

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Family Jurisdiction)*

**2017/HP/D008**

BETWEEN:

**PRETTY KATOZHI MBENGA CHOLA**

AND

**STEVEN CHOLA**



**PETITIONER**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 16<sup>th</sup> DAY OF  
AUGUST, 2017**

*For the Petitioner : In person*

*For the Respondent : No appearance*

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## **J U D G M E N T**

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CASES REFERRED TO:

- 1. Anne Susan Dewar V Peter Alexander Dewar 1971 ZR 38**

LEGISLATION REFERRED TO:

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

The Petitioner filed a petition for the dissolution of marriage on 29<sup>th</sup> March, 2017, pursuant to Sections 8 and 9 (1) (b) of the Matrimonial Causes Act No 20 of 2007.

The petition states that the Petitioner and the Respondent were lawfully married on 14<sup>th</sup> March, 2014, at the office of the Registrar of marriages in Lusaka. That immediately after the solemnization of the marriage the parties lived as husband and wife in Arakan Barracks in Lusaka. The petition further states that the parties last lived together at house

number D64 Arakan Baracks in Lusaka, and that they are both domiciled in Zambia.

Paragraph 5 of the petition avers that the Petitioner is a Sergeant in the Zambia Army and resides at house number 57 B Company, Arakan Baracks, while the Respondent is a retired army officer and resides at house number D64, Arakan Baracks. It is stated that there is one child of the family now living namely Esther Chola, born on 22<sup>nd</sup> December, 2015.

The Petitioner in paragraph 7 of the petition states that there have been no proceedings in court in Zambia with reference to the marriage, or the property of either or both of them, and that there are no proceedings in any court outside Zambia with respect to the marriage which are capable of affecting its validity or substance. It is also stated that no agreement has been made between the parties with respect to the maintenance of either of them, or the children of the family.

The Petitioner states that the marriage has broken down irretrievably as the Respondent has behaved in such a way that she cannot reasonably be expected to live with him. The particulars of the unreasonable behavior are stated as;

- 1. The Respondent having extra marital affairs, and having several children out of wedlock with different women, most of whom he did not disclose to the Petitioner.*
- 2. The Respondent being physically abusive, and violent, resulting in the Petitioner fearing for her life. That on 9<sup>th</sup> November, 2016 the Respondent beat her after she felt electric shock on her neck when she returned to the matrimonial home after having been to see a friend, and found the Respondent home after he had disappeared for*

*three days, and she was only rescued by soldiers, as he had locked her up in the house.*

- 3. The Respondent sleeping out for countless days and weeks, and mostly going out to drink with his girlfriends, which is unbearable for the Petitioner.*
- 4. Due to the Respondent's extra marital affairs and abusive behavior the parties having been living as separate entities, and the Respondent has not been showing any affection towards the Petitioner, and companionship is non-existent between the two.*

The Petitioner therefore prays that the marriage be dissolved, and that she be granted custody of the child of the family, with reasonable access to the Respondent. Further that there be an order for maintenance of the child of the family as well as property settlement, and that costs be in the cause.

The Respondent did not file an answer or complete the acknowledgement of service form despite having been served the petition. He did not attend the hearing.

The Petitioner in her testimony repeated the contents of the petition and produced the marriage certificate that was issued to the parties after the marriage was solemnized, and it was marked 'P1'. She also stated that the marriage had broken down irretrievably as the Respondent had behaved in such a way that she could not reasonably be expected to live with him. She gave the particulars of the unreasonable behavior as the Respondent sleeping out and returning home after three weeks in clean clothes and well shaved.

Further that sometimes he would return home late in the night drunk with ladies in taxis and ask the Petitioner to pay the fare, and they would fight. It was also added that the Respondent would at times say he

had gone to his mother's house, but when asked his mother would say that she last saw him when he was young. The Petitioner testified that the Respondent would beat her and the children of the house, and would sometimes beat the Petitioner with bottles saying that she had delayed to open for him, and would ask her to taste the food. That his behavior had not changed despite his aunt having sat down with them, and talked to them.

Further in her evidence, the Petitioner stated that she had found that the Respondent had more children than those recorded on his file at the office. She explained that she knew that he had two children, but she discovered three birth certificates on his file. That when she had asked his mother and sister they had confirmed the number of children that he had, and was told that he had not divorced his wife but they had merely separated, and he had a child with her about twenty two years ago. That the Respondent thereafter had two children with his second wife, named Maria and Elina, whom the Petitioner had found living with him. She had gone into that marriage with a child.

She was also told that the Respondent had thereafter married a third wife, Chola Chola after he left his second wife, and she died of depression. That Chola Chola has a child with the Respondent called Innocent, and he also left her to date a policewoman called Brenda with whom he has a child called Isaac. She ran away from him as he would beat her.

