

**IN THE HIGH COURT FOR ZAMBIA
FAMILY AND CHILDREN'S DIVISION
HOLDEN AT LUSAKA**

2024/HPF/D269

(Divorce Jurisdiction)

BETWEEN:

CHANDA CHISANGA MUTENUKILE

AND

STANCY CHANDA



PETITIONER

RESPONDENT

**Before: Hon. Mrs. Justice M. M. Bah-Matandala
On the 18th day November, 2025.**

For the Petitioner: Ms. E. Mutalama – Messrs. Junelli & Co.

For the Respondent: Ms. C. Jere – National Legal Aid Clinic for Women

JUDGEMENT

Legislation Referred To

1. *Matrimonial Causes Act No. 20 of 2007 (Sections 4, 6, 8 and 9).*
2. *Marriage Act, Cap 50 of the Laws of Zambia.*
3. *Children's Code Act No. 12 of 2022 (Sections 3, 38, 144 and 167).*
4. *High Court Act, Cap 27 of the Laws of Zambia (Section 14).*
5. *Anti-Gender-Based Violence Act No. 1 of 2011.*

Cases Referred To

1. *Brighton Soko v Petronella Sakala Soko SCZ-8-189-2015.*
2. *Musweu v Musweu Appeal No. 030/2019 (SC).*
3. *Jobsi Ulrich Stoyke v Cleotha Ilona Emily Stoyke Appeal No. 67 of 1998.*
4. *Colange v Chikachi 2014/HP/D/039.*
5. *Livingstone-Stallard v Livingstone-Stallard [1974] Fam 47.*

1.0 INTRODUCTION

1.1 This is a Judgment for a Petition filed on 19th April, 2024 and Cross-petition filed on 10th May, 2024 for the dissolution of marriage and ancillary relief brought

pursuant to Sections 8 and 9 of the Matrimonial Causes Act No. 20 of 2007.

- 1.2 The Petitioner, Chanda Chisanga Mutenukile, seeks a decree of divorce on the ground that the marriage has broken down irretrievably by reason of the Respondent's unreasonable behaviour within the meaning of Section 9(1)(b). He further prays for custody of the child of the family, **Niza Nelly Mutenukile**, and ancillary orders. He has, at times, questioned his paternity of this child and sought DNA testing.
- 1.3 The Respondent, Stancy Chanda Mutenukile, has filed an Answer and Cross-Petition. While denying much of the misconduct alleged against her, she in turn alleges unreasonable behaviour and gender-based violence on the part of the Petitioner and also seeks dissolution of the marriage, with primary custody of Niza being vested in her and the Petitioner ordered to provide maintenance.
- 1.4 During the course of the proceedings the Court made several interlocutory orders, including an ex parte interim custody order in favour of the Petitioner, a

welfare investigation order and an order for DNA testing in relation to Niza.

- 1.5 The matter now comes before me for final determination of the petition and cross-petition and all outstanding issues relating to Niza, save for quantification of maintenance which is, by practice, referred to the Deputy Registrar.

2.0 BACKGROUND

- 2.1 The parties contracted a monogamous marriage on 27th June, 2020 at UNZA Chapel, Lusaka, under the Marriage Act, Cap 50. The marriage certificate was produced and admitted in evidence.
- 2.2 At the time of the marriage, both parties were of full age and capacity. They are Zambian citizens domiciled in Zambia.
- 2.3 There is one child who was born of the marriage, namely **Niza Nelly Mutenukile**, now aged 5 years. The Respondent has an older son, **Prince**, aged 13 years, from a previous relationship, who resides primarily with her family in Ndola and is not the subject of the present

custody dispute, save that he forms part of the broader family context.

2.4 During the marriage the parties resided together in Chalala, Lusaka. Over time the relationship deteriorated, giving rise to the present proceedings.

3.0 THE PETITIONER'S CASE

3.1 The Petitioner's case, as pleaded in his Amended Petition and elaborated in his affidavits and oral testimony, is that the Respondent has behaved in such a way that he cannot reasonably be expected to live with her. He alleges, in summary, that:

- *The Respondent frequently goes out to clubs and drinking places and has, on several occasions, taken the minor child with her to such environments.*
- *She consumes alcohol to excess and on one occasion fell whilst allegedly drunk when she was with the child.*
- *She has been physically and verbally abusive towards him, including biting*

him and breaking his mobile phones and a window in the matrimonial home.

