

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

2017/HP/D0138

BETWEEN:

ALFRED PHIRI

AND

TILABILENJI PHIRI



PETITIONER

RESPONDENT

Before Hon. Mr. Justice M. L. Zulu at Lusaka, the 21st day of December, 2017

For the Petitioner: Ms. S. Kalima of J and M Advocates

For the Respondent: Mr. M. Z. Mwandenga of M.Z. Mwandenga and Co.

JUDGMENT

The Petitioner and Respondent are Zambians who were married under the Marriage Act of the Laws of Zambia on 23rd November, 2002, at the University of Zambia (UNZA) Chapel, in the City and Province of Lusaka, Zambia.

After marriage, the parties lived together as husband and wife at plot No. 29538 Chalala, Lusaka. There are four (4) children of the family namely; Chisomo Phiri, female born on 29th December, 2004, Madalitso Phiri, male born on 28th February, 2008, Tamandani Phiri, male, born on 20th June, 2011 and Khumbuso Phiri, male born on 19th April, 2015.

On 1st June, 2017, the Petitioner petitioned for the dissolution of the marriage on the ground that the marriage has broken down irretrievably on account of the fact that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition, and the Respondent has consented to a decree nisi being granted.

The Petitioner testified that this marriage with the Respondent has broken down irretrievably citing the facts that the parties have lived apart for over 2 years and there is no possibility of reconciliation and no likelihood of the parties resulting cohabitation.

The sole ground upon which this Court can dissolve a marriage is to find that the marriage has broken down irretrievably (**Section 8, Matrimonial Causes Act, 2007**).

There is evidence that the parties have lived apart for a continuous period of atleast two years immediately preceding the filing of the Petition.

Section 9 (i) (d) of the Matrimonial Causes Act provides: -

“For the purposes of Section 8, 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

(d)That 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 the decree being granted”.

The Respondent, through Counsel has told the Court that she consents to the dissolution of the marriage, on account of

irretrievable break down and having lived apart for a period of atleast more than 2 years

On the totality of the evidence before me, I am satisfied that the marriage solemnized under the Marriage Act at the University of Zambia (UNZA) Chapel on 23rd November, 2002, between the Petitioner **Alfred Phiri** and the Respondent **Tilabilanji Phiri** has broken down irretrievably by reason of the fact that the parties have lived apart for a continuous period of atleast two years and the Respondent consents to a **Decree Nisi** being granted.

I accordingly, find that the provisions of the law under **Section 9 (i) (d) of the Matrimonial Causes Act, 2007**, have been satisfied, and grant the Petitioner a decree nisi of divorce.

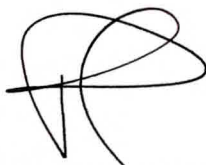
I direct that the said decree shall be made absolute at the expiration of six (6) weeks from the date of this judgment upon application by either party, unless sufficient cause be shown to Court why it should not be so.

Further, I grant the Petitioner the following reliefs he is seeking: -

- a) That the Respondent be granted custody of the children of the family with reasonable access to the Petitioner; and
- b) That the Petitioner bears the legal costs.

I hereby refer all issues pertaining to the ancillary reliefs to the learned Registrar of the High Court for determination.

Delivered at Lusaka this 21st day of Dec 2017.



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**M. L. ZULU
HIGH COURT JUDGE**