

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2007/HP/D.088**

(Divorce jurisdiction)

**B E T W E E N:**

**MARIA MWELWA  
APPLICANT**

**AND**

**INNOCENT MWELWA  
RESPONDENT**

***Before: Hon. Judge B.M.M. Mung'omba on this 17<sup>th</sup> day of October, 2014.***

*For the Applicant: Ms. M.C. Kaoma of KMG Chisanga Advocates*

*For the Respondents: Ms. Kasonga Mweemba of Messrs Mweemba Chashi & Partners.*

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**J U D G M E N T**

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The Petition for dissolution of marriage pursuant to Section 9 of the Matrimonial Causes Act No.20 of 2007 shows that on the 8<sup>th</sup> November, 1997, the Petitioner, **MARIA MWELWA**, was lawfully married to **INNOCENT MWELWA** (*hereinafter called the Respondent*) at the Church of Sacred Heart in Kitwe.

The Petitioner and Respondent last cohabited as husband and wife at Plot No. 8 Curlew Court, Los Angeles Road, Lusaka. The Petitioner and the Respondent are both domiciled in Zambia. The Petitioner is a Receptionist by Profession, but is currently unemployed and resides at Plot No. 17, Hippo

Street, Kitwe, while the Respondent is a Businessman and resides at Flat No. 8 Curlew Court, Los Angeles Road, Lusaka.

There is one child of the family born to the Petitioner and the Respondent now living namely **MWANSA MWELWA** born on 4<sup>th</sup> February, 1998. There is one other child living born to the Respondent during subsistence of the marriage as far as is known to the Petitioner.

There have been no previous proceedings to the said marriage between the Petitioner and the Respondent. There are no proceedings continuing in any country outside Zambia which are in respect of the marriage or capable of affecting its validity or substance.

No agreement has been made against the Respondent for the support of the Petitioner and the child of the family.

The Petitioner further states that the marriage has broken down irretrievably and that the Respondent and the Petitioner have been living apart from each other for a period of over two years **AND THE RESPONDENT** has indicated that he will consent to the dissolution of the marriage.

The Petitioner prayed that:

1. That the said marriage be dissolved;
2. That the Petitioner be granted custody of **MWANSA MWELWA**;
3. That the Petitioner be granted an order for maintenance pending suit;
4. That there be an order for property settlement.
5. That an order of interim injunction directed at the Respondent be issued and that the Respondent be thereby restrained and enjoined under penalty of law whether by himself his agents or servants or otherwise howsoever from disposing of or from dissipating or otherwise dealing with the proceeds of the sale of the family

property situated at Lusaka West in the Lusaka Province of the Republic of Zambia until final determination of these proceedings;

6. That the Respondent be ordered to pay the costs of this suit.

In the acknowledgment of service, the Respondent indicated that he was not defending the case but objected to paying the costs of the proceedings on the ground that the dissolution of the marriage would be by consent and each of the parties would bear their own costs.

In the Answer to the petition, the Respondent admits that the Petitioner and the Respondent had been living apart from each other for a period of over two years and consents to the dissolution of the marriage. That the property in Lusaka West belonged to the Respondent and was not family property. His prayer was that the Court grants the parties joint custody of the child of the family, **MWANSA MWELWA**. That the application for an Order for interim injunction be dismissed.

At the hearing on 17<sup>th</sup> October, 2014 both parties were present and the Petitioner sought to rely on the contents of the petition. The Respondent confirmed that he had lived apart from the Petitioner since 2011, and consented to the dissolution of the marriage.

**Section 9 (1) (d) of the Matrimonial Causes Act** under which this petition has been brought provides:

“9(1) for purposes of Section eight, the Court hearing a petition for divorce shall not hold a marriage to have been 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.”*

I have inquired into the facts alleged by the Petitioner and the Respondent, so far as I reasonably can, and I am satisfied that the marriage solemnized under the Marriage Act at the Church of Sacred Heart on the 8<sup>th</sup> November, 1997 between the Petitioner **MARIA MWELWA** and the Respondent, **INNOCENT MWELWA** has broken irretrievably by reason that the Petitioner and the Respondent have lived apart for a continuous period of at least two years immediately preceding the presentation of this petition.

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

I grant joint custody of the child of the marriage **MWANSA MWELWA**.

I hereby refer all issues pertaining to the assessment of maintenance and property settlement to the learned Deputy Registrar of the High Court for determination.

I order that each party bear their own costs of this petition.

***Dated this ..... day of ..... 2014***

**B.M.M. Mung'omba**  
**HIGH COURT JUDGE**