

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

2024/HPF/D380

BETWEEN:



SIKOPO MATAA NG'ANDU

PETITIONER

AND

TRIPHER NG'ANDU

RESPONDENT

*Before the Honourable Mrs. Justice M.M. Bah-Matandala
Dated this 3rd December 2024.*

*For the Applicant: In person
For the Respondent: In Person.*

J U D G M E N T

Legislation and Other Works Referred To:

1. *The matrimonial causes act No. 20 of 2007.*
2. *Rayden and Jackson on Divorce and Family Matters 16th Edition, Butterworths.*
3. *Rayden's Law & Practice in Divorce & Family Matters in the High Court, County Courts' &*
4. *Magistrates' Courts, 11th Edition, London, Butterworths.*

Cases Referred To:

1. *Brighton Soko vs Petronella Sakala Soko, - SCZ-8-189-2015*
2. *Ash vs Ash (1972) 1. A.E.R. 582*
3. *Mahande vs Mahande (1976) Z.R. 354 (S.C).*

1.0 INTRODUCTION

1.1 This is a Petition for dissolution of marriage which was filed on 20th June 2024, pursuant to the provisions of

section 8 and 9 (1)(b) of the Matrimonial Causes Act No. 20 of 2007 on the ground that the marriage has broken down irretrievably by reason of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

Sections 8 and 9 (1) (b) of the Matrimonial Causes Act provides 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...”***

1.2 Further, **Section 9(2) of the Matrimonial Causes Act** provides that:

***“On a petition for divorce it shall be the
duty of the Court to inquire so far as it
reasonably can, into the facts alleged by the
petitioner and into any facts alleged by the
respondent.”*** (Court’s emphasis)

2.0 BACKGROUND

2.1 The Petition indicates that the Petitioner is namely ***Sikopo Mataa Ng’andy*** who was lawfully married to the Respondent, ***Tripher Ng’andu***, on the 1st December 2009 at the office of the Registrar of Marriages at Civic Centre in the City and Province of Lusaka of the Republic of Zambia.

2.2 The Parties last lived together as husband and wife at House No. 1 Mukuya Road in the City and Province of Lusaka of the Republic of Zambia.

- 2.3 Both the Petitioner and Respondent are domiciled in the Republic of Zambia.
- 2.4 The Petitioner is a Business Lady by profession and resides in Lusaka whilst the Respondent is a Business Man and resides in Lusaka Province of the Republic of Zambia.
- 2.5 There are Four (04) children born to the Petitioner and the Respondent during the subsistence of the marriage namely;
- i Joshua Ng'andu a male born on 1st June 2010.*
 - ii Atalia Ng'andu a female born on 9th July 2013.*
 - iii Abishai Ng'andu a male born on 9th July 2023.*
 - iv Shakinah Ng'andu female born 31st May 2017.*
- 2.6 There have been no previous proceedings in any Court in Zambia or elsewhere, with reference to the marriage that are capable of affecting its validity or substance.
- 2.7 There are no proceedings continuing in any country outside Zambia which are in respect of the marriage or are capable of affecting its validity or subsistence.

2.8 No arrangement or agreement has been made or proposed to be made between the parties for the support of the Respondent or otherwise relating to or arising out of or connected to these proceedings.

2.9 The said marriage has broken down irretrievably.

2.10 The Petitioner has alleged that Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

3.0 THE PETITIONER'S CASE

3.1 The Petitioner alleges that the marriage has broken down irretrievably as the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

3.2 The Petitioner has relied on **Section 8 and 9 (1) (b) of Matrimonial Causes Act**, which provides that irretrievable breakdown maybe proved by satisfying the Court that the Respondent has behaved in such a way that the Petitioner, or *vice visa* in the case of cross petition, cannot live with the Respondent.

3.3 The Petitioner avers the particulars of unreasonable behavior herein are as follows;

- i) the Respondent is a violent person who has on several occasions physically assaulted the Petitioner.*
- ii) the Respondent does not provide for the children of the family financially.*
- iii) the Respondent and the Petitioner have lived apart for continuous period of not less than two years, since April 2022.*

3.4 The Petitioner therefore prays that;

- i the said marriage be dissolved.*
- ii each party bears their own costs.*

4.0 ANSWER

4.1 The Respondent did not file an Answer to the Petition but acknowledged the service of the Petition on 14th June, 2024, wherein he indicated that he will defend the Petition but did not file an Answer to the Petition.

