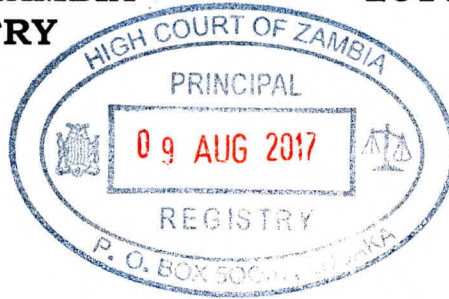


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Divorce Jurisdiction)

2017/HPF/D.145



B E T W E E N :

CHRISTOPHER MWAMBA

PETITIONER

AND

CLARA MBULO MWAMBA

RESPONDENT

PATRICK NGANDWE

CO-RESPONDENT

Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the 9th day of August, 2017

For the Petitioner : *Mr. L. Mudenda, Messrs Kalokoni & Co.*
For the Respondents : *Mrs. M. Marabesa-Mwenya, Legal Aid Counsel,
Legal Aid Board*

J U D G M E N T

Legislation Referred To:

1. *Matrimonial Causes Act, No. 20 of 2007*

The Petition for dissolution of marriage was filed on 12th June, 2017, by **Christopher Mwamba**, the **Petitioner**. The Petition is

presented pursuant to sections 8 and 9 (1) (b) of the Matrimonial Causes Act.

It is common cause that the Petitioner, Christopher Mwamba, then a Bachelor and the Respondent, Clara Mbulo Mwamba a Spinister were lawfully married on 25th March, 2001, at the Potter's House Christian Faith Church in Ndola. The Petitioner and Respondent last lived as husband and wife in Lusaka West in December, 2015.

The Petitioner is a Sales and Marketing Manager and resides at ZAMTEL Flats 88, Woodlands, Lusaka, while the Respondent is unemployed and resides in Chelstone, Lusaka. There are three children born to the Petitioner and Respondent during the subsistence of their marriage.

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 is no proceedings continuing in any Court outside Zambia

which are in respect of the marriage or are capable of affecting its validity or subsistence.

It is the Petitioner's testimony that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved unreasonably and he cannot be expected to live with her.

The particulars of the unreasonable behaviour are that:

- (i) *That the Respondent and the Co-Respondent put the Petitioner under trauma, misery, hopelessness and a lot of stress owing to her unruly behaviour. In March, 2016, he contracted severe fungal burns on his penis from the Respondent. urine infections and herpes zoster, as a result of her illicit affair with the Co-Respondent.*
- (ii) *The Respondent is in the habit of receiving money from the Co-Respondent to support her mother in Chipata, and has built her house therefore, causing confusion in the marriage. That on several occasions the Co-Respondent committed adultery with the Respondent at Umoyo Clinic in Mashlands and Ndichete Colon Hydrotherapy Health Centre in Kabulonga, Lusaka.*
- (iii) *That on 23rd December, 2015, the Respondent deserted the matrimonial home in Ndola to lodge with Co-Respondent during Christmas and then proceeded to Mutenguleni Village in Chipata. Further that on 19th March, 2016, the Petitioner obtained the Respondent's mobile number, which she was using to contact their children and belonged to the Co-Respondent. When the Petitioner called the number, the Co-Respondent answered and accused him of calling his wife. He threatened him with unspecified actions.*
- (iv) *That on 21st March, 2016, the Petitioner met the Respondent on a lunch date in Ndola and persuaded her to return home. Whilst having lunch, the Co-Respondent called the Respondent and told her not to return to her matrimonial home. Further, between 3rd and 9th October, 2016, the Co-Respondent organized and committed adultery. On 14th November, 2016, the Petitioner confronted the Respondent about her immorality and she confirmed the adultery with the Co-Respondent.*
- (v) *On 15th November, 2016, the Petitioner pursued the Co-Respondent at House No. 21 Sable Road, Kabulonga and took him to Woodlands Police Station- Victim Support Unit where he complained about his behavior. In response, the Co-Respondent confessed his love for the*

Respondent and having sex with her on numerous occasions and impregnated her.

- (vi) *That upon the Respondent's return from Mutenguleni, she started co-habiting with the Co-Respondent and shared his private information with the Co-Respondent. This caused him mental anguish and stress.*

At trial, the Petitioner confirmed the contents of his Petition. The Respondent and Co-Respondent confirmed that they were not contesting the Petition.

I have seriously considered the Petition filed in this matter. The only ground upon which a petition for divorce may be presented to the Court is provided in section 8 of the Matrimonial Causes Act which states thus:

"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."

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) (b) which is relevant to the Petition under consideration provides as follows:

"9 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:

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

This being an undefended Petition, and it is not necessary to give a lengthy judgment. Suffice it to state that upon the facts stated in the Petition and confirmed by the Petitioner in his evidence, I am satisfied that the marriage has broken down irretrievably on the ground that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her. I am satisfied that the Respondent does not oppose the granting of a decree nisi.

I therefore dissolve the marriage between the Petitioner and Respondent celebrated on 25th March, 2001 as prayed by the Petitioner and accordingly grant a decree nisi. The decree nisi will be made absolute six weeks from the date of this judgment.

I will determine the question of custody of the children upon application by either party. The question of property settlement will

be determined by the Learned Deputy Registrar upon application by either party.

Each party will bear their costs.

Dated this 9th day of August, 2017

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE