

I.T

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

2014/HP/D116



BETWEEN:

MUNDIA MUYA

PETITIONER

AND

KAFILI NORIA MUYA

RESPONDENT

CORAM: HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Petitioner: Mr. B. Gondwe of Messrs Buta Gondwe & Associates

For the Respondent: Mrs. N.N Mbao

J U D G M E N T

Legislation referred to:

- (i) Marriage Act Chapter 50 of the Laws of Zambia*
- (ii) Matrimonial Causes Act No.20 of 2007 of the Laws of Zambia*

This is a matrimonial petition for the dissolution of marriage launched on 3rd June, 2014 by the Petitioner Professor Mundia Muya against Kafili Noria Mulukutu Muya alleging irretrievable

breakdown of marriage on the ground that the parties have stayed apart for atleast 2 years preceding the filing of the petition.

At the hearing of the petition, both parties were represented by their respective Advocates. I was therefore satisfied that the Respondent had been served with the petition and the amended petition filed on 24th August, 2015 together with all the documents accompanying the petition.

I therefore allowed the Petitioner to present his Petition.

DW1 was the Petitioner himself. Professor Mundia Muya. He gave affirmed evidence; he testified that the parties were lawfully married on 2nd April, 2008 under the Marriage Act¹ at Lusaka Civic Centre as evidenced by exhibit P1 which is the marriage certificate.

After the marriage the parties cohabited at No. 8 Elliot Court Great East road campus Lusaka as husband and wife. Both parties are domiciled in Zambia. There is one child of the family namely **Tumelo Muya** (female) born on 14th September, 2006 presently doing her grade VI at Rhodes Park school.

There are no court proceedings elsewhere in the world that might affect the validity of the marriage or property settlement.

It was his evidence that the parties have continuously lived apart for atleast 2 years preceding the presentation of the matrimonial petition and as such the marriage has broken down irretrievably.

The Respondent consents to the decree nisi as shown and admitted in paragraph 1 of the Respondents answer to supplemental petition filed on 7th June, 2016.

He finally prayed for the decreed nisi. He was not cross examined and the Professor rested his case.

RW1 was the Respondent herself **Kafili Noria Milukutu Muya**. She gave sworn evidence. She is a programme Assistant with International Conference of Great Lakes. She confirmed the evidence of the Petitioner and reiterated that the marriage has indeed broken down irretrievably on the situation fact that the parties have lived apart for a continuous period of 2 years immediately preceding the presentation of the petition. She consents to the decree nisi.

She was not cross examined and she rested her case.

On the basis of the evidence adduced I am satisfied that the parties were lawfully married on 2nd April, 2008 at the Civic Centre as evidenced by exhibit "P1" under the Marriage Act¹.

I am also satisfied that there is one child of the family namely **Tumelo Muya**. I am further satisfied that the marriage aforesaid has broken down irretrievably pursuant to section (8) and (9) (d) of the Matrimonial Causes Act² and that the Respondent consents to the decree nisi for divorce.

I hereby therefore grant the decree nisi dissolving the marriage pursuant to Section 41 of the Matrimonial Causes Act and I make the following orders:

- (1) The decree nisi shall become absolute after 6 weeks from the date hereof unless cause is shown why the same cannot be made absolute;
- (2) The issue of custody of the child is referred to this Court in Chambers within 30 days on application by either party in default of agreement;
- (3) The issue of maintenance of the parties and the child and property settlement (if any) are referred to the learned Deputy Registrar for determination within 30 days from the date hereof on application of either party in default of agreement;
- (4) Each party is to bear its own cost.

Dated at Lusaka this *26th* Day of September, 2016



**Mwila Chitabo, SC
Judge**