

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
FAMILY COURT DIVISION  
HOLDEN AT LUSAKA

2023/HPF/D712

(Divorce Jurisdiction)

BETWEEN:



JANET MWAANGA NGOMA

PETITIONER

AND

EMMANUEL MASAUSO NGOMA

RESPONDENT

*Before the Honourable Mrs. Justice M.M. Bah-Matandala  
Dated this 30<sup>th</sup> January, 2025.*

*For the Petitioner:  
For the Respondent:*

*Mrs. P. Chibwe Messrs. National Legal Aid Clinic for Women  
Mr. C. Ngoma Messrs. Chris & Partners.*

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## J U D G M E N T

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**Legislation and Other Works Referred To:**

1. *The matrimonial causes act No. 20 of 2007.*
2. *Rayden and Jackson on Divorce and Family Matters 16<sup>th</sup> Edition, Butterworths.*
3. *Rayden's Law & Practice in Divorce & Family Matters in the High Court, County Courts' &*
4. *Magistrates' Courts, 11<sup>th</sup> 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 6<sup>th</sup> December 2023, 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 ***Janet Mwaanga Ngoma*** who was lawfully married to the Respondent, ***Emmanuel Masauso Ngoma***, on 20<sup>th</sup> December 2019 at the office of the Registrar of Marriages, Civic Centre in the City and Province of Lusaka of the Republic of Zambia.

2.2 Immediately after marriage the parties lived as husband and wife in Makeni Majoru Area in the City and Province of Lusaka of the Republic of Zambia.

- 2.3 The Parties last lived together as husband and wife in Barlastone, in the City and Province of Lusaka of the Republic of Zambia.
- 2.4 Both the Petitioner and Respondent are domiciled in Zambia.
- 2.5 The Petitioner is currently unemployed and resides in Solwezi, North- Western Province of Zambia whilst the Respondent is currently a Human Resource Manager at G&H Logistics and runs his own Companies and he resides in Barlastone in the City and Province of Lusaka of the Republic of Zambia.
- 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 There are no children of the family now living to the Petitioner and the Respondent.

2.9 No agreement has been made between the Petitioner and the Respondent in relation to the maintenance of either party to these proceedings or property sharing.

2.10 The said marriage has broken down irretrievably.

### **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 may be proved by satisfying the Court that the Respondent has behaved in such a way that the Petitioner, or *vice versa* 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 has been inconsiderate towards the Petitioner since the inception of the marriage to the extent that he did not*

disclose to the Petitioner that he was on ARVs until the Petitioner found out on her own in a month after the wedding.

ii) the Respondent has been verbally, mentally, psychologically abusive towards the Petitioner such that when the Petitioner got pregnant for their child the Respondent would lock up the Petitioner in the bedroom and beat her up.

iii) the Respondent has maintained a constant pattern of abuse dating back to the very inception of the marriage in 2020 and on one occasion he threw a block and a metal chair on the Petitioner but missed her. He however held the Petitioner by the neck and shove her head into river sand which was meant for building a shelter for a bar in the presence of the Respondent's workers and further told his workers not to listen and respect the Petitioner nor take instructions from her.

iv) in April, 2020 the parties had a misunderstanding because the Petitioner did not wear a waist red rope which was given to her by the Respondent's pastor, the Respondent got angry to the extent of packing the Petitioner's clothes and took her back to her aunt's house in Matero North, Lusaka. The Petitioner stayed at her aunt's house for over a month until church elders and the Respondent went to pick up the Petitioner and took her back to her matrimonial house and he was charged to pay the price of two cows before he could take the Petitioner back home but he only paid for one.

v) around June 2020 the Respondent stopped having sexual intercourse with the Petitioner until after the Petitioner delivered their child in July 2020. Two days after the Petitioner delivered, the Respondent forced her to

move out of the matrimonial bedroom and the Petitioner stayed in the spare bedroom for four months until she decided to go back to the matrimonial bedroom but the Respondent continued to deny the Petitioner her conjugal rights and whenever the Petitioner confronted him about it, he merely said that he had no affection for the Petitioner.

