

IN THE COURT OF APPEAL FOR ZAMBIA  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

CAZ/08/263/2023

BETWEEN:

**JUDY MUBANGA KUSENSELA MHENDE**

Appellant

AND

**EDWIN TAPIWA MHENDE**

Respondent



**Coram: Hon. Lady Justice N.A Sharpe-Phiri on the 20<sup>th</sup> June 2023**

For the Appellant: Mrs. L. Mushota of Messrs Mushota and Associates

For the Respondent: No appearance

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## R U L I N G

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Legislation referred to:

1. *The Matrimonial Causes Act, No. 20 of 2007 of the Laws of Zambia*

This is an extempore ruling on the application brought by the Appellant to stay proceedings of the High Court making a decree nisi absolute pending determination of an appeal against the judgment of 26 April 2023.

The application was brought by way of summons filed into Court on 31 May 2023, supported by an affidavit in support and list of authorities and arguments. The gist of the affidavit evidence is that the Appellant and the Respondent solemnized a marriage union at civic center in Lusaka on 11 September 2020.

The Respondent petitioned for divorce in the Livingstone High Court on the 17 January 2023. The High Court Judge rendered a judgment on 26 April 2023 granting a decree nisi dissolving the marriage between the Appellant and the Respondent ordering the decree to be made absolute after 6 weeks from the date thereof. Being dissatisfied with the decision of the High Court, the Appellant filed an Appeal on 24 May 2023 together with an application seeking to stay proceedings to render the decree nisi absolute pending determination of appeal. However, the trial Court declined to stay the proceedings, which prompted the Appellant to renew the said application before this Court on 31 May 2023.

The application was scheduled for hearing before me on 6 June 2023. On that date, the Appellant's counsel, Mrs. L. Mushota was before Court but the Respondent was absent. The Court adjourned the hearing to enable service of process on the Respondent. The matter was rescheduled to today. Mrs. Mushota was in attendance but the Respondent, who is unrepresented was absent. Mrs. Mushota explained all the efforts she went to ensure service of the application on the Respondent. She also referred to an affidavit of service being filed. Having been satisfied that the Respondent has been made aware of the application, I allowed the Appellant's counsel to proceed with the application. She relied on the documents filed before Court and urged the Court to grant an order staying the High Court proceedings.

I have carefully considered the submissions of the Appellant's counsel. By this application, the Appellant seeks to stay proceedings of the making of the decree absolute.



A close review of Part VII of the Matrimonial Causes Act No. 20 of 2007 specifically, the provisions relating to when a decree nisi becomes absolute, **Section 43 of the Matrimonial Causes Act**, particularly **Section 43(1)** and **43(3)(a)** provides as follows:

*“43. (1) Subject to this section, a decree nisi made on or after the commencement of this Act becomes absolute by force of this section at the expiration of a period of six weeks from the making of the decree.*

...

*(3) Where an appeal is instituted before a decree nisi has become absolute the decree nisi, unless reversed or rescinded becomes absolute by force of this section -*

*(a) at the expiration of a period of twenty-eight days from the day on which the appeal is determined or discontinued; or”*

The import of **Section 43(1) of the Matrimonial Causes Act** is that a decree becomes absolute after six weeks of the making of the decree nisi. Where an appeal has been lodged regarding proceedings where a decree nisi had been granted, a decree nisi only becomes absolute twenty-eight (28) days after determination or discontinuance of the appeal unless such decree has been reversed or rescinded by the Appellate Court. This is provided that the appeal was lodged before the decree became absolute.

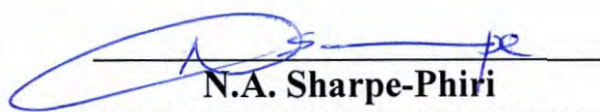
In the present case, given that the appeal was lodged on 24 May 2023 before the expiry of the 6 weeks from date of grant of decree nisi on 26 April 2023, it is clear that by operation of **Section 43(3)(a) of the Matrimonial Causes Act**, the decree nisi cannot be made absolute until 28 days after the appeal is discontinued or determined by the Court of Appeal.

The law is unambiguous that where an appeal has been lodged in proceedings where a decree nisi has been granted, proceedings for the grant of a decree absolute must await the determination or discontinuance of such appeal.

I am therefore of the considered view that the Appellant's application for a stay of the High Court proceedings is unnecessary.

**Section 43(3) of the Matrimonial Causes Act** adequately addresses the Appellant's concerns providing that a decree nisi is not to be made absolute whilst an appeal regarding the dissolution of marriage is pending determination before the Court of Appeal. The application for a stay of proceedings is dismissed accordingly. I make no order as to costs.

**Dated at Lusaka this 20<sup>th</sup> June 2023**

  
**N.A. Sharpe-Phiri**  
**COURT OF APPEAL JUDGE**