

**IN THE HIGH COURT FOR ZAMBIA**

**2019/HPF/D413**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Divorce Jurisdiction)*

**BETWEEN:**

MUTINTA SHISHOLEKA YUMBE **PETITIONER**

**AND**

CHOMBA MUBANGA YUMBE **RESPONDENT**



**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO,  
IN OPEN COURT, ON THE 5<sup>TH</sup> DAY OF MARCH, 2020.**

*For the Petitioner: Mrs. M. S. Yumbe - In Person*

*For the Respondent: Mr. C. M. Yumbe - In Person*

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## **JUDGMENT**

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**LEGISLATION REFERRED TO:**

1. *The Matrimonial Causes Act, Act No. 20 of 2007; and*
2. *The Marriage Act, Chapter 50 of the Laws of Zambia.*

**1 BACKGROUND**

1.1 On 9<sup>th</sup> December, 2019, the Petitioner MUTINTA SHISHOLEKA YUMBE, Petitioned for the Dissolution of Marriage pursuant to **Sections 8 & 9 (1) (e)** of **The Matrimonial Causes Act**<sup>1</sup> on the ground that the marriage has broken down irretrievably by reason of the fact that the parties have lived apart for a

continuous period of five (5) years immediately preceding the presentation of this Petition.

## **2 THE LAW**

2.1 **Sections 8 and 9 (1) (e)** of **The Matrimonial Causes Act**<sup>1</sup> provides 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.*

*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...*

*(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...*

*(Court's emphasis)*

2.2 I refer to **Section 9 (2)** of the **Matrimonial Causes Act**<sup>1</sup>, which provides that: -

*"On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent."* *(Court's emphasis)*

## **3 EVIDENCE**

3.1 In accordance with the said **Section 9 (2)**<sup>1</sup>, I set this matter down for the hearing of the Petition for Dissolution of Marriage on 5<sup>th</sup> March, 2020, in order

for me to inquire into the fact alleged in the Petition for Dissolution of Marriage presented before this Court by the Petitioner.

- 3.2 On the return date, both parties were in attendance. The Respondent confirmed that he had been duly served with the Petition and other supporting documents. I therefore allowed the Petitioner to present her Petition for Dissolution of Marriage.
- 3.3 The Petitioner gave sworn evidence. She testified that she was married to the Respondent CHOMBA MUBANGA YUMBE, on 22<sup>nd</sup> October, 2001, at the Civic Centre, in Lusaka, in the Lusaka Province of the Republic of Zambia. She produced an original marriage certificate, which was identified as "**ID1**" and was admitted into evidence as exhibit "**P1**".
- 3.4 It was her testimony that both the Petitioner and Respondent are domiciled in Zambia. According to the Petitioner, she is a Biomedical Scientist and resides at Flat No. 3, Chinsali Court, Northmead, Lusaka while the Respondent is a Senior Cameraman, whose address is Flat No. 6, McAlpine Court, Nyakaseya Road, Nipa, Lusaka, aforesaid.
- 3.5 There are no previous proceedings in any Court or continuing in Zambia or elsewhere, in reference to the said marriage, which are capable of affecting its validity or subsistence.
- 3.6 Arrangements have been made between the parties for the welfare of the children of the family as contained in

the Statement as to Arrangements for the Children placed before the Court.

- 3.7 The parties last cohabited together as husband and wife, on 12<sup>th</sup> February, 2012, in Lusaka, Zambia.
- 3.8 There are two children of the family namely Kasongo Edna Yumbe, a girl, born on 22<sup>nd</sup> September, 1995 and Mwindi Gabriel Yumbe, a boy born on 26<sup>th</sup> May, 2006. The said children reside with the Respondent. The first child of the family is in formal employment, while the youngest child of the family is enrolled at St. Ignatius College, Lusaka. There are also two other children born to the Respondent on 29<sup>th</sup> December, 1993 and 22<sup>nd</sup> August, 1995, namely Tisa Yumbe and Mulenga Yumbe, respectively.
- 3.9 The Petitioner further testified that the said marriage has broken down irretrievably, such that the parties can no longer be expected to live together based on the fact that the parties have lived apart for more than five (5) years immediately preceding the presentation of the Petition for Dissolution of the Marriage.
- 3.10 The Petitioner prayed therefore for the dissolution of marriage and that a *Decree Nisi* be granted; joint custody of the children of the family; and that each party bears its own costs.
- 3.11 There was no cross-examination conducted and that marked the close of the Petitioner's case.
- 3.12 The Respondent, CHOMBA MUBANGA YUMBE, submitted that he is the Respondent mentioned herein

