

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

2022/HPF/D324

BETWEEN:

ELIZABETH KALWANI

AND

LLOYD HALUBILI



PETITIONER

RESPONDENT

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

For the Petitioner: Mrs. M. Mweemba, Advocate – Messrs Lusenga Mulongoti Advocates.

For the Respondent: Mr. T. M. Sapato, Advocate-Messrs Legal Aid Board.

J U D G M E N T

LEGISLATION REFERRED TO:

- 1. 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 at 77.***

ELIZABETH KALWANI (the Petitioner) filed this Petition for dissolution of her marriage on 22nd June, 2022 seeking to dissolve her marriage to ***LLOYD HALUBILI*** (the Respondent).

The Petition was brought pursuant to **Section 8 and Section 9 (1) (e) of the Matrimonial Causes Act.**

The Petition reveals that the Petitioner was married to the Respondent on 1st June, 1996 at the Office of the Registrar of Marriages, Civic Centre, in the City and Province of Lusaka of the Republic of Zambia; that the Petitioner and Respondent are both domiciled in Zambia; that the Petitioner and the Respondent last lived together as husband and wife at Plot No. 13296, Hillview Chalala, Lusaka aforesaid; that the Petitioner is a retired Accountant while the Respondent is also an Accountant and Consultant by profession.

The Petition further reveals that there are three children of the family born from the marriage of the Petitioner and the Respondent, namely;

1. **Elizabeth Sikopo Halubili** (Female) born on 25th November, 1994.
2. **Namonda Agness Halubili** (Female) born on 20th July, 1999.
3. **Mweetwa Kennedy Halubili** (Male) born on 28th April, 2002.

The Petition also reveals that there are no other children born to the Respondent before or during the subsistence of the marriage as far is known to the Petitioner.

There have been no previous proceedings in any Court of Law in Zambia with reference to the said marriage between the Petitioner and the Respondent or with reference to any property of either or both of them. That there are no proceedings continuing in any Court

outside Zambia which are in respect to this marriage which are capable of affecting its validity and subsistence.

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 nine years immediately preceding the presentation of Petition namely 2013.

The Petitioner prayed;

1. *That the marriage be dissolved.*
2. *That the Petitioner be granted custody of the children of the family.*
3. *That there be an order for property sharing acquired during the subsistence of the marriage.*
4. *That there be an order for ancillary relief.*

There was an acknowledgment of service filed by the Respondent on 27th July, 2022 in which he stated that he did not intend to defend the Petition.

There was also an Answer and Cross Petition filed by the Respondent on 16th November, 2022 where he admitted the contents of Paragraphs 1 to 13 of the Petitioner's Petition. He also admitted that the marriage had broken down on ground that he and the Petitioner have lived apart for a continuous period of nine years 2 months immediately preceding the presentation of the Petition.

He prayed that;

- i. *The marriage be dissolved.*
- ii. *For costs of the application to be in the cause.*

I have considered all the evidence before me and I am satisfied that the Petitioner has sufficiently proved the contents of her 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 five years' separation 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 am therefore satisfied that the Petition in this case can be disposed of on the basis of the documents on the Record without the attendance of the parties or their Advocates.

In the circumstances, I find that the marriage solemnized between **ELIZABETH KALWANI** and **LLOYD HALUBILI** on 1st June, 1996 at the Office of the Registrar of Marriages, Civic Centre 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)(e) 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 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 Petitioner is granted custody of children of the family with reasonable access to the Respondent.
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 16TH DAY OF APRIL, 2024.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**

