

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2023/HPF/D598**

*(Divorce Jurisdiction)*

**BETWEEN:**

**JOSEPH PHIRI**

**AND**

**NATASHA TEMBO**



**PETITIONER**

**RESPONDENT**

***BEFORE THE HONOURABLE MR. JUSTICE W. S. MWEEMBA AT LUSAKA.***

***For the Petitioner:*** Mr. L. T. Tindi, Advocate – Messrs Legal Aid Board.

***For the Respondent:*** No Appearance.

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**JUDGMENT**

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LEGISLATION REFERRED TO:

- 1. The Matrimonial Causes Act, No. 20 of 2007 of the Laws of Zambia.***
- 2. The High Court (Amendment) Rules 2020, Chapter 27 of the Laws of Zambia.***
- 3. The Matrimonial Causes Rules of England of 1973.***
- 4. Family Proceedings Rules 1991 of England.***

CASES REFERRED TO:

- 1. Pounds V. Pounds (1994) 1 F.L.R. 775***

**JOSEPH PHIRI** (the Petitioner) filed this Petition for dissolution of marriage on 31<sup>st</sup> October, 2023 seeking to dissolve his marriage to **NATASHA TEMBO** (the Respondent).

The Petition was brought pursuant to **Section 8 and Section 9(1)(d) of the Matrimonial Causes Act No. 20 of 2007.**

The Petition reveals that the Petitioner was married to the Respondent on 19<sup>th</sup> October, 2015 at Barack Christian Center in the City and Province of Lusaka of the Republic of Zambia; that both parties are domiciled in Zambia; that the Petitioner and the Respondent lived together as husband and wife at Binga Road Matero, Lusaka aforesaid; that the Petitioner is a Business Man while the Respondent is a Business Lady.

The Petition further reveals that there are two (2) children of the family now living namely: -

- (i) **Michelle Phiri**, a female, born on 24<sup>th</sup> February, 2013.
- (ii) **Caleb Phiri**, a male, born on 30<sup>th</sup> September, 2018.

No other child now living has been born to the Petitioner during the marriage.

The Petition also reveals that there are or have been no previous proceedings in Zambia or elsewhere with reference to the same marriage or between the Petitioner and the Respondent with reference to any property of either or both of them; there are no proceedings continuing in any country outside Zambia which are in respect of the marriage capable of affecting its validity or subsistence.

It further reveals that no agreement or arrangement has been made between the parties for the support of the children of the family.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have since 7<sup>th</sup> July, 2020 lived apart for a continuous period of at least two (2) years immediately preceding the presentation of the Petition and that the Respondent consents to a Decree *Nisi* being granted.

The Petitioner prays;

- i. *That the marriage be dissolved.*
- ii. *That there be an order for property settlement.*
- iii. *That there be an order for the custody of the children.*
- iv. *That each party bears their own legal costs.*

The Respondent filed Consent to Dissolution of Marriage on 31<sup>st</sup> October, 2023. She confirmed that the marriage with the Petitioner has broken down irretrievably and she has lived apart from the Petitioner for a continuous period in excess of two (2) years preceding the presentation of the Petition herein and she consents to the dissolution of the marriage with the Petitioner.

I find that the Petitioner has sufficiently proved the contents of his Petition and is entitled to a *Decree Nisi* particularly that the Respondent is not contesting the divorce. I will deal with the Petition in the way that Petitions in the Special Procedure List are dealt with.

The Special Procedure was introduced in 1973 in England and Wales for undefended divorces based on the fact of two years' separation plus consent, although only where the couple did not have children.

This procedure allowed a divorce to be granted on the basis of Affidavit evidence alone. In 1977 it was extended to all undefended divorces,

and the “Special Procedure” became the norm-see the **Family Proceedings Rules 1991 (Statutory Instrument 1991/1247) Rule 2.36**. The Procedure was summarized by Waite L.J in the case of **POUNDS V POUNDS (1)**.

Whilst the **English Family Proceedings Rules 1991** do not apply to Zambia, I am of the firm view that undefended divorces based on the fact of two years’ separation plus consent should be dealt with using the Special Procedure i.e on the basis of Affidavit evidence alone without the need for the parties to attend Court for their case to be heard. I am of the considered view that the Court is empowered to determine such a divorce on the documents before it pursuant to **Order 30 Rule 6A of the High Court Rules, Chapter 27 of the Laws of Zambia** as amended by the **High Court (Amendment) Rules 2020. Rule 6 A of Order 30** provides as follows:

- “6A. (1) Where the Court is satisfied that the application can be disposed of on the basis of the documents before it, the Court may determine the matter without the attendance of the parties or their advocates and shall issue a notice of the date of delivery.**
- (2) This Rule shall apply to –**
- (a) An interlocutory application;**
  - (b) An application under 11(a);**
  - (c) An application for determination on questions of law or construction of documents; or**
  - (d) Any other application as may be directed by the Court.”**


I have considered the evidence of the Petitioner and noted that the Respondent has given her consent to dissolution of the marriage.

I am satisfied that the marriage solemnized between **JOSEPH PHIRI** and **NATASHA TEMBO** on 19<sup>th</sup> December, 2015 at Barack Christian Center, in the City and Province of Lusaka of the Republic of Zambia has broken down irretrievably in terms of **Section 8 and Section 9(1)(d) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia**. I am further satisfied that granting a *Decree Nisi* will not cause grave financial or other hardship to the Respondent.

I therefore hereby invoke the provisions of **Section 41 of the Matrimonial Causes Act, No. 20 of 2007** and grant the *Decree Nisi* and I make the following Orders.

1. The *Decree Nisi* shall become Absolute Six (6) weeks from the date hereof unless cause be shown why the same cannot be made Absolute.
2. The Respondent shall have custody of the children of the family namely; **Michelle Phiri and Caleb Phiri** with liberal and reasonable access being granted to the Petitioner.
3. The Petitioner and Respondent shall each contribute towards the maintenance of the children of the family.
4. I refer the issue of property settlement to mediation pursuant to **Order 31 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia**.
5. Each party is to bear their own legal costs of this action.

**DELIVERED AT LUSAKA THIS 22<sup>ND</sup> DAY OF JANUARY, 2024.**

  
WILLIAM S. MWEEMBA  
HIGH COURT JUDGE