

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

2017/HP/DO036

BETWEEN:

KUSOLU SAKUWUNDA SIAMANI

AND

LACKSON SIAMANI



PETITIONER

RESPONDENT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 1st DAY OF
DECEMBER, 2017**

For the Petitioner : In person

For the Respondent : In person

J U D G M E N T

LEGISLATION REFERRED TO:

1. The Matrimonial Causes Act No 20 of 2007

This petition for the dissolution of marriage was filed on 9th February, 2017, pursuant to Section 9 (1) (c) of the Matrimonial Causes Act, No 20 of 2007. The petition states that the Petitioner and the Respondent were lawfully married on 24th February, 2014, at the office of the Registrar of Marriages in Lusaka. That the parties last lived as husband and wife at House No 43505 Njanji Road in Libala South, Lusaka, and that they are both domiciled in Zambia.

The petition further states that the Petitioner is a police officer and resides at No 10942/329 Kuomboka Township in Lusaka, while the Respondent is a serviceman under the Zambia Defence Forces, and resides at Lusaka West Apollo Military Camp in Lusaka.

It is stated that there is one child of the family now living namely Chabota Lackson Siamani born on 26th September, 2013, and who is in baby class at High Vision School in Kuomboka Lusaka. The petition further states that there is one child now living, who was born to the Respondent before the marriage called Rabecca Siamani so far as is known to the Petitioner, and that the said child resides with the Respondent's mother in Mtendere Compound.

The petition also states that there have been no previous proceedings in any court in Zambia or elsewhere with reference to the marriage, or the child of the family or with reference to the properties of the parties, and that no arrangement has been made between the parties with regard to the support of either or both of them.

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

- a) *The Respondent having developed promiscuous habits to the extent of applying for local leave from his workplace alleging that he was attending his sister's funeral, and going on private business with the Commanding Officer's son to Choma and Chipata respectively in December, 2015 and early 2016.*
- b) *The Respondent stressing the Petitioner by denying her conjugal rights for a year since February, 2016.*
- c) *The Respondent having severely beaten the Petitioner in July, 2015 for having broken a sim card which had a message reading **"how do you feel cheating on you"** sent by a woman who called on the Respondent's phone which the Petitioner was using to communicate with the wedding coordinators whilst travelling to the Copperbelt to attend a wedding party.*
- d) *The Respondent taking the child of the family Chibota Lackson Siamani when he was two years old in 2016 to his girlfriend from 08:00 hours until*

21:00 hours without changing his diaper, and declining to eat food prepared by the Petitioner on the premise that it was not well cooked.

- e) The Respondent in February 2016 lying that he was going for work without stating where, and not answering the Petitioner's phone calls, and the Petitioner receiving a phone call from the Respondent's work place and being informed that the Respondent had applied for local leave to attend his sister's funeral but he had exceeded the leave days that he was given, and would be considered as absent without leave.*
- f) The Respondent on or about 15th February, 2016 having packed some of the household goods and chasing the Petitioner from the matrimonial home for reporting him to his work place that he was in the habit of cheating that he was at work, when in fact he was at his girlfriend's home.*
- g) The Respondent on 26th April, 2016 telling the gathering that he was not ready to take back the Petitioner to the matrimonial home until she called him and told him she was ready for marriage thereby causing the Petitioner great anguish and pain.*
- h) The parties hardly communicating as husband and wife making it unbearable for the Petitioner to live in the same house with the Respondent. Further that the said behavior by the Respondent has negatively affected the Petitioner and she no longer feels any love for the Respondent or trusts him.*
- i) The Respondent has no respect for the Petitioner, and has no regard for her opinion as a wife, and does not support or encourage her making it difficult for the Petitioner to advance in life.*

The Petitioner therefore prays that the marriage be dissolved and that she be granted custody of the child of the family. Further that there be an order for property settlement and maintenance.

On 5th April, 2017, the Respondent filed an answer in which he denies the particulars of unreasonable behavior alleged by the Petitioner. He states in his

answer that he has not continuously engaged in extra marital affairs, but rather that the Petitioner's promiscuous behavior has led to the breakdown of communication in the marriage. He alleges that the Petitioner has on several occasions gone to his work place to complain to his superiors each time they have a marital dispute.

He further denies having treated the Petitioner with lack of respect and disregarding her opinions as a wife. His assertion is that indeed the marriage has broken down irretrievably, and he consents to the marriage being dissolved.

At the hearing both the Petitioner and Respondent testified. The Petitioner repeated the contents of the petition, and with respect to the particulars of unreasonable behavior on the Respondent's part, she stated that he would tell her that he had gone for work as he was working in another department and would carry clothes in a bag. That when she would call him she could not get through, and that it was only him that could call to ask her how the family was. That on the eighth day of one particular incident she received a phone call from his work place asking her to tell her husband to report for work.

