

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

2024/HPF/D679

BETWEEN:

KELVIN MUMA NKONDA



PETITIONER

AND

JOHANNA MBOLOLWA LUBINDA

RESPONDENT

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

For the Petitioner: Mrs. K. M. Chileshe – Sukwana Mweemba & Partners

*For the Respondent: Ms. C. Kabwe Senior Legal Counsel, Tanzania-Zambia Railways
(TAZARA), Pro-bono Counsel/LAZ*

J U D G M E N T

Legislation and other works referred to:

1. *The Matrimonial Causes Act No. 20 of 2007*
2. *Marriage Act, Chapter 50 of the Laws of Zambia*
3. *Rayden and Jackson on Divorce and Family Matters, 16th Edition, Butterworths*
4. *Rayden's Law & Practice in Divorce & Family Matters in the High Court, County Courts & Magistrates' Courts, 11th Edition, London, Butterworths*

Cases referred to:

1. *Brighton Soko v Petronella Sakala Soko SCZ/8/189/2015*
2. *Ash v Ash (1872) Fam 135*
3. *Mahande v Mahande (1976) Z.R. 287*
4. *Mable M. Bbuku v Arthur Yoyo (SCJ No. 78 of 1998) (unreported)*
5. *Namuunda Hamalengwe Mutombo v Livian Haabula Mutombo (2009) ZR (unreported)*
6. *Pheasant v Pheasant (1972) 1 All ER 592*

1.0 INTRODUCTION

- 1.1 This is a Judgment for a Petition for dissolution of marriage filed by the Petitioner, **Kelvin Muma Nkonda**, against the Respondent, **Johanna Mbololwa Lubinda**, under **Sections 8 and 9(1)(b)** of the Matrimonial Causes Act No. 20 of 2007 (hereinafter “the Act”).
- 1.2 The ground relied upon is that the marriage has broken down irretrievably by reason of the Respondent having behaved in such a way that the Petitioner cannot reasonably be expected to live with her.
- 1.3 Reference is had to Section 8 of the Act which provides that a petition for divorce may be presented to the Court on the ground that the marriage has broken down irretrievably. Section 9(1)(b) then sets out one of the facts that may be relied upon to prove irretrievable breakdown, namely:
- “that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.”*
- 1.4 The statutory scheme therefore requires not merely that the marriage is unhappy or difficult, but that the

conduct of the respondent has reached such a level that continued cohabitation cannot reasonably be expected.

1.5 Furthermore, Section 9(2) further 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.”

1.6 This judgment is delivered in line with that duty, after consideration of the pleadings, the filed documents (including the marriage certificate, statements of arrangements for the child, and various notices and affidavits) and the oral testimonies of both parties.

2.0 BACKGROUND

2.1 The parties were lawfully married on **7th November 2020** at the **Lusaka Civic Centre**, as evidenced by the marriage certificate produced and admitted into the record. I am satisfied that the marriage was celebrated in accordance with the Marriage Act, Chapter 50 of the Laws of Zambia, and is therefore a statutory marriage.

2.2 Following their marriage, the Petitioner relocated to, and primarily resided in, the United Kingdom, where he is employed as a Sales Executive. The Respondent later joined him there. Prior to joining him in the UK, the Respondent lived in Zambia and the parties resided together for short periods during the Petitioner's visits to Zambia.

2.3 There is **one child of the family**, namely **Henry Mutafela Nkonda**, born on **19th August 2022**. It is common cause that the child suffers from a kidney-related medical condition known as Hydroureteronephrosis, which has significant implications for his medical and general welfare and requires on-going medical management.

2.4 The Petitioner is now resident in the United Kingdom, while the Respondent is resident and domiciled in Zambia, at Plot 1187, Chilanga Estates in Lusaka. For purposes of Section 4(3) of the Matrimonial Causes Act, jurisdiction is established as the parties are spouses under a statutory marriage and at least one of them was

domiciled in Zambia at the commencement of these proceedings.

2.5 The parties no longer cohabit. It emerged from the evidence that in or about April 2024, the Respondent returned to Zambia with the child of the family, leaving behind her wedding ring and effectively bringing cohabitation to an end. The question in this matter is not whether the marriage is in difficulty; that is conceded but whether the statutory threshold of **irretrievable breakdown** on the basis of **unreasonable behaviour** has been met, and what orders should follow regarding the child and other ancillary matters has to be determined.

