

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
FAMILY & CHILDREN'S COURT DIVISION
(Divorce Jurisdiction)**

2023/HPF/D145

BETWEEN:

MIRRIAM MWWA MULUBWA

AND

LAWRENCE NGANDWE



PETITIONER

RESPONDENT

*Before the Honourable Mrs. Justice M.M. Bah-Matandala
on this 30th April, 2024.*

APPEARANCES:

*For the Petitioner : Mrs. B. M. Mulenga & Ms. S. Chifeta Messrs. – National
Legal Aid Clinic for Women.
For the Respondent: Mr. W. Mwandela Messrs. O.M.M. Banda & Company.*

J U D G M E N T

LEGISLATION REFERRED TO:

1. THE MATRIMONIAL CAUSES ACT NO. 20 OF 2007 OF THE LAWS OF ZAMBIA
2. HIGH COURT (AMENDMENT) RULES S.I NUMBER 72 OF 2018

1.0 Introduction

1.1 On 16th March, 2023 **Mirriam Mwewa Mulubwa** the Petitioner herein filed a Divorce Petition Pursuant to **Section 8 and 9(1) (c) and 14(1) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia**

against the Respondent **Lawrence Ng'andwe** on the ground that the Respondent had deserted the Petitioner for a continuous period of at least more than two years since 27th March 2020 immediately preceding the presentation of the Petition.

2.0 Petition

- 2.1 That the Petition showed that the parties were lawfully married on 8th November, 2019 at the Office of the Registrar, of Marriages in the city and province of Lusaka in the Republic of Zambia.
- 2.2 Immediately after the marriage the Petitioner and the Respondent lived together as husband and wife in Chipata Ma Plot in Lusaka.
- 2.3 The Petitioner and the Respondent last lived together in Chipata Ma plot, in the Lusaka Province of the Republic of Zambia. The Petitioner and the Respondent are both domiciled in Zambia.
- 2.4 That the Petitioner is a nurse at Chongwe District hospital and currently resides in Kakubo Village in Chongwe while

the Respondent is a businessman and currently resides at Chipata Ma Plot, in Lusaka.

2.5 That there is One (1) child born of the Petitioner and the Respondent during the subsistence of the marriage namely:

*i **Kiandre Senkwe Ng'andwe** born on 21st September, 2020.*

2.6 That there is no other child born to the Petitioner whereas there are four children born to the Respondent prior to the marriage so far as it is known to the Petitioner.

2.7 That there had been no previous proceedings in any Court in Zambia or elsewhere with reference to the said marriage or property of both or either parties. There are no proceedings continuing in any Court outside Zambia which are in respect of the marriage which are capable of affecting its validity and substance.

2.8 That there are no arrangements that have been made between the Petitioner and the Respondent in relation to the custody and maintenance of the children of the family.

2.9 The said marriage has broken down irretrievably.

2.10 That the Respondent has deserted the Petitioner for a continuous period of at least more than two years since 27th March 2020.

Particulars of the Desertion

- i *The Petitioner and the Respondent last lived together on the 27th March, 2020 before the Petitioner left the matrimonial house due to the Respondent's physical violence.*
- ii *The Respondent chased the Petitioner out of the matrimonial house without regard to the fact that the Petitioner was three months pregnant at that time.*
- iii *The Respondent has neglected to provide for the Petitioner and the child of the family.*

The Petitioner therefore prays:

- i *That the said marriage be dissolved.*
- ii *That the Petitioner be granted custody of the child of the family*
- iii *That each party bears their own costs.*

4.0 Answer

4.1 The Respondent filed an answer to the Petition on 12th April, 2023.

5.1 **Hearing**

5.1 At the date of the hearing on 4th December, 2023, the Respondent did not attend the hearing of the Petition although he was aware of the hearing date and he was served with the notice of hearing and there was proof of service. Therefore, upon being satisfied that service was properly effected on the Respondent and there being no reason for his absence, I allowed the matter to proceed to be heard.

5.2 The Petitioner stated that the Respondent chased her from the matrimonial home on 26th March, 2020 when she was pregnant for the child of the family and since then, he had not been maintaining the child of the family and the Petitioner.

5.3 The Petitioner stated that the Respondent had never bothered to visit or check on the child of the family since the time he chased the Petitioner on 26th March, 2020 up to date.

5.4 The Petitioner implored the Court to dissolve their marriage as the Respondent has deserted the Petitioner

since 27th March, 2020. The Petitioner also prayed that marriage be dissolved and there be an Order for Child Custody of the child of the family and that each party bears their own costs.

6.0 Consideration and Decision

6.1 Upon considering the evidence adduced by the Petitioner herein and the Respondent having deserted the marriage, this Court is satisfied that the parties have lived apart for a continuous period of at least two years since 27th March, 2020 immediately preceding the filing of this Petition.

6.2 In light of the foregoing, it is hereby adjudged that the marriage between the parties herein has broken down irretrievably. The Petitioner is granted a *decree nisi* which shall become *absolute* after the prescribed statutory period of six weeks pursuant to *Order XXXI Rule 4(4)(a) of the High Court (Amendment) Rules S. I number 72 of 2018*.

6.3 I refer the determination of maintenance of the child of the family to mediation and if the mediation fails to the Deputy Registrar.

6.4 I grant Custody of the child of the family to the Petitioner
with reasonable access by the Respondent.

7.0 Each party shall bear their own costs.

8.0 I order accordingly.

Dated at Lusaka, this 30th April, 2024.


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M.M. Bah-Matandala
HIGH COURT JUDGE