vi) the Respondent has on several occasions returned home with receipts for food he never took home as well as with receipts from different lodges and when the Petitioner asked about it, he would tell her that he did not want the marriage anymore as he hated the Petitioner and he would insult the Petitioner and her parents and repeatedly called her a maid.

vii) when the Petitioner confronted the Respondent, he would tell the Petitioner that

if she was tired of his behaviour she should pack her belongings and leave him alone. until the Petitioner left the matrimonial house and went to her aunt's house in Kafue in January 2021.

viii) after three days a family meeting was called to reconcile the parties but the Respondent openly stated that he did not want the Petitioner anymore and only wanted the marriage to come to an end. The Respondent forced the Petitioner to be on separation having packed all the belongings of the Petitioner and her children. The said separation lasted for a continuous period of nine months.

ix) afterwards church elders called the Petitioner's relatives for a meeting at the parties' matrimonial house and it was resolved that the Petitioner goes back to her matrimonial home but the Respondent gave

her conditions that she shouldn't be wearing female trousers of all kinds and should always wear wraps and head wraps like Respondent's late wife. He further commanded the Petitioner to stop doing her business of selling school bags and children's clothing which was her means of livelihood. This happened on two occasions and led the Petitioner to lose all her capital.

x) the Petitioner went back to the matrimonial house but the Respondent sent the Petitioner's children away and said that they should not return to the matrimonial house because he did not want to educate them as they had their own fathers and would rather educate street kids. Thereafter the Respondent left the matrimonial home from 17:00 hours and only returned home around 02:45 hours in the morning without any explanation and left the house again at

10:00 hours in the morning without giving any explanations and returned home around 13:00 hours the next day without any explanation and he did not eat the food that was served at their matrimonial home and this continued for days.

xi) the Respondent has on several occasions told the Petitioner's aunty that he would divorce the Petitioner and has someone of his age to marry, the Respondent has three children during the subsistence of the marriage but he has not formerly informed the Petitioner about the children.

xii) in November 2021 the Respondent spent days out again and he gave no explanation, he did not answer the Petitioner's phone calls later on when he answered the Petitioner's phone calls, he told her that she was irritating him and that he was not her husband. Afterwards the Respondent

returned home and when the Petitioner confronted him about it he said he cannot just be having sexual intercourse with the Petitioner alone and he cannot just be eating food prepared by the Petitioner alone.

xiii) the Respondent has been very disrespectful towards the Petitioner, one account in particular the Respondent called the Petitioner "a whole" and he would always pick quarrels with the Petitioner. On several occasions the Petitioner called the Respondent's cell phone and other women answered it. The Respondent continuously insults the Petitioner and calls her names like witch in the presence of his children as well as his friends and his girlfriends. One time in particular the Petitioner found sperms in the Respondent's underwear and he was shaved by other women.

xiv) the Respondent brought a phone for the Petitioner to use after which the Petitioner discovered the phone belonged to one of his girlfriend's. thus the Petitioner gave back that phone to the Respondent. Thereafter, the Respondent took away the Petitioner's cell phone from her and has not yet returned it up to now, which has been a challenge on the part of the Petitioner.

xv) in October 2021 the Petitioner discovered that the Respondent pays school fees for some children at their children's school and he uses the family vehicle to pick them from their school and taking them to their respective homes and when the Petitioner confronted the Respondent about it, he merely gave excuse and told her that it is his car thus decides who uses it.

xvi) afterwards the Respondent discovered that the Petitioner found out about how the

Respondent gives lifts to his girlfriend's children to and from school and when he got home he beat the Petitioner with his fists while she was pregnant. Thereafter, he got a kitchen knife and almost stabbed the Petitioner with it until they struggled and the knife fell off. However, the Respondent continued to beat the Petitioner, he punched her in the stomach and ribs until she managed to get off his grip and run into the closet and locked herself inside.

