

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

**2024/HPF/680**

**IN THE MATTER OF:**

**SECTION 58 OF THE MATRIMONIAL  
CAUSES ACT NO. 20 OF 2007**

**IN THE MATTER OF:**

**ORDER VI RULE 1 SUB RULE (3) OF  
THE HIGH COURT (AMENDMENT)  
RULES, CHAPTER 27 OF THE LAWS OF  
ZAMBIA**

**AND**

**IN THE MATTER OF:**

**AN APPLICATION FOR AN ORDER OF  
WILFUL NEGLECT TO MAINTAIN THE  
CHILDREN OF THE FAMILY**

**B E T W E E N:**

**ANITA KANYANTA CHIMWALA**

**APPLICANT**

**AND**

**GABRIEL CHIMWALA**

**RESPONDENT**

***Before the Hon. Mrs. Justice M.M. Bah-Matandala***  
**On the 30<sup>th</sup> day of April, 2025.**

*For the Petitioner:* Ms. V. Mulansinyungwe Messrs. Malisa & Partners Legal Practitioners  
*For the Respondents:* Mr. M. Chipanzhya Messrs. Chipanzhya & Company

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## **JUDGEMENT**

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**Legislation Referred To:**

1. *The Matrimonial Causes Act No 20 of 2007*
2. *The Children's Code Act No. 12 of 2022*

**Works Referred To:**

1. *Jonathan High Elliot v. Katongo Elliot (Nee Chilufye) 2019/HPF/D386*
2. *Herman Miles v. Patricia Miles (2014) 1 ZR 179*
3. *Rita Miller v. Samson Kachepa 2014/HP/1051.*

## 1.0 INTRODUCTION

1.1 By way of Originating Summons supported by an affidavit dated 21<sup>st</sup> August, 2024, the Applicant is seeking for the following reliefs;

- a) *That the Respondent be ordered to pay the Applicant periodical payments towards the support and maintenance of the children of the family from the date of his refusal or neglect to do so;*
- b) *Costs occasioned by and incidental to this application, and*
- c) *Further or other reliefs that the Court may deem fit.*

1.2 The Application is made pursuant to **section 58 of the Matrimonial Causes Act No. 20 of 2007 of the Laws of Zambia.**

## 2.0 AFFIDAVIT IN SUPPORT OF APPLICATION

2.1 In the Affidavit in Support dated 21<sup>st</sup> August, 2024 and deposed to by **Anita Kanyanta Chimwala** the Applicant herein, it was deposed that the parties were lawfully

married on 29<sup>th</sup> day of December, 2012 at St. Ignituous Parish under the Roman Catholic Church of Lusaka.

2.2 And it was stated that during the subsistence of their marriage they had five (5) children namely,

1) *Polyana Mwansi Chimwala female born on the 11<sup>th</sup> of October, 2013*

2) *Mapalo Faith Chiwala female born on 21<sup>st</sup> May, 2015*

3) *Shekinah Chimwala female born on 21May, 2017*

4) *Israel Kondani Chimwala male born on 7<sup>th</sup> November, 2020*

5) *Divine Lyando Angel Chmwala female born on 9<sup>th</sup> March, 2022.*

2.3 The Applicant averred that the parties mutually agreed to go on separation which has been for one year and five months due to irreconcilable unresolved marital conflicts between them. The Applicant has had custody of all the children of the family during the separation.

2.4 The Applicant averred that the Respondent only contributes a fifty percent towards the payment of school

fees for the children of the family and occasionally towards medical expenses.

2.5 The Applicant averred that the Respondent has willfully neglected to consistently provide or to make sufficient contribution or provisions towards the maintenance and educational needs of the Applicant and the children of the family.

2.6 The Applicant averred that she is currently employed as a Security Sergeant under ZESCO Limited with a monthly net pay of fifteen thousand, one hundred and thirty kwacha (K15,130.00) and there is an amount less, monthly deductions of three thousand seven hundred and sixty and twenty ngwee (K3,760.20) which was for the purchase of a motor vehicle which the Respondent uses. This is evidenced by exhibit marked "AKC2" the Applicant's pay-slip.

