

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

2023/HPF/D589

BETWEEN:

MONDE MWANGALA MOOLA



PETITIONER

AND

KAWANA LAWRENCE MOOLA

RESPONDENT

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

For the Petitioner: Ms. C. M. Katemangwe, Advocate Messrs Legal Aid Board.

For the Respondent: No Appearance.

J U D G M E N T

LEGISLATION REFERRED TO:

1. *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 at 77.*

MONDE MWANGALA MOOLA (the Petitioner) filed this Petition for dissolution of her marriage on 27th October, 2023 seeking to dissolve her marriage to **KAWANA LAWRENCE MOOLA** (the Respondent).

The Petition was brought pursuant to **Section 8 and Section 9 (1) (e) of the Matrimonial Causes Act.**

The Petition reveals that the Petitioner was married to the Respondent on 29th January, 2000 at St. Ignatius Catholic Church, in the City and Province of Lusaka of the Republic of Zambia; that both parties are domiciled in Zambia, that the Petitioner and the Respondent last lived together as husband and wife in Woodlands at Plot No. 6344, Khola Road, Lusaka aforesaid; that the Petitioner is a retired Banker and resides at Plot 6344, Khola Road, Lusaka while the Respondent is a Management Accountant and currently resides at Zambia Rail line in Kabwe, Central Province of the Republic of Zambia.

The Petition further reveals that there are five children of the family born during the subsistence of the marriage, namely;

- i. ***Ilukena Moola***, aged 26 years old, born on 17th January, 1997.
- ii. ***Mwanga Moola***, aged 24 years old, born on 28th August, 1999.
- iii. ***Kapelwa Moola***, aged 18 years old, born on 22nd March, 2005.
- iv. ***Namukolo Ruth Mbuyoti***, aged 13 years old, born on 8th August, 2010.
- v. ***Tumelo Moola***, aged 9 years old, born on 1st November, 2014.

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

There has been no agreement or arrangement made between the parties for the support of the children in the event of the decree being granted.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the parties have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of Petition namely from the year 2017.

The Petitioner prayed;

- i. *That the marriage be dissolved absolutely.*
- ii. *That custody of the children of the family be granted to the Petitioner with reasonable access to the Respondent.*
- iii. *That each party bears its own legal costs.*
- iv. *For any other relief the Court will consider fit.*

There was no defence filed by the Respondent.

On 27th October, 2023 the Petitioner filed an application before the learned Deputy Registrar for Directions for Trial of the matter by entry of the cause in the Special Procedure List pursuant to **Rule 33(3) of the Matrimonial Causes Rules 1973.**

By Special Procedure-Deputy Registrar's Certificate dated 31st October, 2023 the Honourable Deputy Registrar certified that the Petitioner had sufficiently proved the contents of her Petition and is entitled to a *Decree Nisi*. The matter is referred to this Court for pronouncement of the *Decree Nisi*.

I considered the evidence of the Petitioner both in the Petition and the Affidavit in Support of evidence filed into Court on 27th October, 2023 and noted that the Honourable Deputy Registrar has certified that the Petitioner has sufficiently proved the contents of her Petition. I have

noted that in the said Affidavit the Petitioner states that she and the Respondent separated in January, 2015.

I am satisfied that this matter is one that is suitable to be determined by Special Procedure particularly on the ground that the Petitioner and Respondent have lived separately for over a period of five years.

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 five years' separation 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 am satisfied that the Petition in this case can be disposed of on the basis of the documents on the Record without the attendance of the parties or their Advocates.

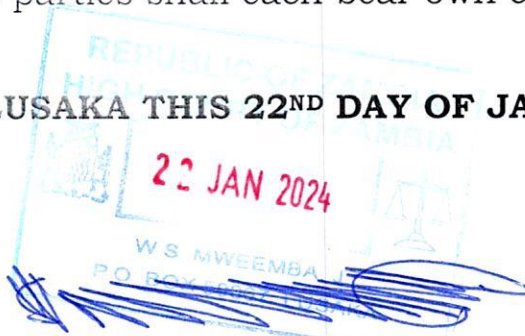
I am accordingly satisfied that the marriage solemnized between **MOONDE MWANGALA MOOLA** and **KAWANA LAWRENCE MOOLA** on 29th January, 2000 at St. Ignatius Catholic Church, in the City and Province of Lusaka of the Republic of Zambia has broken down irretrievably in terms of **Section 8 and Section 9(1)(e) 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 accordingly Decree that the said marriage be dissolved and a Decree Nisi is hereby pronounced dissolving the marriage.

I hereby make the following orders:

1. The said Decree is to be made Absolute within six (6) weeks from the date of this pronouncement unless sufficient cause be shown why it shall not be so made.
2. The Petitioner is granted custody of the children of the family with reasonable access to the Respondent.
3. The Petitioner and the Respondent shall contribute to the maintenance of the children of the family.
4. I Order that the parties shall each bear own costs of this suit.

DELIVERED AT LUSAKA THIS 22ND DAY OF JANUARY, 2024.

A faint, rectangular court stamp is visible in the background. It contains the text "REPUBLIC OF ZAMBIA" at the top, "HIGH COURT OF ZAMBIA" in the middle, and "PO BOX 100" at the bottom. A red date stamp "22 JAN 2024" is also present. The signature is written in blue ink over the stamp.

**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**