

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

**2024/HPF/D172**

**BETWEEN:**

**STEVEN SIKAZWE**

**AND**

**ABIGAIL NGWALE**



**PETITIONER**

**RESPONDENT**

***Before the Honourable Mrs Justice M. M. Bah-Matandala  
Dated this 12<sup>th</sup> December, 2025.***

*For the Petitioner: Mr. R. Semani, Messrs ACK Legal Practitioners*

*For the Respondent: Mr. J. Matende & Ms. N. Puta, Messrs Legal Aid Board.*

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## **JUDGEMENT**

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**Legislation & authorities cited:**

1. *Matrimonial Causes Act No. 20 of 2007*
2. *Children's Code Act No. 12 of 2022*
3. *Marriage Act, Cap 50 of the Laws of Zambia*
4. *High Court Act, Cap 27*
5. *High Court Rules, Cap 27 (Order 3 Rule 2; Order 39 Rules 1 & 2)*

**Cases referred to:**

1. *Walusiku Lisulo v Patricia Anne Lisulo (1998) ZR 75*
2. *Lewanika & Others v Chiluba (SCZ)*
3. *Jamas Milling Co. Ltd v Amex International Pty Ltd (2002) ZR 79*
4. *Zamtel v Mulwanda & Ngandwe (SCZ Appeal 63/2009)*
5. *Parkrite Zambia Ltd v Lusaka City Council (CA App. 234/2023)*
6. *Savenda Management Services Ltd v Lumwana Mining Co. (CA App. 165/2024)*
7. *Brighton Soko v Petronella Soko SCZ 8/2015*
8. *Mahande v Mahande (1976) ZR 354*
9. *Mponda v Mponda [2018] ZMSC 562*
10. *Smith Wesson v Stroud SCZ 35/1998*

**Texts**

1. *Rayden & Jackson on Divorce and Family Matters*
2. *Bromley's Family Law*

## 1.0 INTRODUCTION

1.1 This is the Court's consolidated ruling on

- a) *the Petitioner's Summons for an Order to Stay the Ruling dated 5<sup>th</sup> December 2025;*
- b) *the Petitioner's Application for Review pursuant to Order 39; and*
- c) *the re-determination of the Petitioner's Summons to Vary the Custody Order granted on 16<sup>th</sup> April 2025.*

1.2 In the April, 2025 Judgment dissolving the marriage, the Court granted joint custody of the minor child, **Tafari Sikazwe**, born 2<sup>nd</sup> November 2020; primary residence with the Respondent during school terms; and holiday custody with the Petitioner.

1.3 The Petitioner now seeks to vary that order and have primary residence reversed in his favour. The Respondent opposes the application.

## 2.0 PROCEDURAL BACKGROUND

2.1 The Petitioner's Summons to Vary was filed on 2<sup>nd</sup> October 2025. The Respondent filed an Affidavit in Opposition. The Petitioner then filed and served an

**Affidavit in Reply** on 2<sup>nd</sup> December 2025. This affidavit was correctly served on the Respondent's advocates but, due to administrative omission, **was not placed on the Court record** when the ruling of 5<sup>th</sup> December 2025 was delivered.

2.2 Upon discovery of this omission, the Petitioner applied to stay the ruling and to have the matter reviewed under Order 39 of the High Court Rules.

### **3.0 ISSUES**

3.1 The following are the issues herein for consideration;

- i. *Whether the Court should grant and confirm a stay pending review.*
- ii. *Whether the review under Order 39 should be granted.*
- iii. *What orders ought to be made on the Summons to Vary, once reconsidered on a complete record.*

### **4.0 THE LAW**

4.1 **Order 39** empowers a judge to review a decision where *sufficient reason* exists or where *fresh material evidence* emerges that could not reasonably have been placed

before the Court earlier. The Supreme Court in *Walusiku Lisulo, Jamas Milling and Zamtel* has held that review is available where failure to consider material evidence would compromise justice.

