

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLD AT LUSAKA**

2017/HPF/D.142

(Divorce Jurisdiction)

BETWEEN:

DOREEN MULELA NGOSA

AND

CHILUKUSHA GOLDEN NGOSA



PETITIONER

RESPONDENT

**Before Honourable Mrs. Justice S. M. Wanjelani on the 23rd day
of February, 2018**

*For the Petitioner: Ms. C. Jere, National Legal Aid Clinic for
Women*

For the Respondent: In person

JUDGMENT

Legislation and material referred to:

The Matrimonial Causes Act, No 20 of 2007

The Petitioner, **Doreen Mulela Ngosa**, filed this Petition for dissolution of Marriage on 7th June, 2017 pursuant to **9(1)(d)** of the **Matrimonial Causes Act** (the "Act").

I scheduled the matter for hearing pursuant to **Section 9 (2)** of the **Act**, which provides that:

"(2) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the

facts alleged by the petitioner and into any facts alleged by the respondent."

During trial, the Petitioner confirmed the contents of the Petition. She testified that she was lawfully married to **CHILUKUSHA GOLDEN NGOSA**, the Respondent on the 7th January 2007, at the Seventh Day Adventist Church in the City and Province of Lusaka, Zambia and they last lived together as husband and wife at 63/15 Kabanana in the City and Province of Lusaka of the Republic of Zambia.

The Petitioner stated the Parties are both domiciled in Zambia and that she is a business lady residing in Lusaka while the Respondent is a Principal at Dream Maker School, residing in Ndola. She added that there no children of the family while there are two children now living that have been born to the Respondent during the said marriage so far as is known to her namely **Bupe Ngosa** born sometime in 2010 and **Natasha Ngosa** born sometime in 2011.

In her further testimony, the Petitioner stated that there have been proceedings commenced in the High Court in Zambia in respect of the marriage under Cause Number 2011/HP/D 190, but was discontinued due to the Respondent's refusal to sign the Consent to Divorce and that no agreement or arrangement has been made or is proposed to be made between the Parties for the support of the Petitioner.

In concluding, the Petitioner stated that the marriage has broken down irretrievably as the Parties have lived apart for a period exceeding two years immediately preceding the presentation of this Petition, that is from sometime in August, 2014 to date due to matrimonial disputes and the Respondent consents to a decree nisi being granted. The Petitioner therefore that the said marriage be dissolved; that the Court makes an order as to property settlement; and that each Party bears its own costs. She was not cross examined.

The Respondent also testified and confirmed the contents of the Petition which he stated that he understood and that he consented to the dissolution of the marriage, as per the "*Consent to Dissolution of Marriage*" signed on 10th May, 2017 and filed into Court on 7th June, 2017. The Respondent further confirmed that the Parties had lived apart for a period of over two years and attempts at reconciliation through the family and the Church had proved futile. He was not cross examined.

I have considered the Petition filed in this matter and the Parties oral evidence before me. The only ground upon which a Petition for divorce may be presented for a statutory marriage is provided in **section 8** of the **Matrimonial causes Act No. 20 of 2007** which reads:

“A petition for divorce may be presented to the court by either party to the marriage on the ground that the marriage has broken down irretrievably.”

In order to prove that the marriage has broken down irretrievably, the Petitioner should satisfy the court of one or more of the facts set out in section **9 (1) (a) to (e)** of the Act. This Petition was brought pursuant to **Section 9(1)(d)** of the Act which is provides as follows:

“9 (1) 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:

(d) that the 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 a decree being granted; ...

It is common cause that this Petition is uncontested. Based on the facts stated in the Petition and confirmed by both the Petitioner and the Respondent in their oral testimonies, I am satisfied that the marriage has broken down irretrievably as the Petitioner and the Respondent have lived apart for a continuous period of over two (2) years immediately preceding the presentation of this Petition, that is, from August 2014 to date. I am also satisfied that the Respondent consents to the granting of a decree nisi as he restated during the hearing that he consented to the dissolution of the marriage.

As the conditions of section **8**, and **9 (1) (d)** of the **Matrimonial Causes Act No 20 of 2007**, have been met, I hereby dissolve the marriage between the Petitioner and the Respondent celebrated on the 7th January, 2007 as prayed by the Petitioner and accordingly grant a **DECREE NISI**. The **DECREE NISI** will be made absolute six weeks from the date of this Judgment unless sufficient cause is shown to the Court why it should not be made so.

I further order that the issue of maintenance and property settlement, if any, be referred to the Deputy Registrar upon the filing of a formal application by either Party. I make no order as to costs. Leave to appeal is granted.

Delivered at Lusaka this 23rd day of February, 2018.



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S.M.WANJELANI
JUDGE