

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

2023/HPF/D253

BETWEEN:

PASCAL GIFT MASA

AND

MARIA BBENKELE MASA



PETITIONER

RESPONDENT

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

*For the Petitioner: Mr. Mufune Messrs – Abercorn Chambers
For the Respondent: Ms. L. Mulasikwanda – National Legal Aid Clinic for Women*

J U D G M E N T

LEGISLATION REFERRED TO:

1. THE MARRIAGE ACT CHAPTER 50 OF THE LAWS OF ZAMBIA
2. THE MATRIMONIAL CAUSES ACT NO. 20 OF 2007 OF THE LAWS OF ZAMBIA
3. THE MATRIMONIAL CAUSES RULES 1977.

1.0 INTRODUCTION

1.1 On 4th March, 2024 ***Pascal Gift Masaka*** the Petitioner herein filed an Amended Divorce Petition pursuant to ***Section 8 and 9(1) (d) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia*** against the

Respondent ***Maria Bbenkele Masaka*** on the ground that the Petitioner and the Respondent had lived apart for a continuous period of at least two (2) years immediately preceding the presentation of the Petition and that the Respondent consented to the dissolution of the marriage. The Respondent signed the consent to dissolution of marriage which was filed on 4th March 2024.

2.0 THE PETITION

- 2.1 The Petition showed that the parties were lawfully married on 8th May 2016 at Rhema Life Embassy Church at Lusaka ***pursuant to the Marriage Act Chapter 50 of the Laws of Zambia.***
- 2.2 The Petitioner and the Respondent last lived together as husband and wife at house No. 14892 flat K5, Lilayi Road, Chalala in the city and province of Lusaka in the Republic of Zambia.
- 2.3 Both the Petitioner and Respondent are domiciled in Zambia.
- 2.4 The Petitioner is a Network Engineer working for himself and resides at 25B Round close Kalewa housing complex

Northrise Ndola, while the Respondent is a marketing executive at a private Radio Station and resides at plot No. 14892/M Chalala Liliayi Road in the city and province of Lusaka of the Republic of Zambia.

2.5 There are Two (2) children of the family now living namely;

i Pascal Chipego Masaka male, born on the 12th December 2015.

ii Joshua Masaka, male born on the 4th July 2018.

2.6 There is another child of the family fathered by the Petitioner out of wedlock namely;

i Mary Chileshe Masaka female born on 21st April 2007.

2.7 There is also another child of the family so as it is known to the Petitioner born from the Respondent out of wedlock namely;

i Paul Ngoma male born on 24th December 2007.

2.8 That there are no proceedings continuing 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 or either of them.

2.9 There are no proceedings continuing in any Country outside Zambia which are in respect of the marriage or are capable of affecting its validity or substance.

2.10 No agreement or arrangement has been made or proposed to be made between the Petitioner and the Respondent for the support of either of the parties or otherwise relative to the proceedings.

2.11 The Petitioner implored the Court to dissolve their marriage as the parties herein have lived apart for a continuous period of at least more than Two (2) years since between the 10th and 23rd March 2021 to date. And the Respondent has since consented to a *decree nisi* being granted.

2.12 The Petitioner further prayed that;

a) the marriage be dissolved

b) custody of the children namely; Pascal Chiwego

Masaka and Joshua Masaka be given to the

Petitioner with reasonable access to the Respondent.

2.13 The Respondent did not file any Answer to the Petition but filed a consent on 4th March 2024 to have the divorce granted.

3.0 CONSIDERATION AND DECISION

3.1 Upon considering the Petition herein, and the Respondent having consented to the dissolution of the marriage, this Court is satisfied that the Petitioner has sufficiently proved that parties have lived apart for a continuous period of more than two years immediately preceding the filing of this Petition.

3.2 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* unless cause is shown why the same cannot be made absolute.

3.3 However, since this is an uncontested Petition, determined under the *consent for decree nisi* and there being no

material before me to enable me ascertain the current arrangements with regard to the properties, I shall refer the issue of property settlement and maintenance to the learned Deputy Registrar for determination on formal application by either party, in default of agreement.

- 3.4 I grant custody of the children of the family namely Pascal Chipego Masaka and Joshua Masaka to the Respondent with the reasonable access by the Petitioner.
- 3.5 Each party shall bear their own costs.
- 3.6 I order accordingly.

Dated at Lusaka, this 30th April 2024.



M.M. Bah-Matandala
HIGH COURT JUDGE

