

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

2023/HPF/D026

BETWEEN:

NJAVWA SINYANGWE

AND

GRACE MUTUPA



PETITIONER

RESPONDENT

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

For the Petitioner: Mr. N. Sinyangwe (In Person).

For the Respondent: Messrs National Legal Aid Clinic for Women.

JUDGMENT

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***

NJAVWA SINYANGWE (the Petitioner) filed this amended Petition for dissolution of marriage on 26th January, 2024 seeking to dissolve his marriage to **GRACE MUTUPA** (the Respondent).

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

The said Petition revealed that the Petitioner was married to the Respondent on 14th December, 2002 at the Lutheran Church on behalf of the Registrar of Marriages, in the City of Ndola in the Copperbelt Province of the Republic of Zambia; that both parties are domiciled in Zambia; that immediately after the marriage the Petitioner and the Respondent lived together as husband and wife at House No. 1049 Lubuto, Ndola aforesaid; that the Petitioner is a Doctor of Dental Surgery and resides at Plot No. 14967/m/6, Libala South, Lusaka while the Respondent is a Teacher by Profession, although unemployed and resides at House No. 4051, Lubuto Extension, Ndola.

The Petition further reveals that there are three children of the family now living having been born between the Petitioner and the Respondent whose names and dates of birth are as follows:

1. **Chizungusho Sinyangwe** (male) – 7th December, 2006.
2. **Queen Nanyangwe Namukuko** (female) – 24th November, 2010.
3. **Victoria Nanyirongo Nanyangwe** (female) – 18th December, 2016.

The Petition also reveals that there are no other children now living born to the Respondent as far as is known to the Petitioner.

There have been no previous proceedings in any Court in Zambia or elsewhere between the Petitioner and the Respondent with reference to the marriage or property of either or both of them.

That there is an agreement that has been made between the parties for the support and maintenance of the children of the family.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the Petitioner and Respondent have lived apart for a continuous period of two years, namely since December 2019, immediately preceding the presentation of the Petition and the Respondent consents to a Decree being granted.

The Petitioner prayed;

- i. That the said marriage be dissolved.*
- ii. That the Respondent be granted custody of the three children of the family with liberal access to the Petitioner.*
- iii. That there be an Order for maintenance of the children of the family.*
- iv. That there be an order for property settlement.*
- v. That each party bears their own costs.*

The Respondent filed Consent to Dissolution of Marriage on 26th January, 2024. 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 **NJAVWA SINYANGWE** and **GRACE MUTUPA** on 14th December, 2002 at the Lutheran Church on behalf of the Registrar of Marriages, in the City of Ndola in the Copperbelt Province 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 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 is granted custody of the children of the family while the Petitioner shall have reasonable access.
3. The Petitioner and the Respondent shall each contribute to the maintenance of the children of the family.
4. I refer the issue of maintenance of the Respondent to mediation pursuant to **Order 31 Rule 4 of the High Court Rules, Chapter 27 of the Laws of Zambia**.

5. 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.**
6. Each party is to bear their own legal costs of this action.

DELIVERED AT LUSAKA THIS 24TH DAY OF JUNE, 2024.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**

