

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

2023/HPF/D377

BETWEEN:

MARIA CHISANGA MATANDA

PETITIONER

AND

CHARLES MUMBA MATANDA

RESPONDENT

*Before the Honourable Mrs. Justice M. M. Bah-Matandala
Dated this 20th day of November, 2025.*

For the Petitioner: Ms. M. Kapasa-Musonda – Messrs. J. M. Kapasa &
Company

For the Respondent: N/A

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, Butterworths.*
3. *Rayden's Law & Practice in Divorce & Family Matters in the High Court, County Courts & Magistrates' Courts, 11th Edition, Butterworths.*

Cases Referred to:

1. *Brighton Soko v Petronella Sakala Soko, SCZ-8-189-2015.*
2. *Ash v Ash (1972) 1 All E.R. 582.*
3. *Mahande v Mahande (1976) Z.R. 354 (S.C).*

1.0 INTRODUCTION

1.1 This is a Judgment for the Petition for dissolution of marriage which was filed on **19th July, 2023**, pursuant to the provisions of **Sections 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 Sections 8 and 9(1)(b) of the Matrimonial Causes Act provides that 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, and that, for purposes of Section 8, the Court shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of, inter alia, the fact 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. I am guided accordingly.

2.0 BACKGROUND

- 2.1 The Petition indicates that the Petitioner, **MARIA CHISANGA MATANDA**, was lawfully married to the Respondent, **CHARLES MUMBA MATANDA**, at the **Catholic Church of Our Heavenly Father**, Chelston Parish, in Lusaka, in the Lusaka Province of the Republic of Zambia, on **10th March, 2012**. A marriage certificate to that effect was produced and admitted in evidence.
- 2.2 After the celebration of the marriage, the parties last lived together as husband and wife at House No. H37, Obama, Lusaka, in the Lusaka Province of the Republic of Zambia.
- 2.3 Both the Petitioner and the Respondent are domiciled and resident in the Republic of Zambia.
- 2.4 The Petitioner is a Procurement Officer employed by ZESCO Limited, while the Respondent is a Cyber Security Officer employed by the Zambia Information and Communications Technology Authority (ZICTA).
- 2.5 There are five (5) children of the family born to the Petitioner and Respondent, namely:

- i. **Charles Bwalya Matanda**, born on 26th January, 2009;
- ii. **Naomi Mwansa Matanda**, born on 6th May, 2011;
- iii. **Emmanuel Chimanda Matanda**, born on 4th March, 2014;
- iv. **John Kangwa Matanda**, born on 4th March, 2014; and
- v. **David Chola Matanda**, born on 1st July, 2016.

2.6 All the said children are minors and still in school.

2.7 There have been previous proceedings between the parties in this Court under cause number 2022/HPF/D/274 for divorce, which did not terminate the marriage. There are no other proceedings in any court in Zambia or elsewhere capable of affecting the validity or subsistence of the said marriage.

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

2.9 It is the Petitioner's position that the marriage has broken down irretrievably.

3.0 THE PETITIONER'S CASE

3.1 The Petitioner alleges that the marriage has broken down irretrievably because the Respondent has behaved in such a way that she cannot reasonably be expected to live with him, within the meaning of Section 9(1)(b) of the Matrimonial Causes Act.

3.2 The particulars of **unreasonable behaviour** relied upon by the Petitioner may be summarised as follows:

- i) *That the Respondent has failed to provide adequate financial support for the Petitioner and the children of the family and has neglected his responsibilities as husband and father, resulting in, inter alia, school fees falling into arrears and the children being sent away from school.*
- ii) *That the Respondent has engaged in excessive drinking and gambling, staying away from the matrimonial home for long periods,*

and returning at will without explanation, causing emotional distress and instability in the home.

iii) That the Respondent has incurred multiple debts, allowing creditors to harass the Petitioner and threaten to seize household property, thereby exposing the family to embarrassment and insecurity.

iv) That the Respondent has deserted the matrimonial home, staying away overnight or for prolonged periods without informing the Petitioner of his whereabouts and, ultimately, causing the Petitioner to move out on or about 4th August, 2023 due to the untenable situation.

- v) *That the marriage is characterised by frequent quarrels, tension and hostility, which have created an environment that is not conducive for family life.*
- vi) *That attempts at reconciliation have been made but have failed, as the Respondent has shown indifference and has not changed his conduct.*

3.3 The Petitioner therefore prays that:

- i) *the said marriage be dissolved;*
- ii) *she be granted custody of the children of the family, with reasonable access to the Respondent;*
- iii) *there be appropriate provision made for the **maintenance** of the children;*
- iv) *there be an order for **property settlement**; and*
- v) *each party bear their own costs, or as the Court may deem fit.*

4.0 ANSWER

- 4.1 The record shows that the Respondent **did not file an Answer** to the Petition. No affidavit in opposition to the Petition was filed.
- 4.2 Although the Respondent did appear at an earlier mention of the matter in 2023, he subsequently failed to attend the later hearings set for the hearing of the Petition and did not participate in the trial. He has not filed any defence to contest the dissolution of the marriage or the allegations of unreasonable behaviour.
- 4.3 The Court is satisfied from the Affidavits of Service and the exhibit "MCM1" that the Respondent was duly served with the Petition and subsequent notices of hearing, including service by email at his confirmed email address when he indicated that he was out of town.
- 4.4 The Petition is therefore undefended, and as such Respondent has not opposed dissolution of the marriage.

