

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

**2025/HPF/D683**

**BETWEEN**

**CHIBESA CHIBESA**

**AND**

**PASCAL MPUNDU KABWE**



**PETITIONER**

**RESPONDENT**

***Before the Honourable Mrs. Justice M.M. Bah-Matandala  
Dated this 11<sup>th</sup> December 2025.***

*For the Petitioner: Ms. M. Marabesa, Legal Aid Counsel Messrs. Legal Aid Board*

*For the Respondent: In Person*

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## **J U D G M E N T**

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**Legislation & texts referred to:**

1. *Matrimonial Causes Act No. 20 of 2007*
2. *Marriage Act, Chapter 50 of the Laws of Zambia*
3. *Matrimonial Causes Rules, 1977 (England), as applied in Zambia*
4. *The Children's Code Act, 2022*
5. *Rayden & Jackson on Divorce and Family Matters, 16th Edition*

**Cases referred to:**

1. *Ndlovu v Ndlovu (1977) ZR 315 (HC)*
2. *Kabwe v Kabwe (1979) ZR 65 (SC)*
3. *Mahande v Mahande (1974) ZR 107 (HC)*
4. *Chalwe v Chalwe (1978) ZR 165 (HC)*
5. *Ash v Ash [1972] 1 All ER 498*
6. *Gollins v Gollins [1964] AC 644*

### **1.0 INTRODUCTION**

- 1.1 The Petitioner, **Chibesa Chibesa**, filed a Petition on 27<sup>th</sup> October 2025 seeking dissolution of the marriage

pursuant to **Sections 8 and 9(1)(d)** of the Matrimonial Causes Act No. 20 of 2007.

- 1.2 She alleges that the parties have lived apart for a continuous period of at least two years immediately preceding the filing of the Petition and that the Respondent has consented to the grant of a decree.
- 1.3 The matter was heard on 9<sup>th</sup> December 2025. The Petitioner attended with counsel. The Respondent attended in person. He had earlier filed a Consent to Divorce and an Acknowledgment of Service, confirming that he does not intend to defend the petition. His position enabled the Court to proceed on the uncontroverted evidence.

## **2.0 THE PETITION**

- 2.1 The parties contracted a statutory marriage on 25<sup>th</sup> September 2021 at Great Harvest Outreach Church in Lusaka pursuant to the Marriage Act, Cap 50.
- 2.2 The parties last lived together in April 2023, after which they separated and have not resumed cohabitation.
- 2.3 There are two children who were born to the family namely Emmanuel Kabwe, male, born 22<sup>nd</sup> February

2018 and Azariah Kabwe, female, born 29<sup>th</sup> August 2024.

- 2.4 There are no earlier or pending matrimonial proceedings in Zambia or elsewhere.
- 2.5 The Respondent executed a Consent to Divorce consistent with Section 9(1)(d), acknowledging the period of separation and expressly consenting to the grant of a decree.
- 2.6 A Certificate with Regard to Reconciliation was filed pursuant to Rule 7 of the Matrimonial Causes Rules, confirming that reconciliation was attempted through family and church but was unsuccessful.

### **3.0 EVIDENCE**

- 3.1 The Petitioner testified under oath that the marriage has broken down irretrievably. She confirmed that the parties separated in April 2023 and have since lived entirely separate lives.
- 3.2 Attempts at reconciliation through families and church leaders were unsuccessful. She expressed no wish to resume cohabitation. She tendered the Marriage Certificate, admitted as P1.

- 3.3 The Petitioner testified that the younger child, Azariah, resides with her in Lusaka. The older child, Emmanuel, resides with the Respondent in Chinsali. She stated that Emmanuel struggles emotionally each time he returns after school holidays and that his academic performance has declined. She also expressed concern that he lives in a household with four children under the care of a 22-year-old caregiver.
- 3.4 She testified that she has flexible working hours and is better positioned to attend to the children's day-to-day and educational needs. She seeks custody of both children with reasonable access to the Respondent.
- 3.5 The Respondent did not challenge the Petitioner's evidence. He confirmed the separation, confirmed his consent to divorce, and stated that he supports access arrangements that serve the children's welfare. He expressed willingness to abide by the Court's determination on custody.