- *She has communicated inappropriately with other men in a manner he considered flirtatious.*
- *Since about January 2024 she withdrew from the matrimonial bedroom and denied him conjugal rights.*
- *He further avers that attempts at reconciliation by family and church elders have failed and that cohabitation has become intolerable.*
- *On custody, the Petitioner asserts that the Respondent is unfit because of her alleged drinking habits and instability. He claims that he has always been responsible for the financial needs of the child and that Niza has been living with his parents in Chalala where she is well cared for and attends school.*

3.2 He therefore prays for:

- i) *a decree of divorce;*
- ii) *custody of Niza with reasonable access to the Respondent; and*
- iii) *ancillary orders for maintenance and property adjustment.*

4.0 THE RESPONDENT'S CASE

- 4.1 The Respondent denies being a habitual drunkard or exposing the child to harm. She states that any drinking on her part has been social and occasional and that the child was never deliberately placed at risk.
- 4.2 She alleges, instead, that it is the Petitioner who has behaved unreasonably and subjected her to gender-based violence (GBV), including physical assaults, emotional abuse and economic control.
- 4.3 She relies on a Police Medical Report recording soft tissue injuries and on an application for a Protection Order under the Anti-Gender-Based Violence Act No. 1 of 2011, which she filed in the Subordinate Court. She states that she resorted to the protection-order process after repeated assaults.

4.4 The Respondent contends that the Petitioner has, at times, denied paternity of Niza and has used court orders to keep the child away from her by placing her in the sole care of the paternal grandparents.

4.5 While she does not seek to preserve the marriage and agrees that it has broken down, she maintains that she is a fit and proper person to have primary custody of Niza, with the Petitioner providing maintenance and enjoying reasonable access.

4.6 In her cross-petition she therefore seeks:

- i) dissolution of the marriage;*
- ii) sole or primary custody of Niza;*
- iii) maintenance for the child and herself; and*
- iv) costs.*

5.0 INTERLOCUTORY APPLICATIONS & PROCEDURAL HISTORY

5.1 On 19th August 2024, upon an ex parte application by the Petitioner, this Court granted him interim custody of Niza, with access to the Respondent. The child was, in practice, placed with the Petitioner's parents.

- 5.2 The Respondent subsequently applied under Order XXXV of the High Court Rules to set aside the interim order on the grounds that it had been granted without her being heard and that it was not in the child's best interests.
- 5.3 Alleging that the Respondent had not complied with the interim order, the Petitioner applied for leave to commence committal proceedings for contempt. Leave was granted.
- 5.4 Given the seriousness of the allegations advanced by both sides, the Court, on 29th May 2025, ordered the District Social Welfare Officer, Lusaka, to conduct a welfare investigation and file a report on the circumstances of the parties and the child.
- 5.5 The Court further ordered, on 28th May 2025, that the parties and Niza undergo DNA testing at Levy Mwanawasa Hospital to resolve the Petitioner's dispute over her paternity.
- 5.6 Although additional time was granted, the parties failed to present themselves and the child for DNA sampling, and no results were produced. In those circumstances,

the Court must fall back on the common-law presumption that a child born in lawful wedlock is presumed to be the child of the husband unless the contrary is proved by cogent evidence.

5.7 The welfare report, however, was duly filed and plays a central role in this judgment.

6.0 EVIDENCE AT HEARING

6.1 Both parties gave evidence on oath. Their affidavits in support of the various applications were admitted, together with several exhibits.

6.2 The Petitioner adopted his Amended Petition and affidavits as his evidence-in-chief. He confirmed that the parties were married on 27th June 2020 at UNZA Chapel and that Niza was born during the marriage.

6.3 He testified that the Respondent frequently went out drinking and that on one occasion he found her at a bar with the child present. He produced WhatsApp messages and photographs which he said showed her drinking habits and the aftermath of an incident where she allegedly fell while drunk.

- 6.4 He further stated that the Respondent had been violent towards him, smashing his phones and a window, and had denied him conjugal rights by leaving the matrimonial bedroom.
- 6.5 Furthermore, on the issue of the child, Petitioner said that, because of these concerns, he arranged for Niza to stay with his parents in Chalala, near his own residence, where she attends kindergarten. He maintained that this arrangement was safer and more stable.
- 6.6 In cross-examination, he admitted that he had not reported the alleged assaults to the police nor sought medical attention, stating that he wished to preserve the Respondent's dignity. He also accepted that there were serious conflicts between them which may have contributed to the breakdown.
- 6.7 The Respondent adopted her Answer and Cross-Petition and supporting affidavits as her evidence-in-chief. She confirmed the marriage and the birth of Niza but denied being a habitual drunkard or intentionally exposing the child to unsafe environments.