It was her evidence that when she tried to call the Respondent, she did not get through, but he later called her, and when she informed him of the phone call that she had received from his work place, he had told her that he was at work and would return the next day. That he did indeed return the next day and he went for work, and left his phone. The Petitioner stated that she found photographs of a woman called Faith Ngwira that the Respondent has a son with, and that the next day she went to his office.

That there the *bashibukombe* had informed her that the Respondent had obtained permission to attend a funeral, and this surprised the Petitioner as she did not know about it. The Petitioner was told that the Respondent had called the office asking for more days but this was declined, and the *bashibukombe* said that they should sit to discuss, and the Petitioner left for home.

It was further her evidence that around 16:00 hours that day the Respondent had called her and told her that she was not his wife as she had reported him to his superiors at work. He then packed her things and drove her to her mother's home in February, 2016, and she started waiting for him. That despite family meetings having been held things had not worked out. The Petitioner also testified that the next thing she heard was that he had married and on 29th August, 2017, she went to his home with her aunt and friends and they found a lady called Faith Nyirenda who told her that to her knowledge the Respondent had divorced her, and they were married in Chipata, and even had a marriage certificate.

It was added that the Petitioner even saw the wedding photos, and the Petitioner asked that the marriage be dissolved and she be granted custody of the child of the family, and that there be an order for maintenance and property settlement.

In cross examination, the Petitioner stated that a mobile line, and not a landline called her from the Respondent's work place. She admitted having followed the Respondent to his work place, but explained that it was because the *bashibukombe* had called her. When asked how the *bashibukombe* had got her phone number, the Petitioner stated that it was during the time they had marriage lessons, and that it was in the Respondent's presence. She agreed that the Respondent would tell her when he went for private business, but that in relation to the incident in issue, he had told her that he had gone for work, and not to Chipata to attend a funeral.

The Respondent in his evidence explained that he had obtained seven days local leave from work, and he went to Choma to attend a funeral. That after the burial he had called the Petitioner and told her that he was going to Chipata for business. However he exceeded the seven days leave by a day, and he called the work place asking for a days' extension of the leave, but the office had responded late stating that he needed to report for work as there was a shortage at the platoon.

Further in his testimony, the Respondent stated that he even called the Petitioner and told her that he would return home the next day, and that his business did not go through. His evidence with regard to the events surrounding how he was made aware that the office had called the Petitioner was that it was in fact the Petitioner who had called him and informed him so. Further that the *bashikubombe* whom the Petitioner had claimed had contacted her over his whereabouts, was not connected to his platoon.

That when he returned home the next day the Petitioner did not say anything, and that when he went for work the next day his boss had told him that he could not proceed as he had an issue, and the Petitioner had gone there and complained about a number of things to his bosses.

He denied having taken their son to his girlfriend from 08:00 to 21:00 hours, testifying that he was released from work around 11:00 hours and the Petitioner was tear gassed at Woodland Stadium, and he had picked her up using his friend's vehicle. He further stated that she had changed from her uniform into civilian clothes, and had returned to work stating that she had not been released by the Officer in Charge. The Respondent testified that he then picked up the child after lunch and went to watch some sports which ended at 17:00 hours.

The Respondent also told the court that Mikango Baracks where the sports were held is about thirty two kilometres from town, and he reached home around 20:00 hours, adding that he had changed the child's diaper himself. That when he went for work the next day his supervisor was talking about his home issues, and his evidence was that it was not the first time that the Petitioner had talked about their marriage, adding that she has the same tendency even with the neighbours, and the issues discussed extend to their bedroom matters.

He further testified that the Petitioner did not heed his advice that they try and sort out their problems without involving the neighbours or his work place, and that is why when she went to his work place to complain about his trip to

Chipata, he said that it was too much and he would take her to her mother's place. That when he went home he found that she had packed, and he took her to her grandmother's house where he explained that she needed to be taught about marriage, and her grandmother agreed.

Still in his testimony, the Respondent told the court that he had called the Petitioner a week later so that they sit to reconcile, but he was surprised that her mother and uncle went there, and he had explained what had happened and they said that they would sort it out. That in his absence the Petitioner had met his family with her mother and grandmother, and the meeting was deferred to another date. However when the Respondent's mother called the Petitioner's mother, she had responded that she was busy as she worked, and when the Petitioner was asked to reason with her mother, her mother had stated that the Petitioner should not be pressured.

The Respondent told the court that he had waited for a month, and then personally followed up with the Petitioner four times so that she could return home, but she declined. He added that one time he had gone to see the Petitioner with his uncle, and she had responded that she would return home on a Thursday, but when he called her on that day to go and pick her up, she refused. It was stated that the last time that he went there, she had told him that the lobola he had paid had expired and he needed to re-marry her, prompting him to tell her that she should let him know when she was ready to return home, but she did not do so.