2.7 The Applicant averred that her expenditure includes, paying for housing which is near the children's school in Avondale and which is occupied in order to reduce transport costs spent on the children of the family.

- 2.8 The Respondent is said to be currently employed as a Senior Human Capital Assistant under ZESCO Limited and has a monthly pay of close to twenty thousand Kwacha (20.000.00). The Respondent is also alleged to collect monthly rentals of seven hundred kwacha (K700.00) from a three-roomed house on the plot belonging to the family and he may also commence collecting rentals from another three-roomed house, both which were built using the Applicant's money which she obtained from ABSA, and in which the Respondent only contributed a meager four thousand kwacha only (4,000.00).
- 2.9 The Respondent is not paying rentals because he has continued to stay in a rental free-matrimonial home.
- 2.10 The Applicant averred that the Respondent does not spend money on public transport since he has continued to use the family vehicle purchased by parties wherein the Applicant contributed about fifteen thousand kwacha (K15,000.00) more compared with the Respondent's contribution.

2.11 The Applicant has provided the monthly needs of the family to be;

i) Groceries & laundry	ZMW4,500.00
ii) Food staff for school	ZMW3,000.00
iii) Food staff at home	ZMW8.000.00
iv) Transport costs for school	ZMW3,000.00
v) School fees, books pencils pens and miscellaneous (per term)	ZMW11,000.00
vi) Maid	ZMW1,700.00
vii) Medicals	ZMW2,000.00
viii) Rentals	ZMW5,000.00
ix) Electricity	ZMW600.00
x) Water	ZMW100.00
xi) Garbage	ZMW50.00
xii) Clothing (every 6 months)	ZWM6,000
xiii) Hair salon (per two months)	ZMW1,400.00
xiv) Gratuity installment (maid per month)	ZMW2,000.00
xv) Outside house maintenance	ZMW700.00
<b>Total monthly expenses only</b>	<b>ZMW15,850.00</b>

excluding school fees and medical expenses

2.12 The Applicant also indicated that she has been unable to solely provide for the financial needs of the children and for herself. The Applicant averred that the Respondent should support her by contributing to the provision of the monthly expenses and other periodical expenses apart from just school fees and medical expenses which he has been contributing.

2.13 The Applicant now seeks the Court's order for the Respondent to pay a monthly contribution towards the expenses aforesaid since the Respondent has the financial capacity since he earns a monthly income of about K20,000 gross.

### **3.0 AFFIDAVIT IN OPPOSITION TO THE APPLICATION**

3.1 In opposition an affidavit was filed on the 4<sup>th</sup> September, 2024 which was deposed to by the Respondent and it was accompanied with skeleton arguments as well as a list of authorities of even dates.

3.2 The Respondent in response to paragraph 6 and 7 of the affidavit in support averred that there was no mutual

separation as alleged or at all but that the separation was induced by the Applicant who had deserted the matrimonial home and abandoned the Respondent and the children including an eleven month old infant on the 8<sup>th</sup> of March, 2023 due to irreconcilable and unresolved marital disputes stemming from the Applicant's adulterous relationship with a married man who is her work supervisor.

- 3.3 The Respondent averred that the children of the family were only taken at the intervention of the Zambia Police Victim Support Unit.
- 3.4 The Respondent averred that paragraph 8 of the Applicant's affidavit is true that he only contributed 50% towards the school fees but that he always settles the children's medical expenses as evidenced by exhibit marked "GCC1" receipts of the payments over time for school and medical expenses.
- 3.5 The Respondent has denied the allegations in paragraph 9 and all the allegations itemized under points (i) to (ix) thereunder and averred that the maid who the Applicant

dismissed two months ago for advising the Applicant, is ready to give evidence in that regard. The maid was the only means of communicating with the Applicant ever since the separation occurred.

3.6 The Respondent averred that with regard to the contents of paragraph 12 of the Applicant's affidavit, it is true that he is currently employed at ZESCO Limited as a Senior Human Capital Assistant although it is not true that he has a monthly pay of close to kwacha twenty thousand (K20,000.00). The Respondent averred that he is in receipt of about thirteen thousand, four hundred and fifty-five (13,455.00) as evidenced by a true copy of his July, 2024 pay-slip marked and exhibited as "GCC2".