#### **4.0 ISSUES FOR DETERMINATION**

- 4.1 The issues arising for determination are:

- i. *Whether the marriage has irretrievably broken down under Section 8 of the Matrimonial Causes Act;*
- ii. *Whether the statutory requirements of Section 9(1)(d) have been satisfied;*
- iii. *What arrangements promote the best interests of the children of the family;*
- iv. *Whether the Petitioner is entitled to the reliefs sought.*

## **5.0 ANALYSIS**

5.1 The starting point is the determination of whether the marriage has irretrievable breakdown of marriage. Section 8 provides that the sole ground for divorce is irretrievable breakdown.

5.2 Section 9(1)(d) provides:

*“The Court shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court that the parties have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition*

*and the respondent consents to a decree  
being granted.”*

- 5.3 The evidence on record establishes that the parties have lived apart since April 2023, a period well in excess of two years by the time the Petition was filed. The Respondent executed a valid Consent to Divorce.
- 5.4 In *Mahande v Mahande* (1974) ZR 107, the Court held that where a statutory fact under Section 9(1) is established, and there are no exceptional circumstances, a decree must follow.
- 5.5 Similarly, *Ndlovu v Ndlovu* (1977) ZR 315 emphasises that long separation coupled with consent is conclusive evidence of breakdown. Applying these authorities, I find that the marriage has **irretrievably broken down**, and the statutory requirements under Section 9(1)(d) are fully met.
- 5.6 The second issue for determination is the cessation of marital relationship. The test in *Gollins v Gollins* [1964] AC 644 and reaffirmed in *Ash v Ash* [1972] 1 All ER 498 is whether the marital relationship has ceased to function in a meaningful way. The unchallenged

evidence shows prolonged separation, failures of reconciliation, cessation of consortium and mutual intention to end the marriage. The test is therefore satisfied.

5.7 The third issue for consideration is the issue of the children; which is the best interest standard. Section 3 of the Children's Code Act, 2022 provides:

*"The best interests of the child shall be the primary consideration in all actions relating to children."*

5.8 The evidence shows that Emmanuel is struggling emotionally and academically under the current arrangement. The concerns regarding inadequate supervision in the Respondent's home are relevant. The Petitioner, by contrast, has flexible working hours and already provides primary care to the younger child, Azariah. The principles in *Hopes v Hopes* [1949] 2 All ER 920, later applied in *Kabwe v Kabwe* (1979) ZR 65, emphasise that stability, continuity of caregiving, and overall welfare must guide custody decisions.

5.9 Therefore, given the ages of the children, their emotional needs, and evidence of the Petitioner's caregiving capacity, I find that the children's welfare will be best served by granting custody, care, and control to the Petitioner, with reasonable access to the Respondent to preserve the parental bond.

## **6.0 CONCLUSION**

6.1 I am satisfied that the statutory ground under Section 9(1)(d) has been fully established. The parties have lived apart for more than two years, reconciliation has failed, and the Respondent consents to the decree. The marriage has irretrievably broken down.

## **7.0 ORDERS**

7.1 Accordingly, the following orders are made:

*a) A Decree Nisi is hereby granted dissolving the marriage solemnised on 25<sup>th</sup> September 2021 at Great Harvest Outreach Church, Lusaka. The decree shall become absolute after six (6) weeks unless otherwise stated by the parties.*

- b) *Custody of the minor children, Emmanuel Kabwe and Azariah Kabwe, is granted to the Petitioner.*
- c) *The Respondent shall have reasonable access, including holidays and such other times as may be mutually agreed.*
- d) *Both parties shall contribute to the financial needs of the children proportionate to their means.*
- e) *Each party shall bear their own costs.*

**8.0** I order accordingly.

Dated at Lusaka, this 11<sup>th</sup> December 2025.

  
M. M. BAH-MATANDALA  
**HIGH COURT JUDGE**