3.0 THE PETITIONER'S CASE

3.1 In his Petition and oral testimony, the Petitioner asserts that the marriage has broken down irretrievably due to a sustained course of conduct on the part of the Respondent. He testified that following the Respondent's eventual relocation to the United Kingdom in 2022, there was a marked and rapid deterioration in her behaviour and their marital relationship.

3.2 The Petitioner stated that he welcomed the Respondent to the UK while she was pregnant, and he wished to provide a stable home environment. However, within a short time, the Respondent began requesting significant sums of money. A notable incident mentioned was a demand for K12,000 which the Petitioner said was meant for a business venture for the Respondent's family. The Petitioner explained that at this time he was already supporting the Respondent's older child from a previous relationship in Zambia, paying school fees, upkeep and other necessities. He felt overwhelmed by demands he considered excessive and unappreciative of his efforts.

3.3 The Petitioner further testified that the Respondent refused to cooperate domestically. According to him, upon returning home from work and on many occasions working two jobs and therefore being physically exhausted, he would find that there was no food prepared and the housework had not been done. When he attempted to discuss this, the Respondent allegedly became angry and confrontational. He described an

environment where basic marital cooperation and understanding were absent, despite his long working hours and the financial burden he bore.

3.4 A central plank of the Petitioner's complaint was the emotional and verbal abuse which he said he suffered. He told the Court that the Respondent would repeatedly call and text him whilst he was at work, including when he was driving or in the presence of his employers, and she would start arguments by phone. He testified that this incessant communication caused friction with his employers and undermined his work environment. He also stated that the Respondent insulted him personally as well as his siblings, using disrespectful and malicious language.

3.5 There was also alleged physical violence. The Petitioner gave a detailed account of an incident in 2023 when he was driving the Respondent to the hospital. He explained that he had left the house early to put fuel in the car and had to take a diversion as a road was closed. The Respondent accused him of wasting money and taking too long, and in the course of that argument, she

punched him while he was driving. This caused him to momentarily lose control of the vehicle. Fearing for their safety, he pulled over into a residential area. The argument continued, and he described the Respondent grabbing him by the seatbelt and attempting to strike him again. Members of the public came out due to the commotion, and the police were called. They attended the scene, and although the Petitioner declined to press charges, he considered the incident extremely serious and frightening.

3.6 The Petitioner also referred to events during a trip to Zambia in 2023. He testified that this visit was, in part, arranged so that the parties could seek counselling and intervention from family elders and counsellors to salvage the marriage. However, according to him, the Respondent did not cooperate with these efforts. A counsellor was arranged and waited at their home for many hours, but the Respondent did not attend the scheduled session and could not be reached. When the Petitioner contacted her uncle, he allegedly indicated

that he had not seen her and was not aware of her movements, contrary to the Respondent's explanations.

3.7 During this same period in Zambia, the Petitioner said that the Respondent repeatedly went out at night, dressed in a manner that he considered inconsistent with a married woman's demeanour, and returned home in the early hours of the morning. On one occasion, a friend of the Petitioner observed the Respondent at a nightclub in Longacres, and the Petitioner stated that this fuelled his suspicion that she was not committed to the marriage. He emphasised that he was at home with the child whilst she was out until the early hours.

3.8 The Petitioner described another serious altercation in Lusaka at about 01:00 hours, at their residence in Kingsland City, where he said the Respondent physically assaulted him in the presence of his brother, Robby Nkonda. He said that the Respondent's conduct became loud, violent and uncontrollable, and family members had to intervene.

3.9 Ultimately, the Petitioner said that the Respondent's behaviour became intolerable and that attempts at reconciliation failed.

3.10 Upon return to the United Kingdom, he moved into a separate bedroom due to the atmosphere in the home. Eventually, in April 2024, the Respondent left the UK, returned to Zambia with the child and left behind her wedding ring, signifying to him a complete abandonment of the marriage. From his perspective, the marriage was over, and he could not reasonably be expected to live with her.

3.11 He therefore urged this Court to find that the Respondent's conduct meets the threshold of Section 9(1)(b) and prayed for a decree of divorce and appropriate orders relating to the child.

4.0 ANSWER AND CROSS-PETITION

4.1 The Respondent filed an **Answer and Cross-Petition**. In her Answer, she admitted the fact of the marriage and the existence of the child but denied that she was the cause of the breakdown of the marriage.

