

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

**2022/HPF/D315**

**BETWEEN:**

**KAREN MASOJA**

**AND**

**WILLIAM SINGOYI**



**PETITIONER**

**RESPONDENT**

***BEFORE THE HONOURABLE MR. JUSTICE W. S. MWEEMBA AT LUSAKA.***

***For the Petitioner:*** Ms. K. Masoja *(In Person)*.

***For the Respondent:*** Mr. W. Singoyi *(In Person)*.

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**J U D G M E N T**

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**LEGISLATION REFERRED TO:**

- 1. The Matrimonial Causes Act, No. 20 of 2007 of the Laws of Zambia.***

**CASES REFERRED TO:**

- 1. Hyde V Hyde (1866) LR 1P & D 130.***
- 2. Mahande v Mahande (1976) ZR 287.***
- 3. Thurlow V. Thurlow (1975) 2 ALL E.R. 979.***

**WORKS REFERRED TO:**

- 1. Mckenna, Breakdown of Marriage, Modern Law Review, Vol 30 No. 2 (1967).***
- 2. Passingham, Law and Practice in Matrimonial Causes (3<sup>rd</sup> Ed), London: Butterworths (1979).***

***KAREN MASOJA (the Petitioner)*** filed the Petition for Dissolution of Marriage on 20<sup>th</sup> June, 2022 seeking to dissolve her marriage to ***WILLIAM SINGOYI (the Respondent)***.

The Petition was launched pursuant to the **Section 8 and Section 9 (1) (a) and (b) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia.**

The Petition reveals that the Petitioner was married to the Respondent on 27<sup>th</sup> November, 2010 at the Office of the Registrar OF Marriages, Civic Centre in the City and Province of Lusaka of the Republic of Zambia; that both parties are domiciled in Zambia; that the Petitioner and the Respondent last lived together as wife and husband at House No. 15063/917, Kamwala South, Lusaka aforesaid; that the Petitioner is a Fire fighter officer at Lusaka Fire Station and residing at House No. 11568/1080, Kamwala South, Lusaka while the Respondent is a businessman and residing at Plot No. 15 Buteko Road, Town Centre, Chingola.

The Petition further reveals that there is one child of the family now living and having been born between the Petitioner and Respondent during the subsistence of the marriage, namely **Emeliya Nagoyi**, a female, born on 10<sup>th</sup> October, 2011.

The Petition also reveals that there have been no previous proceedings in the High Court for Zambia with reference to the said marriage and between the Petitioner and Respondent or with reference to any property of either or both of them.

There are no proceedings continuing in any Court or Country outside Zambia which are, in respect of the marriage capable of affecting its validity or subsistence. No agreement or arrangement has been made, or is proposed to be made between the parties for the support of the Petitioner or Respondent.

The Petitioner alleges the irretrievable breakdown of the marriage on the ground that the Respondent has committed adultery and behaved in such a way that the Petitioner cannot reasonably be expected to live with him.

The cited particulars of adultery by the Respondent were that in or around 2011 the Petitioner discovered used condoms in their matrimonial bedroom after she returned home from hospital where she had been admitted for pregnancy.

Whilst the following were cited as particulars of the Respondent's unreasonable behaviour:

- i. *That from 2012, the Petitioner and Respondent's marriage had been marred by frequent altercations whereby the Respondent would not only confront the Petitioner over drinking alcohol at workshops but he would abuse her verbally and physically.*
- ii. *That the Respondent left their matrimonial home towards the end of 2012 on the pretext that he had gone for a business trip but never returned home, which led to a communication breakdown between the parties from 2013 and that from that time, the Petitioner and Respondent lived apart for a period of four years until the year 2017 when the Respondent resurfaced claiming that he had been in detention over the years.*
- iii. *That after the Respondent's return home, inspite undergoing family reconciliation, the Respondent's behaviour remained the same as the Petitioner would always discover used condoms in his bag whenever he returned from his business trips.*
- iv. *That on or about 2019, the Petitioner confronted the Respondent over the said used condoms whenever he returned from his business trips but he got upset and assaulted her which led to their separation.*
- v. *The marriage was currently tainted with lack of happiness, understanding and the desire to live together as husband and wife.*

The Petitioner prays for the following;

- i. That the marriage be dissolved;*
- ii. That there be an Order for the maintenance of the child of the family.*
- iii. That Custody of the child of the family be granted to the Petitioner.*
- iv. Costs be borne by each party.*

There is an Acknowledgement of Service and a Certificate of Consent to the Dissolution of the marriage filed by the Respondent dated 8<sup>th</sup> August, 2022. In his Acknowledgement of Service, the Respondent stated that he did not intend to defend the case. In his Consent to the Dissolution of the marriage, the Respondent certified that the marriage had broken down irretrievably and consented to the decree nisi being granted.

