

**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KITWE**

2020/HK/FCD/94

(Divorce Jurisdiction)

BETWEEN:



OBBY NSONGE

PETITIONER

AND

MARTHA MWILA MUSHIPI NSONGE

RESPONDENT

Before Hon. Mrs. Abha Patel, S.C. in Open Court on 24th February 2021.

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 of the Laws of Zambia –

1. INTRODUCTION

This was a petition for dissolution of marriage which was filed into Court on 26th November, 2020 pursuant to the provisions of the Matrimonial Causes Act, No. 20 of 2007.

In her Acknowledgment of Service dated 26th November, 2020, the Respondent, after being served with the petition, indicated that she did not wish to defend the case.

2. The Hearing

The Petitioner's evidence

In his testimony at the trial on 24th February, 2021 the Petitioner said that he married the Respondent on 21st August, 2007 at Kitwe Civics Centre in Kitwe in the Copperbelt Province of the Republic of Zambia for which they were issued with a marriage certificate under the Marriage Act of the Laws of Zambia. He said that after that they lived well as husband and wife.

After their marriage, the couple lived together as husband and wife at house No. 59 6th Street Nkana West Kitwe in the said Republic. Between them, there is one child namely, Valentine Subakanya Nsonge, a boy who was born on 29th August, 2005 and three children from the Petitioner's first marriage namely, Obby Nsonge Jr, a boy aged 24 years, Lwidinah Subakanya Nsonge, a daughter aged 19 years and Kondwani Nsonge, a son aged 17 years.

He further testified that there are and have been no previous proceedings in any Court in Zambia or elsewhere with reference to the said marriage or which are capable of affecting its validity or subsistence. He alleged that the marriage has broken down irretrievably as the Respondent has behaved in such a way that he cannot reasonably be expected to live with the Respondent. He narrated that the Respondent deserted the matrimonial home on or about 28th August, 2008 and the parties have lived apart for a continuous period of more than 5 years immediately preceding the presentation of the petition.

He said that efforts by family members and Church counsellors to have them reconciled have been unsuccessful and he reckons that there is no likelihood of them ever resuming cohabitation. He therefore prayed for the marriage to be dissolved.

The Respondents evidence

The Respondent attended the hearing on 24th February, 2021 where she confirmed her earlier position of not defending the case and stated that she wanted the marriage to be dissolved.

3. Analysis of the Law and Facts

I have considered the evidence adduced by the Petitioner in support of his petition. Indeed, **Section 9(1)(c) of the Matrimonial Causes Act** requires that irremediable breakdown of the marriage can be proved by the fact that **“that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;**

section 9 (1) (e) provides that:

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

Further, **Section 9(3) and (4)** of the Act empowers the Court to grant a decree of dissolution of marriage if it is satisfied on the evidence that such facts as alleged for the breakdown of the marriage have been proved, and that there is no reasonable likelihood of cohabitation being resumed.

I find as a fact that the parties started living apart from about 28th August, 2008 when the Respondent deserted the matrimonial home and they have not lived together as husband and wife ever since.

The petition herein was filed on 26th November, 2020, which makes it a continuous period of at least five years immediately preceding

the presentation of the petition. I further find that efforts at having the parties reconciled have proved fruitless.

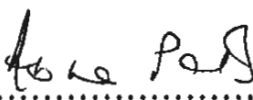
I am therefore satisfied that there is no reasonable likelihood of the parties resuming cohabitation. I accordingly find that the contents of the petition that the marriage has broken down irretrievably have been proved.

I therefore, dissolve the marriage between the Petitioner and the Respondent celebrated on 21st August 2007 as prayed for by the Petitioner and accordingly grant him a decree nisi. It will be made absolute six weeks from the date of this judgment.

I further order that the Petitioner shall have the custody, care and control of the children of the family and that the Respondent shall continue to have reasonable access to them.

I order that each party shall bear her/his own costs of the Petition.

Delivered at Kitwe, this ^{4th}..... day of March, 2021


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Mrs. Abha N. Patel, S.C.

HIGH COURT JUDGE