4.2 The Court of Appeal in *Parkrite* and *Savenda* explained that review is a **two-stage process**:

*(a) determining whether sufficient grounds exist;*

*(b) reconsideration of the merits if grounds exist.*

4.3 The Court retains power to grant an interlocutory stay under Section 72(7) of the Matrimonial Causes Act, Section 13 of the High Court Act, and Order 3 Rule 2. And Section 3 of the Children's Code Act makes the *best interests of the child* the paramount consideration.

## **5.0 STAY PENDING REVIEW**

5.1 The omission of the Petitioner's Affidavit in Reply from the record was not caused by the Petitioner and deprived the Court of material evidence relating to communication attempts, access, and the Respondent's cooperation.

5.2 The review raises a serious question to be tried, and refusal of a stay would perpetuate prejudice, including

continued denial of access. The Respondent suffers no prejudice if the April 2025 Order remains in place pending review.

5.3 It is my finding that the stay of the ruling dated 5<sup>th</sup> December 2025 is confirmed, and the Custody Order of 16<sup>th</sup> April 2025 remains operative pending this ruling.

#### **6.0 APPLICATION FOR REVIEW PURSUANT TO ORDER 39 OF THE HIGH COURT RULES CAP 27**

6.1 The documentary evidence (SS2) shows the Affidavit in Reply was properly filed and served but not placed before the Court when the ruling was delivered.

6.2 This constitutes sufficient reason under Order 39 Rule 1 and also qualifies as fresh material evidence under Rule 2 because the Court did not consider evidence that would materially affect the decision.

6.3 Review is therefore justified to uphold fairness and ensure the ruling is made on the complete evidentiary record. Consequently, the Application for Review is GRANTED, and the ruling of 5<sup>th</sup> December 2025 is hereby SET ASIDE.

6.4 The Court therefore proceeds to re-determine the Summons to Vary on the full record.

## **7.0 RE-DETERMINATION OF THE SUMMONS TO VARY**

7.1 The Petitioner alleges:

- i) He has not seen the child since January 2025;*
- ii) The Respondent ignored or blocked communication;*
- iii) The Respondent unilaterally changed schools and residence;*
- iv) Exhibits SS1 show repeated unanswered calls and deleted messages;*
- v) He has stable accommodation and wishes to assume primary residence.*

7.2 The Respondent denies obstructing access and maintains the current arrangement serves the child's best interests, given continuity of care, schooling, and emotional stability.

7.3 Applying Section 3 of the Children's Code Act, the evidence by the Respondent on record is that the child,

now 4 years old, has continuity with the Respondent. Sudden reversal of residence would be disruptive.

7.4 Exhibits SS1 (call logs and deleted messages) demonstrate limited cooperation by the Respondent and difficulty in communication. This weighs against her but does not outweigh stability considerations.

7.5 There is no evidence of violence, abuse, or threats by the Petitioner on this record. The child in the circumstances benefits from maintaining relationships with both parents. The current access challenges require remedial court direction. In conclusion, material change has occurred in communication and co-parenting, but the Petitioner has not established grounds to reverse primary residence. However, enhanced and enforceable access is necessary to protect the child's welfare and relationship with the Petitioner.

## **8.0 FINAL ORDERS**

8.1 The final orders of the Court are,

i. Review Outcome;

(a) The Application for Review under Order 39 is

GRANTED.

- (b) The Ruling of 5<sup>th</sup> December 2025 is SET ASIDE.
- ii. The Custody Order of 16<sup>th</sup> April 2025 is CONFIRMED, with the following enhanced access terms:
- a) *The Petitioner shall have all school holidays with the child, as originally ordered.*
  - b) *The Petitioner shall additionally have day access on alternate Saturdays, from 10:00 to 16:00 hours.*
  - c) *The Respondent shall not block or hinder communication, including voice and video contact.*
  - d) *Any access logistics disagreements shall first be referred to Department of Child Welfare for mediation.*
  - e) *Persistent non-compliance by either party may constitute grounds for contempt or future variation.*
- iii. The stay previously granted is confirmed and is now overtaken by this substantive ruling.

- iv. Either party may apply to vary these orders upon demonstration of substantial change of circumstances.

Delivered at Lusaka this 12<sup>th</sup> December, 2025

M. M. BAH-MATANDALA  
**HIGH COURT JUDGE**

