

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

2023/HPF/D043

BETWEEN:

LIMPO MUBITA

AND

BESSY NAKANYIKA



PETITIONER

RESPONDENT

*Before the Honourable Mrs. Justice M.M. Bah-Matandala
Dated this 13th February, 2024.*

For the Applicant: Ms. L. Mushota Mmes- Mushota & Associates.

For the Respondent: Ms. K.M. Chileshe Messrs. - Sukwana Mwamba & Partners.

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,*
3. *Butterworths.*
4. *Rayden's Law & Practice in Divorce & Family Matters in the High Court, County Courts' & 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).*

4. *Namuunda Hamalengwe Mutombo vs Livian Haabula Mutombo (2009) ZR Dr. Matibini*
5. *SC, Mable M. Bbuku vs Arthur Yoyo (SCJ) No. 78/1998 unreported)*

1.0 INTRODUCTION

1.1 This is a Petition for dissolution of marriage which was filed on 24th January 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.

1.2 The said **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...”

1.3 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 **Limpo Mubita**, who was lawfully married to the Respondent, **Bessy Nakanyika**, on 26th October, 2013

at New Apostolic Church in Lusaka in the Republic of Zambia.

2.2 The Parties last lived as husband and wife at Plot number 288, off Shantumbu Road, Chalala, in Lusaka Province of the Republic of Zambia. Both the Petitioner and the Respondent are domiciled in Zambia.

2.3 The Petitioner is a Civil Engineer by Profession and resides at plot no. 288 off Shantumbu Road Chalala in Lusaka while the Respondent works as a Chef and resides at an unknown address.

2.4 The marriage has Two (2) children of the family now living, namely;

i Liseli Mubita born on 3rd March, 2014 and

ii Lilato Mubita born on 20th February, 2018.

2.5 To the best of the Petitioner's knowledge there is no child now living born to the Respondent.

2.6 The Petitioner has One (1) child living born to him from another relationship before marriage namely; Likezo Mubita aged 11 years old.

2.7 There have been previous proceedings in the High Court of Zambia under cause No. 202/HPF/D.157 but the same were discontinued in 2022 when the parties reconciled. There have been no other proceedings elsewhere with reference to the said marriage between the Petitioner and the Respondent or with reference to any property of either or both of them.

2.8 There are no proceedings continuing in any Court in or outside Zambia which are in respect of the said marriage or which are capable of affecting its validity or subsistence.

2.9 There have been no arrangements made between the parties for financial support and for settlement of property.

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 following particulars;

- i) *during the course of cohabitation, which effectively came to an end in January, 2020, the Respondent demonstrated total lack of concern or love and respect for the Petitioner.*
- ii) *she has restricted the Petitioner's conjugal rights to only when she feels like, from the day of marriage nine (9) years ago.*
- iii) *months before the parties got married, something happened and the Petitioner wanted to call off the wedding as will be proved at the trial. The Petitioner had a meeting with the Respondent's parents/relatives in which they told him to*

start living with her while waiting for the wedding date. From that time, she started refusing to make love to the Petitioner save for once in a while. The Petitioner complained to her relatives, since the Respondent was pregnant it was believed this was a phase which would pass but that was not to be.

iv) despite all the torture, the Petitioner was still there for the Respondent as a husband and provider, at that time, regardless, the Petitioner even bought a personal car for the Respondent and registered it in her name in an attempt to improve relations between them, but her behaviour never changed for the better.

v) the Respondent got a job without the Petitioner's knowledge and to date the Petitioner knows nothing much about the job, and the Respondent persistently

showed no respect for the Petitioner, humiliating him in public and telling him that he had no say in their home.

vi) despite the Respondent knowing the Petitioner's work programs that take him out of Lusaka, sometimes 800 kilometers away during which times the Petitioner would keep the Respondent informed, he would arrive back home sometimes at such late hours as 01:00 hours to find no food, compelling him to cook for himself at that late hour.

