

EDWARD ANTHONY MALAMA AND JACQUELINE MALAMA (NEE MUKANDWA)

SUPREME COURT

CHIBESAKUNDA, J. S.

6TH JUNE 2000 AND 5TH DECEMBER 2000

APPEAL NO. 84/2000

Flynote

Domestic Relations Law - Divorce - unreasonable behaviour - irretrievable breakdown of marriage.

Headnote

The Respondent and the Appellant married on 27th June 1987 at St. Anthony's Catholic Church, Kansenshi, Ndola. The Couple had three children by the said marriage. There was no matrimonial harmony from 2nd September 1991 because the appellant believed that the respondent used love potions and herbs to her body and introduced some to his food. The appellant found this behaviour unreasonable, unacceptable and highly offensive. He filed for divorce citing unreasonable behaviour as the cause of the irretrievable breakdown of the marriage. The court below dismissed the petition on the grounds that the appellant had not established prompt beyond reasonable doubt that because of this conduct by the respondent the marriage had irretrievably broken down. On appeal the appellant questioned the failure of the court below to apply the correct standard of proof to establish that the marriage had broken down irretrievably.

Held:

The conduct of the respondent was such that the appellant could not reasonably be expected to live with her in that she resorted to the application of love potions, even after the protestation of the appellant. The marriage had broken down irretrievably. Appeal allowed.

Cases referred to:

1. Dewer v. Dewer (1997) S.J.Z. 143 at 147.
2. Mahande v. Mahande (1976) Z.L.R. 287 at 297.
3. Stallard v. Livingstone - Stallard (1974) 2 All. E.R. 766 Ibid. in the Digest. Re-issue
vol. 27(2) Husband and Wife para. 4718 at P.120.
4. Katz v. Katz (1972) 3 All E.R. 219.

Acts referred to:

1. The Matrimonial Causes Act of 1973.
2. The High Court Act, Cap. 27.

For the Appellant J. Kabuka, Messrs J. Kabuka & Company, Ndola.

For the Respondent J.C. Kaumba, Principle State Advocate, Legal Aid
Directorate.

Judgment