

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

2014/HP/D0139

BETWEEN:

JOSEPH MWENDA

AND

ANGELA NTENTABUNGA



PETITIONER

RESPONDENT

BEFORE : HON. G.C. CHAWATAMA - IN CHAMBERS

For the Petitioner : Mrs. Marabesa Mwenya – Legal Aid Board

For the Respondent : Mrs. M. Sakala Silumba – National Legal Aid Clinic for Women

RULING

CASES REFERRED TO:

1. *Mundwe Godfrey Mulundika V Rhodah Zangose Mulundika (1991)*

AUTHORITIES REFERRED TO:

1. *Section 8, 9(1) (b), 9(2) of the Matrimonial Causes Act No. 20 of 2007*

The Petitioner and the Respondent were joined in holy matrimony on the 30th May, 2009. One child namely Nandeka Mwenda a girl was born during the subsistence of their marriage.

On the 23rd June, 2014, the Petitioner filed a petition for the dissolution of marriage pursuant to *Section 8 and 9 (e) of the Matrimony Causes Act No. 20 of 2007*.

The Petitioner stated that the marriage has broken down irretrievably, that the Respondent has behaved unreasonably and the Petitioner cannot reasonably be expected to live with her.

Both parties were heard on the 21st January, 2016.

The court was informed that though the Respondent in the acknowledgement of service indicated that she intended to defend the case and did not consent to a decree being granted, she changed her mind and the record shows that through her lawyer she decided that she was no longer contesting the divorce.

On oath the Petitioner informed the court that he was relying on the particulars listed in the petition to support the fact that the marriage between him and the respondent be dissolved.

On oath the Respondent stated that she was agreeable to the particulars of the unreasonable behaviour as contained in the petition of the Petitioner and prayed that the marriage be dissolved.

The court notes that the Petitioner petitioned for the dissolution of marriage pursuant to Section 8 and 9 (e) of the Matrimonial

Causes Act No. 20 of 2007. The court further notes that in the petition the reason given for the breakdown of the marriage is unreasonable behaviour. The court notes that the petition contains particulars of the unreasonable behaviour. The court is satisfied that the parties especially the Respondent was aware of the fact that the reason for the breakdown was not because the parties have lived apart for five years (Section 9(e) but that the Petitioner alleged that the Respondent has behaved unreasonably and the Petitioner cannot be reasonably expected to live with her. The Respondent addressed her mind to this and in her testimony on oath addressed the same.

Section 8 and 9 (1)(b) of the Matrimonial Causes Act No. 20 of 2007, states as follows:-

Section 8 states that:

“A petition for divorce may be presented to the court by either party to a marriage on the grounds that the marriage has broken down irretrievably.”

Section 9(1) (b) states that:

***“For purposes of section eight, 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 of the following facts:
(b) That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.***

Section 9(2) places an obligation on the court to inquire so far as it reasonably can into the facts alleged by the Petitioner and into any facts alleged by the Respondent.

The particulars of the unreasonable behaviour as per the petition of the Petitioner are as follows:-

- I. *The Petitioner and the Respondent last lived together in harmony since their marriage until in 2010 when after a minor domestic dispute the Respondent took some drugs in an attempt to commit suicide.*
- II. *That sometime in 2011 during a minor domestic dispute the Respondent became violent, got a knife and cut the tyres of the family car.*
- III. *In the same year 2011 the Respondent attempted to stab the Petitioner with a knife whilst he was asleep, he woke up suddenly and Respondent shown a torch in his face and she had a knife in her hands.*
- IV. *In 2012 again the Respondent attempted to commit suicide by attempting to throw herself in front of a fast moving car but she was saved by alert members of the public, this was after a domestic dispute.*
- V. *That on the 8th of May, 2014 after another domestic dispute the Respondent attempted to stab the Petitioner with a kitchen knife in the full view of their daughter and his young sister. When he managed to evade her she attempted to cut*

off her vein on the wrist with a view to bleed to death but the Petitioner managed to stop her.

