

IN THE HIGH COURT FOR ZAMBIA

2016/HP/D 064

AT THE PRINCIPAL REGISTRY LUSAKA

HOLDEN AT LUSAKA

(DIVORCE JURISDICTION)



**BETWEEN:**

FRIDAY KAFULA

PETITIONER

**AND**

NATURE DAMASE NYIRENDA KAFULA

RESPONDENT

***Before The Honourable Mrs Justice P.C.M. Ngulube in Chambers.***

For the Petitioner: Dr Henry Mbushi, Messrs HBM Advocates.

For the Respondent: No appearance.

## J U D G M E N T

***Cases referred to:***

- 1. Yoyo vs. Yoyo, SCZ Judgment Number 78 of 1998***
- 2. Dewar vs. Dewar (1971) ZR 38***

This is Petition for dissolution of Marriage. On the 10<sup>th</sup> of March, 2016, Friday Kayula filed a Petition for Dissolution of Marriage pursuant to Sections 9(1)(b)(c)(d) of the Matrimonial Causes Act. The Petition shows that-

The Petitioner and the Respondent Nature Damase Nyirenda were lawfully married as husband and wife at Northmead Assembly of God Church, Lusaka. The Petitioner and the Respondent were domiciled in Zambia but later emigrated to the United States of America where they lived in Jackson Ville Florida. The Petitioner states that he is now domiciled in Zambia while the Respondent is domiciled in the United States of America. The Petitioner

is a business man and the Respondent is a secretary. He resides at Plot Number 16, Old Jim, Chipata, and the Respondent lives in Atlanta, Georgia, United States of America.

The Petition shows that there are no children of the family now living and that no child has been born to the Respondent to the best of knowledge of the Petitioner during the course of the marriage. There are no proceedings continuing in any court in the Republic of Zambia after the dismissal of an earlier petition by the Respondent under Cause Number 2013/HP/D 213.

The Petition shows that there are no proceedings continuing in any other country outside Zambia which are in respect of the marriage and are capable of affecting its validity or subsistence. The Petitioner states that the marriage has broken down irretrievably because the parties have lived apart since 2005 and that the Petitioner intercepted calls from another man who called the Respondent and contributed to the differences in the matrimonial home. The Petitioner states that the Respondent developed an un governed temper because of the associations with different men and could not discuss any issues relating to the marriage. He therefore prays that the marriage be dissolved and that there be property settlement in Zambia and in the United States of America. The Petitioner prays that each party bears their costs of the Petition.

At the hearing of the matter, the Petitioner was granted leave to proceed in the absence of the Respondent because the court was satisfied that the Respondent was aware of the date of hearing as her sister Martha Nyirenda was before the court. She was however excused from attending the hearing as she could not represent the Respondent as her Attorney.

The Petitioner, Friday Kafula, aged 46 years gave sworn evidence that on the 2<sup>nd</sup> October, 1999, he lawfully wedded his wife Nature Damase Nyirenda, the Respondent, at Northmead Assemblies of God Church, Lusaka. He testified that the couple lived as husband and wife at Merzaf Flats, Chilenje South, Lusaka. The Petitioner stated that in 2001, the couple left the country and went to live in the United States of America, in Jacksonville, Florida. The

Petitioner testified that in 2002, they returned to visit the family. He stated that he travelled to Chinsali to visit his mother who was unwell and returned to the United States of America in 2003. However, prior to their return to the United States of America, the Petitioner, the Respondent and their families had a meeting because they were having marital problems. He pleaded with his mother-in-law to counsel the Respondent because she has no regard for the marriage and her focus was on making money.

The Petitioner testified that when he returned to the United States of America in 2003, their marital problems worsened and in 2005, the Respondent left Jacksonville Florida and went to live in Atlanta, Georgia. Prior to her departure, the Petitioner received a telephone call from a man who said he was the Respondent's boyfriend since she had told him that she was unmarried. When confronted, the Respondent denied having an affair with the man and the Petitioner forgave her and decided to give her another chance.

The Petitioner testified that when the Respondent relocated to Atlanta, they did not live as a family, they just kept in touch. He testified that in 2010, he returned to Zambia while the Respondent remained in Atlanta, Georgia. In 2012, the Petitioner told his wife that they needed to divorce because the marriage had failed. He testified that they have not had conjugal rights since they separated and that there is no chance of reconciliation. The Petitioner stated that there are no children of the family. He prayed that the court grants them the dissolution of the marriage as it have broken down irretrievably.

The Petitioner was shown a document which he identified as the Marriage Certificate that he was given after the marriage was solemnized at Northmead Assembly of God Church. It was admitted into evidence and marked P1. The Petitioner prayed that there be property settlement after the dissolution of the marriage.

I have considered the evidence on record as well as the testimony of the Petitioner in this matter. Section 8 of the Matrimonial Causes Act enacts that-

***“A petition for divorce may be presented to the court by either party to a marriage on the grounds that the marriage has broken down irretrievably.”***

Section 9 of the MCA sets out the facts upon which a Petitioner seeking dissolution of a marriage may rely on.

The evidence in this matter is essentially that the marriage has broken down irretrievably because the parties are living apart and are no longer cohabiting as husband and wife. In the case of **Yoyo vs. Yoyo**<sup>1</sup>, the Supreme Court stated that in order to refuse to grant a decree of dissolution of marriage, there must be evidence of mutual love between the parties.

The standard of proof necessary to establish irretrievable breakdown is the one applied in civil matters, on a balance of probabilities. In the case of **Dewar vs. Dewar**<sup>2</sup>, the court held that –

***“It is not permissible to hold that a marriage has broken down irretrievably unless one or more of the five requirements is present, and it must be satisfied that the marriage has broken down irretrievably.”***

It is the duty of the court to inquire as far as it reasonably can into the facts alleged by the Petitioner and any facts alleged by the Respondent in ascertaining the state of the marriage.

I find that sufficient evidence has been led to show that the parties have lived apart for over five years. It is the Petitioner’s evidence that there is no hope that the parties could resume cohabitation again. I find that the conduct and lifestyle of the parties is consistent with a marriage which has broken down irretrievably as the parties have lived apart for over five years. Having considered the totality of the evidence and the matrimonial history of

the marriage, I form the conclusion that the marriage has broken down irretrievably.

Having had sight of the Marriage Certificate, I am satisfied that the parties were married under the provisions of the Marriage Act. I decree that the Marriage between Friday Kafula and Nature Damase Nyirenda be dissolved. I grant the parties a decree nisi of divorce which shall be made absolute within six weeks, either party is at liberty to apply.

Any application for property settlement shall be made by the parties before the Deputy Registrar. Each party shall bear his or her costs of the Petition.

Leave to appeal is granted.

***Delivered this 1<sup>st</sup> day of September, 2016.***



**HONOURABLE MRS. JUSTICE P.C.M. NGULUBE**

**HIGH COURT JUDGE**