xvii) the Respondent still broke the door handle and the Petitioner run to the bathroom, later on, when the Respondent calmed down the Petitioner managed to slip out of the house and run off to Matero Police Station to report the incident and she went to Matero Level one Hospital where she got treated. Thereafter the police summoned the Respondent and he promised not to repeat

the physical violence. Two weeks after that incident the Petitioner miscarried her pregnancy.

xviii) after the miscarriage the Petitioner fell sick but the Respondent never showed any compassion, he would leave the house and only return home around 03:00 hours in the morning while drunk without giving any explanation.

xix) around February 2022 the Petitioner asked the Respondent for conjugal rights but he instead beat up the Petitioner, strangled her not until she managed to free herself from his grip. Thereafter, he got her phone and called Petitioner's relatives and lied to them that his life was in danger as the Petitioner had gone crazy. He further advised the Petitioner's relatives to pick her up from the matrimonial house and after a month, the parties reconciled. on the same day after the

Petitioner went back to the matrimonial home, the Respondent went out of the matrimonial home without giving any reason as to where he was and he only returned the following day.

xx) the Respondent continued to deny the Petitioner her conjugal rights, further other women continued to call the Respondent's cell phone and the Respondent would flirt with them in the Petitioner's presence without any consideration towards her feelings. At times he would walk out of the house at night to go and see his girlfriends.

xxi) in May 2022 the Respondent spent two nights out of the matrimonial home without any explanation as to where he was. when he returned home the Petitioner did not ask him where he had been and around 22:00 hours he got some beddings and left the matrimonial bedroom to sleep in the spare

room while the Petitioner was in the sitting room, he insulted the Petitioner as well as her parents but the Petitioner merely ignored him.

xxii) later in the afternoon the Respondent beat the Petitioner and threatened to kill her or go missing if she continued to live in that house. he strangled the Petitioner until she fainted after the Petitioner woke up, she went to report the matter at Matero Police Station.

xxiii) thereafter the Respondent chased the Petitioner from the matrimonial home in May, 2022 and asked his neighbour to take the Petitioner to the Petitioner's aunt in Matero. Days later, the matter was discussed on a conference call between the Petitioner's parents and the officer in charge of the Victim Support Unit for Matero police. When the Petitioner moved to matero, the Respondent volunteered to be paying the

house rent for her. However, the Respondent only paid for a few months thereafter he told her that he was not her father and therefore had no obligation to her whatsoever.

xxiv) the Respondent went on to become distant from both the Petitioner and the child of the family. he stopped sending any support to the child of the family nor did he bother asking about the well-being of the child of the family. This has affected the wellbeing of the child who used to be close to the Respondent as she does not get to see him and further, the Respondent only supports the child as and when he feels like more especially after much persuasion from the Petitioner.

xxv) the Respondent has since blocked the Petitioner's phone calls as well as her text messages and scarcely provides for child's

*financial needs nor does he show any concern towards the child nor the Petitioner.*

*xxvi) the Petitioner filed in a Petition for dissolution of marriage under cause number 2022/HPF/D360 before Honourable Justice K. Mulife. The said matter was discontinued in September 2022 by the Petitioner in order to explore possibilities of reconciliation with the Respondent.*

*xxvii) following the discontinuance of the matter, the Petitioner tried to engage the Respondent through his advocates to arrange for counselling but it yielded no positive results.*

*xxviii) in December 2022 the Petitioner discovered that the Respondent was having an affair and staying in the matrimonial house with one woman named Francisca from Zimbabwe. When the Petitioner confronted Ms. Francisca and Ms. Francisca mother about Francisca's relationship with*

the Respondent, Francisca's mother confirmed that the Respondent and Francisca usually go out together to drink beer.

xxix) the Petitioner later discovered that the Respondent had secretly married another woman and was paying college tuition fees for the said woman.

