

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

2024/HPF/D309



BETWEEN:

SAMANTHA KANGWA KAYOLA KAMBANI

PETITIONER

AND

ALICK JOSEPH KAMBANI

RESPONDENT

Before: The Hon. Mrs. Justice M. M. Bah-Matandala

Date: 2nd October, 2025.

*For the Petitioner: Ms. M. Marabesa, R. Mbewe & Ms T. Mwiinga, Messrs
Legal Aid Board*

For the Respondent: Ms R. Kamukwamba, Messrs Linus E. Eyaa & Partners

J U D G M E N T

Legislation & Texts Referred To

1. Matrimonial Causes Act No. 20 of 2007
2. Children's Code Act No. 12 of 2022
3. High Court Act, Cap 27 & Rules
4. Rayden & Jackson on Divorce and Family Matters, 16th Ed., Butterworths.
5. Rayden's Law & Practice in Divorce & Family Matters, 11th Ed., Butterworths.

Cases Referred To

1. Brighton Soko v Petronella Sakala Soko, SCZ-8-189-2015 (Supreme Court).
2. Mahande v Mahande (1976) Z.R. 354 (SC).
3. Ash v Ash [1972] 1 All ER 582.

1.0 INTRODUCTION

1.1 This is a Judgment for a Petition and Cross-Petition for dissolution of a statutory marriage brought under

Sections 8 and 9 (1) (b) Matrimonial Causes Act

(MCA). The parties were married on 18th April 2007 at the Office of the Registrar of Marriages, Lusaka. The Petition was issued on 14th May 2024.

1.2 The Petitioner alleges that the marriage has broken down irretrievably by reason of the Respondent's unreasonable behaviour. The Respondent filed an Answer and Cross-Petition on 21st October 2024 asserting that, while the marriage has broken down, it is the Petitioner whose behaviour renders cohabitation unreasonable.

1.3 In terms of Section 9(2) MCA, the Court is obliged
“so far as it reasonably can, to inquire into the facts alleged by the petitioner and into any facts alleged by the respondent.”

2.0 BACKGROUND

2.1 Both parties are domiciled and resident in Zambia. They last cohabited as husband and wife at House No. 25, Puta Road, Woodlands of Boarder View area in Lusaka.

2.2 There are four children who were born during the marriage:

- i. Kambani born on 14th June 2007 and now an adult at university,
- ii. Ndanji born on 7th October, 2014,
- iii. Kangwa born on 14th February, 2014, and
- iv. Samantha born on 7th November 2017.

2.3 No foreign or prior proceedings affect the subsistence or validity of the marriage. A certified copy of the marriage certificate is on the record.

2.4 Further by Section 4(3) MCA, and Section 6 MCA, this Court has jurisdiction; and the Petition was presented long after one year from solemnisation.

3.0 Petitioner's Case

3.1 The key averments of the Petitioner have been summarised herein as follows:

- i) *There is loss of love or affection and degrading remarks. the Respondent is said to have repeatedly told Petitioner she is not sexually attractive and prefers other women.*
- ii) *Intimacy has reduced to mechanics. The Petitioner has said their sexual relations can be described as "mechanical", devoid of affection.*

- iii) *The Petitioner has alleged exclusion from family decisions and overcrowding of the matrimonial home: she said that the Respondent unilaterally permitted his sister, her children, and other relatives to live in matrimonial home; Petitioner found Respondent listed as father on the sister's children's birth certificates; when challenged she was told "it is none of your business" and "don't bother me."*
- iv) *There has been unreasonable surveillance: The Respondent has been putting tracking devices on Petitioner's vehicles; her movements are monitored on Respondent's phone.*
- v) *There has been violence and threats: Several assaults including an injury to her hand; threats to shoot her and a cousin; public intimidation at a restaurant where phones and a vehicle were seized and she was left at her mother's home.*
- vi) *There has been abandonment and non-communication.*

3.2 The Petitioner has prayed for the following reliefs:

- i) Dissolution of the marriage,
- ii) Custody of the children of the family,
- iii) maintenance, property settlement, and
- iv) costs.

4.0 Respondent's Answer

4.1 The Respondent in his Answer admits the marriage, domicile, the children and that the marriage has broken down; he however denies assault, firearm ownership, and cruelty.

4.2 The Respondent explains loss of affection as being due to Petitioner's alleged excessive bleaching and strong-smelling lotions; and averred that the trackers are for security.

4.3 The Respondent alleges that the Petitioner's improper conduct and infidelity of having her vehicle parked at an ex-boyfriend's place; being found with a man at a bar, and cruelty to his family by opposition to his mother and siblings to living with them.

4.4 **The Respondent therefore has prayed for:**

- i. Dissolution of the marriage,

- ii. custody in his favour,
- iii. property settlement, and
- iv. costs.