- 6.8 She testified that it was the Petitioner who had been violent and controlling, recounting incidents of physical assault and humiliation. She produced a Police Medical Report showing soft tissue injuries and a Protection Order application filed at the Subordinate Court under the Anti-GBV Act.
- 6.9 She explained that the couple's disagreements often centred on finances and communication, and that both families had attempted, unsuccessfully, to mediate.
- 6.10 On custody, she said that she had been the child's primary caregiver when they cohabited and that her greatest concern was that the interim order had effectively removed Niza from her, placing her almost exclusively in the care of the grandparents.
- 6.11 In cross-examination she admitted that there were occasions when she left the matrimonial home for short periods due to conflict, but denied abandoning the marriage. She also conceded that reconciliation at this stage is not possible and that she does not oppose the dissolution of the marriage.

7.0 WELFARE REPORT

7.1 The welfare report, dated 14th November 2025, was prepared by Nosiku Situmbeko, Assistant Social Welfare Officer, Ministry of Community Development and Social Services. The officer conducted interviews with both parties, visited the paternal grandparents' home where Niza resides, and visited the matrimonial home.

7.2 The report records that both parties come from stable, faith-centred families and that each has supportive relatives. The Petitioner is employed as a Customer Value Management Specialist and resides in Chalala; the Respondent is currently unemployed but actively seeking work and likewise resides in Chalala.

7.3 The officer found that:

- i) The couple have had episodes of severe marital conflict, including allegations of alcoholism and violence, but by the time of the investigation they had resumed cohabitation in the matrimonial home;
- ii) Niza has been living with the paternal grandparents for an extended period and

- has very limited direct contact with her mother;
- iii) The child loves her grandparents but expressed a desire to live with both her parents;
 - iv) Both parents appear capable of caring for the child; there was no independent evidence that either is inherently unfit.
 - v) The report concludes that:
 - a) Under Section 38 and Section 167 of the Children's Code Act, primary responsibility for a child's care lies with the parents and not with grandparents unless the parents are unfit;
 - b) The current arrangement, where Niza resides primarily with the grandparents while both parents are available, is unfair to the child and contrary to her best interests;

c) The child should be placed in the care of both parents, with Social Welfare supervision, and the parties should attend counselling.

8.0 SUBMISSIONS

8.1 Both Counsel made submissions, written and oral, which I have considered in full.

8.2 The Petitioner relied on Section 9(1)(b) of the Matrimonial Causes Act and on *Brighton Soko v Petronella Sakala Soko*, submitting that the Respondent's drinking and violent behaviour amounted to unreasonable conduct such that no reasonable person in his position could be expected to continue cohabiting with her.

8.3 The Respondent, while denying the specific allegations of drunkenness and neglect, did not defend the marriage. Counsel for the Respondent emphasised that both parties accept that the marriage has broken down and invited the Court to focus on the best interests of the child under Section 3 of the Children's Code Act.

8.4 On custody, the Respondent relied on *Musweu v Musweu*, *Jobsi Stoyke* and *Colange v Chikachi*, submitting that welfare is the paramount consideration and that, given Niza's age and history of care, primary custody should be vested in the mother with meaningful access to the father.

8.5 Both Counsel were agreed that the quantification of maintenance and any property adjustment should be referred to the Deputy Registrar.

8.6 On the issue of paternity, Counsel for the Respondent submitted that, in light of the parties' failure to comply with the DNA order, the common-law presumption of legitimacy applies and Niza must be treated as the child of the marriage and child of the family for all purposes in these proceedings.

9.0 ISSUES FOR DETERMINATION

9.1 The following issues arise for determination:

- i) Whether the marriage between the parties is valid and subsisting and capable of dissolution by this Court.

- ii) Whether the marriage has broken down irretrievably within the meaning of Sections 8 and 9 of the Matrimonial Causes Act.
- iii) What final orders should be made in respect of the custody and welfare of the child of the marriage, Niza.
- iv) What is the effect of the parties' failure to comply with the DNA order in relation to Niza and whether she is to be treated, in law, as a child of the marriage.
- v) What directions should be given regarding maintenance, property and the pending interlocutory applications.

10.0 ANALYSIS AND DETERMINATION

10.1 The marriage certificate confirms that the parties were lawfully married under the Marriage Act on 27th June 2020 at UNZA Chapel.

10.2 Section 6 of the Matrimonial Causes Act provides that a petition for divorce may not be presented unless at least one year has elapsed since the date of the marriage.

