

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

2018/HPF/D202



B E T W E E N:

LISA MUMBA MUSONDA

PETITIONER

AND

JUSTIN MUSONDA

RESPONDENT

Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 26th day of March, 2018

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

J U D G M E N T

Cases Referred To:

1. *Thurlow v Thurlow* (1975) 2 ALL ER 979

Legislation Referred To:

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

Other Works Referred To:

1. *Rayden & Jackson's Law and Practice in Divorce and Family Matters, 16th Edition by Booth Dame Margaret Wall Q. C. N, Maple G.J and Biggs A.K. London, Butterworths 1991*

The Petitioner, **Lisa Mumba Musonda**, filed a petition for dissolution of marriage on 16th August, 2017, pursuant to sections 8 and 9 (1) (b) of the Matrimonial Causes Act. She was lawfully

married to the Respondent, **Justin Musonda** on 15th August, 2005, at the Lusaka Civic Centre. They last lived as husband and wife at House No. 32 U.T.H. Compound of Nationalist Road, Lusaka.

The Petitioner is an Assistant Administrator for Master Butcheries while the Respondent is a Business man. There are three children born to the Petitioner and Respondent during the subsistence of their marriage.

There are no other proceedings in any Court in Zambia or elsewhere regarding the marriage or between the Petitioner and the Respondent regarding any property of either or both of them. There are no proceedings continuing in any Court outside Zambia in respect of the marriage or proceedings which are capable of affecting its validity or subsistence.

The Petitioner alleges that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved in an unreasonable manner and she cannot be expected to live with him. The particulars of the unreasonable behaviour given are that:

- a) *The marriage with the Respondent has for the last two years been characterized by lack of intimacy and passion from the Respondent towards the Petitioner.*
- b) *The Respondent has been disrespectful towards the Petitioner and has on several occasions been physically abusing her violently.*
- c) *After the last reconciliation, the situation did not significantly improve and the Petitioner realized that her feelings towards the Respondent had been adversely affected by the Respondent's behavior over the years.*
- d) *The Respondent has conducted himself in such a way and manner as to bring the Petitioner into ridicule, disrespect and contempt to both his and her relatives, friends and neighbours.*
- e) *The Respondent has caused a lot of pain and misery into her life, the pain has been very unbearable.*

The Petitioner prayed to Court to dissolve the marriage and grant her custody of the children. Further, for an order on settlement of the property and maintenance.

The Respondent refused to receive the Petition and this is shown in the Affidavit of Service filed into Court on 22nd February, 2018. He did not appear at the hearing.

At trial, the Petitioner (PW) testified that the Respondent was an aggressive and abusive man. There were a number of episodes when he violently abused PW in front of their children. It was PW's evidence that on 18th July, 2017, the Respondent left home with her

vehicle. He returned the next morning in a drunken stupor. PW earlier called for a taxi to take her and the children to work and school respectively. The taxi driver had hardly driven into the yard when the Respondent attacked her with a big log. The neighbours heard her screaming and they came out to watch her assault.

PW testified that she ran to her vehicle for refuge but the Respondent followed her. He smashed the windscreen and broke the driver's window where she was seated. He then pulled her out of the vehicle and continued beating her. The neighbours told her to run away because the Respondent was in a violent rage. She managed to escape and went to Kabwata Police Station where she lodged a complaint for assault. She was issued a medical report and treated at Kabwata clinic. Later her aunt went to visit her and removed her and the children from her matrimonial house. They went to live with her in Makeni.

PW further testified that because the Respondent was usually very drunk, there was no intimacy in their relationship. He had no respect for her family and told her to cut off family ties. When the Respondent's father died in 2010, he put his wedding band in the

casket to show that he would divorce PW. She also testified that on several occasions she would report the Respondent to his mother, who told her to condone her son's behaviour because he inherited it from his father.

