

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

**2020/HPF/D0022**

BETWEEN:

**WAYNE IAN MANTON**

AND

**LESLEY OLIVER MANTON**



**PETITIONER**

**RESPONDENT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 31<sup>st</sup> DAY OF  
AUGUST, 2020**

*For the Petitioner : Mrs M. Milambo, Messrs Mwenye & Mwitwa Advocates*

*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. Katz V Katz 1972 3 ALL ER 219**
- 2. Livingstone-Stallard V Livingstone-Stallard 1974 ALL ER 767**

LEGISLATION REFERRED TO:

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

OTHER WORKS REFERRED TO:

- 1. Joseph Jackson in Rayden's Law and Practice in Divorce and Family Matters in all courts, 12<sup>th</sup> Edition, Volume 1 Text, London Butterworths, 1974**

This petition for the dissolution of marriage was filed on 16<sup>th</sup> January, 2020, pursuant to Sections 8 and 9 (1) (b) of the Matrimonial Causes Act No 20 of 2007.

The petition states that the Petitioner, Wayne Ian Manton, was lawfully married to the Respondent, Lesley Oliver Manton on 22<sup>nd</sup> August, 1992 at Ruwa in the Republic of Zimbabwe. After the celebration of the marriage, the parties lived together as husband and wife at Tata Farms Plot 372A Ngwerere Road, Rose Blooms Zambia Limited in Lusaka, Zambia.

Both parties are domiciled in Zambia, and the Petitioner is a Zambian citizen and works as Director at Rose Blooms Zambia Limited, while the Respondent is a book keeper currently residing at Number 72 Lee Street, Horley RH68ES, United Kingdom. The petition further states that there is one child of the family now living, namely Brent Manton, who was born on 1<sup>st</sup> January, 1997. He is aged twenty two (22) years, and is working and is financially independent.

There is no other child now living, born to either party during the subsistence of the marriage, so far as is known to the petitioner. It is stated that there have been no previous proceedings in any court in Zambia or elsewhere with reference to the marriage or the property of either or both of them.

Further, there are no proceedings continuing in any court in Zambia with respect to the marriage, which are capable of affecting its' validity or substance. The petition states that no arrangement has been made

between the parties for the maintenance of the Respondent or with regard to the settlement of property.

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

1. *That on 22<sup>nd</sup> March, 2019, the Respondent left Zambia for the United Kingdom and has been residing there since.*
2. *That the Respondent left the matrimonial home in Zambia without any proper communication with the Petitioner, and the only communication made with him was a message from the Respondent sent via a social media platform called WhatsApp.*
3. *The Respondent stated in the said WhatsApp message that she wanted to find herself and was not going to listen to anything that the Petitioner had to say. The Respondent further stated that she was not going to return to Zambia and she did not want anything from the Petitioner.*
4. *That despite various efforts by the Petitioner, the Respondent has fervently stated that she has no intentions of returning to Zambia, and this position was recently echoed in the email that she sent to the Petitioner on 15<sup>th</sup> October, 2019.*
5. *That as a result of the Respondent's behavior, the Petitioner has suffered mental and emotional anguish, and he has every reason to believe that his marriage to the Respondent has no prospects of continuing, and is virtually at an end.*

The Petitioner prays that the marriage be dissolved, and that each party bears their own costs of the proceedings. He also prays that the court grants any other relief that it may deem fit.

The Respondent did not file an answer, but she completed the acknowledgment of service form, in which she indicated that she did not intend to defend the petition. Further, that she would not like to be heard on maintenance and property settlement.

At the hearing, only the Petitioner and his advocate were before court. On record is an affidavit of service dated 17<sup>th</sup> August, 2020, which shows that the Respondent was served the notice of hearing of the petition on 20<sup>th</sup> July, 2020 through email. The Respondent was therefore aware of the hearing date, and the Petitioner was granted leave to present his petition.

The Petitioner as the only witness to his case, confirmed the contents of the petition. He produced the marriage certificate into evidence, as proof that the parties were married, and it was marked as 'P1'. On the unreasonable behavior on the part of the Respondent, the Petitioner told the court the Respondent in late March, 2019, asked if she could go to Zimbabwe to visit her sister. The Petitioner granted the Respondent's request, and she left.