5.0 HEARING

5.1 At the hearing of the matter on the 20th November 2024 the Petitioner augmented her Petition by testifying on oath that the marriage has broken down irretrievably on

the basis of unreasonable behavior by the Respondent as stated in the Petition.

5.2 The Petitioner testified on oath in her own respect and did not call any witness. Further, she largely recited her averments in her Petition.

5.3 The Petitioner informed the Court that she relied on the contents on the Petition. And she wishes the Court to grant them a divorce.

5.4 The Respondent did not file an answer to the Petition but acknowledged the service of the Petition.

6.0 SUBMISSIONS

6.1 There were no submissions from both parties filed at the time of this judgment.

7.0 CONSIDERATIONS AND DECISION

7.1 I have considered the Petitioners' pleadings and the oral testimony by the Petitioner.

7.2 Firstly, I take cognizance of the fact that the parties celebrated their civil marriage in the Republic of Zambia as evidenced by the marriage certificate exhibited in the Petition.

- 7.3 I therefore make a finding of the fact that the parties' marriage was celebrated in compliance with the **Marriage Act, Chapter 50 of the Laws of Zambia**. I am satisfied that the parties were properly married in compliance with the laws of the Republic of Zambia.
- 7.4 It is the presence of the marriage certificate which forms the basis of my jurisdiction over the Petition as the same shows that their marriage is not customary but *statutory*.
- 7.5 I have also taken cognizance of the position that the Petitioner and the Respondent are both resident in the Republic of Zambia for purposes of **Section 4(3) of the Matrimonial Causes Act**, which bestows jurisdiction on the High Court, to entertain a petition for dissolution of a statutory marriage, based on the residence or domicile of one or both parties to the marriage. The provision states as follows;

"The Court shall have jurisdiction in proceedings for divorce or for a decree of nullity of marriage if either party to the marriage..."

(a) is domiciled in Zambia at the date of the commencement of the proceedings; or

(b) is resident in Zambia at the date of the commencement of the proceedings, and has been ordinarily so resident for a period of not less than twelve months immediately preceding that date.

7.6 Furthermore, it is my finding that the Petition is properly before the Court because it was issued out of Court at least one year post the solemnization of the subject marriage. This is in view of **Section 6 of the Matrimonial Causes Act** concerning the timeframe within which a Petition for the dissolution of a marriage can be presented to the Court. The said provision prescribes that a Petition for the dissolution of marriage can only be filed into Court after the lapse of one year from the date the marriage was contracted.

7.7 Based on the foregoing findings, it is my position that I have jurisdiction to entertain the present Petition.

7.8 I now turn to determine whether the marriage of the parties has broken down on ground of unreasonable behaviour.

7.9 As highlighted already, the Petitioner has indicated that the marriage has broken down irretrievably, and regrettably the Respondent has not rebutted the allegations.

7.10 I wish to begin by stating that the test to apply on whether the Respondent's behaviour was unreasonable to the Petitioner, and the eminent ***author of Raydens Law & Practice in Divorce & Family Matters in the High Court, County Courts & Magistrates' Courts***, opined as follows at page 203 paragraph 25:

“Nevertheless, in considering what is reasonable, the Court (in accordance with its duty to inquire, so far as reasonably can, into the facts alleged) will have regard to the history of the marriage and to 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 made for the sensitive as well the think-skinned;...”

7.11 The said eminent authors further opined at page 204, paragraph 26 as follows:

“Regard will be had to the cumulative effect of behaviour, for while conduct may consist of a number of acts each of which is unreasonable in itself, it may well be even more effective if it consists of a long continued series of minor acts no one of which could be regarded as serious if taken in isolation, but which, taken together, are such that the petitioner cannot reasonably be expected to live with the Respondent.”