and did not wish to defend the Petition for dissolution of marriage. He agreed that the marriage has broken down irretrievably and to the Statement as to Arrangements for the children of the family. He further submitted that he did not wish to be heard on anything else pertaining to the Petition for dissolution of marriage

3.13 That marked the close of this case.

#### **4 ANALYSIS AND FINDINGS**

4.1 Having heard and inquired into the Petitioner's Petition for the Dissolution of Marriage in accordance with the above cited provision, I am satisfied that the Petitioner was lawfully married to the Respondent at the Civic Centre, Lusaka, in the Lusaka Province of the Republic of Zambia on 22<sup>nd</sup> October, 2001, under ***The Marriage Act***<sup>2</sup>.

4.2 I refer to **Section 90** of ***The Matrimonial Causes Act***<sup>1</sup>, which provides that: -

***"Proof of marriage, etc.***

***In proceedings under this Act, the court may receive as evidence of the facts stated in it a document purporting to be either the original or certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place whether in Zambia or elsewhere."***

4.3 The evidence of fact that the Petitioner was married to the Respondent as per her testimony is the original Certificate of Marriage admitted into evidence marked "**P1**", which was obtained from Civic Centre, in Lusaka

after the marriage was solemnised and was issued in accordance with **Section 27** of **The Marriage Act**<sup>2</sup>.

4.4 I am satisfied that there are two children of the family, namely KASONGO EDNA YUMBE and MWINDI GABRIEL YUMBE. I am further satisfied with the arrangements put in place for welfare of the children of the family. I am also satisfied that there are no proceedings either in Zambia or elsewhere in the world subsisting which might affect the validity of the marriage.

4.5 I refer to **Section 9 (3)** of **The Matrimonial Causes Act**<sup>1</sup>, which provides that: -

*"If the Court is satisfied on the evidence of any fact mentioned in subsection (1), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably it shall grant a decree of dissolution of marriage."*

4.6 I further refer to **Section 71 (1) (b) (i)** of **The Matrimonial Causes Act**<sup>1</sup>, which provides that: -

*"Restrictions on decrees for dissolution, annulment or separation affecting children*

*(1) The court shall not make absolute a decree of divorce or nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied—*

*(b) that the only children who are or may be children of the family to whom this section*

*applies are the children named in the order and that—*

*(i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances;..." (Court's emphasis)*

4.7 It was the Petitioner's testimony that the parties herein last lived together on 12<sup>th</sup> February, 2012. Therefore, I am satisfied and hereby find that the marriage solemnised between MUTINTA SHISHOLEKA YUMBE and CHOMBA MUBANGA YUMBE has indeed broken down irretrievably due to the fact that the parties have lived apart for a continuous period of 5 years immediately preceding the presentation of this Petition.

4.8 I am further satisfied that arrangements for the welfare of the children of the family have been made and are satisfactory.

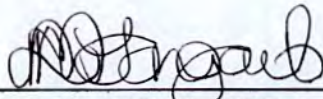
## **5 CONCLUSION**

5.1 Accordingly, it is hereby **ORDERED** that the Marriage solemnised by the Petitioner and the Respondent on the 22<sup>nd</sup> October, 2001, **BE** and is **HEREBY DISSOLVED** and a **DECREE NISI** is granted to be made Absolute within six weeks from date of the **DECREE NISI**, upon application to the Registrar of the High Court, by either party.

5.2 Joint Custody of the children of the family, is granted to the Petitioner and the Respondent.

5.3 Each party will each bear its own costs.

**Delivered at Lusaka, on the 5<sup>th</sup> day of March, 2020.**



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