

IN THE HIGH COURT FOR ZAMBIA 2016/HP/D040
 AT THE PRINCIPAL REGISTRY
 HOLDEN AT LUSAKA
 (Divorce Jurisdiction)
 BETWEEN:

PRISCA M. N'GANDU CHIKOLI

AND

ARNOLD CHIKOLI



Before the Hon. Mr. Justice M.L. ZULU
 in Chambers on the 21st August, 2017

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

J U D G M E N T

Cases cited:

1. Mahande V Mahande (1976) ZR 287 (S.C)
2. Livingstone-Stallard V Livingstone-Stallard (1974) 2 ALL E.R. P. 766

Legislation referred to:

1. The Matrimonial Causes Act No. 20 of 2007, Section 9(1) (b)

This is a petition for dissolution of marriage on the ground that the marriage has broken down irretrievably. The Petition shows that the parties **Prisca Mukandeke N'gandu Chikoli** and **Arnold Chikoli** were lawfully married on 27th March, 2008 at the office of the Registrar of Marriages at Lusaka.

The parties are both domiciled in Zambia and last cohabited at House Number 12734/m, Chalala, Woodlands, Lusaka. The Petitioner is unemployed and currently resides at Plot No. 1414 Off Palm Drive, Lusaka. The Respondent is an Advocate by Profession and his current residential address is unknown

The couple have one child of the family. There are no other children born to the Respondent during the subsistence of the marriage.

There have been no previous proceedings in any court in Zambia or elsewhere with reference to the said marriage or any property of either or both of them.

The Petitioner alleges that the Respondent has behaved in such a manner that she cannot reasonably be expected to live with him. The particulars of unreasonable behaviour are that the Respondent sometime in 2010 started drinking heavily, returned home late or not come at all. Its also alleged that the Respondent became violent and would not take the Petitioner or child to hospital whenever they fell ill, instead preferred drinking with friends.

The Petitioner also alleges that the Respondent borrowed money from different unknown individuals but failed to use this money of the family for groceries, food, or rent consequently failed to maintain the child and Petitioner resulting in them not enrolling in school.

It was the Petitioner's evidence that the Respondent denied the Petitioner her conjugal rights and eventually moved out of the matrimonial home in 2013, abandoning the family with no money. Consequently, the family was evicted and proceeded to stay in the incomplete house which had no roof, windows and toilet for three months.

The Petitioner further alleges that the Respondent was staying with another woman whom he impregnated and intended to marry. Later the Respondent sold the matrimonial home for K1,800,000.00 and failed to share the proceeds with the Petitioner.

The Petitioner states that the Respondent has been in and out of police cells on charges of obtaining money by false pretences, issuing cheques on insufficient bank accounts amongst other things there by causing her immense emotional and mental distress. The Petitioner believes the Respondent is not a good example for their son to grow under his influence because he's not a responsible father and husband.

The Petitioner prayed that the marriage be dissolved; that she be granted custody of the Child of the family Mike Chikoli; that she be granted an Order for maintenance and property settlement; and that the Respondent be condemned in costs of this action.

At the hearing, the Petitioner gave oral evidence and called no witness.

In her testimony, she testified that problems started in 2009 and attempts by both parents to resolve their issues proved futile as the Respondent continued being violent and started sleeping out until he abandoned the family who failed to pay the rentals. She testified that while squatting at the cousin's house, the Respondent reappeared and asked for forgiveness. But after a few months he started mistreating her and left home after severely beating her up in 2013. It was Petitioners testimony since then she does not know the whereabouts of the Respondent. The Petitioner added that she's heard

rumours that the Respondent has remarried and has children. The Petitioner testified that there was no chance of cohabitation resuming between the parties.

That was the evidence in support of the Petition.

The Respondent did not file an Answer to the Petition and failed to appear in court despite notices of hearing being sent.

I have considered the Petition and the evidence adduced by the Petitioner.

Section 9(1) of the Matrimonial Causes Act sets out the facts upon which a marriage can be said to have broken down irretrievably. These are:

- (a) *That 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 Respondent has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the Petition.*
- (d) *That 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 the decree being granted.*
- (e) *That parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the Petition.*

The Petition is based on the fact of unreasonable behaviour outlined in **Section 9(1) (b)** which is that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him. In determining whether or not the Petitioner cannot reasonably be expected to live with the Respondent the court has to consider not only the behaviour of the Respondent as alleged and established in evidence, but the character, personality, disposition and behaviour of the Petitioner. This principle was enunciated by the Supreme Court in the case of **Mahande V Mahande(1)**. Similar sentiments were echoed in the case of **Livingstone-Stallard V Livingstone-Stallard (2)** in which it was stated that the Court must take into account the whole circumstances including the characters and personalities of the parties.

Thus, the Court must decide whether the Respondent's behaviour is sufficiently grave to fulfil that test, that is, to make it unreasonable to expect the Petitioner to endure living with the Respondent bearing in mind the individual characters, personalities and disposition of the parties.

The Petitioner's evidence is that the Respondent physically abused her on several occasions during the subsistence of the marriage, and that he abandoned the family and failed to support them. The Respondent however, failed to justify his reasons for abandoning his matrimonial home and family for several years without any explanation to his wife. To date, the Petitioner doesn't know his whereabouts and failed to support the family. This behaviour can not be justified or tolerated. I therefore, hold that the Respondent is unreasonable to have left or abandoned his family since 2013 without

supporting the family in any way. The action has led the Petitioner to support the child and herself despite not working. The Petitioner has endured evictions and having the matrimonial home sold by the Respondent without consultation or receiving any proceedings from the transaction.

I find that the Respondent has been abusive, irresponsible and unreasonable towards the Petitioner.

The question is whether the Petitioner can Condon the Respondent's behaviour and be expected to continue living with him.

On the totality of the evidence before me, I am of the considered view that the Petitioner cannot reasonably be expected to live with the Respondent. The Respondent has abandoned his family since 2013, exhibited high levels of irresponsibility by not providing for the family and potentially committed a crime of bigamy if indeed he's started another family, a situation that could lead to dire consequences if proved.

It is evident that the Respondent's behaviour of abandoning the Petitioner and Child since 2013 without informing the Petitioner where he is amounts to unreasonable behaviour. The Petitioner cannot reasonably be expected to continue living with him.

I therefore, find and hold that the marriage has broken down irretrievably on account of the fact that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him. I grant a **Decree nisi** for the dissolution of the marriage to be made absolute within six weeks.

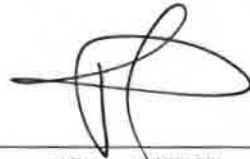
The Petitioner is granted custody of the child of the family, Mike Chikoli with reasonable access to the Respondent.

Maintenance and property adjustment shall be dealt with by the Learned Registrar of the High Court.

I make no orders to costs of this action.

Leave to appeal is granted.

Delivered at Lusaka this 21st day of August, 2017.

A handwritten signature in black ink, consisting of a stylized, cursive 'Z' followed by a loop and a horizontal stroke.

**M.L. ZULU
HIGH COURT JUDGE**