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

2023/HPF/D237

BETWEEN:

BRIDGET CHITAMBALA BANDA

PETITIONER

AND

BILLY BANDA

RESPONDENT

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

For the Applicant: Ms. S. Chifeta- National Legal Aid Clinic for Women.

For the Respondent: In Person

J U D G M E N T

LEGISLATION AND OTHER WORKS REFERRED TO:

1. *The matrimonial causes act no. 20 of 2007.*
2. *Rayden and Jackson on Divorce and Family Matters 16th Edition,*
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).*
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1.0 INTRODUCTION

1.1 This is a Petition for dissolution of marriage which was filed on 4th May, 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 ***Bridget Chitambala Banda***, who was lawfully married to the Respondent, ***Billy Banda***, on 8th July, 2009 at Lusaka Civic Centre, in the city and Province of Lusaka in the Republic of Zambia.

- 2.2 The Parties last lived as husband and wife at plot No. 207/9 in Ng'ombe, in the Lusaka Province in the Republic of Zambia.
- 2.3 It has been stated that both Petitioner and Respondent are domiciled in Lusaka District of the Republic of Zambia.
- 2.4 Both the Petitioner and the Respondent are doing business and they both reside at plot No. 207/9 Ng'ombe in the city and province of Lusaka in the Republic of Zambia.
- 2.5 The marriage has one female child of the family now living, namely;
- i* Chimwemwe Banda (Female) born on 28th March,2010.
- 2.6 The Petitioner has three other children whilst the Respondent has five other children that are not children of the marriage.
- 2.7 It has been stated that 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.

2.8 No arrangement or agreement has been made or is proposed to be made between the parties for the support of either party to these proceedings and or the children of the family.

2.9 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 maybe proved by satisfying the Court that the Respondent has behaved in such a way that the Petitioner, or vice visa in the case of cross petition, cannot live with the Respondent.”*

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

- i) *The Respondent has two other women whom he calls his wives and treats them as such among them is his former wife and the Petitioner finds this unreasonable and unhealthy.*
- ii) *The Respondent does not support the Petitioner financially and leaves her to provide for the household alone.*
- iii) *The Respondent has been cohabiting for one year with his mistress and only goes to his matrimonial home as and when he decides.*
- iv) *The Respondent is emotionally abusive towards the Petitioner and this has resulted in lack of sexual intimacy between the parties as the Petitioner has lost interest in being sexually intimate with the Respondent.*
- v) *The Respondent is verbally abusive towards the Petitioner and uses derogatory terms against her such as 'you are a prostitute'*

whenever the parties differ. This has caused the Petitioner to suffer feelings of ridicule and shame.

vi) That the Respondent has become physically abusive towards the Petitioner. The Respondent physically assaults the Petitioner when she confronts him about his drinking habits and whereabouts. As a result of the Gender based violence she continues to experience, the Petitioner no longer feels safe to stay with the Respondent as husband and wife.

vii) That the Respondent has occasionally threatened the Petitioner to leave the matrimonial home because the Respondent's promiscuous behaviour which has led the Petitioner to stop giving him attention.

viii) The Respondent does not effectively engage or communicate with the Petitioner with

regard to decisions that concern and or affect the welfare of the family, therefore contributing to the breakdown of the marriage.

3.4 The Petitioner therefore prays that;

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

4.0 ANSWER

4.1 The Respondent admits that he did not file an answer to the Petition.

5.0 HEARING

5.1 At the hearing of the matter on the 24th August, 2023 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. For avoidance of repetition, I shall only highlight issues she did not aver in the Petition.

5.3 Under cross-examination by the Respondent, the Petitioner informed the Court that Respondent has not been supportive to the Petitioner as his wife and to the child of the family resulting in her getting debts from people to help herself and the child.

5.4 Further that the Respondent drinks out his money and does not help out with house bills. She informed the Court that, all family bills have been on Petitioner's account.

5.5 The Respondent on the other hand did not file an answer to the Petition because he thought it was an option to file and or not file.

5.6 The Respondent did not defend the Petition. He indicated that he wanted to defend the Petition but he had nonetheless not filed his answer.

5.7 The Petitioner raised an objection to the Defendant giving testimony since he did not file an answer.

5.8 The Petitioner's objection was sustained on the basis of time passed in which the Respondent should have filed an answer and therefore the Respondent was considered not to have defended the Petition.

6.0 SUBMISSIONS

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

7.0 CONSIDERATIONS AND DECISION

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

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 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.

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 ground of unreasonable behaviour by the Respondent.
- 8.8 As highlighted already, much as both parties are in consensus that their marriage has broken down irretrievably, due to the Respondent 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 him.

8.17 The Petitioner relied on her Petition and testimony. And an analysis of the aforesaid averments is that the Petitioner is feed up with the marriage for the reason that the Petitioner is an abuser who verbally as well as physically abuses her and he is said to be a womanizer, he is also does not engage in effective communication with the Petitioner regarding decisions that concern and affect the welfare of the family thereby contributing to the breakdown of the marriage

- 8.18 I find that the Petitioner has provided substantive evidence of the allegations raised herein which has not been discredited in cross examination.
- 8.19 The Respondent did not rebut the Petition since he did not file an answer.
- 8.20 Therefore, given the aforesaid, and in consideration of the facts herein 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, given the circumstances that he has not been intimate with the Petitioner, he has been emotionally, physically and verbally abusive to the Petitioner for example calling the Petitioner as a prostitute whenever the parties differed.
- 8.21 The Respondent being in a relationship of marriage with the Petitioner is expected to be loving and caring towards the Petitioner as his as his wife. I find that his inability to provide care and love for the Petitioner is an unreasonable behaviour and as such affects the marriage.

- 8.22 Consequently, on a totality of the evidence before me I find that the Petitioner has on a balance of probability established that the marriage has broken down irretrievably due to the unreasonable behaviour of the Respondent who has behaved in such a manner that the Petitioner cannot reasonably be expected to live with him.
- 8.1 I find that the Respondent's abusive and womanizing behaviour is unreasonable especially that the Respondent is said to be cohabiting with two other women whom he calls his wives is adulterous behaviour wherein the Petitioner is not expected to leave him. This averment has not been rebutted by the Respondent.
- 8.2 Consequently, I find that the Petitioner and Respondent are unharmonious with each other and the Petitioner herein finds it intolerable to live with the Respondent.
- 8.3 I find that 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.

8.4 I also grant the Petitioner custody of the child of the family with reasonable access by the Respondent since the Respondent has not contested for custody.

8.5 I refer all maintenance and property settlement issues to the Deputy Registrar for determination.

9.0 Leave to appeal is granted

Dated at Lusaka, this 13th February, 2024.



M.M. Bah-Matandala
JUDGE HIGH COURT