He testified that when he sent the Respondent a WhatsApp message to find out how she was getting on, she had responded stating that she would not be returning to Zambia, and that she no longer wanted to be married to the Petitioner. His testimony was further that over next

months, he negotiated with the Respondent and tried to work on his marriage.

However, the Respondent requested to go to the United Kingdom to go and find herself, and the Petitioner purchased an air ticket for her, and she went there. In late August, the Respondent informed the Petitioner that she would not be coming back to Zambia, and that the Petitioner should stop working on the marriage. The Respondent also confirmed that she wished to divorce the Petitioner.

He stated that the letter evidencing the communication from the Respondent was exhibited as 'WMI2' to the affidavit in support of the summons for leave to issue and serve process outside jurisdiction. The Petitioner prayed that the marriage be dissolved, so that he could carry on with his life.

I have considered the evidence. The petition was brought pursuant to the provisions of Sections 8 and 9 (1) (b) of the Matrimonial Causes Act No 20 of 2007. Section 8 of the Matrimonial Causes Act provides for the ground for divorce. It states 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”.***

Section 9 of the said Act on the other hand provides for the facts that need to be proved in order to establish that a marriage has broken down irretrievably. It states that;

***“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.***

***(a) that the 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 the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;***

***(d) that the 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 a decree being granted; or***

***(e) that the parties to the marriage have lived apart for continuous period of at least five years immediately preceding the presentation of the petition”.***

The Petitioner relies on the fact the Respondent has behaved in such a way that he cannot reasonably be expected to live with her. On what constitutes unreasonable behavior, the case of ***Livingstone-Stallard V Livingstone-Stallard*** <sup>(2)</sup> laid down the test for reasonableness as;

***“would any right-thinking person come to the conclusion that his (wife) has behaved in such a way that this***

***(husband) cannot reasonably be expected to live with her, taking into account the whole of the circumstances, and the personalities of the parties”.***

Further, ***Joseph Jackson in Rayden’s Law and Practice in Divorce and Family Matters in all courts, 12<sup>th</sup> Edition, Volume 1 Text, London Butterworths, 1974*** at paragraph 25 at page 216 states that;

***“In considering what is reasonable, the court in accordance with its duty to enquire so far as it reasonably can into the facts alleged, will have regard to the history of the marriage and to take the individual spouses before it, and from this point of view will have regard to this petitioner and this respondent, in assessing what is reasonable, allowance will be had for the sensitive as well as for the thick skinned”.***

In the case of ***Katz V Katz*** <sup>(1)</sup> it was stated that;

***“Behavior is something more than a mere state of affairs or a state of mind such as for example, a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating his love, or not being demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other, such conduct may take either acts or omission or may be a course of conduct and, in my view, it must have reference to the marriage.....The court must consider the effect of the***

***behavior on this particular plaintiff and ask the question: is it established, not that she is tired of the plaintiff or colloquially fed up with him, but that she cannot reasonably be expected to live with him. In a sense it seems to me wrong to call it, as we are apt to do, unreasonable behavior. It is behavior that causes the court to come to the conclusion that it is of such gravity that the wife cannot reasonably be expected to live with him”.***

Therefore, in this matter, in determining whether the Respondent has behaved unreasonably, even attributes of the Petitioner have to be taken into account. The allegations of unreasonable behavior on the part of the Respondent's part relate to the Respondent having left the matrimonial home without giving any reasons, and declaring that she wants the marriage to be dissolved.

The Respondent did not file an answer, and she stated in the acknowledgment of service that she does not intend to defend the petition. Therefore, she has not indicated any attributes on the part of the Petitioner that would enable me determine the basis for her behavior. What is before me is that the Respondent has walked out of her marriage, without any reasons, and has declared that the marriage should be dissolved. This action, without giving any basis for it, leads me to the conclusion, that the Respondent has no reason for doing so.

Therefore, she has behaved unreasonably. I accordingly find that the Petitioner has proved that the Respondent has behaved in such a way that he cannot reasonably be expected to live her, and on that



account, the marriage has broken down irretrievably. I therefore grant a decree nisi for the dissolution of the marriage, which shall become absolute after a period of six weeks. Issues of property settlement and maintenance are referred to the Hon Registrar for determination. Each party shall bear their own costs of the proceedings.

**DATED THE 31<sup>st</sup> DAY OF AUGUST, 2020**

                    Kaunda                      
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**