

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

2016/HP/D281

MAVIS B. KUNDA SIAME

PETITIONER

AND

JACK SICHELA SIAME

RESPONDENT



**Before the Hon. Mr. Justice M.L. Zulu
in Chambers on the 14th day of June, 2017.**

For the Petitioner: *In Person*
For the Respondent: *N/A*

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)*

Work referred to:

1. *Rayden's Practice and Law of Divorce, 9th Edition, London: Butterworths*

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 7th October, 2007 at Grace Ministries Mission International, Lusaka.

The parties are both domiciled in Zambia and last cohabited in Libala South, Lusaka. The Petitioner is a Teacher, Lusaka and currently resides at House No. 642, Kabwata Site and Service.

The couple have one child of the family.

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 is violent and physically abusive. The Petitioner alleges that the Respondent has a violent behaviour and usually beats up the Petitioner to a point where the Petitioner would collapse. The Petitioner alleges that whenever she would be beaten to a point of collapsing, the Respondent would then force himself on the Petitioner and have sex with her in the same state and afterwards brag about his actions. The Petitioner further adds that the Respondent has threatened her life thereby causing her to suffer physical and mental torture.

Further, the Petitioner stated in her Petition that the Respondent does not respect her to the extent that he insults and beats her in public which behaviour the Petitioner finds intolerable.

The Petitioner prayed that the marriage be dissolved; an Order for Maintenance of the Petitioner and the Child of the family; Custody of the Child of the family with reasonable access to the Respondent; and that costs of this Petition be in the cause.

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

In her brief testimony, the Petitioner explained that she has been married to the Respondent since 2007 and started noticing strange behaviour of the Respondent. She testified that things became worse in 2011 and could not bear staying with him as she would wake up realising the bed was wet after collapsing from his beatings. She further added that during such periods when she collapsed from his beatings, the Respondent would force himself into having sex with her. The Petitioner narrated that on several occasions neighbours had to come to her rescue.

That was the evidence in support of the Petition.

The Respondent did not defend this Petition.

I have considered the Petition and Oral submission of the Petitioner. **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.*

This 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 is violent and physically abused her on several occasions during the subsistence of the marriage. That the Respondent beat up the Petitioner so severely to a point of collapsing and would have sex with her in her state of unconsciousness. The evidence of the Petitioner is supported by a medical report supporting the allegation of Assault. The evidence of the Petitioner was not challenged as the Respondent elected not to give his position.

I, accordingly find and hold that the Respondent has been violent and physically abused the Petitioner. According to the learned authors of Rayden's Practice and Law on Divorce, 9th edition at page 136 ***even threats of actual personal violence may constitute cruelty***. The Respondent actions and disposition clearly point to a violent and cruel man. The actions of the Respondent were criminal and he ought to have been prosecuted. Incidences of domestic violence of any nature should not be condoned.

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 violence, which could lead to dire consequences if the parties continue to live together.

There is no evidence to suggest that the Petitioner was quarrelsome, violent or indeed instigated the violence. It is evident that the Respondent's behaviour of beating the Petitioner poses a danger to the Petitioner's health and life and she 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, accordingly grant a **Decree Nisi** for the dissolution of the marriage to be made absolute within six weeks.

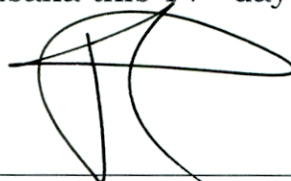
The Petitioner is awarded Custody of the Child of the family with reasonable access to the Respondent as prayed.

Maintenance and property adjustment if any shall be dealt with by the Learned Registrar of the High Court.

I order that each Party bears the costs of this Petition.

Leave to appeal is granted.

Delivered at Lusaka this 14th day of June, 2017.



M.L. ZULU
HIGH COURT JUDGE