

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

2023/HPF/D212

BETWEEN:

LAZAROUS NDHLOVU

AND

PATRICIA SHITUBA NDHLOVU



PETITIONER

RESPONDENT

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

For the Petitioner: Mr. L. Ndhlovu *(In Person)*.

For the Respondent: Mrs. P.S. Ndhlovu *(In Person)*.

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. *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.***

Lazarous Ndhlovu *(the Petitioner)* filed the Petition for Dissolution of Marriage on 18th April, 2023 seeking to dissolve his marriage to **Patricia Shitumba Ndhlovu** *(the Respondent)*.

The Petition was initially launched pursuant to the **Section 8 and Section 9 (1) (b) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia**. It was then amended on 5th June, 2024 to

read as being pursuant to **Section 8 and 9 (1) (d) of the Matrimonial Causes Act No. 20 of 2007.**

The amended Petition reveals that the Petitioner was married to the Respondent on 19th April, 2006 at the Office of the Registrar of Marriages, Civic Centre 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 Chilenje, Lusaka aforesaid; that the Petitioner is a Police Officer while the Respondent is a Security Officer.

The Petition further reveals that there are three children of the family now living and having been born between the Petitioner and Respondent during the subsistence of the marriage. Their names and ages are as follows:

1. **Francis Ndhlovu** – 24 years old.
2. **Ashley Ndhlovu** – 22 years old.
3. **Emmanuel James Kabwe Ndhlovu** – 13 years old.

The Petition also reveals that there have been previous proceedings in the High Court for Zambia with reference to the said marriage and with reference to the property of either or both of them.

There are no proceedings continuing in any Court or Country outside Zambia which are, in respect of the marriage capable of affecting its validity or subsistence. No agreement or arrangement has been made, or is proposed to be made between the parties for the support of the Petitioner or Respondent.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have since August, 2019 lived apart for a continuous period of two years and that the Respondent consents to a decree nisi being granted.

The Petitioner prayed for the following;

- i. *That the marriage be dissolved;*
- ii. *That the Petitioner be granted custody of the three children of the family;*
- iii. *That there be an order of K5000 monthly maintenance of the Respondent;*
- iv. *That Property No. F32a/F/4/A 1960, A32a/F/4/A1961 and Stand No.6/05 of 4586 Lusaka be transferred to names of the children of the family namely Francis Ndhlovu, Ashley Ndhlovu and Emmanuel James Kabwe Ndhlovu; and*
- v. *That each party bears their own costs.*

The Respondent filed Consent to Dissolution of Marriage on 5th June, 2024. She confirmed that she and the Petitioner have lived apart for a continuous period of two years and that she consents to the *Decree Nisi* being granted.

Based on the foregoing, I am satisfied 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 satisfied that the marriage solemnized between **Lazarous Ndhlovu** and **Patricia Shitumba Ndhlovu** on 19th April, 2006 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)(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. The Petitioner shall have custody of the children of the family namely; **Francis Ndhlovu, Ashley Ndhlovu and Emmanuel James Kabwe Ndhlovu** with reasonable access to the Respondent.
3. The Petitioner shall pay the Respondent for her sustenance K5,000.00 per month during her life or until re-marriage. This will be payable monthly in arrears.
4. The Petitioner will be responsible for the maintenance and education of the children of the family until they attain the age of 25years .

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

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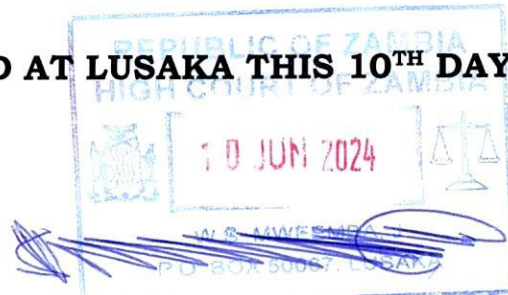
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5. That property No. F32a/F/4/A1960, A32a/F/4/A1961 Lusaka and Stand No.6/05 of 4586 Lusaka should be transferred to the children of the family namely Francis Ndhlovu, Ashley Ndhlovu and Emmanuel James Kabwe Ndhlovu.
6. Each party is to bear their own costs.

DELIVERED AT LUSAKA THIS 10TH DAY OF JUNE, 2024.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**