vii) further, whenever he got back home from work, or from field trips as aforementioned, which she always knew about, she would never say a word of greeting welcome, showing a total lack of affection.

viii) the Petitioner made several attempts to have families reconcile them in order to serve the marriage, but the Respondent would be

- okay for a day or two after the counseling, and relapse to her usual indifference and non-affectionate self soon thereafter.*
- ix) *it was so bad that inspite of living under the same roof, the parties hardly talked to one another, and literally lived separate lives under the same roof.*
- x) *as a consequence, the Petitioner was left with no option but to Petition for dissolution of marriage, which he did on 17th June 2020 under cause number 2020/HPF/D.157 as stated in paragraph 8 above.*
- xi) *the Petitioner discontinued the said Petition under cause number 2020/HPF/D.157 in May, 2022 after counselling which the Respondent shunned but seemingly went along with the reconciliation to participate in it, the reconciliation has failed on account that the Respondent has continued to behave in the same unaffectionate and*

arrogant manner and the Petitioner cannot reasonably be expected to continue living with the Respondent-

- a) *the Respondent would leave home for work at 06:30 hours and knocks off 16:00 hours, but get home three to four hours later, especially on Mondays, Wednesdays and Fridays and she would be extremely tired and smelling alcohol.*
- b) *would sleep in her clothes thereby creating a barrier between her and the Petitioner and she would not allow any intimacy save once in a blue moon when she decided.*
- c) *for work she would wear short and tight clothes which the Petitioner did not approve of, but*

she never cared as she said that is what she liked to wear.

d) The communication between the Respondent and the Petitioner was reduced to scanty, yet the Respondent would chat 5 times a day including after work with someone and dared the Petitioner to call him and giving his name as Lee.

e) Upon calling the said Lee, he answered that he was a married man and it was the Respondent who always called him asking for lunch or this and that.

f) Upon reaching home after the call to Lee referred to in subparagraph (e) above the Respondent saved the Petitioner with a call-out and they both

reported to Kabwata Police Station at the appointed time, at which the Respondent told the Police that they should tell him to stop interfering in her private life.

g) Talking between the Parties was reduced to “naya” in the morning as she left for work and “food is served” in the evening and in the evening and in the deterioration of relations, the Petitioner started to cook for himself much to the pleasure of the Respondent.

h) The Respondent caused the Petitioner to do a DNA test to prove if he was the father of her children, which DNA test proved that he was the father of the children of the family.

- i) *In June 2022, a stranger sent the Petitioner a Facebook complaint that the Respondent was flirting with the man she wanted to marry and her narration of events corresponded with the days the Respondent would come home very late, very tired and usually drunk.*
- j) *In September, 2022 the Petitioner confronted the Respondent about her relationship with a man who was about to marry someone else as stated in sub-paragraph (i) above, but her reaction was to grab a knife and attempted to stab the Petitioner.*
- k) *Upon informing the Respondent's father about the incident, referred to sub-paragraph (j) above, the*

father replied that as far as he was concerned their marriage ended a long time ago and that they should go on separation, and he said that the Petitioner was mistreating the Respondent.

l) Since then, the Respondent has been sleeping in the same room with the children and sometimes takes them out and sleeps out with them without the Petitioner's knowledge and consent.

xii The Petitioner is now very apprehensive and fears for his life as the Respondent is hostile and goes in and out of the house as she likes, showing that there is totally nothing between them and going by the current trend, the Petitioner fears that he may be killed.

xiii for the foregoing reasons, the Respondent has behaved in such a manner that Petitioner cannot reasonably be expected to live with the Respondent.

3.4 The Petitioner therefore prays that;

- i the said marriage be dissolved.*
- ii there be joint custody of the children of the family*
- iii Costs of this Petition be borne by the Respondent.*

4.0 ANSWER

4.1 The Respondent admits that she did on 3rd February file both an Answer to the Petition and an acknowledgment of service.

