IN THE HIGH COURT FOR ZAMBIA **2015/HP/D020**
AT THE PRINCIPLE REGISTRY
HOLDEN AT LUSAKA
(Divorce Jurisdiction)

BETWEEN:

DAVIES SILUNGWE **PETITIONER**

AND

MARY SILUNGWE **RESPONDENT**
(Nee Mwansa)

For the Petitioner : *Messrs Mosha & Company*

For the Respondent : *In Person*

JUDGMENT

AUTHORITIES REFERRED TO:

1. ***Section 9 (1) (e), 17(1), 17 (2), 18(1) of the Matrimonial Causes Act No. 20 of (2007)***

The Petitioner Davies Silungwe and the Respondent Mary Silungwe were joined in holy matrimony on the 24th day of November, 2003. The Petitioner filed a petition on the 22nd January, 2015 in which he states that the marriage has broken down irretrievably. The Petitioner states that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

The Petitioner prays that:

1. *The said marriage be dissolved.*
2. *That each party shall bear their own legal costs.*

An acknowledgement of service was filed on the 22nd January, 2015 in which the Respondent experienced that she did not intend to defend this case and that she did not intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardships to her and that in all the circumstances it would not be wrong to dissolve the said marriage.

The Respondent expressed that she wanted to be heard in costs, secured periodical payments and lumpsum provision. Satisfied that the Petitioner and Respondent have adhered to the legal requirements expected of them they were heard on the 2nd November, 2015.

The Petitioner on oath informed the court that he wanted the marriage dissolved. It was his testimony that he and his wife lived apart in 2009. His wife packed all her belongings and left the matrimonial home. Since then the couple have not lived together.

On oath the Respondent informed the court that she and the Petitioner separated on the 22nd February, 2010. She informed the court that she would not suffer any hardships if the court were to grant the divorce. She stated that she had no objections to the divorce being granted and that each side should bear their own costs.

There is only one ground for divorce that is that marriage has irretrievably broken down (Section 8 of the Matrimonial Causes Act No. 20 of 2007). I cannot hold that the marriage has irretrievably broken down unless the Petitioner satisfies me of one or more of the five facts set out in Section 9 (1) of the matrimonial Causes Act No. 20 of 2007.

In the matter before me the Petitioner relied on ***Section 9 (1) (e) of the Matrimonial Causes Act No. 20 of (2007)*** which states as follows:

> ***"That the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition."***

The issue before me is whether or not the Petitioner has established the above. ***Section 17(1) of the Matrimonial Causes Act No. 20 of 2007*** defines separation and states as follows:

> ***"17(1) for purposes of paragraphs (a) and (e) of subsection (1) of section nine, the parties to a marriage may be held to have separated not***

withstanding that the cohabitation was brought to an end by the action or conduct of only one of the parties."

Section 17 (2) states that:

"A decree of dissolution of marriage may be made upon the fact specified in paragraph (e) of subsection (1) of section nine notwithstanding that relevant time.

a) ***A decree or order of a court suspending the obligation of the parties to the marriage or cohabit or***
b) ***An agreement between these parties for separation."***

Section 18(1) of the same Act states as follows:

"The Respondent be a petition for divorce in which the Petitioner alleges five years separation may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial or other hardship to the Respondent and that it would in all the circumstances be wrong to dissolve the marriage."

In the matter before me both the Petitioner and Respondent are in agreement that they have lived apart for five years. The Respondent gave the exact date when she walked out of the matrimonial home as being the 22nd February, 2010, meaning they clocked the five year separation on the 22nd February, 2015, the petition was filed on the 22nd January, 2015. However, by the time they were being heard they had clocked five years. The court is aware that the provision is clear that the couple should

have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

I will not go into whether the Act in the use of the word presentation means filing or meant at the time of hearing the parties. A month compared to having lived apart for four years and eleven months is neither here nor there especially since the petitioner stated that the couple separated in 2009. I make this decision also based on the fact that the Respondent does not oppose the granting of a decree.

I have considered all the circumstances put before me by the couple including their conduct especially the conduct of the Respondent who did not oppose the fact that she packed her belongings and left the matrimonial home. I have also considered that there are no children or other persons concerned mentioned by the couple and that the granting of the dissolution of the marriage will not result in grave financial or other hardship to the Respondent as she herself testified on oath. It would not be wrong to dissolve the marriage as prayed.

A decree nisi is hereby granted (in accordance with section 41 of the Act). The same will be made absolute by force of section 43 of the same Act at the expiration of a period of six weeks from the making of the decree. Either party can apply for the decree absolute to be granted.

Each party to bear their own costs.

DELIVERED AT LUSAKA THIS 10TH DAY OF MAY, 2016.

G.C. CHAWATAMA
JUDGE