

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

2019/HPF/D416

BETWEEN:

KABUWA SHAMUTETE

AND

ROZITA KATONGO SHAMUTETE



PETITIONER

RESPONDENT

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 30th DAY OF JANUARY, 2020

For the Petitioner : in person

For the Respondent : no appearance

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 10th December, 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, Kabuwa Shamutete, was lawfully married to the Respondent, Rozita Katongo Shamutete, on 7th January, 2011 at the office of the Registrar of Marriages at the Lusaka Civic Centre. The parties last lived as husband and wife at Plot 2386 Meanwood Mutumbi in Lusaka.

It is stated that both parties are domiciled in Zambia, and the petitioner is a Consultant, while the respondent is a Business lady. There are no children of the family now living, and 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 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. He prays that the marriage be dissolved, and that each party bears their own costs.

The respondent did not file an answer, but she completed the acknowledgment of service form. In that document that she agrees that she is the person that has been cited as the respondent in the petition. She also indicates therein, that she does not intend to defend the petition, and she consents to the divorce being granted. The respondent also states that she would not like to be heard on maintenance, property settlement or costs. She also signed the consent to divorce.

The petitioner also provided affidavit evidence on the two (2) year separation, after he applied that the petition be listed under the special procedure, pursuant to Rule 5(1) of the Matrimonial Causes Rules, 1973. In the affidavit, he states that he is the person that has filed the petition, and that the contents of the petition are true. He also deposes therein that he separated with the respondent in September, 2016 due to irreconcilable differences. At the hearing, only the petitioner was present, and he relied on the petition and the affidavit evidence.

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. The affidavit evidence filed shows that the parties separated in September, 2016, and the respondent in the acknowledgement of service states that she consents to divorce being granted.

Further, the respondent signed the consent to divorce. 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 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 7th January, 2011. The decree nisi shall become absolute after a period of six weeks. Any 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 30th DAY OF JANUARY, 2020

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**