4.2 The Respondent admits being married to the Petitioner as indicated in the Petition and admits paragraphs 1 to 11 of the Petition.

4.3 The Respondent admits paragraph 12 of the Petition in as it states that the marriage has broken irretrievably, the Respondent will add that in fact it's the Petitioner

who has behaved unreasonably during the duration of the marriage.

4.4 The Respondent denies the allegation that she has not demonstrated love and respect for the Petitioner and that she has restricted his conjugal rights. The Respondent pleads that from the time the Petitioner and the Respondent were courting and through the marriage, the Petitioner has been insecure and suspicious of the Respondent without cause. The Petitioner went to the extent of smelling the Respondents underwear.

4.5 Further in relation to paragraph 12 (vi) of the Petition, the Respondent denies that she purposefully did not prepare food for the Petitioner when he arrived back from long trips, in fact, the Petitioner would not communicate with the Respondent that he was travelling back to Lusaka in hopes of catching the Respondent red handed.

4.6 The Respondent avers that after the parties reconciled, the Petitioner stopped performing in bed. And the

Petitioner admitted to having unprotected sexual relations during the separation period, which the Respondent stated could have been the cause of the problem. The Respondent asked the Petitioner to seek help for his condition to which the Petitioner responded that it was emotional because the Respondent had been with other men during the separation. Thus, the allegation that the Respondent would not allow intimacy after reconciliation is not true.

4.7 The Respondent states that, concerning paragraphs 12 (d) (e) and (f) of the Petition, that the Petitioner invaded her privacy by obtaining call records from Airtel without her consent and that is why she approached the police. The Respondent will further state that she has never asked Mr. Lee for what the Petitioner alleged and that she actually informed the Petitioner that he was assisting her to obtain a passport and that is what they were communicating over.

4.8 The Respondent states that the Petitioner carried out DNA tests based on a message he had received on

Facebook and the results of those tests were that the children of the family are actually his children despite his unfounded suspicious.

4.9 The Respondent denies the contents of paragraph 12 (j) of the Petition, the Respondent states that after the confrontation referred to therein, she left the bedroom to get tissue, when she returned, the bedroom door was locked so there was no attempt to stab the Petitioner as alleged and even if there were, it would not have been possible because the Respondent was locked in the bedroom and she then had to sleep in the children's bedroom that night.

4.10 In responding to paragraph 12 (g) and (1) of the Petition, the Respondent stated that the Petitioner started cooking for himself because he claimed he feared for his life, so the Respondent stated that she did not choose to stop cooking for him. Further that, when the Respondent sent one of the children to inform the Petitioner that she was leaving the house, the Petitioner

stated that he had nothing to do with her life indicating that he does not want to know about her movements.

4.11 The Respondent therefore prays for the following;

- i) *that the marriage between the Petitioner and the Respondent be dissolved.*
- ii) *that the Court grants the Petitioner and the Respondent joint custody of the children of the family.*
- iii) *that each party bears their own costs of the said Petition.*

5.0 HEARING

5.1 At the hearing of the matter on the 7th December, 2023 the Petitioner augmented his 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 his own respect and did not call any other witness. Further, he largely recited his averments in his Petition. For avoidance of

repetition, I shall only highlight issues he did not aver in the Petition.

5.3 In examination in chief, the Petitioner informed the Court that after their engagement, the Petitioner noticed that their relationship was not as it used to be before in the sense that the trends of intimacy had reduced such that he almost called off the wedding, but then the Respondent was already pregnant and the Petitioner was advised by the elders, aunties and pastors that it was normal for a pregnant woman to behave like that whereby she will not want to be touched by a man.

5.4 The Petitioner reiterated that, after the birth of the child, things got better. The Respondent was better at intimacy. Nevertheless, during their first few years of marriage the situation got worse and so in order to preserve the marriage the Petitioner did not tell his family members instead the Petitioner told the Respondent's family who sat them down and discussed on how a man and a woman should live together with regard to bedroom matters. In spite of the meeting,

things got even worse to the extent that the Respondent could sleep with her clothes on to avoid intimacy.