- 10.3 The Petition in this matter was filed in April 2024, well after the one-year period.
- 10.4 Both parties are Zambian citizens domiciled in Zambia. Jurisdiction under Section 4 of the Act is therefore satisfied. I find therefore that the marriage is valid and capable of dissolution.
- 10.5 Furthermore, Section 8 of the Matrimonial Causes Act states that the sole ground for divorce is that the marriage has broken down irretrievably. Under Section 9(1)(b) this may be established if the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- 10.6 The decision in *Brighton Soko v Petronella Sakala Soko* adopted, with approval, the approach in *Livingstone-Stallard v Livingstone-Stallard*, that the Court must consider the cumulative effect of the conduct and ask whether a right-thinking person would conclude that this petitioner cannot reasonably be expected to live with this respondent.
- 10.7 In the present case, each party accuses the other of serious misconduct, including violence and emotional

cruelty. The Respondent has produced medical evidence and a protection-order application indicative of GBV, while the Petitioner has produced messages and photographs tending to support his concerns about the Respondent's conduct and its impact on the child.

10.8 Whatever the exact balance of blame, the fact that both parties have filed a petition or cross-petition for divorce and neither seeks reconciliation is telling. Their mutual trust and respect have broken down. They have involved the police, the Subordinate Court, Social Welfare and this Court in their disputes. The situation is, in my view, irreparably damaged. I am satisfied that the marriage has broken down irretrievably and that each party has, at different times, behaved in ways which the other cannot reasonably be expected to endure. It is neither necessary nor helpful to apportion fault in detail. I therefore answer this issue in the affirmative.

10.9 I now turn to the effect of the parties' failure to comply with the DNA order in relation to Niza. There is a longstanding common-law presumption, applicable in this jurisdiction in the absence of contrary statutory

provision, that a child born during the subsistence of a valid monogamous marriage is presumed to be the child of the husband; the presumption of legitimacy.

10.10 The burden of rebutting that presumption lies on the party alleging non-paternity. Mere suspicion or rumour will not suffice; clear and cogent evidence is required, commonly in the form of proof of non-access or scientific (DNA) evidence.

10.11 In this case, it was the Petitioner who raised doubts regarding his paternity of Niza and obtained the DNA order. However, despite extensions of time, he did not comply with the order nor facilitate the testing of the child. The Respondent likewise did not bring the child for sampling. In such circumstances, the party alleging non-paternity cannot rely on the absence of DNA results which is of his own making. The Court is entitled to draw an adverse inference from his failure to cooperate with the ordered investigation.

10.12 I therefore find that the presumption of legitimacy has not been rebutted. Niza, having been born during the subsistence of the marriage, is to be treated as a

child of the marriage and a child of the family for all purposes of these proceedings, including custody and maintenance.

10.13 In addition, Section 3(1) of the Children's Code Act provides that in all actions concerning a child, the best interests of the child shall be the primary consideration. Sections 3(2) and (3) elaborate the factors to be taken into account, including the child's physical, emotional, educational and social needs, the likely effect of any change in circumstances and the capacity of each person to meet those needs.

10.14 Further Section 38 places primary responsibility for the care and protection of a child on the parents, while Section 167 emphasises that a child should only be removed from parental care where the parents are unwilling or unable to provide adequate care. Section 144(2) sets out specific welfare criteria in custody and access decisions.

10.15 The Supreme Court in *Musweu v Musweu* and earlier authorities such as *Jobsi Stoyke* and *Colange v Chikachi* have consistently held that the welfare of the

child is the paramount and overriding consideration and that financial superiority of one parent is not, by itself, determinative.

10.16 Niza is a girl of tender age. Historically, during periods of cohabitation, the Respondent appears to have been the primary day-to-day caregiver, while the Petitioner has been the main financial provider.

10.17 Under the interim orders, however, Niza was placed with the paternal grandparents. The welfare report criticises this arrangement and notes that the child has had very limited access to her mother and that both parents are available and capable of caring for her.

10.18 The child expressed affection for her grandparents but also a desire to live with her parents. There is no independent evidence that either parent is presently unfit, though there is a history of conflict and allegations on both sides.

10.19 The welfare officer recommends that the child should be with both parents rather than with grandparents. In light of the impending dissolution of the marriage, "both parents" must now be understood

as meaning active involvement by each parent in a post-divorce parenting plan, rather than physical cohabitation.

10.20 Taking into account Niza's age and need for consistent nurturing; the Respondent's history of hands-on caregiving; the Petitioner's stable employment and capacity to provide financially; the strong bond already formed between Niza and the paternal grandparents; and the need to correct the present imbalance in the child's relationship with her mother, I find that Niza's best interests will be served by vesting joint legal custody in both parents but placing primary physical custody and day-to-day care with the Respondent, subject to generous access to the Petitioner.