The Petitioner stated that he then met her and after dating for three months they got married. However the Respondent goes back to his first wife and his sister in law that he had married, interchangeably. The Petitioner narrated one incident when she was assaulted by the Respondent stating that on 9<sup>th</sup> November, 2016 she had returned home after 18:30 hours and had found the Respondent home, after having

been away. She had greeted him and had proceeded to change her clothes, and he had smiled at her.

She had then gone to the bedroom which was dark, and she felt electric shock from her head to her neck and she fell down. When she woke up she found herself in the sitting room and the Respondent was beating her.

It was her testimony that she could not move her hands and legs but she heard people shouting at the window, but the Respondent continued beating her and did not unlock the door. Then soldiers were sent who asked the Respondent to open the door but he told them to go away stating that they all had their problems, and he would sort out his. In her continued testimony the Petitioner stated that she then heard her aunt's voice asking the Respondent to hand the Petitioner over to her, and after refusing, he eventually opened the door, and ran into the bedroom where he locked himself up.

It was stated that the Petitioner was rushed to the University Teaching Hospital (UTH) where she was admitted for three days. When she was discharged and she went home, she found all the children locked outside the house with no access to food, and they only entered the house on breaking down the door. That she went with her aunt and the two small children, and her evidence was that the police started looking for the Respondent who was elusive but managed to apprehend him on 2<sup>nd</sup> December, 2016 at the house.

She stated that the Respondent was charged and arrested and when he appeared in court he was convicted and sentenced to pay a fine, and she had not seen him since. However on being released from jail he got his two daughters sold off all the property that they had but he returns to house number D64, as he has not been paid his repatriation benefits.

The Petitioner asked the court to dissolve the marriage and that she be granted custody of the child of the family, with reasonable access to the Respondent. She also prayed that he be ordered to maintain the child, and that she would not want any property settlement.

I have considered the evidence. The petition was brought pursuant to Sections 8 and 9(1) (b) of the Matrimonial Causes Act No 20 of 2007. The said sections provide that;

***“8. A petition for divorce may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.***

***9. (1) 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;”***

The Petitioner as seen relies on the fact that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him. Thus the question is whether the Petitioner has proved the unreasonable behavior on the Respondent's part?

In the case of ***ANNE SUSAN DEWAR V PETER ALEXANDER DEWAR 1971 ZR 38*** it was held that the test required to prove unreasonable behavior is an objective test that takes into account the characters and personalities of the parties concerned. The first allegation pertaining to the unreasonable behavior is that the Respondent has had extra marital affairs and would sleep out prior to parties separating, and that this would be for days ranging into weeks. A marriage contracted under the

Act such as this one is a union of two people to the exclusion of all others.

As such it was not expected that the Respondent would have relationships with other women whilst married to the Petitioner. Further it was not expected that he would spend nights away from home without just cause. The fact of spending nights away from home was torture to the Petitioner, and she stated so in her pleadings. Then there is also the evidence that the Respondent was abusive to the Petitioner. The Petitioner narrated one incident where the Respondent beat her until she was rescued and taken to the hospital where she was admitted. To beat a spouse to an extent where she is hospitalized is not only violent but brutal and endangered life. Marriage is meant to be enjoyed and it should not turn into nightmare.

Then there is also the aspect of the Respondent having more children than he had informed the Petitioner about. Marriage is founded on principles of honesty and trust, and when these are broken the relationship in some instances turns sour. The failure to be truthful to the Petitioner on how many children the Respondent has goes to show that he does not have commitment to the Petitioner as a spouse, and does not care how she feels about it.

The evidence further shows that the Respondent goes back to his previous partners, and would sometimes go home with women whilst drunk, which again shows that the Respondent is indifferent to the Petitioner's feelings. This is also a reflection of the Respondent's attitude to the marriage, and shows that he has no respect for it. He did not file an answer or appear at the hearing to defend the allegations levelled against him. He has therefore not discredited the Petitioner's testimony as regards his behavior, and he has not asserted any attributes that the

Petitioner has that can be taken into account in finding that he has behaved unreasonably.

The Petitioner on the other hand has shown that the Respondent is a womaniser, and is violent to an extent of endangering her life and health, and this is proof of unreasonable behaviour, as no reasonable person would want to endure such.

I therefore find that the Petitioner has established on a balance of probabilities that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him, and I accordingly grant a decree nisi for the dissolution of the marriage. The said decree shall become absolute after a period of six weeks, and the parties are at liberty to agree on the custody of the child of the family.

In default thereof either party can apply before me at chambers for the grant of the order, and issues of property settlement and maintenance are referred to the Registrar for determination. I make no order as to costs.

**DATED THE 16<sup>th</sup> DAY OF AUGUST, 2017.**

*S. Kaunda*

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**S. KAUNDA NEWA  
HIGH COURT JUDGE**