

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

**2023/HPF/D271**

**BETWEEN:**

**GRACE MULENGA KABWE**

**AND**

**NEWTON MAMBO SHAKALIMA**



**PETITIONER**

**RESPONDENT**

***Before the Honourable Mrs. Justice M.M. Bah-Matandala  
Dated this 14<sup>th</sup> June, 2024.***

*For the Applicant:  
For the Respondent:*

*Mr. M. Siyangwa & Mr. Simawi Lusita Chambers.  
Ms. C. Siwabamunda & Ms. A. Nguluwe G.M. Legal  
Practitioners.*

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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 24<sup>th</sup> 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 **Grace Mulenga Kabwe** who was lawfully married to the Respondent, **Newton Mambo Shakalima**, on the 6<sup>th</sup> May 2007 at the office of the Registrar at the Lusaka City Council, in the City and Province of Lusaka in the Republic of Zambia.

- 2.2 The Parties immediately lived as husband and wife in holy matrimony at Zambia Airforce Singe Quarters in the City and Province of Lusaka of the Republic of Zambia. The Petitioner and the Respondent last lived as Husband and Wife in plot No. 13054, Munali Street, Meanwood Kwamwena in the City and Province of Lusaka in the Republic of Zambia.
- 2.3 Both the Petitioner and Respondent are domiciled in the Republic of Zambia.
- 2.4 The Petitioner is a Lawyer and currently unemployed and resides at plot No. 13054, Munali Street, Meanwood Kwamwena, whilst the Respondent is a ZAF Technician in the Zambia Airforce in the Ministry of Defence of the Republic of Zambia and resides in Kaunda Square both in the City and Province of Lusaka in the Republic of Zambia.
- 2.5 There are Four (4) children of the family namely;
- i Joy Shakalima, female born on the 30<sup>th</sup> August 2007 and currently in grade 11 at Chibombo Boarding Secondary School*

*and resides with the Petitioner at plot No. 13054.*

*ii Luyando Shakalima, male born on the 15<sup>th</sup> April 2011 and currently in grade 7 at Flame of Knowledge School and resides with the Petitioner.*

*iii Abraham Shakalima male born on the 20<sup>th</sup> May 2017 and currently in grade 1 at Flame of Knowledge school and resides with the Petitioner.*

*iv Abigail Shakalima female born on 30<sup>th</sup> July 2019 and currently in pre-school at Flame of Knowledge school and resides with the Petitioner.*

2.6 There are no other children living born to the Respondent during their marriage so far as is known to the Petitioner.

2.7 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 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.
- 2.9 It has been proposed that the children of the family namely; Joy shakalima, Luyando Shakalima, Abraham Shakalima and Abgail Shakalima currently residing with the Petitioner should be ordinally be residing with the Petitioner with reasonable access to the Respondent at all reasonable times.
- 2.10 The said marriage has broken down irretrievably.
- 2.11 The Petitioner has alleged that Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

### **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) *After the birth of the second child, Luyando Shakalima, the Respondent became physically aggressive to the Petitioner to a point where he would beat her up. The Petitioner has had to report the Respondent to the Police and also to his superiors at his work place for this behaviour. The Respondent had been arrested on several occasions by both Kwamwena Police Post and Ibex Police Station. Most of the cases reported at the various Police Stations were withdrawn by the Petitioner hoping the Respondent would change.*

- ii) Sometime in 2021, the Petitioner and the Respondent had separated due to the Respondent's behaviour. During this period of separation, the Respondent had an altercation with Joy Shakalima, the Respondent's daughter and he choked her to a near-death experience such that she had to be resuscitated at the Hospital. The Respondent was arrested but the matter was withdrawn later by the Petitioner and the said daughter, Joy Shakalima.
- iii) in October 2022 on or about Independence Day, the Respondent came home very drunk and started shouting in the house accusing the Petitioner of having boyfriends because she had a lot of cell-phone numbers saved in her mobile phone. The shouting resulted in the Respondent physically beating the Petitioner and dragging her out of the

bedroom naked and this was said not the first of its kind as it has occurred severally.

iv) further that on or about May 1<sup>st</sup>, 2023, the Respondent continued with his abuse and he braggingly uttered these sentiments;

**“that he will keep on abusing the Petitioner until she voluntarily caves the marriage as he is a moving cheque and would like to enjoy his pension and marry a less educated woman.”**

v) the Respondent though being in gainful employment with a gross salary of ZMW 16,0056.00 as at December 2022 has rarely provided for support towards the family. The erratic support he has provided has always been through being pushed and at times by being reported to his superiors at his work place. Whenever he gets paid, he has

*always disappeared from home for days and only showed up at home whenever money finished. Further, the Respondent has economically negatively impacted the Petitioner in the following specific ways;*

***a) In March 2022 the Respondent was forced to stop work at Chanda Chizu & Associates, a firm of Legal Practitioners due to the Respondent's behaviour. The Respondent had a tendency of calling the Managing Partner, Mr. Chanda Chizu and accused one of the general workers at the firm of being in a relationship with the Petitioner. The Petitioner was embarrassed and forced to resign work to***

*avoid further embarrassment due to the Respondent's behaviour.*

- b) immediately after leaving work as a result of the Respondent's behaviour, the Petitioner found a stand at Kaunda Square Stage 1 market where she started making and selling sausages amongst other food staffs. the Respondent started calling and issuing to kill any person who had given her a stand at the market accusing him of having a sexual relationship with the Petitioner. The Petitioner was evicted from the market and she has since lost out on*

