

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

**2018/HPF/D.0013**

**BETWEEN :**

PRISCILLA MALWA HOFISI

**AND**

EDGAR HOFISI



**PETITIONER**

**RESPONDENT**

**Before Honorable Mrs. Justice M. Mapani-Kawimbe in Chambers on the  
23<sup>rd</sup> day of February, 2018**

*For the Petitioner* : *In Person*  
*For the Respondent* : *No Appearance*

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**R U L I N G**

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**Cases Referred To:**

1. *Shell and BP (Z) Limited v Conidaris & Others (1985) ZR 174*

**Legislation Referred To:**

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

By this application, the Petitioner seeks an interim injunction pursuant to section 101(1) (a) (b) (c) of the Matrimonial Causes Act. It is supported by Affidavit.

The Affidavit discloses that the Respondent is violent towards the Applicant and never resolves disputes in an amicable way. That the Respondent is fond of using anything he lays his hands on just to get back at the Petitioner. Further, that the Respondent recently broke a door in the matrimonial home using an axe so that he could kill the Petitioner's nephew who attempted to resolve the couple's dispute. The deponent states that because of the Respondent's violent behavior, the Petitioner has no access to her youngest child who has been removed from the family home.

The Affidavit further discloses that all efforts to prevent the Respondent's undesirable behaviour, including his phone calls and messages have proved futile. That unless the Respondent is restrained by the Court, the Petitioner will continue to suffer distress, mental anguish and other encroachments on her personal liberty. The Petitioner believes that the injunction will not cause any injury or prejudice to the Respondent who has no justification for tormenting her. She prays to Court to confirm the *ex parte* order of interim injunction.

The Respondent filed an Affidavit in Opposition where he contends that he has never been violent to the Petitioner. That the incident of the broken door is before Court in the main divorce proceedings and not fit for consideration at this stage. He states that Edwin Hofisi, the youngest child of the family is on holiday at the Petitioner's friend's house in Luanshya. That it was wrong for the Petitioner to cite wrong reasons for his removal. The deponent also states that he has never made threatening phone calls nor sent messages to the Petitioner. He prays to Court to discharge the *ex parte* order of interim injunction because he is currently in police custody and it will prejudice his rights as enshrined under the Zambian Constitution.

In Reply, the Petitioner states that the Respondent's excuse of being in custody is feeble. That the Respondent has been appearing in the Kafue Subordinate Court for a criminal case and if he desires, he can appear before this Court as provided under section 65(1) of the Prisons Act. The Petitioner reiterates her prayer to Court to confirm her *ex parte* order of interim injunction.

I have anxiously considered the Affidavits filed herein. The issue to be determined is whether I can confirm the *ex parte* order of interim injunction that I granted on 12<sup>th</sup> January, 2018 pending the final determination of the main cause.

Section 101(1) of the Matrimonial Causes Act provides:

**“(1) Without prejudice to any other powers of the Court, the Court may upon application made by either party to the marriage whether or not an application has been made by either party for any other relief under this Act, grant an injunction or other order as the case may be-**

- (a) For the personal protection of a party to the marriage or of any child of the marriage;**
- (b) Restraining a party to the marriage from entering or remaining in the matrimonial home on the premises in which the other party to the marriage resides or restraining a party to the marriage from entering or remaining in a specified area being an area in which the matrimonial home is, or which the location of the premises in which the other party to the marriage resides.**
- (c) Restraining a party to the marriage from entering the place of work of the other party to the marriage or restraining a party to the marriage from entering the place of work or the place of education of any child of the marriage;**
- (d) In relation to the property of a party to the marriage or**
- (e) Relating to the use of occupancy of the matrimonial home.....”**

In the case of **Shell and BP Zambia Limited v Conidaris and Others<sup>1</sup>**, the Supreme Court stated that a person seeking injunctive relief must demonstrate the following:

- a) A clear right to relief*

- b) *Irreparable damage and injury that cannot be atoned for by damages.*
- c) *A tilt of the balance of convenience in the Plaintiff's favour.*

The first issue I must consider is whether there is a serious issue to be tried. From the Affidavits, it can easily be discerned that the Petitioner and the Respondent have marital problems, which are unresolved. The Petitioner has filed for divorce based on the ground of unreasonable behavior. This *prima facie* suggests that there is a serious question to be determined at trial.

The second issue to consider is whether the Petitioner would be adequately atoned by an award of damages if the interim injunction is not confirmed. The Petitioner claims that the Respondent is emotionally tormenting her and is a violent man. He is in police custody because of his violent behaviour. In my view, if the Respondent is given access to the Petitioner, he is likely to harm her and a monetary award cannot atone for the damage.

I also take the view that to be safe from the Respondent, the balance of convenience rests with the Petitioner. This is a proper case where I can confirm the *ex parte* order of interim injunction

granted on 12<sup>th</sup> January, 2018 and accordingly do so. I make no order as to costs.

Dated this 23<sup>rd</sup> day of February, 2018.

*M. Mapani-Kawimbe*

M. Mapani-Kawimbe  
**HIGH COURT JUDGE**