

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
FAMILY & CHILDREN'S COURT DIVISION
(Divorce Jurisdiction)

2024/HPF/D169

BETWEEN:

COSTEN GASTO PHIRI

AND

BEATRICE BANDA



PETITIONER

RESPONDENT

*Before the Honourable Mrs. Justice M.M. Bah-Matandala
this 3rd June, 2024.*

For the Petitioner: In Person
For the Respondent: In Person

J U D G M E N T

LEGISLATION REFERRED TO:

1. THE MARRIAGE ACT CHAPTER 50 OF THE LAWS OF ZAMBIA
2. THE MATRIMONIAL CAUSES ACT NO. 20 OF 2007 OF THE LAWS OF ZAMBIA
3. THE MATRIMONIAL CAUSES RULES 1977.

1.0 INTRODUCTION

1.1 On 13th March 2024 **Costen Gasto Phiri** the Petitioner herein filed a Divorce Petition pursuant to **Section 8 and 9(1) (d) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia** against the Respondent **Beatrice**

Banda on the ground that the Petitioner and the Respondent had lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and that the Respondent consented to the dissolution of the marriage, by signing the acknowledgement of service on 13th March 2024 wherein he stated that he would not be defending the Petition.

2.0 THE PETITION

- 2.1 The Petition showed that the parties were lawfully married on 24th December 2009 at the office of the Registrar of Marriages at the Civic Centre in the city and province of Lusaka of the Republic of Zambia, ***pursuant to the Marriage Act Chapter 50 of the Laws of Zambia.***
- 2.2 The Petitioner and the Respondent last lived together as husband and wife in Mogoditshane, Gaborone of the Republic of Botswana. Both the Petitioner and Respondent are domiciled in Zambia.
- 2.3 The Petitioner works for Flying Cargo Company and resides at plot No. 12869 Kabangwe Road in Lusaka whilst

the Respondent is a Hair dresser and resides at house No. 98 Chelstone Extension, in Lusaka.

2.4 There are Two (2) children born during the subsistence of the marriage namely;

i *Phiri Tatiana Ruth female aged Eleven (11) years.*

ii *Phiri Samire male aged Fourteen (14) years.*

2.5 There is another child named Racquel N. Phiri aged five (5) months, twelve days now living who has been born to the Petitioner outside the said marriage.

2.7 That there were no proceedings continuing in any Court outside of Zambia in respect of the said marriage or which were capable of affecting its validity or subsistence.

2.8 That there had been no proceedings in any Court in Zambia or elsewhere with reference to the marriage between the Petitioner and Respondent or property of either or both of them.

2.9 The Petitioner implored the Court to dissolve their marriage as the parties herein have lived apart for a

continuous period of at least two years since 15th September 2019 to date. And the Respondent consents to a *decree nisi* being granted by signing the acknowledgment of service on 13th March 2024 that he would not defend the Petition.

2.10 No agreement has been formalised between the parties for the support of the children or otherwise relative to the proceedings.

2.11 The said marriage has broken irretrievably by reason of the fact that the parties to the said marriage have lived apart since 15th September 2019 for continuous period of two years immediately preceding the presentation of the petition for divorce.

2.12 The Petitioner further prayed that;

- a) the marriage be dissolved*
- b) the Petitioner be granted custody of the children with reasonable access by the Respondent.*
- c) each party bears its own costs.*

3.0 Consideration and decision

- 3.1 Upon considering the Petition herein, and the Respondent having consented to the dissolution of the marriage, this Court is satisfied that the Petitioner has sufficiently proved that parties have lived apart for a continuous period of two years immediately preceding the filing of this Petition.
- 3.2 In light of the foregoing, it is hereby adjudged that the marriage between the parties herein has broken down irretrievably. The Petitioner is granted a *decree nisi* which shall become *absolute* after the prescribed statutory period of *six weeks* unless cause is shown why the same cannot be made absolute.
- 3.3 However, since this is an uncontested Petition, determined under the *consent for decree nisi* and there being no material before me to enable me ascertain the current arrangements with regards to the properties, I shall refer the said issue of property settlement to the learned Deputy Registrar for determination on formal application by either party, in default of agreement.

- 3.4 I grant joint custody of the children to the parties as agreed by the parties and the two will agree on how the children will spend time between them.
- 4.0 Each party shall bear their own costs.
- 5.0 I order accordingly.

Dated at Lusaka, this 3rd June, 2024

.....
M.M. Bah-Matandala
HIGH COURT JUDGE

