

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(Civil Jurisdiction)**



2014/HP/0385

**IN THE MATTER : SECTION 58 (1) (a) (i) (ii) OF THE MATRIMONIAL
CAUSES ACT NO. 20 OF 2007 OF THE LAWS OF
ZAMBIA**

BETWEEN:

**MARGRET MVULA MBEWE
AND
DANIEL MBEWE**

APPLICANT

RESPONDENT

BEFORE HON. MRS. JUSTICE M.S. MULENGA THIS 15TH DAY OF AUGUST 2014.

FOR THE APPLICANT : MS. M. MTONGA OF NATIONAL LEGAL AID CLINIC
FOR WOMEN
FOR THE RESPONDENT : IN PERSON

J U D G M E N T

This action was commenced by way of Originating Summons on grounds of willful neglect to maintain pursuant to section 68(1) (a) of the Matrimonial Causes Act No. 20 of 2007. The Applicant is seeking the following reliefs:

- 1. That the Respondent be ordered to maintain the Applicant and the children of the family.*
- 2. That the Respondent be ordered to pay school fees and other requirements incidental to the school for the children of the family and the Applicant.*

3. *That the Respondent be ordered to pay for the Applicant's and the children's medicals when need arises.*
4. *That the Respondent be ordered to pay rent for the Applicant and the children of the family.*
5. *Further or other relief that the Court may deem fit.*
6. *That the costs of this application be in the cause.*

In the affidavit in support the Applicant states that she got married to the Respondent on the 7th day of August, 2008, at Reformed Church at Kabanana Congregation in Lusaka as per copy of the marriage certificate exhibited as "MMM1". That there are two children of the family born in 2008 and 2011, respectively.

That the Respondent chased the Applicant and the children from the matrimonial home in Mongu on 5th September, 2013. That the children and the Applicant are now residing with the Applicant's mother in Chazanga, Lusaka. That from the time the children and the Applicant came to Lusaka, the Respondent only bought rice, mealie meal, 2kg sugar, bread and cooking oil in December 2013 and in January 2014 the Respondent sent K250.00 for maintenance. That the money sent is not enough to cater for the children's school fees as well as for the Applicant. That currently the Applicant and Children are sleeping on the floor because she cannot afford to pay rent.

That the following are the needs of the Applicant and the children:

1. Rent	K600.00
2. Food	K1,000.00
3. Electricity	K100.00

4. School requirements	K720.00
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	K2,420.00
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They also need medicals when need arises. That for the school fees, she got a quotation from Mapalo Trust School where she is currently in grade 10 and it is her mother who is paying the school fees. However, the children are not yet in school. That the oldest son is supposed to be in middle class and the school fees are K300.00 per term while the younger one is supposed to be in baby class and the school fees are K360.00 per term based on the exhibit "MMM2" which is a copy of a quotation for the school fees and school requirements.

That the Respondent is employed as a driver at the Auditor General's Office in Mongu and is able to afford to maintain the Applicant and the children but has neglected to provide reasonable maintenance hence the application.

The Respondent in his affidavit in opposition acknowledged most of the assertions in the affidavit in support. He however stated that the Applicant and the Respondent do not live together as the Applicant left on 5th September 2013 due to matrimonial misunderstanding and not that he chased her as stated in her affidavit. That the Applicant shall be put to strict proof of the averment relating to sleeping on the floor. That his monthly earning is K1,552.24 as shown on the payslip marked "DM1" for March 2014 month end.

In the affidavit in reply the Applicant responded that her mother's house is a two bedroomed house and one bedroom is occupied by her brother and his wife, while her mother sleeps in the other bedroom.

At the hearing, both parties relied on their respective affidavits. This application has been brought under section 58(1)(a) which provides:

“(1)Either party to a marriage may apply to the court for an order under this section on the ground that the Respondent-
(a) being the husband, has willfully neglected.
(i) to provide reasonable maintenance for the applicant; or
(ii) to provide or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies;”

The facts as revealed from the affidavits is that the Applicant and Respondent were married under the Marriage Act on 7th August 2008. Due to matrimonial misunderstandings the Applicant and the two children of the family left the matrimonial home in Mongu on 5th September 2013 and are living with the Applicant's mother. From September 2013 to the date of this application in March 2014, the Respondent had only provided assistance to the Applicant and the children on two occasions in December 2013 and January 2014 in form of food stuffs and K250.00, respectively.

These facts reveal that the Respondent has indeed willfully neglected to reasonably provide maintenance to the Applicant and the children of the family from the time they left the matrimonial home.

The Respondent's payslip for March 2014 indicates that he gets a gross salary of K3,120.00 and at that time had a net salary of K1,552.24 due to a number of deductions. From the deductions I note that one of

K166.17 for salary advance had only one outstanding repayment showing that it was fully paid in April 2014. This brings the current net pay to K1,718.41. The Respondent is also subject of two loan recoveries of K337.00 and K834.30 totalling K1,171.30 which have affected the net pay. These loan repayments had outstanding installments of 19 and 46, respectively as at March 2014 month-end.

The Applicant has tabulated requirements for rent, food, electricity and school requirements totaling K2,420.00. From the current net income of K1,718.41, this demand of K2,420.00 cannot be reasonably achieved. The Applicant's further statement is that the children are not yet in school. The older child born in 2008 is now over five years and is in immediate need to start school. The fees are usually paid on termly basis.

Section 56 (1) of the Matrimonial Causes Act provides that when making maintenance orders, the Court should have regard to a number of issues which include the financial needs, obligations and responsibilities which the parties have and are likely to have in the foreseeable future. In this case I note that the Respondent has loan obligations of up to K1,171.00 but which are apparently being consumed by him or for his benefit. On the other hand the Applicant is unemployed and has the responsibility of daily taking care of the children.

On these facts, I find it equitable for the net salary to be shared equally between the parties to enable the Applicant and the children to be reasonably provided for. This translates to K860.00 per month. This

however does not discharge the Respondent from giving additional financial support as he is in employment and thus has access to some other adhoc benefits that fall due from time to time. The Respondent as the one responsible for the welfare of his family must also take care of the medical needs of the Applicant and children when need arises.

The monthly maintenance amount of K860.00 to the Applicant and children should be secured to avoid any default. This amount can be subject to review should need arise an application by the parties. As provided by section 94 of the Matrimonial Causes Act, this order may be enforced under the Maintenance Orders (Enforcement) Act Cap 55.

Leave to appeal is granted.

Dated this 15th day of August 2014.


M.S. MULENGA
HIGH COURT JUDGE