

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

**2023/HPF/D650**

**BETWEEN:**

**MWAKA CHILWA NAKAZWE MUNTHALI**

**PETITIONER**

**AND**

**JOHN RICHARD MUNTHALI**

**RESPONDENT**

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

***For the Petitioner:*** Ms. Chipo Malambo of Messrs Malambo & Company.

***For the Respondent:*** Mr. John Richard Munthali (In Person).

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

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**LEGISLATION REFERRED TO:**

- 1. Matrimonial Causes Act, No. 20 of 2007 of the Laws of Zambia.***
- 2. Matrimonial Causes Rules of England 1973.***
- 3. The High Court Rules, Chapter 27 of the Laws of Zambia.***

This is a Petition launched by ***Mwaka Chilwa Nakazwe Munthali*** (the Petitioner) against ***John Richard Munthali*** (the Respondent) 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 wife and husband for a continuous period of at least 2 years immediately preceding the filing of the Petition on 16<sup>th</sup> November, 2023.

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

The Petition reveals that the Petitioner was married to the Respondent on 4<sup>th</sup> July, 1998 in Virginia of the United State of America, at the Alexandria Circuit Court; that both parties are domiciled in Zambia; that the Petitioner and the Respondent last lived together as wife and husband at Plot House No. 2339/M/B, Ring Road, New Kasama Lusaka in the Lusaka Province of the Republic of Zambia; that the Petitioner is a Chef running her own business residing at House No. 2339/M/B, Ring Road, New Kasama, Lusaka and the Respondent is a Head of Operations at Catholic Relief Services Maputo ordinarily residing at House No. 2339/M/A Ring Road, New Kasama, Lusaka.

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

- i. **Towela Margaret Munthali** a 25-year-old female born on 25<sup>th</sup> August, 1998 currently employed as a teacher in South Korea; and.
- ii. **John Tionge Munthali** a 21-year-old male born on 5<sup>th</sup> November, 2002 attending Law School at the University of Bristol in the United Kingdom.

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

It also reveals that there have been no previous proceedings in any Court whether in Zambia or outside Zambia which are in respect to

this marriage which are capable of affecting its validity and subsistence or with regard to any property of either or both of them. That no agreement or arrangement has been made or is proposed to be made between the parties for the support of the Respondent or the Petitioner or the children of the family.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have lived apart for a continuous period of at least two (2) years immediately preceding the presentation of the Petition namely since 10<sup>th</sup> June, 2021 and have not resumed cohabitation to date and there is no hope of the parties resuming cohabitation and that the Respondent consents to a *Decree Nisi* being granted.

The Petitioner prays that her marriage to the Respondent be dissolved; that the Respondent continues to maintain **John Tionge Munthali**; that there be an Order for settlement of property; that each party shall bear their own legal costs; and any other relief the Court will deem fit.

The Respondent filed Consent to Dissolution of Marriage on 16<sup>th</sup> November, 2023. He stated that he consents to the dissolution of the marriage and he has no objection to the granting of a *Decree Nisi* and therefore he does not intend to defend the matter.

On 20<sup>th</sup> November, 2023 the Petitioner's Counsel, Messrs Malambo & Company applied to the Hon. Deputy Registrar for Directions for Trial of the matter by entry of the cause on the Special Procedure

List. An Affidavit of the Petitioners evidence in support of the application was filed on even date.

On 22<sup>nd</sup> November, 2023 the Hon. Deputy Registrar directed that the matter be entered in the Special Procedure List after being satisfied that the requirements of **Rule 33(3) of the Matrimonial Causes Rules 1973** had been met.

The Hon. Deputy Registrar further certified that the Petitioner has sufficiently proved the contents of the Petition herein and is entitled to a Decree of Divorce as the parties have lived apart for a continuous period of at least 2 years.

I have considered the evidence of the Petitioner and noted that the Hon. Deputy Registrar has certified that the Petitioner has sufficiently proved the contents of her Petition. I have also noted that the Respondent has no intention of defending this Petition and consents to the dissolution of the marriage.

The issue for consideration is the determination of whether the marriage between the parties herein has broken down irretrievably.

I am satisfied that the marriage solemnized between **John Richard Munthali** and **Mwaka Chilwa Nakazwe** on 4<sup>th</sup> July, 1998 at Alexandria Circuit Court in Virginia of the United States of America has broken down irretrievably in terms of **Sections 8 and 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** and *Decree* that the said marriage be dissolved and a *Decree Nisi* is hereby pronounced dissolving the marriage and I make the following orders:

1. The *Decree Nisi* shall become Absolute after (6) weeks from the date hereof unless cause be shown why the same cannot be made Absolute.
2. The Petitioner and the Respondent will both continue to support and maintain **John Tionge Munthali** while the Respondent will continue to be responsible for costs associated with University.
3. 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.**
4. Each party is to bear their own legal costs of this action.

No appeal lies against a consented Decree Nisi.

**DELIVERED AT LUSAKA THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2024.**

05 FEB 2024



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**WILLIAM S. MWEEMBA  
HIGH COURT JUDGE**