

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA**

2014/HP/D125

(Divorce Jurisdiction)

BETWEEN

**HUGO JOHANNES ERFMANN
PETITIONER**

AND

**MUKAKANSHINKU BWALYA
RESPONDENT**

Before: Hon. Judge B.M.M. Mung'omba on this 11th day of December 2014.

For the Petitioner: Ms. M. Banda of Messers Musa Dudhia & Company

For the Respondent: Mrs. M. Chombe & Mrs. M. Siansima of Messers TMN Legal Practitioners

JUDGMENT

Statutes Referred to:

1. The Matrimonial Causes Act No. 20 of 2007; s9 (1)(b).

This is a petition for divorce filed into Court on 16th June, 2014 and amended on 25th August, 2014, by the Petitioner, **Hugo Johannes Erfmann**. The petition was brought pursuant to **Section 9 (1) (b) of the Matrimonial Causes Act, 2007**.

The Petitioner avers that he was lawfully married to **Mukakanshinku Bwalya**, the Respondent herein, on 30th November, 2012 at the Office of the

Registrar of Marriages at Lusaka Civic Centre in the Lusaka District of the Lusaka Province in the Republic of Zambia.

He states that they last cohabited as husband and wife at House No. 5695/8 Beu Crescent, Kalundu in Lusaka, Zambia. Both are domiciled in Zambia. The Petitioner is a Managing Director of Redcliff Safaris Limited (T/a Redcliff Zambezi Lodge). He resides at Plot/House No. 12648/M Luangwa District. The Respondent is unemployed and resides at Flat No. 16 Zambezi Flats, Zambezi Road, Roma in Lusaka.

The petition reveals that there is now living one child of the marriage namely, **Bertha Angela Erfmann** (female) born on 1st December, 2009. She is in pre-school class at the British International School in Lusaka. There is no other child now living that has been born during the same marriage as far as is known by the Petitioner.

The petition further discloses that there have been no previous proceedings in Court in Zambia or elsewhere with reference to the said marriage or to any child of the family or between the parties with reference to any property of either party or both of them. That there are no proceedings continuing in any country outside Zambia which is in respect of the marriage or are capable of affecting its validity or subsistence.

The petition also reveals that no agreement or arrangement has been made between the parties for the support of the parties or the said child of the family.

The Petitioner claims that the said marriage has broken down irretrievably as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to continue to live with her. The particulars of 'behaviour' are:

- 1) That the Respondent and the child of the family have been living in Lusaka since the Child of the family was 2 years of age. This was to enable both the Respondent and the child of the family to attend school. On the other hand, the Petitioner would continue running Redcliff Zambezi Lodge in Luangwa in order to support the family. In this regard, the Petitioner rented House No. 5695/8 Beu Crescent, Kalundu, Lusaka, Zambia (the “Matrimonial Home”) for the Respondent and the child of the family.
- 2) It was agreed between the Petitioner and the Respondent that the Petitioner would spend time with the Respondent and Child of the family at the matrimonial house from time to time. The Respondent and the Child of the family would as well spend school holidays at the Lodge.
- 3) This arrangement went on for two (2) years. During this period and unbeknown to the Petitioner, the Respondent developed a relationship with another man of Norwegian descent.
- 4) On 11th December 2013, the Respondent informed the Petitioner that she was going to attend a hen party being thrown for one of her friends. However, shortly after she left the Matrimonial Home for the purported hen party the Respondent sent the Petitioner a message informing the Petitioner that she was on a flight to Dubai.
- 5) In the days following her abrupt trip to Dubai, the Respondent informed the petitioner that she had met another man three (3) years earlier and she now no longer wished to be married to Petitioner.
- 6) When the Respondent returned to Zambia just before Christmas, on or about 19th December 2013, she confirmed her desire to separate from the Petitioner. This was when she joined the Petitioner and Child at the Lodge.
- 7) The Respondent admitted to having an intimate association with the Norwegian man with whom she admitted to have had sexual intercourse.

- 8) The Respondent also admitted to having met with the Norwegian man whenever he was in the country and staying with him at Raddisson Blue Hotel during such times.
- 9) The Petitioner tried to reason with the Respondent in an attempt to save the marriage but the same proved futile.
- 10) The Respondent, who is unemployed, has since moved out of the Matrimonial home of her own volition and now resides at Flat No. 16 Zambezi Flats, Zambezi Road Roma Lusaka Zambia a home purchased for her by the Norwegian man.
- 11) The Respondent has been taking the Child with her whenever she goes to spend time with the Norwegian man which has contributed to Bertha's hesitation to spend time with the Petitioner as her father. This has further lead to Bertha and the Petitioner growing apart.
- 12) Efforts to reconcile have proved futile and the relationship is acrimonious. It is therefore in the best interest of the parties to dissolve the relationship.

On the basis of the reasons of the Respondent's behavior set out above, the Petitioner therefore prays that the marriage be dissolved. That the Petitioner be granted joint custody of the child of the family.

The Respondent has contested the petition in an answer filed on 23rd September, 2014. In the answer, the Respondent resisted the prayer for dissolution of marriage on the grounds advanced by the Petitioner.

The Answer reveals that the Respondent admits the contents of paragraphs one (1) to ten (10) and 11.1 to 11.8 and 11.12 of the petition. She however partially denies the 'behaviour' grounds set out in paragraphs 11.9 to 11.12 of the petition.

She contends that throughout the marriage the Petitioner frequently displayed a bad temper and insulting habits in his treatment of the Respondent even in the presence of the child of the family. It is revealed in the answer that the Petitioner often threatened to kill the Respondent if he found out that she was cheating on him.