- 4.2 In the Cross-Petition, she alleged that it was the Petitioner who behaved unreasonably and that she, rather than the Petitioner, is entitled to a decree of divorce.
- 4.3 In summary, the Respondent alleged that the Petitioner was financially secretive, that he did not share details of his income, assets or financial arrangements. She further claimed that the Petitioner was emotionally unavailable, that he would block her calls and fail to communicate for periods of time, and that he relied excessively on advice from his older sister in dealing with matrimonial issues instead of dealing directly with her as his wife.
- 4.4 The Respondent also stated that she suffered from post-natal depression after the birth of the child and that the Petitioner did not provide sufficient emotional support during this period. While she admitted that she once slapped the Petitioner, she claimed that she did so only after he had allegedly insulted her, calling her a gold-digger and disparaging her origins and her family.

- 4.5 With regard to the incidents in Zambia, the Respondent denied being out with another man or engaging in infidelity. She insisted that on the nights in question she was either with relatives or friends, and that any late return home was not indicative of marital misconduct. She also disputed the account that she refused counselling, contending instead that she had tried to engage her uncle and others to discuss the marital difficulties.
- 4.6 In relation to the child, the Respondent maintained that she has been the primary caregiver, especially in light of the child's kidney condition, and she asked the Court to order maintenance from the Petitioner, including support for a medical scheme, and to regulate access.
- 4.7 The Cross-Petition thus, in essence, invites the Court to find that it is the Petitioner who has behaved unreasonably and that the marriage has broken down owing to his conduct.

5.0 HEARING

- 5.1 The matter came up for hearing on 29th July 2025 for the Petitioner's case. The Petitioner testified on oath

and, as already outlined, he largely confirmed the averments in his Petition, expanding them with detailed accounts of particular incidents of violence, abuse and failed reconciliation. He was not materially shaken in cross-examination.

5.2 The Respondent's case was heard on 20th November 2025. On that date, the Respondent took the oath and confirmed that she had filed both an Answer and Cross-Petition. She confirmed the marriage and the existence of the child and gave her own account of the difficulties in the marriage. Although she disputed many of the Petitioner's allegations and sought to shift blame to the Petitioner, it is noteworthy that she did admit some central facts, including the slapping incident and the existence of significant quarrels and communication breakdown.

5.3 After the Respondent's testimony, counsel informed the Court that the parties would rely on the evidence on record and the documents filed. No additional witnesses were called by either party.

6.0 SUBMISSIONS

6.1 There were no final written submissions filed by either the Petitioner or the Respondent, despite the opportunity having been afforded. The Court therefore proceeds to determine the matter on the basis of the pleadings, documents and oral testimonies alone. In doing so, I remain bound by Section 9(2) of the Matrimonial Causes Act to inquire, as far as reasonably possible, into all material facts.

7.0 CONSIDERATIONS AND DECISION

7.1 I shall first address jurisdiction. The marriage certificate exhibited in these proceedings confirms that the parties' marriage is a **statutory marriage** celebrated under the Marriage Act, Chapter 50, at the Lusaka Civic Centre on 7th November 2020. I am therefore satisfied that this Court has jurisdiction under **Section 4(3)** of the Matrimonial Causes Act, which provides that the Court shall have jurisdiction in proceedings for divorce or nullity if either party to the marriage is domiciled or resident in Zambia at the commencement of the proceedings. The Respondent is domiciled and resident

in Zambia, and the marriage is primarily Zambian in character.

7.2 Accordingly, the Petition is properly before this Court, and I proceed to consider whether the requirement of **irretrievable breakdown** of the marriage has been met.

7.3 As indicated earlier, **Sections 8 and 9(1)(b)** of the Act require that the Court be satisfied that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her.

7.4 The leading authorities, including **Rayden & Jackson on Divorce and Family Matters**, emphasise that, in assessing unreasonable behaviour, the Court must consider the history of the marriage and the individual characteristics of the parties. At page 203, paragraph 25, Rayden notes that in considering what is reasonable, the Court will have regard to both the sensitive and the thick-skinned, and must evaluate behaviour in the context of this particular petitioner and this particular respondent.

7.5 At page 204, paragraph 26, the same authors observe that behaviour may consist of a long-continued series of

minor acts, which, taken alone, may appear trivial, but taken together, may be such that the petitioner cannot reasonably be expected to live with the respondent. This concept of the cumulative effect of conduct has been adopted by our Courts.