- VI. *That the incidence in paragraph V herein was so horrific that the Petitioner had to report to Chilenje Police Station and a docket was opened against her on the 9th May, 2014 on my way to Livingstone on an assignment.*
- VII. *When the Petitioner returned to Lusaka on the 10th of May, 2014, for fear of his life he decided to sleep away from home but had informed the Respondent about this. The Respondent was very upset about this and she decided to take drugs.*
- VIII. *The Respondent later that night decided to take some drugs in an attempt to commit suicide. The Petitioner had to rush her to UTH after he was informed by his young sister what had transpired.*
- IX. *That whilst at UTH the Respondent's family became violent and hurled insults at the Petitioner accusing him of being the cause of the Respondent's attempted murder. That the Petitioner was saved from the Respondent's family attack when the Police were called to intervene.*
- X. *That during many domestic differences the Respondent would go on a rampage to break things in the house such as the television set, picture frames etc.*
- XI. *That the Respondent has behaved unreasonably throughout the marriage such that the Petitioner cannot be reasonably be*

expected to live with her as he fears for his life and that of the Respondents'.

In her answer and the Respondent did not dispute before court, she admitted to paragraph 4, 5, 6, 7 and 8 of the petition. Designing paragraphs 2, 3, 9 and 10. In her answer the Respondent denied neither slashing car tyres nor attempting to stab the Petitioner. She denied ever throwing herself under neither a moving car nor an attempt to kill herself in front of her daughter and the Petitioner's sisters. The Respondent admits being taken to the University Teaching Hospital and undergoing counseling due to some traumatic experience as a child. She admitted that she had experienced some problems and suicide seemed like a way out for her. She underwent counseling sessions and despite the Doctors requesting her husband to accompany her he did not.

She has continued with the sessions and is confident that she will be alright. Exhibits were photos filed by the Petitioner. The Respondent filed documents which included an anger evaluation process form and the results of the evaluation and a letter from the counselor. In the letter the counselor states that the Respondent had made remarkable progress.

In considering what amounts to unreasonable behaviour the court considers 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/her taking into account all the circumstances and the characters and the personalities of the parties (***Livingstone Stallard v Livingstone Stallard (1974) fam 47***). Although the range of the allegations made by the Petitioner and some made and admitted to by the Respondent are wide and vary from not too serious to serious others falling short of such behaviour including all sorts of anti-social behaviour, courts will consider the following as amounting to unreasonable behaviour:

- *Excessive drinking leading to unpleasant behaviour*
- *Unreasonably refusing to have sexual intercourse or making excessive sexual demands*
- *Having an intimate relationship with another person falling short of adultery*
- *Committing criminal offences or keeping the other party unreasonably short of money*
- *Violent behaviour*

The decision of the Supreme Court in the case of ***Mundwe Godfrey Mulundika V Rhodah Zangose Mulundika (1991)*** is very instructive. The brief facts were as follows:-

1. *The Petitioner and Respondent were married for several years. During this time, the Petitioner had extra marital affairs with other women and had three children out of wedlock. Consequently, the Respondent started drinking*

and the Petitioner claimed his wife's drinking problems became excessive and intolerable, the Petitioner applied for the marriage to be dissolved by the High court.

It was held that:

- i. The behavior of the Respondent is the important issue, and the fact that the Petitioner finds it unbearable to live with the Respondent does not of itself permit a decree to be granted.*
- ii. The relevant time at which irretrievable break down must be established is at the time of hearing the petition.*
- iii. The test to be applied in determining the behavior of the Respondent is that he must behave in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.*
- iv. The Petitioner has not adduced sufficient evidence of the Respondent's behavior either in its cumulative effect or otherwise to prove his case that the Respondent has behaved in such a way that he cannot be expected to live with her and that the marriage has broken down irretrievably.*

I have looked at the Respondent's behaviour and the Petitioner's behaviour and his response to what can only be described as his wife's condition. The Respondent's behaviour is the important issue and the fact that the Petitioner finds it unbearable to continue to live with her.

In the matter before me this itself permits a decree to be granted. The time which irretrievable breakdown took place was 2010. The state of affairs continued until 2014 when the Petitioner decided to petition the court for a divorce. It's the court's view

that the Petitioner has adduced sufficient evidence of the Respondent's behaviour in its cumulative effect to prove his case that the Respondent has behaved in such a way that he cannot be expected to live with her and that the marriage has broken down irretrievably. Having so said the Respondent without the Petitioner's help, encouragement or support has taken the necessary steps to deal with her anger, a step which the court commends and encourages her to continue.

In accordance with the provision of **Section 41 of the Matrimonial Causes Act No. 20 of 2007** a decree of the dissolution of marriage by way of a decree nisi is granted. The same shall not become absolute unless the court by order has declared that is satisfied that the issues relating to the child of the family and property settlement if any has been dealt with. These issues have been dealt with. Either party can make an application for a decree absolute.

DELIVERED AT LUSAKA THIS 18TH DAY OF FEBRUARY, 2016


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G.C.M CHAWATAMA
JUDGE