

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2023/HPF/D664

(Divorce Jurisdiction)

BETWEEN:

JOHN MWALE

AND

ONIDA KUMWENDA MWALE

RESPONDENT

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

For the Petitioner: Mr. John Mwale (In Person).

For the Respondent: Mrs. Onida Kumwenda Mwale (In person).



PETITIONER

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***

JOHN MWALE (the Petitioner) filed his amended Petition for dissolution of marriage on 4th December, 2023 seeking to dissolve his marriage to **ONIDA KUMWENDA MWALE** (the Respondent).

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

It is deposed that the Petitioner was married to the Respondent on 20th August, 2007, at the Office of the Registrar of Marriages at Lusaka Civic Center in the City and Province of Lusaka 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 in Mtendere Area, Lusaka; that the Petitioner is a Businessman and currently resides at House # 203/08 Kaunda Square Stage 2 Lusaka while the Respondent is a Waitress and currently resides in Chalala area.

It is also averred that there are two children of the family whose names and ages are as follows:

- (i) **Patience Mwale** – 16 years old
- (ii) **Faith Mwale** – 12 years old

There are or have been no previous proceedings in Zambia or elsewhere with reference to the said marriage or between the Petitioner and the Respondent with reference to any property of either or both of them; there are no proceedings continuing in any country outside Zambia with respect to the marriage capable of affecting its validity or subsistence.

There has been no agreement formalized between the parties for the support of either party to the marriage in the event that a decree nisi is granted.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have since September, 2019 lived apart for

a continuous period of at least two (2) years immediately preceding the presentation of the Petition and that the Respondent consents to a Decree *Nisi* being granted.

The Petitioner prays;

- i. *That the marriage be dissolved.*
- ii. *That the parties be given joint custody of the children;*
- iii. *That both parties should maintain the children of the family;*
- iv. *That there be no property settlement;*
- v. *That each party bears their own costs.*

The Respondent filed Consent to Dissolution of Marriage on 20th November, 2023. She confirmed that her marriage with the Petitioner has broken down irretrievably and that they have lived apart for a continuous period in excess of two (2) years preceding the presentation of this Petition 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 therefore 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.”**

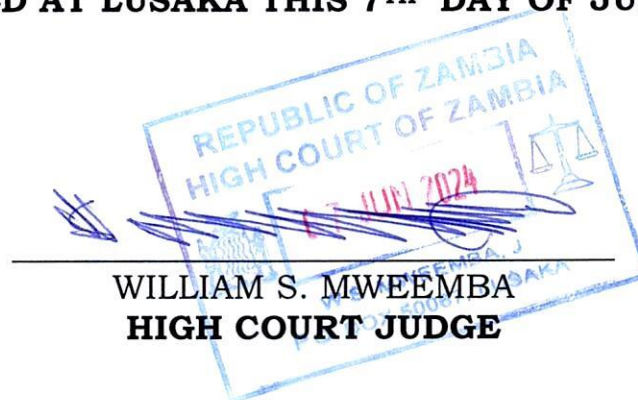
I have considered the evidence of the Petitioner and noted that the Respondent has given her consent to dissolution of the marriage.

I am therefore satisfied that the marriage solemnized between **JOHN MWALE** and **ONIDA KUMWENDA MWALE** on 20th August, 2007 at the Office of the Registrar of Marriages at Lusaka Civic Center 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)(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 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. That the parties be given joint custody of the children.
3. That both parties are to maintain the children.
4. No order relating to property settlement has been made.
5. Each party is to bear their own legal costs of this action.

DELIVERED AT LUSAKA THIS 7TH DAY OF JUNE, 2024.



WILLIAM S. MWEEMBA
HIGH COURT JUDGE