5.0 HEARING

- 5.1 The matter came up for hearing on several occasions, and ultimately, on 19th November 2025, it was listed for the hearing of the Petition before me.
- 5.2 On that date, the Petitioner appeared in person and was represented by learned counsel **Ms. M. Kapasa-Musonda**, whilst the Respondent did not appear and was not represented, despite proof of service upon him.
- 5.3 The Learned counsel for the Petitioner applied that the matter proceeds in the absence of the Respondent, and I so ordered, the Court being satisfied that the Respondent had proper notice of the hearing and had chosen not to attend.
- 5.4 The Petitioner testified on oath herein. She identified the Respondent as her husband and produced the marriage certificate which was admitted in evidence as P1. She adopted the contents of her Petition as her evidence in chief and reiterated that the marriage had broken down irretrievably due to the Respondent's unreasonable behaviour as set out in the Petition.

5.5 The Petitioner testified that the Respondent frequently stayed away from home, neglected his financial obligations, and left her as the sole caregiver of the five minor children. She further stated that she made efforts at reconciliation, including involving third parties, but these efforts failed as the Respondent did not change his conduct.

5.6 The Petitioner also testified that she has had de facto custody of all five children, who reside with her, and that the Respondent has not been actively involved in their day-to-day upbringing or provision beyond what has been compelled by court order in separate maintenance proceedings.

5.7 At the close of the Petitioner's viva voce evidence, the learned counsel indicated that this was the entirety of the Petitioner's case and closed the case for the Petitioner. There was no evidence from the Respondent.

6.0 SUBMISSIONS

6.1 There were no written submissions filed by either party at the time of this judgment. I have therefore relied on the pleadings and oral testimony.

7.0 CONSIDERATIONS AND DECISION

- 7.1 I have considered the Petitioner's pleadings and the oral testimony. I begin by noting that the parties celebrated their statutory marriage at the Catholic Church of Our Heavenly Father, Chelston, Lusaka, as evidenced by the marriage certificate exhibited at the hearing. I therefore find as a fact that the parties' marriage was celebrated in compliance with the **Marriage Act, Chapter 50** of the Laws of Zambia, and that it is a statutory marriage.
- 7.2 The existence of a valid marriage certificate forms the basis of this Court's jurisdiction over the Petition, as it shows that the marriage is not customary but statutory.
- 7.3 I have also taken cognisance of the fact that the Petitioner and the Respondent are both resident and domiciled 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.

- 7.4 Further, it is my finding that the Petition is properly before the Court because it was issued out of Court more than one year after the solemnisation of the marriage, in compliance with Section 6 of the Matrimonial Causes Act concerning the timeframe within which a petition for dissolution of marriage may be presented.
- 7.5 Based on the foregoing, I am satisfied that this Court has jurisdiction to entertain the present Petition.
- 7.6 Further the Petitioner's case shows that the marriage has broken down irretrievably due to the Respondent's unreasonable behaviour.
- 7.7 The Respondent has not filed any Answer or led any evidence to rebut the Petitioner's allegations.
- 7.8 The test to apply in determining whether the Respondent's behaviour is unreasonable within the meaning of **Section 9(1)(b)** has been discussed by eminent authors such as Rayden, and interpreted in decisions such as *Mahande v Mahande*, *Brighton Soko v Petronella Sakala Soko and the English authority of Ash v Ash*.

7.9 The Court is required to assess the behaviour of the respondent in the context of the particular petitioner and determine whether, having regard to all the circumstances and the history of the marriage, the petitioner can reasonably be expected to live with the respondent.

7.10 I am guided by the principle that it is not every difficulty or disagreement that will warrant dissolution of a marriage. However, where conduct, taken cumulatively, reaches the point at which the petitioner's powers of endurance are exhausted such that he or she cannot reasonably be expected to continue cohabiting with the respondent, the test is met.

7.11 I have carefully considered the Petition and the viva voce evidence of the Petitioner. The allegations include persistent failure to provide, neglect of the children's financial needs, accumulation of debts to the detriment of the family, prolonged absences from the matrimonial home without explanation, and indifference to reconciliation efforts.

7.12 The Respondent has neither filed an Answer nor led evidence to counter these allegations. I therefore take the Petitioner's evidence as **uncontroverted**.