4.5 In the Cross-Petition, the Respondent's particulars of the alleged unreasonable behaviour by the Petitioner are as follows;

- i) *Parking the tracked vehicle at the Petitioners mother's house and using another vehicle for undisclosed errands;*
- ii) *incidents at a bar and at an "ex-boyfriend's" apartment;*
- iii) *bleaching her skin and use of lotions which affect his sexual desire for the Petitioner due to smells of lemon which offends him found in the used products;*
- iv) *lack of empathy to Respondent's relatives when they visit the matrimonial home.*

5.0 Petitioner's Reply and Answer to Cross-Petition

5.1 The Petitioner denies infidelity and explains the apartment incident: she said she was visiting a female

friend vacating the premises; the vehicle was towed only because Respondent had disabled it.

5.2 The Petitioner denies cruelty towards Respondent's family; she says the real issue is the unilateral influx of relatives into a three-bedroom house which often ends up with at least 12 plus more persons.

5.3 She maintains it is Respondent's behaviour that is unreasonable; repeats Petition in toto.

6.0 EVIDENCE

6.1 The Petitioner's viva voce evidence on the record is her indication that she would place her reliance on her pleadings.

6.2 In augmenting, the Petitioner spoke to assaults including being struck, and the injury which was treated at University Teaching Hospital, wherein she was given a police medical report after reporting at Woodlands Police; there being death threats; surveillance by trackers and phone-tapping, public humiliation which happened at a restaurant confrontation; the overcrowding of peoples from in-laws; and financial neglect regarding children's needs.

6.3 She further said that reconciliation was deemed hopeless as shown on the certificate on record.

6.4 The Respondent by agreement in his Answer and Cross-Petition admitted the same as his evidence-in-chief.

6.5 He did not cross-examine the Petitioner; likewise, the Petitioner did not cross-examine him. No additional witnesses were called.

7.0 The Statements as to Arrangements & Open-Court Position

7.1 Parties agreed to maintain the status quo in the interim of the custody and, by the close of the hearing, consensually proposed:

- i) Kambani aged 18, the adult child at university; there is no custody order required.
- ii) Ndanji aged 11 years and Kangwa aged 10 years their primary custody to be with the Respondent and they are both schooling at Sacred Heart which is close to residence so they maintain.
- iii) Samantha aged 7years old; her primary custody to be with the Petitioner as she already lives with her.

And liberal access or reasonable access to the non-custodial parent is granted.

- iv) The maintenance being practiced by the parties: that is, the Respondent to shoulder school fees and major educational needs; both to contribute to food, clothing, transport and medicals and the Petitioner to provide day-to-day transport to continue.

8.0 Submissions

8.1 On 27th August 2025, counsel stated that there would be no cross-examination and no written submissions.

8.2 Matter was reserved for Judgment.

9.0 ISSUES FOR DETERMINATION

- i. Whether the marriage has broken down irretrievably within Section 8 of the MCA.
- ii. If so, whether such breakdown is established by unreasonable behaviour under Section 9(1)(b) of the MCA and by whom.
- iii. What custody, access, and maintenance orders best advance the best-interests of the children under the Children's Code Act.

- iv. What should be the appropriate property settlement mechanism.
- v. Costs.

10.0 The Law

10.1 The only ground is irretrievable breakdown pursuant to Section 8 of the MCA. And under Section 9(1)(b) MCA, the Court may hold the marriage to have broken down if the respondent has behaved “in such a way that the petitioner cannot reasonably be expected to live with the respondent.”

10.2 The objective or subjective test which our Supreme Court held in *Brighton Soko v Petronella Soko* and *Mahande v Mahande* be adopted; the approach that the Court considers is the behaviour in the context of the particular spouses, their personalities, disposition, and marital history and applying a reasonable person standard. I have also referred to the case of *Ash v Ash* in that respect.

10.3 In relation to the cumulative conduct reference was made to *Rayden* which emphasises that a series of acts,

trivial if isolated, may cumulatively render continued cohabitation unreasonable.

10.4 Further the Best interests of a child govern all custody and maintenance orders according to the Children's Code Act.

10.5 And Section 13 of the MCA which indicates that brief post-incident cohabitation (if any) does not defeat reliance on unreasonable behaviour.

11.0 ANALYSIS & CONSIDERATION

11.1 Both sides closed their cases without cross-examination. The Court therefore weighs the internal consistency, corroboration, and inherent probabilities of the accounts.

11.2 The Petitioner's account of physical assaults and threats is corroborated by her police medical report and the report to Woodlands Police.

11.3 The Respondent admits installing tracking devices on vehicles; his explanation of "security" does not meet the Petitioner's complaint of coercive surveillance when viewed cumulatively with public confrontations and seizures of phones and a vehicle.