On the date of the hearing on 8<sup>th</sup> September, 2022, both parties appeared in person.

In her evidence, the Petitioner repeated the contents of her divorce Petition. She however augmented her particulars of adultery, by testifying that when she confronted the Respondent over the used condoms she had found he told her that it was actually the nephew who could have used them but she doubted this.

On the particulars of unreasonable behavior, the Petitioner added that around 2012 when she was studying at night school she would occasionally return home late. That on one occasion when she returned home in the company of their child, the Respondent refused to open the door for her and after an altercation ensued between them, she resorted to going back to her mothers' house where she lived until June, 2017 when the parties were reconciled after the death of the Petitioner's mother. She further averred that

during 2011 and 2012, the Respondent made her bath in all sorts of herbs.

The Petitioner also testified that on or about October and November 2018, there were floods in Kamwala South and during which time she was beaten up by the Respondent for telling him to be spreading the bed and cleaning the house whenever she went to attend camp. Further, she told the Court that the Respondent informed her that he was impotent whenever he was at their matrimonial home and that such impotence was as a result of a hot-pressing iron that she had pressed him during a physical altercation after she took it for repair sometime in November, 2018.

Moreover, that the Petitioner reported the physical altercation to Luckson Mapushi Police Post and after which she packed her things and left their matrimonial house and whenever she called the Respondent to inform him about their child being ill, he would respond negatively. Furthermore, that the Respondent did not sufficiently provide for their child as he only paid school fees. The Petitioner told the Court that she was aware that the Respondent had married another woman named Sarah with whom he had a child.

This marked the end of the Petitioner's case.

The testimony of the Respondent in Chief was that the condoms that the Petitioner discovered him with were given to him during his trips when he went to South Africa and that the said condoms were not used. He also testified that after he married the Petitioner, he noticed that she had pictures of herself with another man who

had once picked her up before they were married and that the said issue was subject of a family discussion.

It was also his testimony that on or about 2016 after the death of his mother-in-law he began discussing the issue of rentals with the Petitioner and he asked her to return to their matrimonial home but she refused and only returned in November, 2016. It was also averred that around 2018 there was a misunderstanding regarding the issue of erectile dysfunction.

He averred that on one occasion after the Petitioner took the pressing iron for repair around 8:00 hours, she only returned home at 16:00 hours and the Respondent only confronted the Petitioner about it when he returned from Mazabuka and he slapped her, which led her to press a hot iron on his left shoulder. After this incident they both went to the Police station as well as the Hospital.

He further averred that sometime in November, 2018 the Petitioner moved out of their matrimonial home and the Respondent did not ask her to return since she left of her own accord. Moreover, that he only communicated with the Petitioner because of their child whom he has been supporting by paying school fees and providing money for food to eat at school.

The Respondent finally prayed that the marriage be dissolved, that the Petitioner be granted custody of their child and that there be an Order for maintenance of the child of the family.

This marked the end of the Respondent's case.

I have considered the Petition, and the Acknowledgment of Service signed by the Respondent, the Consent to dissolution of Marriage

filed into Court by the Respondent on 8<sup>th</sup> August, 2022 as well as the additional evidence adduced during the hearing. The allegation is that the marriage has broken down irretrievably on the grounds of adultery as well as unreasonable behavior.

Regarding the ground of adultery, which was founded on the fact that the Petitioner had found used condoms in their matrimonial bedroom upon her return from hospital, the Respondent stated that they belonged to his nephew and added that the condoms that the Petitioner found in his bags were not used. Based on this denial, I find that this ground has failed.

Turning to the ground of unreasonable behavior, it is clear that the starting point is **Section 9 (1) (b) of The Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia** which provides that:

***“Irretrievable breakdown may be proved by satisfying the Court that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, or vice versa in the case of a Cross-Petition.”***

Having been guided by the above authority, it is clear in my view that the behaviour required to be proved must be to the point where it is evident that the Parties cannot reasonably be expected to live with each other.

I am also guided by the case of **HYDE V HYDE [1]** where the Court defined marriage as the:-

***“Voluntary union for life of one man and one woman to the exclusion of all others.”***

With this background, it is clear that the issue to be determined is whether the marriage has broken down irretrievably due to the fact that the Respondent has behaved unreasonably to the point where the Petitioner cannot reasonably be expected to live with the Respondent.

According to Sir B. McKenna, in his discourse on the Breakdown of Marriage, in the Modern Law Review Journal, irretrievable breakdown of marriage is a marriage which stands no chance because the parties to the marriage have ceased co – habiting and one of the parties (or both) intends not to resume cohabitation.