7.13 I am satisfied, on a balance of probabilities, that the Respondent has behaved in a manner which, taken as a whole, amounts to unreasonable behaviour. The Petitioner cannot reasonably be expected to continue to live with him in such circumstances.

7.14 Accordingly, I find that the marriage has **broken down irretrievably** within the meaning of **Sections 8 and 9(1)(b)** of the Matrimonial Causes Act.

8.0 Custody of the Children

8.1 The evidence is that all five children of the family are minors and have been living with the Petitioner. The Respondent has not challenged this position and did not appear to advance any contrary proposal.

8.2 In determining issues relating to children, I am guided by the welfare principle, which is reflected in the **Matrimonial Causes Act** and the **Children's Code Act**, namely that the **best interests of the child shall be the paramount consideration**.

- 8.3 Having considered the evidence, I find that it is in the best interests of the children that **primary custody** remains with the Petitioner, who has been their principal caregiver and who has ensured their continued schooling and day-to-day care.
- 8.4 The Respondent shall, however, have **reasonable access** to the children, to be exercised in a manner that respects the children's welfare and schooling and is arranged amicably between the parties.
- 8.5 The record shows that, in separate interlocutory proceedings under the same cause, this Court (sitting through the Honourable District Registrar) delivered a ruling on **15th December, 2023**, ordering **maintenance pending suit** in the sum of **K8,000 per month** in favour of the Petitioner for the benefit of the children of the family, together with **50% of school fees and logistical expenses** per school term, payable by the Respondent.
- 8.6 The same record shows that, following non-compliance, an order for **attachment of earnings** was made in March 2024, directing the Respondent's employer

(ZICTA) to deduct the said monthly sum from his salary and remit it to the Petitioner.

- 8.7 At this stage of delivering the final judgment in the divorce cause, the question arises whether this Court should make a **fresh final maintenance order** or leave the matter to be determined in detail by the Registrar upon application.
- 8.8 Counsel for the Petitioner has indicated that the Petitioner seeks a final maintenance order to be made at this stage. However, I find that the existing maintenance pending suit order should continue in force until the matter is placed before the Honourable Deputy Registrar for assessment or variation, upon application by either party, in accordance with Sections 54 to 56 of the Matrimonial Causes Act.
- 8.9 In view of the financial complexity, the Respondent's previous non-compliance, and the need for detailed inquiry into both parties' current means and obligations, I am inclined to accept this approach. The existing interlocutory maintenance order continues to meet the immediate needs of the children and is

enforceable through the attachment of earnings order already in place.

8.10 I therefore decline to make a fresh final maintenance order at this stage. Instead, I will refer the question of post-divorce maintenance, whether for the Petitioner or the children, to the Honourable Deputy Registrar, to be determined upon application by either party, with the benefit of fuller financial disclosure.

8.11 For the avoidance of doubt, the maintenance pending suit order and the order for attachment of earnings shall continue in full force and effect until they are reviewed, varied, or discharged by the Registrar or this Court upon proper application.

8.12 The Petitioner has prayed for property settlement but no specific schedule of property or agreed proposals were placed before me for determination at this stage. Given the nature of the issues and the need for detailed accounting and valuation, I consider that property settlement is more appropriately dealt with at the Registrar's level upon application, with liberty to refer any contested questions back to a Judge.

8.13 Accordingly, I refer the determination of property settlement to the Honourable Deputy Registrar, upon application by either party.

8.14 This is a family matter, and the Petition is undefended. In the circumstances, and in the interests of justice, I order that **each party shall bear their own costs.**

9.0 Final Orders

9.1 In the result, and on the totality of the evidence before me, I make the following orders:

- i) *The marriage between **Maria Chisanga Matanda** and **Charles Mumba Matanda**, celebrated on 10th March, 2012, at the Catholic Church of Our Heavenly Father, Chelston Parish, Lusaka, has **broken down irretrievably** by reason of the Respondent's unreasonable behaviour.*
- ii) *A **Decree Nisi** of divorce is hereby granted and shall be made **absolute***

in six (6) weeks from the date hereof,
unless cause is shown to the contrary.

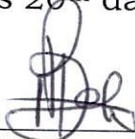
- iii) **Custody** of the five minor children of the family is granted to the Petitioner, with the Respondent having reasonable access, to be exercised in the best interests of the children.
- iv) The existing orders for **maintenance pending suit** and **attachment of earnings** made in December 2023 and March 2024 respectively shall **continue in force** until they are varied or discharged by the Registrar or this Court upon application.
- v) The questions of **final maintenance** (if any) and **property settlement** are hereby **referred to the Learned Honourable Deputy Registrar**, to be determined upon application by either party in accordance with the

Matrimonial Causes Act and the applicable Rules of Court.

vi) Each party shall **bear their own costs.**

9.2 Leave to appeal is granted.

Dated at Lusaka this 20th day of November, 2025.



M. M. Bah-Matandala
HIGH COURT JUDGE