He confirmed that the Petitioner went to his home and found a woman there, but stated that he did not know what the woman told her. The Respondent agreed that he has a child with the woman that the Petitioner found at his home, but denied being married to her. He further stated that efforts to reconcile with the Petitioner had failed as she wanted to divorce, and his evidence was that they went to her church but he felt like he was being interrogated at a police station.

It was stated that thereafter they went to his church in an effort to reconcile and the reverend had asked for time to reconcile them, but the Petitioner however insisted on divorce. That he could not force her, and he asked the court to divorce them, and that the Petitioner be granted custody of the child, and that the parties be heard on property settlement and maintenance.

In cross examination, the Respondent denied that he went to Choma with a friend, stating that he went for a funeral. When asked how many times the Petitioner had gone to his work place, the Respondent stated that it could be once, but stated that the second time he found her there. When pressed further he stated that it could be once, and he found her there.

I have considered the evidence. This petition was brought pursuant to Section 9 (1) (c) of the Matrimonial Causes Act No 20 of 2007. Section 8 of the 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 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. The Section provides as follows;

“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 caption of the petition before court states that the Petitioner relies on Section 9 (1) (c) of the Act. This provision deals with a respondent having deserted the petitioner for a continuous period of two years immediately preceding the presentation of the petition. When one goes to the body of the petition however, they will note that the Petitioner alleges that the marriage has broken down irretrievably as the Respondent had behaved in such a way that she cannot reasonably be expected to live with him, which falls under paragraph 9 (1) (b) of the Act. I therefore take it that it is that fact that has been relied upon.

The Petitioner alleges that the Respondent is promiscuous and would even go to the extent of applying for local leave saying that he was attending a funeral or going for business, and taking the child to his girlfriend from 08:00 until 21:00 hours, and that he packed her belongings on 15th February, 2016 and took her to her mother's house, and told her that she should tell him when she was ready to be a wife. Further that the Respondent would decline to eat food cooked by the Petitioner on the ground that it was not well cooked, and that he had told the gathering that he was not ready to take her back home until she told him that she was ready to be his wife.

No evidence was led to support the allegation that the Respondent has denied her conjugal rights for a year, and that he beat her for destroying a sim card or that he would decline to eat food cooked by the Petitioner on the ground that it was not well cooked,.

The Respondent denied being promiscuous stating that he obtained the leave so that he could go on business. He further denied having taken the child to his girlfriend's house stating that he picked up the child then went with to watch sports at Mikango Barracks. While the Respondent did not deny that there was another woman, as he agreed that the woman that the Petitioner found at his wife after he had taken her to his mother's house has a child with him, he did not refute the Petitioner's evidence that he would pack clothes and say that he was going for work.

He further did not deny that he obtained leave from work and exceeded that leave, but stated that the purpose of obtaining the leave was to attend a funeral and he thereafter told the Petitioner that he was going for business in Chipata. He denied not having told the Petitioner that he was going for a funeral and he did not deny that his office was looking for him. He just questioned how the Petitioner got the *bashibukombe's* phone number. This incident resulted in the parties being talked to by the Respondent's superiors at work, and the Respondent sent the Petitioner back to her mother, and a woman was found at his home by the Petitioner.

While it has not been established that the Respondent was promiscuous, the evidence shows that he is involved with one other woman apart from the Petitioner. He stated that his absence from home was so that he could attend to business, which the Petitioner did not refute. However by sending away the Petitioner for an incident that involved him being absent from work was unreasonable, as when cross examined he admitted that the Petitioner may have only been to his office once. Thus she did not habitually report issues in their marriage to his superiors as alleged.

After sending away the Petitioner from the matrimonial home, the Respondent has even been taking a woman that he has a child with to the house. This again is unreasonable as the marriage was just barely three years old when he took the Petitioner back to her mother. However the Respondent testified that efforts to reconcile with the Petitioner had failed as she had insisted on divorce. She did not challenge him on this evidence. It is therefore my finding that the Respondent has behaved unreasonably by being involved with another woman in the early years of the marriage, and the Petitioner cannot reasonably be expected to live with him, as she has declined to reconcile with him.

The petition succeeds on that basis, and I grant a decree nisi for the dissolution of the marriage, which shall become absolute after a period of six weeks. The parties are at liberty to agree on the custody of the child of the family, and file a consent order to that effect. In default thereof, either party can make an application to me at chambers for the grant of the order. Issues of property settlement and maintenance are referred to the Registrar for determination. Each party shall bear their own costs.

DATED THE 1st DAY OF DECEMBER, 2017


S. KAUNDA NEWA
HIGH COURT JUDGE