5.5 The Respondent on the other hand gave sworn evidence wherein she stated that she was married to the Petitioner as stated in the Petition.

5.6 She testified that everything was okay with the Petitioner until when the Respondent received information from her relatives asking her what was going on in their marriage. They told the Respondent that Petitioner was complaining about bedroom issues, which was that the Respondent was denying the Petitioner sex.

5.7 The Respondent was in shock because the previous night they had intercourse. Then the Respondent realized that maybe the Petitioner doesn't get enough satisfaction during intimacy. The Respondent stated that whenever she told the Petitioner rest from intimacy, he took it as if the Respondent had denied him sex.

5.8 The Respondent further testified that the Petitioner is insecure with everything, for example meeting with

friends, relatives, going to salon was a problem with him. The Respondent stopped attending all those and started to stay home as per wish of the Petitioner.

5.9 Respondent went on to say that all these issues began when a friend to the Respondent saw the Petitioner with a lady at a mall, he had a bottle of Amarula and Pizza. And when the Respondent asked the Petitioner about it the Petitioner refused all the allegations. This happened in 2018.

5.10 Further, the Respondent testified that a few days later after the Petitioner was seen at the mall with a lady, the Petitioner said he was going to stop buying anything for their home or for the Respondent. And that he was going to chase the maids.

5.11 The Respondent was okay with Petitioner's decision, and that is how the Respondent called her uncle to find her a job. When a job was found, the Respondent told the Petitioner about the job issue but he refused and said people who work for the Office of the President where she was offered the job, are prostitutes.

5.12 The Respondent further told the Petitioner that she wanted to work so that she could help out with expenses at home. The Respondent told the Petitioner that the other reason she needed a job was for the fact that before seeking for a job, the Petitioner had kicked the Respondent out of their matrimonial home. This happened in October, 2019.

5.13 The Respondent avers that in about September, 2020 the Petitioner invited the Respondent to go to Livingstone with the children wherein they reconciled and the Respondent moved back home.

5.14 Therefrom the Petitioner told the Respondent that someone had texted him, telling him about a boyfriend who got a job for the Respondent, but the Respondent denied the allegation and told the Petitioner that it wasn't true.

5.15 The Petitioner also told the Respondent that one of the children was not his; the Petitioner brought up this issue from no where and the Respondent did not do

anything. Consequently, the very night the Petitioner asked the Respondent to stop cooking for him.

5.16 The Respondent prayed that the marriage be dissolved as per the Petitioner's wish and hers.

6.0 SUBMISSIONS

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

7.0 CONSIDERATIONS AND DECISION

8.1 I have considered the parties' pleadings and the oral testimony by the Petitioner and the Respondent.

8.2 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. I therefore make a finding of 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.

8.3 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.

8.4 I have also taken cognizance of the position that the both the Petitioner and the Respondent are domiciled in Zambia as indicated in the Petition and residents 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.

- 8.5 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.
- 8.6 Based on the foregoing findings, it is my position that I have jurisdiction to entertain the present Petition.
- 8.7 I now turn to determine whether the marriage of the parties has broken down on the ground of unreasonable behaviour.
- 8.8 As highlighted already, both parties are in consensus that their marriage has broken down irretrievably, this is for

the reason that they have accused each other of having behaved unreasonably and therefore responsible for the breakdown of the marriage.

8.9 I wish to begin by stating that the test to apply on whether the Respondent's behaviour was unreasonable to the Petitioner, 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;...”

8.10 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.”

8.11 In the Supreme Court of Zambia Judgment of **Brighton Soko vs Petronella Sakala Soko**¹, 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)

8.12 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?”

8.13 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?”

8.14 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.”

8.15 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

8.16 I have carefully considered the Petition for dissolution of marriage, as well as the *viva voce* evidence of both parties. 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 her.

