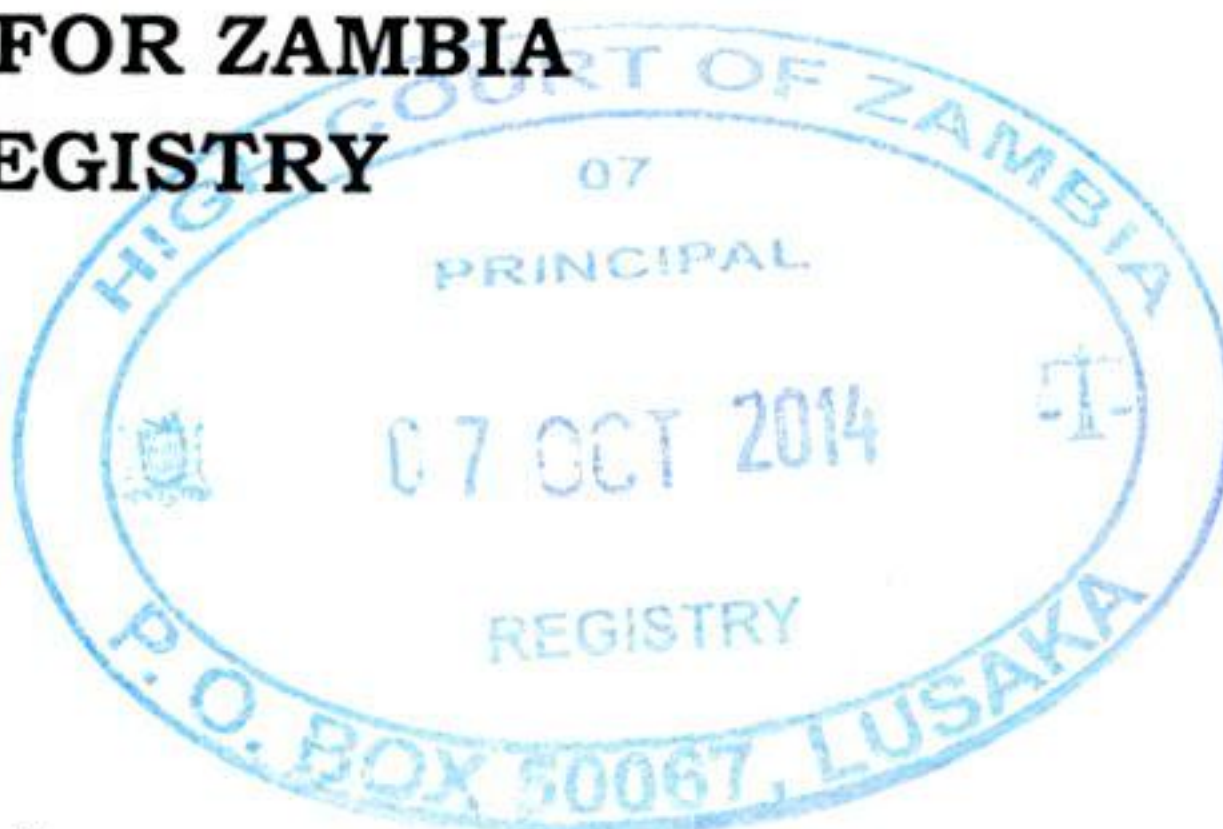


IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPLE REGISTRY  
HOLDEN AT LUSAKA  
(Divorce Jurisdiction)

2011/HP/D151



BETWEEN:

RHODNIE PAUL SISALA

PETITIONER

AND

EUNICE MUTINTA HAAMBOTE SISALA

RESPONDENT

*Before the Hon. Lady Justice F. M. Chisanga on the .... day of ..... 2014*

*For the Petitioner: Mrs N. Simachela, Mrs M. Chakoleka, Messrs Nchito & Nchito*

*For the Respondent: In Person*

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### JUDGMENT

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***Cases referred to:***

- 1. Richards vs Richards (1972) 3 ALL E.R. 695**
- 2. Livingstone Stallard vs Livingstone Stallard (1974) 2 ALL E.R. P. 766**
- 3. Ash vs Ash (1972) Family Division P. 135**

The Petitioner, Rhodnie Paul Sisala, has petitioned this Court for dissolution of the marriage solemnised between himself and the Respondent, Eunice Mutinta Haambote Sisala, contending that the marriage has broken down irretrievably. He relied for this contention on the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her.



The Petitioner claims that the Respondent made several allegations against him and his family to the effect that they are Satanists and that they practice witchcraft. That they killed the Petitioner's first wife and are now contemplating killing her. The Petitioner also alleges that the Respondent diverts money given to her for purposes of food to purchase items for her business thereby depriving the matrimonial home of food and groceries. Further that the Respondent is ill tempered and often quarrelsome. She leveled false allegations against the Petitioner causing him to be arrested but was later released on police bond. This matter however never went to court as there was not enough evidence to prosecute the Petitioner.

It is further alleged that on many occasions, the Respondent has left the matrimonial home with one Mr. Mwenechanya who picks her up from the roadside. Several meetings with senior family members to solve these problems and bring about reconciliation have been unsuccessful and as a result, the parties resorted to living apart. They separated in March 2010.

The Respondent filed an answer and a cross petition in reply in which she denies having behaved unreasonably and states that it is the Petitioner who is stubborn and arrogant. That he does not want to discuss family problems and has thus caused communication breakdown in the home. He further forced her out of the matrimonial home sometime in 2011.