3.7 In relation to paragraph 13 of the Applicant's affidavit the Respondent averred that the same is false and speculative since there is no proof of the alleged building expenses incurred nor any lease agreement entered into or a certificate of title thereto and or the proof of the so called meager contribution thereto of only four hundred kwacha (K400.00).

- 3.8 In relation to paragraph 14 of the Applicant's affidavit, the Respondent conceded that he lives in a rent-free accommodation due to his mother's kindness and benevolence and not because it was a matrimonial property as alleged or at all.
- 3.9 The Respondent averred in relation paragraph 15 that the motor vehicle in issue was purchased via a Village Banking Scheme to which both parties contributed.
- 3.10 The Respondent with regard to the contents of paragraph 16 and 17 of the Applicant's affidavit, averred that the same are highly unrealistic, unjustified and exaggerated and does not take into account that the Applicant is in receipt of a net pay of kwacha twelve thousand four hundred (K12,400.00) per month as per the document produced and exhibited as "AKC2" her pay-slip.
- 3.11 The Respondent in all the circumstances of the case herein, believes that his conduct does not amount to willful neglect as is suggested or all at all but is just a scheme to constructively portray him as such.

#### 4.0 **AFFIDAVIT IN REPLY**

- 4.1 The Applicant on 28<sup>th</sup> November, 2024 filed a Reply.
- 4.2 The Applicant averred that the allegations of an adulterous affair and desertion of the children and the Respondent are false.
- 4.3 The Applicant in relation to paragraph 6 of the affidavit in opposition averred that allegations are false save for the fact that the Respondent admitted that he had relinquished the custody of all the children to relieve himself from the financial burden of transport expenses of the children of the family to and from school.
- 4.4 The Applicant averred that she left the Respondent due to his unreasonable behaviour and that it was the Respondent with his mother who prevented the Applicant from accessing and or getting the children of the family until when intervention was sought from the Zambia Police Victim Support Unit and Legal Clinic for Women Organization.

- 4.5 The Applicant alleged that the Respondent and his mother defied several police call-outs, and that it had to take the police to physically follow the Respondent and his mother at their residence in order for the Applicant to retrieve the two younger children.
- 4.6 And further that on the date of separation, the Applicant due to the state of the Respondent at the time, of threatening to teach her a bitter lesson by beating her, she fled for safety and could not carry the children or her personal effects.
- 4.7 The children were left with the help of two maids whom Applicant used to personally pay without the Respondent's contributions.
- 4.8 The Applicant stated that the paragraph 7 of the affidavit in opposition is false to the effect that the Respondent always settles all the children's medical expenses of the family and instead evidenced medical records from her employer proving the Applicant's contributions towards medical expenses for the children of the family as well as

receipts for some medicines purchased which are marked as "AKC1b" and "ACK1c respectively.

4.9 In relation to paragraph 13 of the affidavit in opposition the Applicant averred that before the separation, the tenants used to pay both parties but after Applicant left the matrimonial home, the Respondent instructed that the tenants pay only to him.

4.10 Finally, the Applicant averred in relation to paragraph 18 of the affidavit in opposition stated that what she was seeking is maintenance of the children which cannot amount to a scheme orchestrated against Respondent and that the evidence from the Respondent's pay-slip shows that there are no any forces beyond his control to contribute towards the children's maintenance of the family.

