

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

2013/HP/D165

BETWEEN:

MANUNGA MUNUNGA

AND

ELIZABETH CHANDA MUNUNGA (Nee MULUMBA) RESPONDENT



PETITIONER

Before the Hon. Mr. Justice M. L. Zulu on the 20th day of June, 2017

For the Petitioner: Ms. Shula of J and M Advocates

For the Respondent: In Person.

J U D G M E N T

Legislation referred to:

1. *Matrimonial Causes Act, No. 20 of 2007*

This Petition for dissolution of marriage between the Petitioner **Mununga Mununga** and the Respondent, **Elizabeth Chanda Mununga** shows that the parties were lawfully married on the 4th day of September, 2004 at New Apostolic Church in the City and Province of Lusaka of the Republic of Zambia and lived together as husband and wife at Bangweulu Street, Chilenje, Lusaka.

At the trial of this Petition, the Petitioner testified that he is an Auditor and resides at Plot 50 Kabangwe.

The Petitioner said that there were four Children born to the parties during the subsistence of the marriage, as per Petition filed into Court.

The Petitioner testified that there were previous proceedings in the Local court at Lusaka, in Zambia with reference to the said marriage between them where the Petitioner summoned the Respondent's 'alleged' man friend Mr. Beene to explain what he has been doing at his matrimonial home with his wife. However, there have not been any proceedings with reference to any property or maintenance of either or both of them. The Petition further states that there were no proceedings continuing in any court outside Zambia which were in respect of the marriage or capable of affecting its validity or substance.

The Petitioner testified that his marriage to the Respondent has broken down irretrievably by reason of the fact that the parties to the marriage have lived apart for a continuous period of at least two years immediately proceeding the presentation of the Petition. She reiterated that the parties have lived apart since June, 2013 and the Respondent consents to a decree nisi being granted.

The Petitioner prayed – that the marriage be dissolved; that the Petitioner be granted full custody of the Children of the family with reasonable access to the Respondent; that the maintenance costs for the Children of the family be shared between the parties; and that each Party bear its own legal costs of this action.

The sole ground upon which this court can dissolve a marriage is to find that the marriage has broken down irretrievably (**Section 8, Matrimonial Causes Act, 2007**).

Section 9 of the said Act provide-

"For the purposes of Section eight, the court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the court of one or more of the following facts

- (a) That Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.*
- (b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.*
- (c) That Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.*
- (d) That parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the decree being granted.*
- (e) That 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 has relied on **Section 9(d)** above in his Petition. The Respondent did not file any Answer to the AMENDED Petition and did not contest the dissolution of the Marriage as evidenced by the Consent filed into court.

At hearing the Petitioner largely relied on the Petition filed herein. The Respondent did not attend the court hearing.

On the totality of the evidence before this court, I am satisfied that the marriage solemnized under the Marriage Act at New Apostolic Church in Lusaka on 4th day of September, 2004 between the Petitioner, **Mununga Mununga** and the Respondent **Elizabeth Chanda Mununga** has broken down irretrievably by reason of the fact that the parties to the Marriage have lived apart for a

continuous period of atleast two years immediately preceeding the presentation of the Petition and the Respondent Consents to the dissolution of the marriage.

I, accordingly, find that the provisions of the law under **Section 9(1)(d) of the Matrimonial Causes Act, 2007** have been satisfied by the Petitioner.

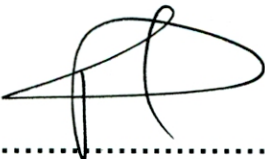
I **DECREE** that the said marriage be dissolved and a **DECREE NISI** is hereby granted which DECREE is to be made absolute within six (6) weeks of the date hereof unless sufficient cause be shown to the court why it should not be made so.

I, Order that a separate hearing be held to hear the parties on the Custody of the children of the family.

I, further Order and refer all issues pertaining to the assessment of Maintenance or Property settlement, if any, to the Learned Registrar of the High Court for determination.

Each party shall bear their own legal costs relating to this action.

Dated at Lusaka this 20th day of June 2017.



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M. L. ZULU
HIGH COURT JUDGE