

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

2023/HPF/D297

BETWEEN:



ANNA CHIBWANA TEMBO

PETITIONER

AND

CHARLES MAFUTA TEMBO

RESPONDENT

Before: The Hon. Mrs. Justice M. M. Bah-Matandala
Dated this 14th day of November, 2025 at Lusaka

For the Petitioner: Ms. Limose Tembo-Tindi Messrs. Legal Aid Board

**RULING ON EX-PARTE APPLICATION FOR CORRECTION OF
JUDGMENT**

*(pursuant to Rule 78 of the Supreme Court Rules, Section 25 of the
Supreme Court Act, and Order 20 Rule 11 of the White Book 1999
Edition)*

LEGISLATION REFERRED TO:

1. *Supreme Court Rules Chapter 25 of the Laws of Zambia*
2. *Supreme Court Act, Chapter 25 of the Laws of Zambia*
3. *Supreme Court Rules (White Book), 1999 Edition*
4. *Matrimonial Causes Act No. 20 of 2007*

CASE LAW REFERRED TO:

1. *Trinity Engineering (PVT) Limited v Zambia National Commercial
Bank Limited*
[1995/1997] ZR 166
2. *Hatten v Harris (1892) AC 560*

1.0 INTRODUCTION

- 1.1 This is my ruling on an Ex Parte Summons filed by the Petitioner on 10th November 2025, seeking correction of a clerical error contained in the Judgment of this Court delivered on **31st October 2025**, which dissolved the parties' marriage and granted ancillary reliefs.
- 1.2 The application is brought under: **Rule 78 of the Supreme Court Rules, Section 25 of the Supreme Court Act, Cap 25**, and **Order 20 Rule 11 of the Supreme Court Practice (White Book) 1999 Edition**.
- 1.3 The application is supported by an **Affidavit sworn by Ms. Limose Tembo Tindi**, counsel for the Petitioner, together with the Statement of Arrangements for the Children filed on the 9th of June 2023, the Petition (LTT1), and the Amended Petition (LTT2).
- 1.4 The Applicant seeks correction of the portion of the Judgment which erroneously granted **custody of the children of the family to the Respondent**, instead of the Petitioner

2.0 BACKGROUND

- 2.1 The material facts are not in dispute. The Petitioner initially commenced these proceedings on **9th June 2023** by Petition for Dissolution of Marriage based on **unreasonable**

behaviour, supported by a Statement as to the Arrangements of the Children of the Family. In that statement, the Petitioner clearly indicated that:

- i. the two minor children, **Janaya Kabonga Tembo** and **Athalia Kunda Tembo**, reside with her,
- ii. attend school in Obama Chamba Valley, and
- iii. are financially and emotionally under her care.

2.2 The original Petition (LTT1) expressly prayed that;

“the Petitioner be granted custody of the children of the family.”

2.3 On **8th October 2025**, the Petitioner filed an **Amended Petition (LTT2)** solely to add an alternative ground of divorce under **Section 9(1)(d)** of the Matrimonial Causes Act (living apart for two years).

2.4 However, in preparing the Amended Petition, counsel inadvertently inserted a prayer stating:

“That the Respondent be granted custody of the children of the family.”

2.5 The evidence before me shows that this was a **clerical and drafting error**. Relying on the wording in the Amended Petition, this Court’s Judgment of **31st October 2025** granted: **custody to the Respondent with reasonable access to the Petitioner**.

2.6 Counsel only became aware of the error upon receipt of the judgment on 4th November 2025, prompting this application.

3.0 **THE ISSUE FOR DETERMINATION**

3.1 The single issue for determination is: *Whether the portion of the Judgment dated 31st October 2025, granting custody to the Respondent, arose from a clerical or accidental slip, and if so, whether it should be corrected under Rule 78 of the Supreme Court Rules.*

4.0 **THE LAW**

4.1 The relevant law is clear and well-established. **Rule 78 of the Supreme Court Rules** Provides that:

“Clerical errors in judgments or orders, or errors arising from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.”

4.2 **Order 20 Rule 11 of the White Book 1999** Provides that:

“The Court may at any time correct an accidental slip or omission in a judgment or order to give effect to the intention of the Court when the judgment or order was given.”

4.3 Judicial authorities have consistently held that: Where the error is **clerical**, **accidental**, or due to **omission**, and correction will merely restore the judgment to what the Court **intended**. The Court **must correct it** in the interests of justice. Cases relied upon by the Applicant include:

Trinity Engineering (PVT) Ltd v Zambia National Commercial Bank Ltd [1995/1997] ZR 166 which confirms the purpose of the slip rule. And the case of **Hatten v Harris (1892) AC 560** which holds that where an error is clearly accidental, the Court must correct the order to reflect what the judge intended to pronounce.

4.4 I fully adopt these principles.

5.0 **ANALYSIS AND FINDINGS**

5.1 The custody request in the Amended Petition was a clear clerical error. The original Petition of 9th June 2023 prayed for **custody to the Petitioner**. The Statement of Arrangements shows the **children reside with the Petitioner**, not the Respondent. Nothing in the Amended Petition intended to reverse custody. The erroneous prayer inserted in the Amended Petition: “That the Respondent be granted custody...” was therefore a **clerical mistake**, not a substantive amendment.

5.2 The custody order in the Judgment resulted directly from this mistake. There was no evidence, oral or documentary, to justify awarding custody to the Respondent. The only reason this Court granted custody to him was because the Amended Petition mistakenly asked for it. Thus, the

Judgment was inadvertently influenced by the accidental wording.

5.3 The correction will not prejudice the Respondent for the reason that the Respondent has: never had custody, not been the primary caregiver, and known throughout that the Petitioner sought custody.

5.4 The welfare and best interests of the children is the **paramount** consideration. Therefore, leaving the mistaken order uncorrected would: disrupt the children's settled environment, impose custody on a parent not exercising care, and undermine justice.

5.5 Furthermore, the correction does not alter the substance of the Court's intended decision. The correction simply restores the Judgment to: the prayer the Petitioner actually sought, the evidence before Court, and what the Court intended based on such evidence. This falls squarely within the slip rule.

6.0 **CONCLUSION**

6.1 I am satisfied that the prayer in the Amended Petition relating to custody was included **in error**. The judgment granting custody to the Respondent arose from that clerical error.

6.2 The error falls within **Rule 78 of the Supreme Court Rules** and **Order 20 Rule 11**. Correction is necessary to give effect to the Court's **true intention** and to safeguard the **welfare of the children**.

6.3 Accordingly, the application succeeds.

7.0 **ORDER**

7.1 It is hereby ordered that:

- i. The Judgment of this Court dated **31st October 2025** is **corrected** pursuant to Rule 78 of the Supreme Court Rules and Order 20 Rule 11 of the White Book, to rectify an accidental slip in the custodial order.
- ii. The portion of the Judgment reading: "**Custody of the children of the family is granted to the Respondent with reasonable access to the Petitioner.**" is hereby **deleted** and substituted with the following: "**Custody of the children of the family is granted to the Petitioner, with reasonable access to the Respondent.**"
- iii. All other parts of the Judgment remain unchanged.
- iv. The correction shall be deemed to take effect **as at 31st October 2025**, the date of the original Judgment.

- v. There shall be **no order as to costs**, the matter concerning the welfare of minor children.

Dated at Lusaka this 14th day of November, 2025.

HON. M. M. BAH-MATANDALA

Judge of the High Court