According to the Respondent, before the Petitioner's marriage to her, and during her pregnancy with the child of the family, she requested for a breakup of their relationship. But the Petitioner threatened the Respondent that he would not support her and the child she was carrying. Since then, their relationship has always been about doing what the Petitioner wanted, she contends.

As to Paragraph 11.9, the Respondent denies that the Petitioner tried to reason with her in an attempt to save the marriage. But that the Petitioner started meeting up with other women and would often ask the Respondent to drive him and the sex workers he picked to a hotel.

The answer states that the Petitioner further went on a trip to meet with one of the Respondent's friends named Shane Mulenga. Regarding the said trip the Respondent found out after checking the Petitioner's emails as well as getting information from the travel shop where the Petitioner bought tickets.

It is contended further that the Petitioner thereafter started a relationship with one Caroline Mfunu, the Manageress at Redcliff Lodge which the Petitioner runs. She also states that the Petitioner is currently living with the said Caroline.

The Respondent admits the contents of Paragraph 11.10 to the extent that she has since moved out of the matrimonial home and now resides at

Flat No. 16 Zambezi Flats, a home purchased for her by the Norwegian man. She states that that she moved out of the rented matrimonial house because the Petitioner had always complained about rent and after the events of December 2013, the Petitioner stopped supporting the Respondent in any way and refused to pay the rent.

The answer also alleges that the Petitioner further took everything which he and the Respondent had bought while together. This includes the vehicle which the Respondent used to take their child to school. Further that household items as well as their Shoprite card for food and groceries was taken away by the Petitioner.

As to Paragraph 11.11, of the petition, the Respondent admits the contents only to the extent that she has been taking their child with her whenever she travels because the Petitioner hardly ever has time for the child. The Respondent admits the contents of Paragraph 11.12 of the Petition.

The Respondent therefore prays that the marriage be dissolved. That the Respondent be granted sole custody of the child of the family. That an Order for property adjustment be granted. Any other relief the court may deem fit. She also prays that the Petitioner may be ordered to pay costs of this suit.

At the hearing of the petition on 1st October, 2014, the Petitioner confirmed the contents of the petition. He testified that the marriage has broken down irretrievably and that all efforts to reconcile with the Respondent have failed.

In response, the Respondent equally confirmed the contents of the petition. She told the Court that indeed the marriage has broken down irretrievably and that there is no possibility of reconciliation.

Both the Petitioner and the Respondent informed me that they are not ready to live as husband and wife and that the marriage must be dissolved.

The Respondent and the Petitioner filed into Court written submissions on 30th October, 2014, and 31st October, 2014 respectively. In the submissions, the parties reiterated that there is no possibility of reconciliation and that indeed the marriage has broken down irretrievably.

I have carefully addressed my mind to the petition and the answer filed in this cause. The petition in this matter was brought pursuant to Section 9 (1) (b) of the Matrimonial Causes Act No. 20 of 2007. The said provision enacts that:

“9(1) For purposes of Section eight, the Court hearing a petition for divorce shall not hold a marriage to have been broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts:

(a).....

(b) that the Respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the Respondent.”

In the light of the facts before me, the question that arises is: has the petitioner adduced sufficient evidence to warrant a finding that the marriage has broken down irretrievably? The Petitioner in his petition alleged that the Respondent had an intimate association with the Norwegian man with whom she admitted to have had sexual intercourse.

It was further alleged that the Respondent has since moved out of the Matrimonial home of her own volition and now resides at Flat No. 16 Zambezi Flats, Zambezi Road Roma Lusaka Zambia; a home purchased for her by the Norwegian man. The Petitioner testified before me that there is no possibility of reconciliation.

On her part, the Respondent admitted to having had sexual intercourse with the Norwegian. She also admitted to have moved out of the matrimonial house. Further, she testified before me that there is no possibility of reconciliation.

I have noted that Counsel for the Respondent urged me to find the grounds upon which the marriage has broken down irretrievably as those set out in the answer. Unfortunately, I find that there was no cross-petition in this cause. Only the answer was filed. In fact, that is the more reason why no particular provision of law, as required by **Section 9 of the Matrimonial Causes Act** to support the alleged grounds, was set out by Counsel for the respondent.

Therefore, on the evidence before me, which I accept, I am satisfied that the requirements of the law as provided by **Section 9(1) (b) of the Matrimonial Causes Act** have been met by the petitioner.

I accordingly find that the marriage solemnized under the provisions of the **Marriage Act** on 30th November, 2012, at the Office of the Registrar of Marriages at Lusaka Civic Centre in the Lusaka District of the Lusaka Province in the Republic of Zambia between **Hugo Johannes Erfmann**, the Petitioner and **Mukukanshiku Bwalya**, the Respondent has broken down irretrievably by reason that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the her.

In other words, I am satisfied that the Petitioner has proved on a balance of probability that the Respondent has behaved in such a way that he cannot be reasonably expected to live with her.

I accordingly *decree* that the said marriage be dissolved and a *decree nisi* shall therefore issue. I direct that the same shall be made absolute unless the application is made to Court by either party in these proceedings within 6 weeks of the date thereof, to show cause why such *decree* should not be made *absolute*.

As regards the question of maintenance and property settlement, the same is adjourned for hearing before the learned Deputy Registrar and either party is at liberty to apply.

The parties shall bear their own costs.

Dated this 11th day of November, 2014

B.M.M. Mung'omba
HIGH COURT JUDGE