xxx) in August 2023 the Petitioner was at Levy Mwanawasa Teaching Hospital visiting the Respondent's brother when the Respondent showed up to the hospital with two friends and his current girlfriend. The Respondent introduced the said girlfriend to his brother in the presence of the Petitioner. After they were done visiting the Respondent's brother, the Petitioner asked the Respondent for a lift home and money to help her buy things for the child but he denied her request stating he had a new wife and that the Petitioner

was no longer his responsibility. The Respondent only offered the Petitioner and his nieces K100.00 to use as transport. The Petitioner refused to collect the said money as she needed money to buy baby food and asked to talk to the said woman, which infuriated the Respondent who reacted by beating her and kicking her on the side of her hip. the Respondent drove off with the said lady leaving the Petitioner on the ground.

xxxi) the Petitioner went to her matrimonial home the next day and went straight to the matrimonial bedroom only to find the Respondent sleeping naked on the matrimonial bed with the said woman he claimed to be his new wife. The Petitioner confronted the woman but the woman responded in a rude way to the Petitioner. This prompted a reaction from the Petitioner

who attacked the Respondent's mistress. When the Respondent tried to defend his girlfriend against the Petitioner, she escaped with the clothes belonging to the Petitioner and his mistress. Thereafter, the Respondent falsely accused the Petitioner of aggravated robbery at Central Police (scorpion department), where the Petitioner was detained.

xxxii) in the aftermath of this episode, the Respondent has discontinued all the little support towards the child of the family and the wife. He has blocked the Petitioner from accessing the Respondent's mobile phone in whatever manner.

xxxiii) the Petitioner and the Respondent have not resumed cohabitation and there is no hope of resumption of cohabitation.

xxxiv) the said marriage has broken down irretrievably and the Petitioner cannot

*reasonably continue to live with the Respondent.*

**3.4 The Petitioner therefore prays that;**

- i the said marriage be dissolved.*
- ii the Petitioner be granted custody of the child of the family with liberal access to the Respondent.*
- iii there be an order for maintenance of the child of the family.*
- iv there be an order for property settlement.*
- v each party bears their own costs.*

**4.0 ANSWER**

4.1 The Respondent filed an Answer and Cross Petition wherein he acknowledged the service of the Petition on 11<sup>th</sup> February 2024

4.2 the Respondent has admitted paragraphs 1 to 6 and 8 to 10 of the Petition but denies paragraph 7. He avers that he has 4 children born before the subsistence of his marriage to the Petitioner.

4.3 The Respondent disputes the assertions in paragraph 13 of the Petition.

**In the Cross-Petition the Respondent avers as follows;**

4.4 The Respondent denies the contents of paragraph 13(1) of the Petition and averred that the Petitioner was aware that the Respondent was on ART and she did a test and the results were negative. She was said to have been given medication for protection against contracting the virus.

4.5 The Respondent disputes the allegations in paragraphs 13(2)(3) and (4) of the Petition and avers that he is a loving and caring towards the Petitioner even during her pregnancy with their child and has always taken care of her in their household.

4.6 The Respondent admits paragraph 13(5) of the Petition to the extent that it was in line with church tradition to separate for at least 40 days until birth and a few days after birth. Furthermore, the Respondent averred that it was the Petitioner's decision to prolong he stay in the

spare bedroom. He has also denied having insulted the Petitioner's parents.

4.7 The Respondent denies paragraph 13(7) and averred that the Petitioner moved to her aunt's place on her own accord.

4.8 In responding to paragraph 13(8) and (9) of the Petition, the Respondent denies the allegations and adds that it was the church counselors and Petitioner's relatives that advised the Petitioner dress decently as a married woman and he denies ever stopping the Petitioner from doing her business.

4.9 The Respondent denies the content of paragraph 13(10) and avers that it was the Petitioner who wanted to force the Respondent to keep and take care of her children who were already being kept by their fathers in their respective homes. The said children only visited during the school holidays. He averred that there was no agreement before or during the subsistence of the marriage for the Respondent to keep the children.

