

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

2020/HPF/D.039

BETWEEN:

ELAINE MARTHA MUNGA MAMBWE



PETITIONER

AND

VICTOR CHALI MAMBWE

RESPONDENT

Before Hon. Mrs. Justice G. Milimo- Salasini in Chambers on the 25th Day of August, 2020.

For the Petitioner : Ms. T.P. Phiri, Messrs. National Legal Aid Clinic for Women.

For the Respondent : Mr. M. Sitali, Messrs Ellis & Company.

J U D G M E N T

This is a Petition filed by the Petitioner **EFLAINE MARTHA MUNGA MABWE** (hereinafter called ("the Petitioner")) on 24th January, 2020, in which the Petitioner prays for her dissolution of the marriage between herself and **VICTOR CHALI MAMBWE** (hereinafter called 'the Respondent").

As the Petition shows, the Petitioner and the Respondent (the parties) were lawfully married on 12th day of September, 1998 at Libala Baptist Church in the Lusaka Province of Zambia. The parties lived together as husband and wife at Flat number 4 Kasenga Road, Emmasdale in the city of Lusaka until 2005. The Petitioner currently resides at house number 102621/1080 Kamwala South, Lusaka and is unemployed while the Respondent is a Salesman at Toyota Zambia and reside at Water Works

Libala in Lusaka. There is one child of the family, a female aged nineteen (19) years **BUPE PRECIOUS MAMBWE**. That there is also a child born to the Respondent, **CHIMWEMWE MAMBWE** aged nine (9) years and born during the marriage to Petitioner. The Petition also states that there have been previous proceedings in the Court for Zambia under Cause number 2008/HP/D.19 although the Petitioner does not state the outcome of that Cause. That there have been no other proceedings in any Court outside Zambia. Both the parties are domiciled in Zambia.

The Petitioner states that the marriage has broken down irretrievably and the parties have lived apart for continuous period of five years immediately preceding the prosecution of the Parties. The Petitioner states further that there is no possibility of the parties resuming cohabitation.

The Petitioner therefore prays:

1. That the said marriage be dissolved
2. For an Order for maintenance of the Petitioner and the Child of the family
3. Costs to be borne by the Respondent

The Petition was also filed with a Certificate. As regards Reconciliation which was attested to by Sitali Mulozi-Kapata, an advocate for the Petitioner. The matter was then heard before me on 22nd May, 2020 where Counsel for the Petitioner informed the Court that the matter was enrolled for Special Procedure and signed on 5th June, 2020.

The Counsel for the Respondent, Mr. Stali responded that his client has not given him any instructions regarding Special Procedure but his client had file a Consent on 21st February 2020 as he was consenting to the divorce based on the five year separation. Regarding the previous cause, 2008/HP/D.19, Counsel express ignorant of the said matter.

I reserved Judgment to a date after Cause 2008/HP/D.19 for the reason that I could not proceed without sight of the Cause 2008/HP/D19

On 21st February, 2020 the Respondent filed a **CONSENT TO DISSOLUTION OF MARRIAGE**, through his advocates, Messrs. Ellis & Company. Also filed with Consent,

on 18th May, 2020 was an application to proceed to have the matter determined by Special Procedure pursuant to Rule 37 (1)(e) of the Matrimonial Causes Rules 2018 of the Matrimonial Causes Act, No. 20 of 2007.

The said Special Procedure was certified by the Registrar on 5th June, 2020 dispense with this matter if another matter was still active.

Since 22 May, 2020 when I instructed the Petitioner to file cause 2008/HP/D.19 into Court, there has been no positive action.

I will therefore adjudge on the evidence before me, which is

- i. It is common Cause that the parties have lived separately for over five (5) years preceding this Petition.
- ii. The Respondent has filed a Consent to the divorce.
- iii. There is a Special Procedure Certificate from the Registrar which the Respondent's Advocate states he has no instructions.

From the above evidence, I am satisfied that the marriage has broken down irretrievably. I therefore **GRANT a DECRE NISI** to be made ABSOLUTE after the expiration of six weeks from today 31st July, 2020.

Leave to appeal is granted.

DELIVERED ON THE 25TH DAY OF AUGUST, 2020.



HON. G. MILIMO-SALASINI
HIGH COURT JUDGE