

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

2016/HP/D212

BETWEEN:

NKULU NYAWA BANDA

AND

ANTHONY NSANGU SIMBEYE



PETITIONER

RESPONDENT

**BEFORE HONOURABLE LADY JUSTICE M. CHANDA THIS 17TH DAY OF
NOVEMBER, 2017**

APPEARANCES:

FOR THE PETITIONER : MS T. MARIATA OF SHARPE AND
HOWARD LEGAL PRACTITIONERS

FOR THE RESPONDENT : MR M. MUKUPA OF ISAAC AND PARTNERS

R U L I N G

LEGISLATION REFERRED TO:

1. SECTION 72 OF THE MATRIMONIAL CAUSES ACT NUMBER 20 OF 2007
2. SECTION 15(2) OF THE AFFILIATION AND MAINTENANCE OF CHILDREN ACT,
CHAPTER, 64 OF THE LAWS OF ZAMBIA
3. SECTION 75(1) OF THE MATRIMONIAL CAUSES ACT
4. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

CASES AND BOOKS REFERRED TO:

1. LILIAN MUSHOTA, FAMILY LAW IN ZAMBIA 2005 UNIVERSITY OF ZAMBIA
PRESS, LUSAKA

2. J V C (1970) AC 68
3. HALSBURY LAWS OF ENGLAND, FOURTH EDITION, VOLUME 13,
4. D V M (MINOR: CUSTODY APPEAL)(1982) 3 All ER 897
5. ELIZABETH NADINE SMITH WESSON V BRIAN SYDNEY STROUD SCJ NO. 35
OF 1998
6. ROSTRON V ROSTRON (1982) 3 FLR 270
7. RE K (RESIDENT ORDER) (1999) TIMES 8/1/99, CA
8. RE MCGRATH (INFANTS) 1895 ICH 148
9. WALKER V WALKER AND HARRISON (1981) NZ RECENT LAW 257
10. POUNTNEY V MORRIS (1984) FLR 38, 384

This is an application for custody of the child of the family under *Section 72 of the Matrimonial Causes Act Number 20 of 2007*. This application follows the grant of decree *nisi* for the dissolution of the marriage between the petitioner and the respondent granted on 30th August, 2016. The summons is supported by an affidavit deposed to by the respondent and filed into Court on 4th April, 2017. The petitioner filed an affidavit in opposition to the application on 10th April, 2017. An affidavit in reply was filed by the respondent on 26th June, 2017.

Hearing of the application was set for 27th June, 2017 but the parties agreed to proceed by way of written submissions and the application was accordingly granted.

The respondent in his affidavit in support of the custody application has deposed in paragraph 4 to 13 as follows:-