- 4.10 The Respondent has denied paragraphs 13(11) to 13(17) and averred that he has always been faithful to the Petitioner.
- 4.11 In relation to paragraph 13(18) and (19) the Respondent denies the allegations and averred that the Petitioner was taken by her relatives because of her unreasonable behaviour in the marriage.
- 4.12 The Respondent denies the allegations in paragraphs 13(20) to 13(22) and averred that he always provided the Petitioner with her conjugal rights on demand save when the Petitioner was away and further that the Respondent by all means tried to communicate his whereabouts to his wife.
- 4.13 The Respondent denies paragraph 13(23) of the Petition and averred that it was the Petitioner's aunty who chased her that why he paid for her rent in order to also care for the child. The Petitioner is said to have differed with the landlord and vacated the said house without informing the Respondent.

4.14 The Respondent denies the allegations in paragraph 13(30) and (31) of the Petition and allege that it was the Petitioner who went with other people armed with knives, screwdrivers, empty beer bottles to attack the Respondent in his house and in the process, he got injured and money was stolen from him. The said matter is said to be in the Subordinate Court.

4.15 The Respondent admits paragraph 13(34) of the Petition save to say that the reason for the irretrievable break down of the marriage is not as averred by the Petitioner but that is due to the unreasonable behaviour of the Petitioner herself. The Respondent consents to the dissolution of the marriage.

4.16 **The Respondent prays that:**

- i) *The marriage be dissolved*
- ii) *That the Respondent be granted custody of the child as the Petitioner has no fixed abode and no capacity to support the child*

- iii) *That the court should not order for property settlement since there is no property subject for settlement*
- iv) *Each party to bear their own costs*

## **5.0 HEARING**

- 5.1 At the hearing of the matter on the 28<sup>th</sup> 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 will rely on the contents on the Petition. And she wishes the Court to grant them a divorce.
- 5.4 The Respondent relied on the filed Answer and Cross-Petition and informed the Court and he added that he wishes the marriage to be dissolved.

## 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 thick-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 Soko<sup>1</sup>**, 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**<sup>2</sup> case was also cited with approval in the Judgment of the Supreme Court of Zambia in **Mahande vs Mahande**<sup>3</sup>, 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 fed up with the marriage for the reason that the Respondent has been unfaithful wherein he has been engaging himself in several relationships with other women and he is physically abusive. The aspect of Respondent beating the Petitioner to the extent of her having a miscarriage is not acceptable to the Petitioner or the society at large. The Petitioner has raised issue and alleged that the Respondent has continued having sexual affairs with different women as evidence by the underwear wherein she found semen. This evidence has not been discredited in cross examination.

7.19 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, for example that of the Respondent having a sexual affair with different women wherein children were born from different women and that of being physically abusive to the Petitioner among other behaviours. Thus, the Petitioner feels that it would be wrong to continue with the marriage since she does not love the Respondent anymore.

7.20 Further the Petitioner has testified that the Respondent has not been supporting the child of the family financially and has completely neglected the Petitioner and the child.

7.21 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 of the Respondent, who has behaved in such a

manner that the Petitioner cannot reasonably be expected to live with him.

7.22 I find that the Respondent has rebutted some of the allegations against him but has instead agreed to proceed to have the marriage dissolved as Petitioned. The Respondent has alleged the Petitioner's behaviour to be intolerable and he too can not live with her.

7.23 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 and vice versa.

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

7.25 I grant joint custody of the child of the family to the Parties on condition that they will agree on the terms of the custody and in default refer this aspect to mediation.

7.26 Each party will bear their own costs herein.

8.0 Leave to appeal is granted.

Dated Lusaka, this 30<sup>th</sup> January, 2025.

  
M.M. Bah-Matandala  
**HIGH COURT JUDGE**