7.6 In **Brighton Soko v Petronella Sakala Soko**, the Supreme Court, building on the earlier decision in **Mahande v Mahande**, held that in determining unreasonable behaviour, it is not only the respondent's conduct that is decisive, but also how that conduct interacts with the petitioner's personality, disposition and attributes. In other words, the Court is required to ask whether *this* petitioner, with his own strengths and weaknesses, can reasonably be expected to go on living with the respondent.

7.7 The English decision in **Ash v Ash** (1872) Fam 135, approved in **Mahande**, is to the same effect. Bagnall J posed the question:

“Can this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad,

having regard to his or her behaviour during the marriage, reasonably be expected to live with this respondent?”

7.8 I bear in mind also Section 13 of the Matrimonial Causes Act, which requires the Court to disregard short periods of resumed cohabitation of not more than six months when assessing unreasonable behaviour, so that temporary reconciliation attempts do not defeat an otherwise clear case of breakdown.

7.9 It is therefore clear that the question before this Court is whether, having regard to all the circumstances, the Respondent’s behaviour, viewed cumulatively, is such that the Petitioner cannot reasonably be expected to live with her any longer.

7.10 The Petitioner’s evidence painted a picture of a marriage characterised by emotional turmoil, financial strain, domestic non-cooperation, and physical violence. A striking feature of his testimony was the detailed account of the incident in the UK where the Respondent punched him while he was driving. This was not a mere domestic argument but conduct which placed both

parties in physical danger and required intervention by the police. The Respondent, in her evidence, did not wholly deny the existence of violent confrontations; she admitted slapping the Petitioner, though she sought to justify it on grounds of provocation.

7.11 The Petitioner's account of the counselling attempts in Zambia, and the Respondent's failure to attend despite arrangements, strongly supports the assertion that the Respondent was not committed to reconciliation. The Petitioner's evidence that the counsellor waited for many hours without the Respondent appearing, and that an uncle of the Respondent indicated that he had not seen her for months, was not convincingly rebutted.

7.12 The evidence relating to the Respondent's late-night outings and being seen at a nightclub must be approached with caution, as not every late night out will constitute unreasonable behaviour. However, these incidents must be examined in context: the parties had travelled to Zambia specifically to seek help for their troubled marriage and the Respondent was expected to cooperate with family and counsellors. Instead, she was

out late at night, returned at unreasonably late hours, and gave explanations which were inconsistent with information from other family members. In the context of a fragile marriage, this behaviour reasonably fuelled the Petitioner's sense of insecurity and abandonment.

7.13 The Petitioner further testified to repeated quarrels, insults directed at him and his family, as well as incessant calls at his workplace. I find it significant that he stated these call patterns led to concerns at his place of employment. The Respondent did not seriously engage with this aspect in her evidence, and I consider that such conduct would, over time, have a serious impact on a working spouse's mental and emotional wellbeing.

7.14 Taken together, the financial demands, domestic non-cooperation, repeated violent incidents, disrespect towards the Petitioner and his family, late-night outings, and refusal to genuinely engage with counselling represent a course of conduct of some gravity. It is not a case of a few isolated quarrels but an accumulation of acts and omissions which, viewed

cumulatively, appear to have exhausted the Petitioner's powers of endurance.

7.15 The Respondent's allegations against the Petitioner, such as financial secrecy, emotional distance and reliance on his sister, may well indicate that the Petitioner was not a perfect spouse. However, as noted in **Mahande v Mahande** and **Pheasant v Pheasant**, the Court does not expect "heroic virtue" or "selfless abnegation" from either spouse. It assesses whether, despite human imperfections, the Respondent's behaviour crosses the line into unreasonable behaviour such that cohabitation cannot be reasonably expected.

7.16 On the evidence, the Respondent's counter-allegations remain largely uncorroborated and do not outweigh the serious and detailed complaints raised by the Petitioner.

7.17 I am therefore satisfied, on a balance of probabilities, that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her, within the meaning of Section 9(1)(b). The marriage has accordingly broken down irretrievably, as required by Section 8.

7.18 Furthermore, Section 9(4) of the Act provides that:

“A decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.”

7.19 In **Namuunda Hamalengwe Mutombo v Livian Haabula Mutombo**, it was held that a marriage is said to have irretrievably broken down if it stands no realistic chance of being restored because the parties have ceased cohabiting and one or both do not intend to resume cohabitation.

