

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Family Jurisdiction)*

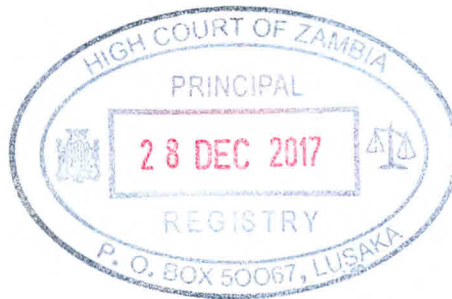
**2017/HPF/D225**

BETWEEN:

**YVONNE MUTUMBI**

AND

**ANTHONY MULAMBWA**



**PETITIONER**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 28<sup>th</sup> DAY OF  
DECEMBER, 2017**

*For the Petitioner : In person*

*For the Respondent : No appearance*

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**J U D G M E N T**

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LEGISLATION REFERRED TO:

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

The petition for dissolution of marriage was filed pursuant to Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007. The petition shows that the Petitioner was lawfully married to the Respondent on 22<sup>nd</sup> December, 2004 at the Office of the Registrar of Marriages in Lusaka. That the parties last lived as husband and wife at number 31 Dongwe Road in Kamwala, Lusaka in the month of March, 2014.

The petition further states that both parties are domiciled in Zambia, and the Petitioner is a Country Co-ordinator at Agripo Focus/SNV, and that the Respondent is a businessman. That there are two children of the

family now living namely, Shuko Beraiah Mulambwa born on 29<sup>th</sup> March, 2008 and Muhau Abigail Mulambwa born on 10<sup>th</sup> October, 2012.

It is also stated in the petition that there have been no proceedings that are continuing in any court outside Zambia in respect of the marriage, that are capable of affecting its validity or substance. The Petitioner alleges that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition, and the Respondent consents to the divorce being granted.

The Petitioner therefore prays that the marriage be dissolved, that both parties maintain the children of the family, and that each party bears their own costs of the proceedings.

The Respondent did not file an answer but completed the acknowledgement of service form in which he agreed that he is the person named in the petition, and that he did not intend to defend the petition, and he consented to divorce being granted. He further signed the consent to the dissolution of marriage.

At the hearing, only the Petitioner was before court, and she repeated the contents of the petition. She also testified that the marriage has broken down irretrievably as the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, and the Respondent consents to divorce being granted.

The Petitioner further testified that the parties went on separation in March, 2014, and have had no contact with each other since. She went on to state that the Respondent had given his consent to divorce in writing, and prayed that the marriage be dissolved. Further that there be an order for maintenance and that she heard on property settlement.

I have considered the evidence. The petition was brought pursuant to Sections 8 and 9 (1) (d) of the Matrimonial Causes Act No 20 of 2007. Section 8 of the said Act provides for the ground for divorce. It states that;

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

Section 9 on the other hand provides for the facts that need to be proved in order to establish that a marriage has broken down irretrievably. The section provides that;

***“9. (1) For 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.***

***(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;***

***(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;***

***(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;***

***(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; or***



***(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition.”***

In this case the Petitioner contends that the parties have lived apart for a continuous period of two years immediately preceding the presentation of the petition, and the Respondent consents to divorce being granted. In her testimony, the Petitioner testified that the parties went on separation in March, 2014. The petition was filed on 7<sup>th</sup> September, 2017, which is a period of more than three years since the parties last lived together. There is on record a consent to the dissolution of the marriage which was signed by the Respondent.

Therefore the Petitioner has proved that the marriage has broken down irretrievably on the fact that the parties have lived apart for a continuous period of two years, immediately preceding the presentation of the petition, and the Respondent consents to divorce being granted. I accordingly grant a decree nisi for the dissolution of the marriage, which shall become absolute after a period of six weeks.

The parties are at liberty to agree on the custody of the children of the family and file a consent order in that respect. In default thereof, either party shall be at liberty to apply for the same, before me at chambers. Issues of property settlement and maintenance are referred to the learned Registrar for determination. I make no order as to costs.

**DATED THE 28<sup>th</sup> DAY OF DECEMBER, 2017**

  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**