8.17 And similarly, in the case at hand the Respondent has testified that the marriage has not broken down due to her behaviour but due to the behaviour of the Petitioner during their marriage which was unreasonable such that she also prays that the marriage should be dissolved by the Court.

9.0 HEARING

9.1 The Petitioner has relied on his Petition and testimony.

9.2 It has been averred that Petitioner is feed up with the marriage for the reason that the Respondent refused him his conjugal rights and that there is no intimacy between them.

- 9.3 I find that the Petitioner has provided substantive evidence to the allegation that Respondent refuses to give him his conjugal rights and the facts review that the parties herein have had a pattern of intimacy which has been at the desire, mercy and condition of the Respondent ever since the early days of their marriage until the filing of the Petition. This situation of lack of intimacy is said to have continued throughout the marriage. Therefore, it has become the basis for desiring the dissolution their marriage by the Petitioner.
- 9.4 Furthermore, I find that Respondent did not rebut the Petitioner in her Answer and testimony over the allegation of controlled intimacy. Nonetheless, the Respondent has clearly outlined the behaviour of the Petitioner towards her and I have taken consideration of her demeanor and find that she a credible witness.
- 9.5 In addition to examining the behaviour of the parties, this Court is also called upon to consider whether cohabitation would resume between the parties since the now use

separate rooms in the matrimonial house. Section 9(4) provides as follows:

“A decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.”

9.6 In the case of **Namuunda Hamalengwe Mutombo vs Livian Haabula Mutombo (2009) ZR Dr. Matibini, SC⁴**, J as he then was, held inter alia that:

- “2. A marriage is said to have irretrievably broken down if it stood no chance because the parties to the marriage have ceased cohabiting, and one of the parties or both intends not to resume cohabitation.*
- 3. The duty of the Court is to inquire into the facts alleged to establish irretrievable breakdown of marriage. If there is anything inconsistent with irretrievable breakdown of marriage, then the condition has not been met.*

4. *when it is alleged that the respondent has behaved in such a way that the petitioner cannot be reasonably be expected to live with the respondent, the task of the court is not to look at the quality of the respondent's behaviour, but also the effect of the conduct upon the petitioner."*

9.7 It is my finding that clearly there is no chance shown of resuming cohabitation between the parties.

9.8 A critical consideration of the facts of this case shows that the Petitioner has cited the character and temperament of the Respondent as the reason she cannot be expected to live with him. The Respondent has not raised any firm denial of this conduct save to also allege character and temperament of the Petitioner towards her as the reason for the dissolution of the marriage

9.9 Upon careful consideration of the facts of this case and the demeanor of both parties during trial, I find that the marriage is indeed one riddled with problems relating the

behaviour of both parties which evidence was not discredited in cross examination for either of them.

9.10 Consequently, on a totality of the evidence before me I find that the marriage has broken down irretrievably due to the lack of mutual love between the parties. This is supported by what was stated in the case of **Mable M. Bbuku vs Arthur Yoyo (SCJ) No. 78/1998 unreported** Chirwa J⁵, as he then was, stated that:

“It is not a question of maintaining the status of “Mrs.”. there must be mutual love. To my mind, both parties must be able to recognize the existence of their marriage for it to be seen to subsist. The state of mind plays a cardinal part in considering whether the marriage exists or not”

9.11 I also find that the Petitioner and Respondent are unharmonious with each other and the Petitioner herein finds it intolerable to live with the Respondent due to her behaviour.

9.12 The marriage has broken down irretrievably and 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.


10.0 I order that the parties will have shared custody of the children and that each party will bear their own costs.

11.0 Further refer all maintenance and property settlement issues to the Deputy Registrar for determination.

12.0 I order that costs will be in the cause.

13.0 Leave to appeal is granted.

Dated at Lusaka, this 13th February, 2024.


M.M. Bah-Matandala
JUDGE HIGH COURT