## 5.0 **SKELETON ARGUMENTS IN SUPPORT**

5.1 In the Skeleton Arguments in Support of this Application, it was submitted that this Court is empowered to decide on the application for Willful Neglect to Maintain pursuant

to section 58 of the Matrimonial Causes Act No. 20 of 2007 which provides as follows:

*“58. (1) Either party to a marriage may apply to the Court for an order under this section on the ground that the respondent-*

*(a) Being the husband, has willfully neglected-*

- i) to provide, reasonable maintenance for the applicant; or*
- ii) to provide or to make a proper contribution towards, reasonable maintenance for any child of the family to whom this section applies; or*

*(b) being the wife, has willfully neglected to provide, or to make a proper contribution towards, reasonable maintenance-*

- (i) for the applicant in a case where, by reason of the impairment of the applicant’s earning capacity through age, illness or disability of mind or body, having regard to any resources of the applicant and the respondent*

*respectively which are, or should properly be made, available for the purpose, it is reasonable in all the circumstances to expect the respondent so to provide or contribute; or*

(ii) *for a child of the family to whom this section applies.*

(2) *The Court shall not entertain an application under this section unless it would have jurisdiction to entertain proceedings by the applicant for judicial separation.*

(3) *This section applies to any child of the family for whose maintenance it is reasonable in all the circumstances to expect the respondent to make a proper contribution.*

(4) *where the child of the family to whom the application under this section relates is not the child of the respondent, the Court in deciding- whether the respondent has been guilty of willful neglect to provide, or to make a proper contribution*

*towards reasonable maintenance for the child;  
and what order, if any, to make under this section in  
favour of the child;*

*Shall have regard to matters referred to in subsection (5) of  
section fifty-six. (5) where an application under this section  
it appears to the Court*

*that the applicant or any child of the family to whom  
the applicant relates is in immediate need of financial  
assistance, but it not yet possible to determine what  
order, if any, should be made on the  
application, the Court may make an interim order for  
maintenance requiring the respondent to make to the  
applicant until the determination of the application such  
periodical payments as the Court thinks reasonable.*

*(6) where an application under this section the applicant  
satisfies the Court of any ground specified in subsection (1),  
the Court may make one or more of the following orders:*

*(a) an order directing the respondent to make such  
periodical payments to the applicant for such  
period as the Court may specify in the order;*

- (b) an order directing the respondent to secure to the applicant such periodical payments for such period as the Court may specify in the order;*
- (c) an order directing the respondent to pay to the applicant such lump sum as the Court may specify in the order;*
- (d) an order that the respondent shall make to such person as the Court may specify in the order the benefit of a child to whom the application relates, or to that child, such periodical payments, for such period, as the Court may specify in the order;*
- (e) an order that the respondent shall secure to such person as the Court may specify in the order the benefit of that child, or to that child, to the satisfaction of the Court, such periodical payments, for such period, as the Court may specify in the order;*

*(f) order that the respondent shall pay such person as the Court may specify in the order for the benefit of a child, or to that child, such lump sum as the Court may specify in the order; Subject, in that case of an order made under paragraph (d), (e) or (f) to the restrictions imposed by this Act on the making of financial provision orders in favour of children who have the age of twenty-one.*

*(7) without prejudice to paragraphs (c) or (f) of subsection (6), an order*

*under this section for the payment of a lump sum-*

*(a) may be for the purposes of enabling any liabilities or expenses reasonably incurred in maintaining the applicant or any child of the family to whom the application relates before the making of the application is met; and*

*(b) may provide for the payment of that sum by instalments of such amount as may be specified in*

*the order any may require the payment of the instalments to be secured to the satisfaction of the Court.”*

- 5.2 Further in support of the application, the Applicant has filed into Court an affidavit, wherein she deposed that she and the Respondent contracted a Statutory marriage. And from there they have five children of the family who are currently attending secondary school.
- 5.3 The Applicant has averred that the Respondent has not been providing for the financial needs of the family since the separation. She deposed that the Respondent has willfully neglected to consistently provide or make sufficient contribution towards the maintenance and educational needs of the family.
- 5.4 The Applicant submitted and referred to section 56 (1) of the Matrimonial Causes Act No. 20 of 2007 which provides that when making a maintenance order, the Court shall have regard to a number of factors some of which include the financial needs, obligations and responsibilities of the parties. The section provides for the following:

*“56. (1) Subject to the provisions of this section, the Court may, in any matter or cause in which application is made for the maintenance of a party to a marriage, or cause in which application is made for the maintenance of a party to a marriage, or of children of the family, other than proceedings for an order for maintenance pending the disposal of proceedings, make such an order on such application as it thinks proper having regard to-*

