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

**2013/HP/D230**

*(Divorce Jurisdiction)*

BETWEEN:

**NSANSHYA MWANZA SIABBETA**

**AND**

**FILTON SIABBETA**



**RESPONDENT**

**BEFORE : HON. G.C. CHAWATAMA**

*For the Applicant : In Person*

*For the Respondent : In Person*

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**RULING**

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AUTHORITIES REFERRED TO:

1. *Section 12 of the Matrimonial Act for the purposes of paragraph (a) of Subsection (1) of Section 9*
2. *Section 41 of the Matrimonial Causes Act.*

On the 14<sup>th</sup> October, 2013 the Petitioner filed a petition for the dissolution of marriage pursuant to **Section 9 (1) (a) and (b) of the Matrimonial Causes Act Number 20 of 2007.**

The Petitioner and Respondent were joined in Holy Matrimony on the 24<sup>th</sup> day of May, 2006. The Petitioner states that the marriage has broken down irretrievably in that the Respondent has committed adultery and the Petitioner finds it intolerable to live with him, secondly that the Respondent has behaved in such

a way that the Petitioner cannot be reasonably expected to live with the Respondent.

The particulars of the adultery are that the Respondent's behaviour is adulterous as he has had several extra marital relations.

The reasons for the unreasonable behaviour are that:

- 1) *The Respondent does not support the Petitioner and the children of the family financially.*
- 2) *That the Respondent is violent, he beats up the Petitioner whenever they have marital differences in the home which behavior makes her believe that her life is in danger.*

The evidence of the Petitioner was that their marriage was solemnized at Civic Center, Lusaka on the 4<sup>th</sup> May, 2006. Two children were born to the couple namely Choolwe Siabbeta aged seven (7) years and Chipengo Siabbeta aged one (1) year and ten months at the time of the petition. The court was informed that the Respondent has committed adultery and fails to support the family. The Petitioner also mentioned the fact that the Respondent was violent and she feared for her life.

The Respondent informed the court that he has tried to facilitate reconciliation between the Petitioner and himself. He has called friends and relatives to help reconcile them but the Petitioner has

made up her mind to leave him. He denied that he did not support the children and that he sends money every month.

The Petitioner informed the court that the Respondent has a child with another lady and that he has continued to communicate with the mother of the child. She further informed the court that he calls other women and often comes home late and when questioned it would usually end up in a fight.

The Respondent agreed that he had a child who was six years old and that he disclosed this to the Petitioner in 2009. When he asked someone to inform her. His desire was to support this child.

I have carefully considered the contents of the Petition and the Respondent's answer to the petition. I have also considered what both the Petitioner and Respondent said in their evidence before me. In law, the test for unreasonableness is whether the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. The court has considered whether a right thinking person would come to the conclusion that the Respondent had behaved in such a way that the Petitioner cannot reasonably be expected to live with him taking into account all the circumstances the characters and the personalities of the parties.

The ranges of the allegations made by the Petitioner are very wide and can be termed as serious.

Examples of unreasonable behaviour may include excessive drinking, unreasonably refusing to have sexual intercourse or making excessive sexual demands, having an intimate relationship with another person falling short of adultery, committing serious criminal offences or keeping the other party unreasonably short of money.

In the matter before me the Petitioner lists the particulars of unreasonable behaviour, these being that the Respondent does not support the Petitioner and the children of the family financially a fact disputed by the Respondent. Unfortunately the Petitioner did not give much detail nor did she state whether this was a one off thing or how often he has deprived the family of money. The Petitioner also mentioned that the Respondent exhibited violent behaviour but did not list when he was violent towards her nor whether or not he actually caused her physical, emotional or mental anguish. Although she did say she indicated that the violent behaviour of the Respondent puts her in a position where she is of the view that her life is in danger.

On the ground of adultery relied on, there was no person who was made party to these proceedings. There was no name mentioned except for the fact that there is a child born out of the

relationship with a nameless person. The Petitioner was told of the child in 2009. She filed the petition on the 14<sup>th</sup> October, 2013. According to **Section 12 of the Matrimonial Act for the purposes of paragraph (a) of Subsection (1) of Section 9** which states:

*“For purposes of Section 8 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 five grounds which in Section 9 (1) (a) includes the committing of adultery for which the Petitioner finds it intolerable to live with the Respondent”*

Section 12 (1) states:

***“A Petitioner shall not be entitled to rely on adultery committed by the Respondent if after it became known to the Petitioner that the Respondent had committed adultery.”***

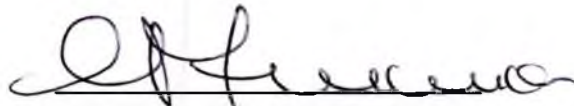
The parties until May, 2013 lived with each other for a period exceeding six months. From the evidence of the Respondent which evidence was not disputed by the Petitioner they continued to live together for a period of over six months and thus the Petitioner cannot rely on this ground.

As for the second ground, although the evidence of the Petitioner was not detailed the court is of a view that since the couple have lived apart since May, 2013 and that the Respondent does not deny the allegation of violent behaviour for which the Petitioner

fears for her life the court has decided to grant the decree nisi in accordance with **Section 41 of the Matrimonial Causes Act.**

Any person who is party to these proceedings may show cause why the decree should not be made absolute if this is not done any party to these proceedings may apply after six weeks for the decree to be made absolute.

**DELIVERED ON THIS 14<sup>TH</sup> DAY OF AUGUST 2014.**



**G.C.M CHAWATAMA  
JUDGE**