In this case, the fact being relied upon by the Petitioner is that of *unreasonable behaviour*. Passingham in Law and Practice in Matrimonial Causes states as follows:

***“the Courts have refrained from any attempt at an exhaustive definition of behaviour...Each case raises a question of fact and degree which may depend on the personalities of the parties...the phrase “cannot reasonably be expected to live with the Respondent,” poses an objective test...But the words “the Petitioner” and “the Respondent” do not refer to ordinary reasonable spouses who are placed in that position, but to the actual persons concerned in the case.”***

In the case of **MAHANDE V MAHANDE [2]**, Cullinan, AJS extending this argument further with specific reference to the question, whether the Petitioner can or cannot reasonably be expected to live with the Respondent, stated as follows:

***“I have to consider not only the behaviours of the Respondent as alleged...but the character, personality,***

***disposition and the behaviour of the Petitioner. The general question may be expanded thus: Can this Petitioner with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this Respondent?"***

In the case of **THURLOW V. THURLOW [3]**, the Court in deciding the question of "unreasonable behaviour" held that: -

***"In order to establish that a Respondent has behaved in such a way that the Petitioner could not reasonably be expected to live with the Respondent, it was not sufficient merely to establish that the marriage was dead and that it was impossible for the Petitioner to cohabit with the Respondent. It had to be shown that it was the Respondent's behaviour which justified a conclusion by the Court that the Petitioner could not reasonably be expected to endure cohabitation."***

The evidence adduced before me has indicated that the Petitioner had found condoms after her return from hospital, and also after the Respondent's return from business trips. Further evidence adduced has indicated that the Respondent has been verbally and physically abusive to the Petitioner, it has also been shown that the parties have lived apart for various durations of time in their marriage notably from 2012 to about 2016 and early 2017. When the Respondent returned, he told the Petitioner that he had been in detention and the parties were reconciled after the death of the Petitioner's mother. After this however, the Petitioner stated that

the Respondent did not change his ways. The Respondent in his testimony has not denied having been physically violent to the Petitioner, and that she indeed found unused condoms in his bags after his return from a business trip. He has also confirmed that the Petitioner left their matrimonial home in November, 2018 and that he did not ask her to return home.

I have analysed the evidence adduced by both parties and I am satisfied that this marriage has been marred by constant separations and physical violence. No doubt the parties have lost all love and affection for each other

In light of the above authorities and given the fact that the Petitioner has sufficiently proved the contents of her Petition, I find that she is entitled to a *Decree Nisi* particularly that the Respondent is not contesting the divorce and he has consented to a decree nisi being granted. This is a clear indication that the parties do not wish to continue being married.

Furthermore, the marriage has broken down and stands no chance because the Petitioner and Respondent ceased cohabiting over five years ago and as such, I am satisfied that there is no reasonable likelihood of the resumption of cohabitation envisaged by **Section 9(4) of the Matrimonial Causes Act, No. 20 of 2007 of the Laws of Zambia** which states that;

***“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.”***

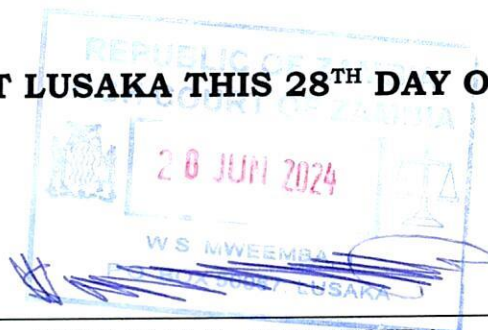
Therefore, on the evidence of both the Petitioner and the Respondent, I am satisfied that the marriage solemnized between

**KAREN MASOJA** and **WILLIAM SINGOYI** on 27<sup>th</sup> November, 2010 at the Office of the Registrar of Marriages, Civic Centre in the City and Province of Lusaka of the Republic of Zambia has broken down irretrievably in terms of **Section 8 and Section 9(1)(b) of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia**. I am further satisfied that granting a Decree Nisi will not cause grave financial or other hardship to the Respondent.

I accordingly Decree that the said marriage be dissolved and a *Decree Nisi* is hereby pronounced dissolving the marriage and I make the following Orders: -

1. The *Decree Nisi* shall become Absolute six (6) weeks from the date hereof unless cause be shown why the same cannot be made Absolute.
2. The Petitioner shall have custody of the child of the family with reasonable access being granted to the Respondent.
3. That the Petitioner and Respondent shall each contribute to the maintenance of the child of the family.
4. Each party is to bear their own costs of this action.

**DELIVERED AT LUSAKA THIS 28<sup>TH</sup> DAY OF JUNE, 2024.**



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**WILLIAM S. MWEEMBA  
HIGH COURT JUDGE**