

IN THE HIGH COURT FOR ZAMBIA

2013/HP/D.274

HOLDEN AT LUSAKA

[Civil Jurisdiction]

Foster Musonda Shawa

V

Pride Shawa



PETITIONER

RESPONDENT

CORAM: Honorable Mr. Justice Mubanga Kondolo, SC

MARSHAL: Ethel Phiri

FOR THE PETITIONER: Ms. M. Mtonga of National Legal Aid Clinic for Women

FOR THE 1<sup>st</sup> RESPONDENT: Mr. S. Nsomboshi of Muleza Mwimbu & Co.

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## **JUDGEMENT**

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### **LIST OF AUTHORITIES**

#### **LEGISLATION**

**1. Matrimonial Causes Act No. 20 of 2007.**

This is a matter in which the Petitioner seeks a decree nisi for dissolution of marriage under sections 8 and 9 (1) (b) of the on the Matrimonial Causes Act No. 20 of 2007 on the grounds that the Respondent has behaved in such a manner that the Petitioner cannot reasonably be expected to continue living with him.

The Petitioner testified that she married the Respondent on 31<sup>st</sup> March, 2007 and they first lived at lived at House No. 04/16 Linda compound and stayed there until their separation.

She further testified that there were no children born between them but there were three children of the family born from earlier relationships. Two of the children were born of her, namely Grace and Yvette whilst one was born of the Respondent and named Pride.

The Petitioner said that the marriage had broken down irretrievably on account of the Respondents unreasonable behavior of which the particulars were as follows;

1. He drinks alcohol excessively.
2. He told her she did not taste like other women and she had to plead for sex. He told her that if he denied her sex she would leave on her own and he wouldn't have to chase her. In 2012 they had sex only thrice.
3. He shifted from the house for one month on the pretext of doing business but when she phoned him a female answered his phone and told her that her husband was a public figure and she would just die of depression. The said female also sent her offensive messages which she showed the Petitioner.
4. The Petitioner stopped buying food at home.
5. He used to drag her outside the house and beat her.

The Petitioner said she realized that she should leave and she did and moved into a two roomed house where she pays rentals of K120 per month. She testified that she only took her clothes and even her children remained in the matrimonial home.

She prayed that the marriage be dissolved and that she be granted the reliefs stated. I pray for the reliefs stated in my petition.

The Petitioner was cross examined and she said she was seeking divorce because of his behavior and not just because he drank alcohol as when she met him he already used to drink.

Under further cross examination she said that she did not establish what kind of relationship the Respondent had with the lady who answered his phone. She reiterated that he used to deny her sex and he stopped buying food for the family. She said he didn't ask her to leave, she left on her own accord.

Under reexamination she said that the Respondent had told her that he intended to marry the woman who had answered his phone.

The Respondent had filed an Answer to the Petition in which he denied most of the Petitioners allegations against him. He agreed that the marriage had broken down irretrievably but on account of the Petitioners unreasonable behavior.

The Respondent testified that he actually had three biological children named Pride, Sharon and Florence. He said nobody had ever caught him or pointed at anyone with whom he was having an extra marital affair and it was therefore not true that he was involved in such an affair/s. He also denied not buying food as he provided everything for the family and on the occasions when he didn't leave money, it was because at that moment the business was not doing well.

The Respondent said it was in fact the Petitioner and her two daughters who were abusive towards him and they would often gang up against him. He alleged the following particulars of unreasonable behavior against the Petitioner;

1. She went for overnight prayers every Friday and had church programs from Monday to Thursday every week.
2. She woke up everyday around 03:00hrs and would sit in the lounge until 06:00 hours and then go and start sweeping outside.
3. She told him that he was a poor man, beneath her class and that she had no sexual feelings for him except for her two previous husbands.
4. She had attempted to divorce him at the local court on three previous occasions but only withdrew the summons after he pleaded with her as he still loved her.
5. She was violent and when beating him she would pull his manhood.
6. She lied that he had assaulted her daughter and he was locked up in police cells for 4 days and she never took him any food or water whilst he was in the cells.
7. She deserted the house leaving him with her two daughters and she took everything from the bedroom and kitchen.
8. After she had already moved from the house, she broke in and stole K3000. He reported to the police and she was apprehended but he had her released the following day after two pastors from their church asked him to have her released from the cells.

The Respondent further testified that he only agreed to have her released from the cells on condition that they signed an agreement that she could keep all the things she had taken so long as the two of them remained free of each other. He said the agreement was signed and it was in his possession. He was therefore surprised that the Petitioner now wanted a divorce as well as property from him again.

He concluded by saying that he found it intolerable to live with his wife and he seeks the prayers contained in his Answer and Cross Petition.

The Petitioner dispensed with cross examination.

I have considered the Petition and Answer & Cross Petition and note that whilst the Respondent answered the Petition, the Petitioner did not answer the Cross Petition. Further, the Petitioner did not cross examine the Respondent. This in effect means that the Petitioner neither controverted nor challenged the Cross Petition and did not take issue with the Respondents Answer to the petition.

It is clear that this marriage has broken down irretrievably and under the circumstances, my ruling is as follows;

1. **The Respondent is granted a Decree Nisi which shall become Absolute after the prescribed statutory period.**
2. **Issues related to custody of the children of family, if any, shall be determined by this court upon application by the parties.**
3. **Issues relating to property settlement and family provision, if any, shall be determined by the Deputy Registrar upon application by the parties.**
4. **Each party shall settle its own costs.**

Dated this ..... day of June, 2014.

**Mubanga M Kondolo, SC**

**Judge**