11.0 Accordingly, I order that:

- i) The parties shall have joint legal custody of Niza.
- ii) Niza's primary residence shall be with the Respondent.
- iii) The Petitioner shall have liberal access, including:
 - a) alternate weekends from Friday after school or 16:00 hours to Sunday at 17:00 hours one-half of each school

holiday, to be shared by agreement and, failing agreement, the first half in one year and the second half in the next; and

b) reasonable mid-week telephone or video contact, not less than twice per week.

iv) The paternal grandparents may host or visit the child during the father's access periods and at other mutually agreed times, but they shall no longer be the primary caregivers.

v) In view of the past conflict and GBV allegations, and in line with the welfare report, I further direct that the District Social Welfare Officer, Lusaka, shall supervise the implementation of these orders for a period of twelve (12) months and may arrange counselling or parenting sessions as may be considered appropriate.

vi) The interim custody orders were made at an earlier stage on incomplete information. With the making of final custody orders after a full hearing and upon receipt of the welfare report, those interim orders are now spent.

- vii) The Respondent's application to set aside the interim order and the Petitioner's committal application for contempt were anchored on that temporary regime. In the interests of moving the parties forward and focusing on the child's future rather than the parties' past non-compliance, I consider that no useful purpose will be served by proceeding with the committal application.
- viii) I therefore mark both the set-aside application and the committal application as spent, with no further order, while reminding both parties that future disobedience of court orders may attract sanctions under Section 14 of the High Court Act.
- ix) In determining the issue of maintenance and property settlement, I find that the evidence before me on the parties' respective financial means and assets is insufficient for a precise determination of maintenance and property adjustment. Both parties, through counsel, have accepted that these matters should be referred to the Deputy Registrar. In accordance with established practice in matrimonial causes, I shall therefore refer:

- i) all questions of maintenance for Niza and for either party; and
- ii) all issues of division or settlement of matrimonial property, to the Deputy Registrar for inquiry, hearing and determination or recommendation, with liberty to the parties to file full financial statements and to be legally represented.

12.0 DECISION AND ORDERS

12.1 For the reasons given above, I make the following orders:

- i) The marriage between **Chanda Chisanga Mutenukile** and **Stancy Chanda Mutenukile**, solemnised on 27th June 2020 at UNZA Chapel, Lusaka, is hereby dissolved on the ground that it has broken down irretrievably within the meaning of Sections 8 and 9(1)(b) of the Matrimonial Causes Act No. 20 of 2007.
- ii) A Decree Nisi shall issue and shall be made absolute after three (3) months, unless sufficient cause is shown to the contrary.

- iii) The parties shall have joint legal custody of the minor child **Niza Nelly Mutenukile** (female, aged 5), who is hereby declared to be a child of the marriage and a child of the family, the presumption of legitimacy not having been rebutted.
- iv) Primary physical custody and day-to-day care of Niza is granted to the Respondent.
- v) The Petitioner shall have liberal access, namely:
 - a) alternate weekends from Friday after school or 16:00 hours to Sunday at 17:00 hours;
 - b) one-half of every school holiday as described in paragraph earlier; and reasonable mid-week telephone and/or video communication.
- vi) The paternal grandparents may continue to have a meaningful relationship with Niza, but only as secondary caregivers under arrangements agreed between the parents and consistent with these orders.

- vii) The District Social Welfare Officer, Lusaka, shall supervise the implementation of these custody and access arrangements for a period of twelve (12) months, with liberty to either party to apply to this Court should serious welfare concerns arise.
- viii) All interim custody orders inconsistent with this judgment are hereby discharged.
- ix) The Respondent's application to set aside the interim custody order and the Petitioner's committal application for contempt are marked spent, with no further order.
- x) All questions relating to: maintenance for Niza; any spousal maintenance; and distribution or settlement of matrimonial property, are referred to the Deputy Registrar for inquiry and determination/recommendation, with liberty to the parties to file financial disclosure and to be heard.
- xi) In light of the shared responsibility for the breakdown of the marriage and the sensitive

nature of the issues, each party shall bear their own costs of these proceedings.

13.0 CONCLUSION

13.1 Marriage is intended to provide a setting of mutual respect, support and security, particularly for children. Where, however, that foundation has been eroded by conflict and mistrust to the extent evident in this case, the law requires the Court to acknowledge the reality of irretrievable breakdown and to focus on protecting the welfare of the child.

13.2 Therefor grant the petition and cross-petition for divorce on the terms set out above and urge the parties, notwithstanding their differences, to work together henceforth as parents for the benefit of Niza, who remains the innocent party in these proceedings.

Delivered at Lusaka this 18th November, 2025



Hon. Mrs. Justice M. M. Bah-Matandala
HIGH COURT JUDGE

