

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

2016/HP/D358

BETWEEN:

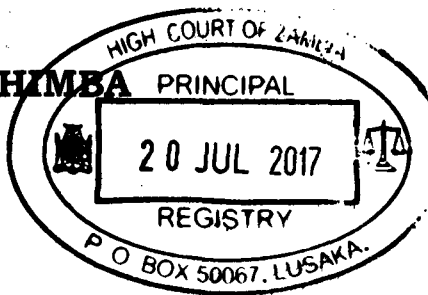
DELIGHT HANDEMA MUCHIMBA

PRINCIPAL

PETITIONER

AND

ROBIN MUCHIMBA



RESPONDENT

**Before the Hon. Mr. Justice M.L. ZULU
in Chambers on the 20th day of July, 2017**

For the Petitioner:

*Mrs. B. Mulenga- National Legal Aid Clinic
for Women*

For the Respondent:

In Person

J U D G M E N T

Cases cited:

- 1. Mahande V Mahande (1976) ZR 287 (S.C).*
- 2. Livingstone-Stallard V Livingstone-Stallard (1974) 2 ALL E.R. P. 766.*

Legislation referred to:

- 1. The Matrimonial Causes Act No. 20 of 2007, Section 9(1)(b).*

This is a petition for dissolution of marriage on the ground that the marriage has broken down irretrievably. The Petition shows that the parties were lawfully married on 20th September, 2008 at the office of the Registrar of Marriages at the Lusaka.

The parties are both domiciled in Zambia and last cohabited at Plot No. P6/12, C6 Kafue Estates in Kafue Estates. The Petitioner is unemployed and currently resides at the above address. The Respondent is an Accountant by Profession but unemployed and resides in Kamwala South with unknown House No, Lusaka.

The couple have two children of the family namely Luyando Muchimba, a boy born on 4th July, 2004 and goes to Josephine Fogg Basic School in Kafue, and Chabota Muchimba a girl born on 20th October, 2009 who goes to Wits Christian School in Kabwe. There are no other children born to the Respondent during the subsistence of the marriage.

There have been no previous proceedings in any court in Zambia or elsewhere with reference to the said marriage or any property of either or both of them.

The Petitioner alleges that the Respondent has behaved in such a manner that she cannot reasonably be expected to live with him. The particulars of unreasonable behaviour are that the Respondent has had several extra marital affairs with different women and would sometimes go out for a week and more without informing the Petitioner. The Petition alleges that the Respondent is emotionally, verbally and physically abusive. The Petitioner alleges that the Respondent left the Petitioner and Children and refused to show them his residence and that he's been living a separate

life as though he is not married and does not support the family. It is further alleged that the Respondent has been sending insulting and disturbing messages to the Petitioner and lacks affection for the Petitioner.

The Petitioner prayed that the marriage be dissolved; that there be an Order for Custody of the Children; that there be an Order for property Settlement; and that Costs be in the cause.

At the hearing, the Petitioner gave oral evidence and called no witness.

In her testimony, she testified that she has been married to the Respondent since 2008. The Petitioner stated that after the Respondent abandoned her and family for over two years she went to live with her Father in Kafue in 2012. It was her testimony that in 2013, she reconciled with the Respondent but in July the same year they separated again and have lived apart since. It was her testimony that during this period the Respondent has not maintain the family. The Petitioner testified that there was no chance of cohabitation resuming between the parties.

That was the evidence in support of the Petition.

The Respondent gave oral evidence and called no witness. His testimony was that the problems began when he lost his job in 2008. It was the Respondents evidence that he left his matrimonial after the Petitioner threatened violence and burnt his clothes. The Respondent admitted to having an affair once, but has a problem with his wife because of her drinking problem.

The Respondent stated worsened in their marriage when the Petitioner was taken to Kasiya College by her parents without his consent. It was his testimony that during this period the Petitioner started communicating

man, which led him to physically confront her and was reported to the police. The Respondent prayed for the dissolution of the marriage because he believed that there was no hope of reconciliation.

That was the Respondent's evidence.

I have considered the Petition and the evidence adduced by both parties. Section 9(1) of the Matrimonial Causes Act sets out the facts upon which a marriage can be said to have broken down irretrievably. These are:

- (a) *That Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent.*
- (b) *That the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.*
- (c) *That Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.*
- (d) *That parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the Petition and the Respondent consents to the decree being granted.*
- (e) *That parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition.*

The Petition is based on the fact of unreasonable behaviour outlined in Section 9(1)(b) which is that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him. In determining

whether or not the Petitioner cannot reasonably be expected to live with the Respondent the court has to consider not only the behaviour of the Respondent as alleged and established in evidence, but the character, personality, disposition and behaviour of the Petitioner. This principle was enunciated by the Supreme Court in the case of **Mahande V Mahande(1)**. Similar sentiments were echoed in the case of **Livingstone-Stallard V Livingstone-Stallard(2)** in which it was stated that the Court must take into account the whole circumstances including the characters and personalities of the parties.

Thus, the Court must decide whether the Respondent's behaviour is sufficiently grave to fulfil that test, that is, to make it unreasonable to expect the Petitioner to endure living with the Respondent bearing in mind the individual characters, personalities and disposition of the parties.

The Petitioner's evidence is that the Respondent verbally and physically abused her on several occasions during the subsistence of the marriage, that abandoned the family and failed to support them. The Respondent does not deny being physical with the Petitioner, but qualifies it as being on one occasion after discovering that she was communicating with another man while in Mazabuka. Further, the Respondent admits that he left the matrimonial home to go and stay in Kamwala South. In his evidence the Respondent states that he left after his clothes were burnt by the Petitioner and was also threatened with violence. He further admits to having an affair once. The Respondent however, failed to justify his reasons for abandoning his matrimonial home and family for over two years without any explanation to his wife. During this period, no one knew his whereabouts and failed to support the family. This behaviour can not be justified or tolerated. I therefore, hold that the Respondent was

unreasonable to have left or abandoned his family for over two years without supporting. The action that led the Petitioner to move back to her parent's house in Kafue.

I find that the Respondent has been abusive, irresponsible and unreasonable towards the Petitioner.

The question is whether the Petitioner can condon the Respondent's behaviour and be expected to continue living with him.

On the totality of the evidence before me, I am of the considered view that the Petitioner cannot reasonably be expected to live with the Respondent. The Respondent has exhibited dangerous levels of deceit, irresponsibility and unreasonableness which he admits and could lead to dire consequences if the parties continue to live together.

It is evident that the Respondent's behaviour of abandoning the Petitioner and Children for over two years without informing the Petitioner where he was is unreasonable behaviour. The Petitioner cannot reasonably be expected to continue living with him.

I therefore, find and hold that the marriage has broken down irretrievably on account of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. I grant a decree nisi for the dissolution of the marriage to be made absolute within six weeks.

Maintenance and property adjustment shall be dealt with by the Learned Registrar of the High Court after I dealt with the Custody of the Children of the family.

Each party shall bear their own costs.

Leave to appeal is granted.

Delivered at Lusaka this 20th day of July, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'Z' followed by a vertical line and a horizontal stroke, all enclosed within a circular loop.

M.L. ZULU
HIGH COURT JUDGE