PW went on to testify that the Respondent's behaviour grew worse. On some occasion, he tore the Petitioner's clothes because he suspected her of having an extra marital affair. On another occasion, he stripped her clothes off her body and dragged her out of the house. He locked the doors and started hurling insults at her in front of their children and his brother, while threatening to kill her. On another occasion, PW went to visit her sick aunt at University Teaching Hospital. The Respondent followed her to the hospital and slapped her upon contact because he thought that she was lying about her whereabouts. His elder brother who followed the Respondent rescued PW from further beatings. As he intervened, the Respondent insulted him. He decided to leave but told PW to move out of the matrimonial home because the Respondent was very abusive.

PW stated that after the hospital visit, she returned home with police escort but the Respondent threatened to do something bad to them. They left her behind and she slept in the vehicle. The Respondent followed her to the vehicle in the wee hours of the morning and tried to beat her, but she managed to escape. She prayed to Court to grant her a divorce because she could no longer bear the Respondent's behaviour.

I have earnestly considered the Petition and the evidence adduced herein. The only ground upon which a petition for divorce may be presented to the Court is provided in section 8 of the Matrimonial Causes Act which states thus:

"A Petition for divorce may be presented to the Court by either party to the marriage on the ground that the marriage has broken down irretrievably."

In order to prove that the marriage has broken down irretrievably, the Petitioner should satisfy the Court of one or more of the facts set out in section 9 (1) (a) to (e) of the Act. Section 9 (1) (b) which is relevant to this Petition provides that:

"9 For the 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 Learned Authors of **Rayden & Jackson's Law and Practice in Divorce and Family Matters** state at page 214 that:

“Behaviour is not confined to behaviour by the respondent: the behaviour may have reference to the marriage although it is to other members of the family or to outsiders. Any and all behaviour may be taken into account: the Court will have regard to the whole story of the matrimonial relationship. But behaviour is something more than a mere state of affairs or a state of mind. Behaviour in this context is action or conduct by the one which affects the other.”

The Learned Authors further state that:

“The Court has to decide the single question whether the respondent has so behaved that it is unreasonable to expect the wife to live with him: In order to decide that, it is necessary to make findings of fact as to the impact of that conduct on the Petitioner.”

In the case of **Thurlow v Thurlow**¹, on deciding the question of unreasonable behavior, the Court held that:

“In order to establish that a respondent had behaved in such a way that the Petitioner could not reasonably be expected to live with the Respondent, it was not sufficient merely to establish that the marriage was dead and it was impossible for the Petitioner to cohabit with the Respondent. It had to be shown that it was the Respondent's behaviour which justified a conclusion by the Court that the Petitioner could not reasonably be expected to endure cohabitation.”

In order to establish unreasonable behaviour, I must be satisfied that the Respondent's actions have exhausted the

Petitioner's endurance levels to a point where she cannot be reasonably expected to live with him. The test to be applied in the circumstances is that of a reasonable man.

In her testimony, the Petitioner recounted how the Respondent physically and emotionally abused her. She was beaten on a number of occasions and suffered humiliation in front of the children and neighbours. The Respondent was not only aggressive to PW but the children. PW stated that the Respondent was an alcoholic and had no regard for his family or occasions. PW testified that she lodged an assault complaint against the Respondent who had also threatened her life. The Respondent's mother was of no consolation because she told PW to persevere with her son's violent behaviour. In strange circumstances, the Respondent put his wedding band in his father's casket.

All these episodes, in my view, show that the Respondent's behaviour is unreasonable. He is a very abusive man and has subjected his wife to humiliating suffering. It is worrying that his violence is exhibited indiscriminately and in front of his children. It must have a traumatizing effect on the children. It is difficult to

imagine that the children saw their mother naked, whilst being hurled with insults.

PW testified that she no longer desires to be with the Respondent and her reasons are obvious from the evidence. I am therefore, satisfied that the Respondent has behaved in a way that the Petitioner cannot reasonably be expected to live with him. I accordingly, dissolve the marriage between the Petitioner and Respondent celebrated on 15th August, 2005 and grant the Petitioner a decree nisi. It will be made absolute six weeks from the date of this judgment.

I shall determine the question of custody, while the Learned Deputy Registrar will deal with the issues of property settlement and maintenance upon application by either party. I make no order as to costs.

Dated this 26th day of March, 2018.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE