

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Divorce Jurisdiction)

2016/HP/D355



BETWEEN:

JULIET SAKALA MWAPE

PETITIONER

AND

JUSTINE MUMBA MWAPE

RESPONDENT

BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Petitioner: Mr. N.M Mulikita of Messrs Mulikita,
Chalwe, Kabalaka Legal Practitioners

For the Respondent: In Person

J U D G M E N T

Legislation referred to:

- (i) *The Marriage Act Chapter 50 of the Laws of Zambia*
- (ii) *The Matrimonial Causes Act No.20 of 2007 of the Laws of Zambia*

This is a matrimonial petition launched by the Petitioner **Juliet Sakala Mwape** against the Respondent **Justine Mumba Mwape** for the dissolution of marriage on the ground that the marriage has broken down irretrievably on the situational fact that the parties

have lived apart as man and wife for a continuous period of 2 years immediately preceding the filing of the amended petition.

At the hearing of the petition, I was satisfied that the Respondent had been duly served with the petition and the accompanying documents since the Respondent was in attendance. I was further fortified in my view by the fact that the Respondent had filed in the necessary consent to divorce. I therefore allowed the Petitioner to present her petition.

The Petitioner gave sworn evidence as Pw1 **Juliet Sakala Mwape**. In her short testimony, she testified that on 25th June, 1994, she was lawfully married to the Respondent at the Cathedral of the Holy Cross at Lusaka under the **Marriage Act**¹ as evidenced by a marriage certificate exhibited as P1.

After the said marriage the parties cohabited as husband and wife at Plot No. 1425, Stadium Area in Solwezi. Both parties are domiciled in Zambia. The Petitioner works for International Facilities Services and resides at Plot No. 1425 Solwezi Stadium Area whilst the Respondent resides at Plot No. 2897 Mangwana, Masala, Ndola and is a Football Agent. There are 2 children of the family namely:-

- (i) **Justine Mumba Mwape** born on 12th January, 1999 and has currently completed his secondary school.
- (ii) **Cornelius Zandonda Mwape** born on 11th May, 2002 and has written his grade IX examination.

There has been previous proceedings between the Petitioner and the Respondent in respect of the marriage in the High Court for Zambia under Cause No. 2016/HP/D.0010 before Honourable Mrs. Justice P.K Yangailo which matter was dismissed for want of prosecution.

Presently, there are no other proceedings subsisting in Zambia (apart from these proceedings) nor anywhere in the world that might affect the validity of the marriage or matrimonial property settlement.

It was her testimony that the marriage has irretrievably broken down on account of the fact that the parties have lived apart as man and wife for a period of atleast 2 years preceding the presentation of the amended matrimonial petition and that the Respondent consents to the Decree Nisi as evidenced by his consent dated and filed on 10th July, 2017 produced as exhibit P2. She therefore prayed for a decree nisi.

The Petitioner was not cross examined and she accordingly rested her case.

DW1 was **Mr. Justine Mumba Mwape**, gave sworn evidence. He confirmed in all material aspects the evidence of the Petitioner and testified that he had given consent to the decree nisi.

Having read the amended matrimonial petition filed on 10th June, 2017 and having heard the evidence of the Petitioner and the Respondent; I am satisfied that the marriage which was lawfully celebrated under the Marriage Act¹ on 25th June, 1994 at the Holy Cross Cathedral in Lusaka has broken down irretrievably on

account of the fact that the parties have lived apart for a period of atleast 2 years immediately preceding the presentation of the amended matrimonial petition pursuant to Section 8 and 9 (d) of the Matrimonial Causes Act².

I am further satisfied that on the basis of exhibit P2 the Petitioner consents to the decree nisi. I therefore hereby invoke the provisions of Section 41 of the Matrimonial Causes Act² and grant the decree nisi and I make the following orders:-

1. The decree nisi shall become absolute after 6 weeks from the date hereof unless cause is shown why the same cannot be made absolute.
2. I refer the issue of custody of the children of the family to myself in Chambers for determination within 30 days from the date hereof on application by either party in default of agreement.
3. I refer the issues of maintenance of the parties and property settlement (if any) to the Learned Deputy Registrar for determination within 30 days from the date hereof in default of agreement.
4. Each party is to bear its own costs.

No appeal lies against a consented to decree nisi.

Delivered under my hand and seal this ^{10/11}..... day of July, 2017



Mwila Chitabo, SC
Judge