

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

2024/HPF/D111

BETWEEN:

IDAH KALUBA CHILUMBU CHILESHE PETITIONER

AND

VICTOR MUTALE CHILESHE

RESPONDENT



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

For the Petitioner: Ms. I.M. Kunda, Advocate – Messrs George Kunda & Company.

For the Respondent: Mr. V. M. Chileshe (In Person).

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**

IDAH KALUBA CHILUMBU CHILESHE (the Petitioner) filed this Petition for dissolution of marriage on 21st February, 2024 seeking to

dissolve her marriage to **VICTOR MUTALE CHILESHE** (the Respondent).

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

The Petition reveals that the Petitioner was married to the Respondent on 19th June, 2010 at Mary Immaculate Catholic Parish, in the City and Province of Lusaka in the Republic of Zambia; that both parties are domiciled in Zambia; that the Petitioner and the Respondent last lived together as husband and wife at House No. 9781, Woodlands, Lusaka aforesaid; that the Petitioner is a Banker working at Atlas Mara Bank and residing at House 9781, Woodlands, Lusaka while the Respondent is a businessman and owns a gas station, a bar and a butchery and residing at an unknown house number but along Leopards Hill Road, New Kasama, Lusaka.

The Petition further reveals that there are two children of the family now living having been born between the Petitioner and the Respondent, namely;

1. **Mutale Victor Chileshe** born on 27th October, 2009.
2. **Elizabeth Chanda Chileshe** born on 16th June, 2014.

There is no other child born to the Petitioner during the said marriage but there are two other children born to the Respondent during the subsistence of the marriage namely;

1. **Mushili Chileshe** aged 7 years.
2. **Bohentle Chileshe** aged 1 year.

The Petition also reveals that there are or have been no previous proceedings in Zambia or elsewhere with reference to the same 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 which are in respect of the marriage capable of affecting its validity or subsistence.

There has been no agreement formalized between the parties for the support of the family or otherwise related to these proceedings, but the Petitioner and Respondent agree to support both children financially.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have since 16th January, 2018 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 Petitioner be granted custody of the children of the family with reasonable access being granted to the Respondent.*
- iii. That there be an order for property settlement.*
- iv. That each party bears their own costs of this suit.*

The Respondent filed Consent to Dissolution of Marriage on 21st February, 2024. He confirmed that the marriage with the Petitioner has broken down irretrievably and he has lived apart from the Petitioner for a continuous period in excess of two (2) years preceding

the presentation of the Petition herein and he consents to the dissolution of the marriage with the Petitioner.

I find that the Petitioner has sufficiently proved the contents of her 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 his consent to dissolution of the marriage.

I am therefore satisfied that the marriage solemnized between **IDAH KALUBA CHILUMBU CHILESHE** and **VICTOR MUTALE CHILESHE** on 19th June, 2010 at Mary Immaculate Parish, 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 Petitioner is granted custody of the children of the family with reasonable access being granted to the Respondent.
3. 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.***
4. Each party is to bear their own legal costs of this action.

DELIVERED AT LUSAKA THIS 25TH DAY OF MARCH, 2024.



REPUBLIC OF ZAMBIA
HIGH COURT OF ZAMBIA
25 MAR 2024
W. S. MWEEMBA, J.

**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**