- (a) The income, earning capacity and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (c) The standard of living enjoyed by the family before the breakdown of the marriage;*

- (d) *The age of each party to the marriage and the duration of the marriage.*
- (e) *Any physical or mental disability of either of the parties to the marriage;*
- (f) *The contributions made by each of the parties to the family, including any contribution made by looking after the home or caring for the family;*
- (g) *In the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit, such as a pension, which as a result of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.”*

5.5 The Applicant averred that this Court is at liberty to make an order for the Respondent pay the Applicant periodical payments towards the support and maintenance of the children of the family from the date of his refusal or neglect to do so, so as to secure and protect the best interest of the children as was illustrated in the case of **Jonathan High Elliot v. Katongo Elliot (Nee Chilufye)**

**2019/HPF/D386<sup>1</sup>** where the Petitioner had commenced proceedings for the dissolution of marriage and the Petitioner has only ever paid fifty percent of the children's school fees since he vacated from the matrimonial home while the Respondent paid the other fifty percent and the cost of extra-curricular activities which the Petitioner had refused to help with. The Judge upheld the application by the Respondent for the support and maintenance of the children of the family and ordered the Petitioner to contribute periodically, that is, per month for the children's upkeep.

5.6 Additionally, it has been contended that the Respondent is currently employed as a Senior human Capital Assistant under ZESCO Limited and receives a monthly pay of close to twenty thousand kwacha only (ZMW 20,000.00) And that he has other incomes as stated in the affidavit in support. As such it is submitted that the Respondent has the financial capacity to make periodical payments per month towards the maintenance and care of the children of the family. Reference was made to the case of **Herman**

**Miles v. Patricia Miles (2014) 1 ZR 179<sup>2</sup>** where this Court stated that it is the duty of parents to provide for children taking into account the means of the parents.

5.7 Furthermore, reference was made to section 38 (1), (3) (a) and 39 (1), (3) of the Children's Code Act. In this regard it was submitted since there is no evidence on record that the Respondent has surrendered his parental responsibilities of the five children of the family and as such, the Respondent has a duty to protect and provide for the children of the family

5.8 Additionally, it is contended that a child's best interest is the primary consideration in a matter or action concerning the child, whether undertaken by a public or private body pursuant to section 3 of the Children's Code Act. Therefore, it was submitted that the Respondent has the financial muscle to provide for the children of the family in fulfilling his parental responsibilities upon taking into account the best interests of the children which is of paramount importance as was stated in the case of **Rita Miller v. Samson Kachepa 2014/HP/1051<sup>3</sup>**.

- 5.9 Based on the forgoing, it was submitted that the mere contribution of fifty percent towards the school fees and occasionally the paying of the medical expenses of the children of the family does not discharge Respondent from any other needs and expenses of the children as he has the parental responsibility to support and maintain the Applicant and the children.
- 5.10 It is further understood that where the facts reveal that a husband, such as the Respondent, has willfully neglected to reasonably provide maintenance to the Applicant and the children of the family from the time they left the matrimonial home as illustrated in the affidavit in support, this Court has proceeded to order the Respondent to support and maintain the Applicant and the children of the family as the law provides.
- 5.11 The Applicant has argued finally, that the Respondent has the financial capacity to support and maintain the children of the family and he has the duty to provide for the children.

5.12 And additionally, the Applicant prays that this Court should order the Respondent to pay the Applicant periodical payments towards the support of the children and maintenance of the children of the family from the date of his refusal or neglect to do so and also that costs occasioned by and incidental to this application shall be for the Respondent.

## 6.0 **ARGUMENTS IN OPPOSITION**

6.1 There were no arguments filed herein in opposition.

## 7.0 **HEARING**

7.1 The Applicant through her Counsel indicated that she would rely on the filed originating process. In augmenting, the Applicant mentioned that the reason for making the application for Willful Neglect to maintain is because the Respondent has not been giving her support as expected in the other aspects of the children's welfare apart from the fifty percent school fees he pays and his contribution towards the payment of medical fees.