11.4 The Respondent's allegations of infidelity rest on suspicion of the parked vehicle and sitting with a man at a bar. There is no independent corroboration; the Petitioner provided a plausible explanation of visiting a female friend; vehicle later towed because the Respondent had immobilised it.

11.5 The overcrowding and unilateral influx of relatives is borne out by detailed averments of often 12 plus persons in a three-bedroom house and the Respondent's own narrative of extended family occupying the home.

11.6 Therefore, applying Brighton Soko and Mahande, I consider the spouses', in this marriage, a pattern emerges of denigration, loss of intimacy, surveillance and control, domestic chaos from unilateral decisions, and episodes of violence or threats. Even if some incidents might be contested individually, the cumulative effect plainly crosses the threshold in Section 9(1)(b): a reasonable spouse in the Petitioner's position cannot be expected to continue to live with the

Respondent. And this is also guided by the articulation of the test in *Ash v Ash*.

11.7 Both parties further concede that the marriage has failed. On the evidence, I find the principal cause of breakdown proved to the civil standard as the Respondent's unreasonable behaviour.

11.8 On Custody and maintenance, the parties' consensual position respects the children's schooling stability and daily routines. It aligns with the best-interests principle under the Children's Code Act: continuity of care; proximity to school; maintaining meaningful relationships with both parents; ensuring educational, medical and emotional needs are met. I adopt and refine it into orders that are clear, workable and enforceable.

11.9 On the issue of property and ancillary relief neither side led granular proof of the assets, ownership, contributions, or liabilities. Consistent with practice under the High Court's auxiliary jurisdiction, I will refer property questions to the Deputy Registrar for inquiry and report, with liberty to the parties to apply on interim occupation or use and disclosure.

11.10 On costs given the cross-allegations and the parties' convergence on dissolution, the just order is that each bears their own costs.

12.0 ORDERS

12.1 Accordingly, the following are the orders;

- i. *The marriage celebrated on 18th April 2007 between the parties is dissolved for irretrievable breakdown established under Section 9(1)(b) of the MCA by reason of the Respondent's unreasonable behaviour. The Decree Nisi shall be made Absolute after six (6) weeks, if no cause is made not to.*
- ii. *Custody and access by consent, is adopted as follows:*
 - a) *Kambani Kambani the adult child there is no need for the order.*
 - b) *Ndanji and Kangwa: the primary custody to be with the Respondent; the Petitioner to have liberal and reasonable access, including alternate weekends and half of school holidays, with flexibility around examinations.*

c) Samantha her primary custody to be with the Petitioner; the Respondent to have liberal and reasonable access, including alternate weekends and half of school holidays.

d) Pick-up and Drop-off: Unless otherwise agreed, hand-overs shall occur at the children's residence or at their school to minimise disruption.

iii. *Maintenance for the (children):*

a) The Respondent shall pay all school fees and compulsory school requirements including uniforms, examination fees and official school books for all minor children from term to term, upon presentation of invoices or demand notes.

b) The Petitioner shall provide day-to-day transport for Samantha and contribute reasonably to food and clothing for the child(ren) in her care.

- c) *Medical: The parties shall jointly meet reasonable medical and dental expenses for all minor children as and when they arise, subject to any medical cover held.*
- v. *Each party shall keep the other reasonably informed of the children's schooling and health needs.*
- vi. *Property Settlement: Pursuant to the High Court's powers, the question of identification, valuation and division (or settlement) of matrimonial property is referred to the Deputy Registrar for inquiry and report within 90 days, with liberty to call for financial disclosure, bank/Title records, and to take evidence on acquisition, contributions and needs.*
- vii. *Either party may apply before the Deputy Registrar for interim occupation or use orders and preservation of property pending the report.*
- viii. *The Deputy Registrar's report shall return to this Court for final determination.*

- ix. *Each party shall refrain from harassment, threats or surveillance of the other; neither shall immobilise or seize the other's personal phone or vehicle save by due process of law.*
- x. *Each party shall bear their own costs.*
- xi. *Either party may apply on reasonable notice regarding implementation or variation of the custody or access timetable and interim financial arrangements, should circumstances materially change.*

13.0 Conclusion

13.1 For the reasons set out, the Petitioner has proved, on a balance of probabilities, that the Respondent has behaved in such a way that she cannot reasonably be expected to live with him, within Section 9(1)(b) of the MCA, as informed by Brighton Soko, Mahande, and Ash v Ash and the cumulative-conduct approach in Rayden.

13.2 The Decree Nisi is accordingly granted with the ancillary orders above.

Delivered at Lusaka this 2nd day of October, 2025


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M. M. Bah-Matandala
HIGH COURT JUDGE