7.12 In the Supreme Court of Zambia Judgment of ***Brighton Soko vs Petronella Sakala Soko¹***, their Lordships held as follows at page J28:

“In taking the view which we have taken, we have paid careful attention to the

reasoning which we have adopted in Mahande namely that when considering the Respondent's behaviour in the context of a divorce petition founded on 'unreasonable behaviour' as enacted in Section 9 (1) of the Matrimonial Causes Act No. 20 of 2007, it is not just the behaviour of respondent which is decisive but, equally crucial and as much decisive, is the way in which such behaviour relates to or interests with the character, behaviour, personality, disposition and other traits and attributes of the particular petitioner involved." (Court's emphasis)

7.13 In the same case, the Supreme Court of Zambia cited the English case of *Ash vs Ash* wherein it was stated in part by Bagnall, J at page 140 as follows:

"the general question may be expended thus: Can this petitioner with his or her character and personality, with his or her faults and other attributes, good and bad, having regard to his or her behaviour

during the marriage, reasonably be expected to live with this Respondent?”

7.14 The **Ash vs Ash**² case was also cited with approval in the Judgment of the Supreme Court of Zambia in **Mahande vs Mahande**³, wherein Cullinan, AJS., stated as follows:

“...The following question then arises, to paraphrase the above words of Bagnall, J, and those of Ormrod, J, in Pheasant vs Pheasant (1972) 1 A.ER. at p. 591 at c to d; bearing in mind the petitioner’s fault and other attributes, good and bad, and having regards to her behaviour during the marriage, bearing in mind the characters and the difficulties of both parties, trying to be fair to both of them and expecting neither heroic virtue or selfless abnegation from either, has the respondent then behaved in such way that the petitioner cannot reasonably be expected to live with him?”

7.15 I have addressed my mind to **Section 13 of the Matrimonial Causes Act**, which provides that:

“ where in any proceedings for divorce the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot be expected to live with the respondent, but the parties to the marriage have lived with each other for a period or periods not exceeding six months after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support the petitioner’s allegations, that fact shall be disregarded in determining for the purposes of paragraph (b) (1) of section nine whether the petitioner cannot reasonably be expected to live with the respondent.”

7.16 I am guided by the above authorities that as can be seen from the above, it is clear and it is my considered view, that the behaviour required to be proved, must be of such

gravity that the party's powers of endurance are exhausted, to the point where it is clear that they cannot reasonably be expected to live with each other. The standard is an objective one or that of a reasonable man or woman

7.17 I have carefully considered the Petition for dissolution of marriage, as well as the *viva voce* evidence of the Petitioner. I am satisfied that the issue for determination is whether this marriage has broken down irretrievably due to the fact that the Respondent has behaved unreasonably such that the Petitioner cannot be expected to live with the him.

7.18 The Petitioner relied on her Petition and testimony. And an analysis of the aforesaid averments is that the Petitioner is feed up with the marriage for the reason that the Respondent has been violent and who on several occasions he has physically assaulted her.

7.19 Furthermore, the Petitioner avers that the Respondent does not provide for the children of the family financially, a situation which is not acceptable to the Petitioner.

7.20 Therefore, given the aforesaid, and in consideration of the fact that the basis of decision making in such circumstances is based on an objective test of a reasonable man or woman, I am satisfied that there has been unreasonable behaviour by the Respondent, as established in the evidence by Petitioner.

7.21 Further the Petitioner has testified that the couple has lived apart for a continuous period of not less than two years, since April 2022. And the Petitioner has indicated that counselling has failed and there is no hope of them cohabiting again.

7.22 Consequently, on a totality of the evidence before me, I find that the Petitioner has on a balance of probability established that the marriage has broken down irretrievably due to the unreasonable behaviour stated above, that is, of the Respondent who has behaved in such a manner that the Petitioner cannot reasonably be expected to live with him.

7.23 I find that the Respondent has not rebutted the allegations against him. I further find that the Petitioner and Respondent are *unharmonious* with each other and the Petitioner herein finds it intolerable to live with the Respondent.

7.24 Consequently, this marriage has broken down irretrievably. I accordingly grant the Petitioner and the Respondent a *decree nisi* and for *divorce* to be made absolute in 6 weeks from the date hereof.

7.25 I refer property settlement to the Honorable Registrar upon application by either party.

7.26 Each party will bear their own costs herein.

8.0 Leave to appeal is granted.

Dated Lusaka, this 3rd December, 2024


M.M. Bah-Matandala
HIGH COURT JUDGE