7.2 And Counsel for the Respondent submitted on behalf of the Respondent that he will rely on the filed affidavit in opposition filed on the 4<sup>th</sup> of September, 2024 which was not accompanied by skeleton arguments as expected and provided in the Rules of the High Court.

## 8.0 **CONSIDERATION AND DECISION**

8.1 I have considered the affidavit evidence on record herein and the submissions made by the parties respectively.

8.2 In determining this application, I have considered the facts which revealed that the Respondent has indeed willfully neglected to reasonably provide maintenance to the Applicant and the children of the family from the time the parties have been separated which was year and five months prior to the filing of the application.

8.3 And further it is undisputed by both the parties that the Respondent has been providing fifty percent of the school fees for the children of the family and occasionally paid medical expenses only for them.

8.4 It has been noted further that both parties are in formal employment and earning as indicated on the pay-slips

provided in support of the claims by the Applicant and an admission also by the Respondent of his monthly income as well.

- 8.5 Further it has not been rebutted that the Respondent that he is using a family vehicle which according to him was purchased using finances of both the parties although the Respondent has claimed that the source of the money was a Village Banking system while in contrast to the Applicant's allegation. And it is also not disputed that the children are using public transportation at the expense of the Applicant save on occasions when the Respondent has helped to take the children for medical visits.
- 8.6 The Respondent has not refused the allegation concerning rentals he receives from a family property of about K700.00 as well that he lives in a rent-free house whereas the Applicant and the children of the family are renting the house they live in.
- 8.7 Furthermore, I have considered the tabulations for the requirements for the food, groceries, rentals and clothing

and other necessitates totaling to a sum of K15, 850 per month excluding school fees and medical expenses.

8.8 And the Applicant has indicated that from her monthly income of K15,130.00 there is a deduction of K3,760.20 which was for the purchase of the family motor vehicle being used by the Respondent.

8.9 From the current net income of the Applicant herein stated and the total demand needed of K15,850.00 per month, to meet the afore listed needs of the Applicant and the children of the family, I find that the Applicant's income alone cannot sustain this demand.

8.10 In this regard, I refer section 58 and 56(1) of the Matrimonial Causes Act cited earlier, which provides for making maintenance orders and the considerations which this Court should consider or have regard to, to make such orders. It has been provided that the Court should have regard to a number of issues which include the financial needs, obligations and responsibilities which the parties have and are likely to have in the foreseeable future.

- 8.11 In this regard, this Court is expected to consider the income of the Respondent and his other obligations in relation to those of the Applicant and the children who are his responsibility as the father and husband of his family.
- 8.12 In the case at hand, the Applicant earns, after deductions an amount of K11,369 but yet she has a monthly expense of K15,850 as her financial responsibility of taking care of herself and the children which is excluding her fifty percent school fees which she contributes as well amounting to a sum per term to K5,500 and provides also for medical expenses.
- 8.13 Therefore, from the foregoing facts, I find it equitable for the net income amounting K13,000 of the Respondent to be equitably shared between the parties so as to enable the Applicant and the children to be reasonably provided for. Hence, this translates to a sum of ZMW6,500.00 per month.
- 8.14 The monthly maintenance amount of ZMW6,500 shall be payable to the Applicant for her maintenance and that of

the children of the family effective month end of April, 2025. The said sum should be secured to avoid default.

8.15 I herein further order that the income of the Respondent at ZESCO Limited be attached in default of payment voluntarily by the Respondent.

8.16 The aforesaid amount can be subject to review should need arise on application by either of parties.

8.17 Furthermore, this does not however discharge the Respondent from giving additional financial support since he is in employment and thus has access to other ad hoc benefits that fall due from time to time.

8.18 The order made herein shall be enforced under the Maintenance Orders (enforcement Act No 55)

## 9.0 **CONCLUSION**

9.1 In sum, the application succeeds and it is hereby ordered that the Respondent pays a monthly payment K6,500.00 per month effective 30<sup>th</sup> April and subsequently every month-end.

10.0 I order that the Respondent bears the costs herein.

11.0 Leave to appeal is granted.

**Dated at Lusaka, this 30<sup>th</sup> day of April 2025.**

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