The Respondent has denied having accused the Petitioner and his family of practicing witchcraft and states that she is a loving and respectful wife who has



forgiven her husband of all the times he battered her and caused harm to her. That she however recalled an incident when the Respondent had a habit of walking around the house naked in the middle of the night. When questioned over this behaviour, he claimed to have been using the toilet downstairs and sometimes would say he was sleep-walking. When this behaviour got out of hand, the Respondent advised the Petitioner to stop as children may witness it.

The Respondent further averred that she used to account for the finances because the Petitioner has always been thrifty and she has had to account for every ngwee. She has never run any business where she could divert money. Responding to the allegations of her disappearing acts with one Mr. Mwenechanya, she stated that whenever she went out, she used to inform the Petitioner. That Mr. Mwenechanya was a friend of the family and used to fix the electrical appliances in the home. That he was a former workmate to both the parties. The Petitioner was aware when he picked her up from the matrimonial home.

The Respondent has cross petitioned that the marriage has broken down irretrievably as the petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with him. She has itemised the particulars of unreasonable behaviour, but I will not reproduce them, seeing as she abandoned her cross petition.

At the hearing, the Petitioner testified that he got married to the Respondent in 2007 and problems started two years later. They were unable to resolve these



problems even after seeking help from family members. Due to these differences they decided to live separately in March of 2010. When their problems continued they both sought counsel and decided to divorce. He prayed for the marriage to be dissolved as there has been unreasonable behaviour on the part of the Respondent.

In cross examination, the Petitioner testified that the parties began cohabiting in 1999. When he moved to Lusaka in 2002, the Respondent moved with him to 11 A Twinpalm Road in kabulonga, his permanent address. He testified that the Respondent's lawyers wrote to him for willful neglect but that the matter was dismissed. He told the Court that he recalled being called for a meeting with the Respondent's advocates to attempt settling the matter amicably. They were advised to wait for April 2012 so that they could rely on two years separation as their ground for divorce.

The Petitioner testified further that on many occasions, the Respondent called him a Satanist. The Respondent being a Pastor, he found such sentiments very distressing. He also told the court of incidents when the Respondent would use her friend to harass the Petitioner. At awkward hours, they would have loud discussions and no one listened to him when he complained. He also testified of the time he was arrested due to allegations of assault but the matter was dismissed due to inconsistencies in the evidence. He told the court that the allegations of assault were all fabricated.



The Respondent did not contest the evidence led by the Respondent, and she led no evidence in support of her cross petition. What I gather from the petitioner's testimony, elicited in cross examination and not in examination in chief, is that he was branded a satanist. I gather those accusations were not made in jest. They were serious, to the extent that the petitioner was distressed. I say so because there is no evidence to refute that claim from the respondent. The other allegation I find proved is that loud discussions would be held in the matrimonial home at awkward hours, and his complaints over the same to the respondent and her friends were futile.

I think it is pertinent to state the approach of the court when considering a petition for dissolution of a marriage on the fact of unreasonable behavior.

**Richards vs Richards (1972) 3 ALL E.R. 695** provides valuable guidance. It was held inter alia in the said case that under section 2 (1) (b) of the 1969 Act, the court was required to make a value judgment about the behavior of the respondent and its effect on the petitioner and to take into account, among all the other factors in the case the temperament of the parties.

In the latter case of **Livingstone Stallard vs Livingstone Stallard (1974) 2 ALL E.R. P. 766**, Dunn J. stated, inter alia, that the proper approach was to determine as a question of fact whether the respondent had behaved in such a way that the particular petitioner cannot reasonably be expected to live with the respondent, taking into account the whole circumstances including the characters and personalities of the parties.



Bagnall J. stated the approach eloquently in **Ash vs Ash (1972) Family Division P. 135** when he held that:

*"In section 2 (1) (b) of the Divorce Reform Act 1969 "the petitioner" meant the particular petitioner and not an ordinary reasonable petitioner, and therefore when considering whether a respondent's behavior was such that the petitioner could not reasonably be expected to live with the respondent, the court had to consider both the respondent's behavior and the petitioner's character, personality and attributes, good and bad, and since the petitioner had not shown herself to be of such a character, personality and behavior that she could be expected to live with the respondent, she had satisfied the court of the fact in relation to the marriage under section 2 (1) (b) of the Act.*

*(2) That the petitioner's assertion that there was no possibility of her contemplating living with the respondent was insufficient to establish that the marriage had irretrievably broken down: the court had to examine the evidence, including the parties' assertion on the point and then consider quite generally whether it could be said that, in spite of the respondent's behavior and the petitioner's reaction to that behavior, the marriage had not irretrievably broken down and on the evidence it had not been so proven."*

Viewed in the light of the stated yardstick, I think the fact of having loud discussions at awkward hours is not sufficiently grave enough to enable me arrive at the conclusion that this particular petitioner cannot reasonably be



expected to live with the respondent. It has not been sufficiently shown that the petitioner finds such behavior intolerable.

Turning to the accusation of being a satanist, I find this is sufficiently grave enough to distress the petitioner so as to lead him to find it intolerable to live with the respondent. By so saying, I am not applying an objective standard. Rather it is a subjective one. The petitioner says the respondent is a pastor, and he was distressed when she called him a satanist, especially that she was a pastor. I think her vocation made her pronouncement grave, and weighty. And it was said more than once. The fact that the parties parted ways reinforces the petitioner's claim that he finds it intolerable to live with the respondent. I am satisfied therefore that the marriage has broken down irretrievably as alleged by the petitioner. I therefore pronounce a decree nisi of divorce as prayed. Each party will bear own costs.

Dated the .....<sup>7<sup>th</sup></sup> day of .....<sup>October</sup>..... 2014

  
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**F. M. CHISANGA**  
**HIGH COURT JUDGE**