievably. It provides that;

“9. (1) For 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.

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(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; or

(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition”.

The petitioner relies on the fact that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, and the respondent consents to divorce being granted. Both parties in this matter agreed that they lived apart for a continuous period of two (2) years immediately preceding the presentation of the petition, having separated between the 16th and 17th July, 2017. The petition was filed on 5th November, 2019, a period of two (2) years and over three (3) months after the parties separated.

The respondent stated that she signed the consent to divorce freely and voluntarily, and that she understood the consequences of signing the said consent. Therefore, the evidence as it is, establishes that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of two (2) years immediately preceding the presentation of the petition, and the respondent consents to divorce being granted.

I accordingly find that the petitioner has proved his case, and I grant a decree nisi for the dissolution of the marriage that was solemnized on 18th May, 2013. The decree nisi shall become absolute after a period of six (6) weeks. The parties are at liberty to agree on the custody of the child of the family, and file a consent order to that effect. In default thereof, an application can be made to me at chambers. Applications for maintenance and property settlement shall be heard by the Registrar. Each party shall bear their own costs of the proceedings.

DATED AT LUSAKA THE 10th DAY OF FEBRUARY, 2020

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**