

**IN THE HIGH COURT FOR ZAMBIA
FAMILY AND CHILDREN'S DIVISION
HOLDEN AT LUSAKA**
(Divorce Jurisdiction)

2017/HPF/D253



BETWEEN:

MUSONDA CHISHIMBA MUSAKANYA

PETITIONER

AND

KAPUMPE VALENTINE MUSAKANYA

RESPONDENT

For the Petitioner: Mrs. B. Musukwa Mulenga of National
Legal Aid Clinic for Women

For the Respondent: N/A

JUDGMENT

Legislation Referred to:

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

This is a matrimonial petition launched on 11th October, 2017 by the Petitioner **Musonda Chishimba Musakanya** against the Respondent **Kapumpe Valentine Musakanya** for the dissolution of marriage on allegation that the marriage celebrated on 21st April, 2001 had irretrievably broken down on account of the fact that the parties had lived apart as man and wife for a period of over 2 years

immediately preceding the presentation of the Petition and the Respondent consents to the decree nisi.

At the hearing of the Petition, I was satisfied that the Respondent was duly served with the Petition herein and the accompanying documents as evidenced by his consent to the decree dated 15th July, 2017.

There was also confirmation from the Petitioners Advocates and the Marshall to the Court Mr. Allan Maguswi that the Respondent had informed them that he did not wish to contest the Petition and the Court could proceed with the hearing.

I therefore granted leave to the Petitioner to present her petition.

PW1 was the Petitioner herself. She gave sworn evidence. She narrated that she was lawfully married to the Respondent on 21st April, 2001 at St Ignatius Catholic Church in Lusaka and under the Marriage Act. To support the celebration of marriage, she produced a copy of the marriage certificate which was admitted as exhibit **P1**.

The parties last cohabited as husband and wife at plot No. 12, Mwapona Road Woodlands in the city of Lusaka. The Petitioner is a Banker with Standard Chartered Bank and is in residence at Plot No. 32A, Leopards Lane, Kabulonga Lusaka whilst the Respondent is a Businessman in residence at House No. 15, Twin Palm Road, Ibex, Lusaka.

Both parties are domiciled in Zambia.

There are two children of the family namely:

(1) Shula Valentine Musakanya (male) born on 7th December, 2001 doing grade 10 at Trident College as at time of filing the Petition.

(2) Bwalya George Musakanya (male) born on 7th April, 2004 and doing grade 8 at the same college as at the time of filing the Petition.

It was her testimony that there is one other child born to the Petitioner before marriage namely Choolwe Elisha Nkwabilo aged 21 years.

There is no written agreement as to the arrangement of children. There are no other proceedings subsisting in Zambia or elsewhere in the world which might affect the validity of the marriage or property settlement.

It was her further evidence that the marriage has irretrievably broken down on account of the fact that the parties have lived apart for 2 years (in fact close to 5 years) immediately preceding the presentation of the petition and that the Respondent consents to the decree nisi (simply put, the dissolution of marriage) as evidence by the Respondents consent signed on 11th October, 2017 which was admitted as Exhibit P2.

It was her further testimony that to the best of her knowledge the said consent has not been withdrawn by the Respondent.

She concluded by praying for a decree nisi and that she be granted the custody of the children as they have been and are in her custody.

She rested her case.

Upon reading the Petition and upon hearing the evidence of the Petitioner and the exhibit P1 and P2, I am satisfied that the marriage which was lawfully celebrated on 21st April, 2001 at St Ignatius Catholic Church and also under the Marriage Act¹ has irretrievably broken down on account of the fact that the parties have continuously lived apart as man and wife for a period in excess of 2 years immediately preceding the presentation of the Petition pursuant to Sections 8 and 9 (i) (d) of the Matrimonial Causes Act².

I therefore invoke the provisions of Section 41 of the Matrimonial Causes Act and hereby grant the decree nisi 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 should not be so made;
- (2) I refer the issue of custody of the children to myself within 30 days from the date hereof on application by either party;
- (3) I refer the issues of
 - (a) maintenance of the parties (if any);

- (b) maintenance of children;
- (c) property settlement if any to the Learned Deputy Registrar for determination within 30 days from the date hereof on application by either party in default of agreement.
- (4) I will make no order as to costs, but differently each party shall bear its own costs; save the Learned Deputy Registrar will make such order as to costs upon determining any application under Order (3) above.
- (5) No appeal lies against a Judgment premised on 2 year separation and where the Respondent consents.

Delivered under my hand and seal this 23rd day of March, 2018



Mwila Chitabo, SC
Judge