

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

2024/HPF/D366

BETWEEN:

KATONGO KALIKEKA

AND

AKENDE MULEMWA



PETITIONER

RESPONDENT

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

For the Petitioner: Mrs. Kunda K. Kombe – Legal Aid Board.

For the Respondent: Mr. Akende Mulemwa (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**

KATONGO KALIKEKA (the Petitioner) filed this Petition for dissolution of marriage on 12th June, 2024 seeking to dissolve her marriage to **AKENDE MULEMWA** (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 30th August, 2019, 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 at Plot No. 401/ A327 Bonaventure Makeni, Lusaka; that the Petitioner is a Sales and Marketing Officer at Taj Pamodzi Hotel and resides at Plot 401/A/327 Bonaventure Makeni Lusaka while the Respondent is a Sales Personnel at Gold Chain and resides at an unknown House No. in the Lusaka District of the Lusaka Province of the Republic of Zambia.

The Petition further reveals that there is one child of the family now living namely **Katongo Mulemwa** who was born on 23rd March, 2019. That no other child now living has been born to the Respondent during the subsistence of the said marriage so far as is known to the Petitioner.

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 the family or otherwise related to these proceedings.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have since March, 2021 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 Court makes an order for joint custody with the Petitioner having primary custody of the child;*
- iii. *The parties bear their own legal costs; and*
- iv. *Any other relief the Court will deem fit.*

The Respondent filed Consent to Dissolution of Marriage on 12th June, 2024. He confirmed that his 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 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 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 his consent to dissolution of the marriage.

I am therefore satisfied that the marriage solemnized between **KATONGO KALIKEKA** and **AKENDE MULEMWA** on 30th August, 2019 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. The Petitioner and the Respondent are granted joint custody of the child of the family namely **Katongo Mulemwa** with the Petitioner having primary custody of the child. The party not having custody at any given time will have reasonable access to the child.
3. The Petitioner and the Respondent are to contribute equally towards the maintenance of the child of the family.
4. Each party is to bear their own legal costs of this action.

DELIVERED AT LUSAKA THIS 24TH DAY OF JUNE, 2024.



WILLIAM S. MWEEMBA
HIGH COURT JUDGE

