

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

2021/HK/FC/D 83

(Divorce Jurisdiction)

BETWEEN:  
KASHINU KAMBANJI

PETITIONER

AND

ZONDIWE SHARON LUHANGA KAMBANJI

RESPONDENT

Before Honorable Mrs. Justice Abha Patel S.C.

For the Petitioner : In Person

For the Respondent : In Person

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JUDGMENT

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Legislation Referred To:

1. Matrimonial Causes Act, No. 20 of 2007

1. Introduction

- a. The Petition for dissolution of marriage was filed on 28 July 2021 by Kashinu Kambanji pursuant to sections 8 and 9 (1) (d) of the Matrimonial Causes Act. The facts reveal that the Petitioner, and the

Respondent, **Zondiwe Sharon Luhanga Kambanji**, were lawfully married on 2<sup>nd</sup> March 2017 at Kitwe Civic Centre before the Registrar of Marriages in the Kitwe District of the Copperbelt Province. After the marriage, the Petitioner and the Respondent co-habited as husband and wife at Flat No. 2 Mukuba Road, Riverside in Kitwe.

- b. The Petitioner is an Accountant in the employ of Belluxa (Z) Limited and the Respondent is a Teacher by profession, but not yet deployed.
- c. There are two children born during the subsistence of the marriage namely:  
**Paul Kambanji** aged 5 years and attending middle class at Cecina Trust School in Ndeke in Kitwe;  
**Shekainah Kambanji** aged two years six months
- d. There are no other proceedings in any Court in Zambia or elsewhere regarding the marriage or between the Petitioner and the Respondent regarding any property of either or both of them and there are no proceedings continuing in any Court outside Zambia in respect of the marriage or are capable of affecting its validity or subsistence.
- e. It is the Petitioner's testimony that the marriage has broken down irretrievably on the ground that the parties have lived separate and apart for a continuous period of at least two years immediately

preceding the presentation of this Petition, that is from January 2019 to date.

**2. The Hearing**

- a. At the hearing of the Petition, on 19<sup>th</sup> January 2022, there being no consent of the Respondent, the Court interrogated both Parties, who appeared in person, and it became apparent that the Respondent did not consent to the Petition and levelled many accusations against the Petitioner, including inter alia, desertion, infidelity and unreasonable behaviour.
- b. The Court did adjourn the hearing of the Petition and advised the Parties, more especially the Respondent to seek legal representation from either Messrs Legal Aid Board or the National Aid Clinic for Women, and adjourned the hearing of the Petition to 15 February 2022.
- c. The Respondent thereafter sought to file an Answer to Petition and a Cross Petition dated 25<sup>th</sup> January 2022. At the hearing both Parties gave evidence on oath which has been considered by the Court.

**3. The Evidence**

- a. The Petitioner in his evidence confirmed the contents of his Petition and prayed for an Order of dissolution of marriage
- b. Under cross examination by the Respondent, and in response to her claim for custody of the children, the Petitioner submitted that she was of no fixed abode, was not in employment and was not able to care for the children. It was his evidence that as he was the provider for the children, and that the children continued to reside with him, he did not see the need to provide support to her.
- c. The Respondent has also raised many allegations against the Petitioner while confirming that the Parties have lived apart for a period of two years because of the Petitioner's unfaithfulness, although they have met several times and enjoyed conjugal rights together. It was his evidence that he did not wish to respond to the allegations made against him by the Respondent in her Answer or the Cross Petition. What was pertinent to him, was that the marriage had broken down and that they had not co-habited for a period of two years prior to the filing of the Petition.
- d. In her Cross Petition, the Respondent alleged that the Petitioner has been unfaithful in the course of the marriage and has further alleged that he is violent and disrespectful towards her. She confirmed that it was the Petitioner who deserted the matrimonial home in January

2019, when she the Respondent was pregnant with their second child.

- e. She accordingly prayed in her cross petition for an order dissolving the marriage between the Parties and also prayed for an order of custody of the children, maintenance and property adjustment.
- f. The Parties did not call any witnesses and did not present any evidence to support their respective allegations.

#### **4. The Law**

- a. After considering the Petition, the Answer and Cross Petition filed herein, the only ground upon which a petition for divorce may presented to Court is provided in **section 8** of the Matrimonial Causes Act which states as follows:

*"A petition for divorce may be presented to the Court by either party to the marriage on the ground that the marriage has broken down irretrievably."*

- b. It is trite that in order to prove that the marriage has broken down irretrievably, the Petitioner should satisfy the Court of one or more of the facts set out in **section 9 (1) (a) to (e)** of the Act. **Section 9 (1) (d)** which is relevant to the Petition provides as follows:

*"For the 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:*

- (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."*

(the highlighting is by the Court for emphasis)

- c. It is apparent that the Petitioner has misunderstood the section under which he has brought his Petition. In his considered view, which became apparent to the Court, it was his position that a separation of two years prior to the filing of a divorce Petition is carte blanche for the grant of an order for dissolution of marriage. He has misapprehended the provisions of **section 9 (1) (d)** of the Act under which his Petition is filed on the requirement of consent on the Part of the Respondent.
- d. Equally the Respondent in her Answer and Cross Petition, where she assumes the position of the Petitioner has not cited any provision of the Act that she seeks to place reliance on, in seeking a bouquet of reliefs from the Court.

- e. She has also maintained that there have been other proceedings before the Subordinate Court at Kitwe under cause Number **2019/SSK/08** where she claimed child maintenance from the now Petitioner. However, she did not place any evidence or transcript of Court proceedings or any certified copy of the Order issued by the Subordinate Court in support of her claims to custody and maintenance.
- f. She has also testified that the Parties had met several times and enjoyed their conjugal rights, casting doubt on the period of their separation.

5. **Findings of the Court**

- a. It is crystal clear that the Petition and Cross Petition, as drafted does not meet the requirements of the Law. Whilst I note that the Parties have serious difficulties with each other, my hands are tied to interpreting and applying the provisions of the law as obtaining.

6. In my considered opinion, the Petitioner has not proved to the Court that his marriage has broken down irretrievably on the basis of the two year separation with consent in accordance with **section 9 (1) (d)** of the Act, as the Respondent has not consented to a decree nisi being granted.

- c. Neither has the Respondent, in her Cross Petition, proved the contents of her Petition and has not cited any of the grounds in **section 9 (1)** that she relies on in support of her cross petition. It is noted that although the Respondent made several allegations of desertion, adultery and unreasonable behaviour on the part of the Petitioner, she has failed to prove those allegations to warrant a finding by the Court. I also find that the Cross Petition is flawed and improperly before the Court.
- d. In arriving at this conclusion, I am fortified by the provisions of **section 9 (2) and 9 (3) of the Act** and the note that the Court could not ascertain or make any findings with any certainty of the facts alleged in the Petition or the Cross Petition. Whilst it is not the place of the Court to offer legal advice, it is regretful that the Respondent did not heed the counsel of the Court to seek legal representation in this suit.
- e. The facts being as they are, I hereby dismiss the Petition and Cross Petition. There is no order for costs.

Delivered at Kitwe, the <sup>17</sup>.....day of May, 2022



**Lady Justice Abha Patel, S.C.**