**business opportunities  
including capacity to provide  
for the family because of the  
Respondent's behaviour.**

vi) the Respondent, immediately after the separation with the Petitioner, has continuously continued to psychologically abuse the Petitioner by way of WhatsApp messaging in that he sends her insulting messages and accuses her of having multiple sexual partners. The Respondent has further texted the Petitioner about his sexual activities including finding a woman better than the Petitioner. The psychological abuse and innuendos by the Respondent on the Petitioner have greatly affected the Petitioner in a way that she cannot continue to live with the Respondent. The Petitioner and the Respondent have previously attended counselling at the Respondent's

*workplace because of the Respondent's behaviour but such counselling has not yielded any positive behavioural change in the Respondent.*

**3.4 The Petitioner therefore prays that;**

- i the said marriage be dissolved.*
- ii that the Petitioner be granted custody of the children of the family with reasonable access at all reasonable times to the Respondent.*
- iii that the Respondent should be ordered to provide reasonable and sufficient provision towards the maintenance of the children of the family.*
- iv the Respondent be restrained and / or prohibited from causing any form of gender-based violence on the Petitioner, the children of the family and any associates of the Petitioner.*
- v the Respondent should meet the costs of this Petition.*

*vi that the Court grant the Petitioner any other reliefs that the Court shall deem fit and reasonable in any event.*

#### **4.0 ANSWER**

4.1 The Respondent did not file an answer to the Petition and did not attend court hearing as his Lawyers could not trace him, they don't know his whereabouts.

#### **5.0 HEARING**

5.1 At the hearing of the matter on the 26<sup>th</sup> March 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. For avoidance of repetition, I shall only highlight issues she did not aver in the Petition.

5.3 The Petitioner informed the Court that Respondent has been okay until when they had their second born child,

this is when he started engaging himself in beer drinking. Whenever he goes out for drinking, he could sleep out and return the following morning. Further the Petitioner stated that she told her relatives about the behaviour of the Respondent wherein a meeting was called. Despite being talked to, the Respondent did not stop his drinking, abusive and sleeping out of the matrimonial house behaviour.

5.4 It was further submitted that the Petitioner even reported the Respondent to his Superiors at his work place concerning his behaviour but still he did not change.

5.5 The Petitioner testified that the Respondent would come home late, drunk and he would start beating her. The last time he dragged the Petitioner naked from the bedroom to the sitting room and this wasn't the first time because it has been happening severally.

5.6 At some point the Petitioner found a job at Sangwa Simiza and Associates, but the Respondent was insecure and suspected the Petitioner of going out with

the Director, he even reached at an extent of calling the Director suspecting him of going out with the Petitioner. The Petitioner couldn't handle the embarrassment and she resigned from work.

5.7 Further she alleged that she had found a table in the market in Kaunda Square stage 1 where she selling sausages and other food staff, but again the Respondent went on to find the person who helped the Petitioner with a stand, he insulted them and they chased her from the market.

5.8 The Respondent is said to be so violent to the Petitioner such that at some point, after he beat her, she become unconscious and she just found herself admitted at Levy Mwanawasa Teaching Hospital.

5.9 The Petitioner later moved out of the matrimonial and went to stay in Ibex Hill, after some time the Respondent apologized to her and said he had changed but later on he went back to his abusive ways and he would mostly beat up the Petitioner towards the exams during her studies.

5.10 The Petitioner stated that when they called for another family meeting the Respondent said the reason, he was beating up the Petitioner is that she is boastful because she is studying Law. The Respondent told the Petitioner that he would continue to abuse her until she leaves the matrimonial home by herself so he would marry a less educated woman.

5.11 The Petitioner also prayed for custody of the children of the family with reasonable access at all reasonable times to the Respondent. And that the Respondent should be ordered to provide reasonable and sufficient provisions towards the maintenance of the children of the family.

5.12 The Petitioner prayed that the Respondent be restrained and or/prohibited from causing any form of gender-based violence on the Petitioner, the children of the family and any associates of the Petitioner.

5.13 And that the Respondent should meet the costs of this Petition and that the Court grants the Petitioner any

other reliefs that the Court shall deem fit and reasonable in any event.

5.14 There was no cross examination because the Respondent did not file an answer to the Petition and did not attend court and his Lawyers had no idea about his whereabouts and had no instructions.

## **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 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, 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 think-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 feed up with the marriage for the reason that the Respondent is an abuser who has been physically assaulting her and the children of the family.

The Respondent choked his daughter at some point and locked up the other children in the house without any food such that the neighbours had called the Petitioner to inform her about the incident.

7.19 The Respondent did not rebut the Petition since he did not file an answer and did not attend court hearing and although his counsel was present, but had no instruction because the Respondent's whereabouts were unknown.

7.20 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, such as excessive drinking and sleeping out of the matrimonial home and physical abuse of beating up of the Petitioner. Further the Respondent is abusive to the extent of even choking his own daughter. I find this behaviour to be unreasonable and unacceptable behaviour.

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 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's inability to support the family financially and his abusive tendencies towards the Petitioner and children of the family, his behaviour of sleeping out of the matrimonial home and stopping the Petitioner from working and from doing any business to be unreasonable behaviour. The Respondent has not rebutted the allegations herein because he did not file an answer to the Petition.

7.23 I find that the Petitioner and Respondent are *unharmonious* with each other and the Petitioner herein finds it intolerable to live with the Respondent. Consequently, this marriage has broken down irretrievably.

7.24 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.

7.25 I also grant the Petitioner custody of the four (4) children of the family with supervised reasonable access to the Respondent, since the Respondent has not contested for custody.

7.26 The Respondent is restrained and /or prohibited from causing any form of gender-based violence on the Petitioner, the children of the family and any associates of the Petitioner.

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

7.28 The Respondent with bear the costs herein.

**8.0** Leave to appeal is granted

Dated Lusaka, this 14<sup>th</sup> June 2024

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