7.20 In the present case, the parties have effectively ceased cohabiting since April 2024. The Respondent returned to Zambia with the child and left behind her wedding ring. The Petitioner’s evidence was that he regards the marriage as over and has no intention of resuming cohabitation. The Respondent similarly did not indicate any concrete intention or plan for reconciliation. On the contrary, she herself has filed a Cross-Petition seeking divorce. This is inconsistent with any realistic prospect of reconciliation.

7.21 I therefore find that there is no reasonable likelihood of cohabitation being resumed. The statutory bar under Section 9(4) is not triggered.

7.22 Turning to the Cross-Petition, the Respondent urges the Court to find that the Petitioner's behaviour is the cause of the breakdown. However, her complaints, principally about financial secrecy, emotional distance and reliance on his sister were not supported by independent evidence. While such issues may indicate tensions and shortcomings in the marriage, they do not, on the evidence before me, rise to the level of unreasonable behaviour in terms of Section 9(1)(b).

7.23 Moreover, the Respondent admitted to at least one act of physical aggression (the slap), and she did not persuasively rebut the more serious allegations of violence and non-cooperation with reconciliation. The balance of the evidence therefore favours the Petitioner's narrative.

7.24 Accordingly, I find that the Respondent has not established, on a balance of probabilities, the fact of

unreasonable behaviour on the part of the Petitioner, and the Cross-Petition must fail.

7.25 Now the issue of the welfare of the child, Henry, it is of paramount importance. While this judgment primarily concerns the dissolution of marriage, the Court cannot ignore the child's best interests. The child suffers from Hydroureteronephrosis, and the evidence shows that he requires ongoing medical treatment and careful follow-up.

7.26 The child currently resides with the Respondent in Zambia. There is no evidence that the Respondent is an unfit parent or that the child is in danger in her care. On the contrary, both parties acknowledge that she is the primary day-to-day caregiver. The Petitioner, for his part, has demonstrated willingness to provide financial support, particularly for the child's medical needs.

7.27 In line with the principles that guide family courts, and having regard to the best interests of the child, I consider it appropriate to maintain the child's primary residence with the Respondent, while ensuring that the

Petitioner remains actively involved in the child's life and contributes meaningfully to his welfare.

8.0 CONCLUSION AND ORDERS

8.1 Having carefully considered the Petition, the Answer and Cross-Petition, the oral testimonies of the parties, the relevant statutory provisions, and the guiding authorities, I am satisfied that:

- i) The marriage between the Petitioner and the Respondent has broken down irretrievably; and
- ii) The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with her, within the meaning of Section 9(1)(b) of the Matrimonial Causes Act.

8.2 I therefore make the following orders:

- iii) A **Decree Nisi** for the **dissolution of the marriage** between Kelvin Muma Nkonda and Johanna Mbololwa Lubinda is hereby granted on the ground of the Respondent's unreasonable behaviour.

- iv) The Decree Nisi shall be made **absolute** upon expiry of the statutory period of Six Weeks, unless sufficient cause is shown to the contrary.
- v) The **Respondent's Cross-Petition** is hereby **dismissed**.
- vi) The parties shall have **joint custody** of the minor child **Henry Mutafela Nkonda**, with **primary residence** in the care of the Respondent in Zambia.
- vii) The Petitioner shall have **liberal and reasonable access** to the child. Such access shall include physical access during agreed holiday periods and regular electronic communication (telephone, video calls and such other means as may be reasonably practicable), bearing in mind the child's age, schooling and medical needs.
- viii) The Petitioner shall continue to bear primary responsibility for the **child's major medical and educational expenses**, including, where feasible, arranging or contributing to a suitable

medical scheme or insurance for the child to ensure continuity of treatment for his kidney condition.

- ix) The Respondent shall contribute to the child's upkeep to the extent that her financial circumstances reasonably permit, particularly in relation to day-to-day living expenses when the child is in her care.
- x) In view of the matrimonial nature of these proceedings, and in line with the general approach of this Court, **each party shall bear their own costs.**

9.0 Leave to appeal is hereby granted to either party, should they be aggrieved by any part of this judgment or the consequential orders.

Dated at Lusaka, this 20th November 2025.



M. M. Bah-Matandala
HIGH COURT JUDGE

