

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

2025/HPF/D027

BETWEEN:

NASILELE KAYAMBA HANGOMA

AND

EUGENE MULEYA HANGOMA



PETITIONER

RESPONDENT

*Before Hon. Justice Mrs. Justice M. M. Bah-Matandala
Dated this 15th day of December, 2025.*

*For the Petitioner: Mr. E. Kachunga, Messrs. Kachunga Legal Practitioners
For the Respondent: Mr. M. Phiri, Messrs. M. Mweene & Partners.*

JUDGEMENT

Legislation referred to

1. Matrimonial Causes Act No. 20 of 2007
2. Marriage Act, Chapter 50 of the Laws of Zambia
3. Children's Code Act No. 12 of 2022
4. High Court Act, Chapter 27 of the Laws of Zambia

Cases referred to

1. Brighton Soko v Petronella Sakala Soko — SCZ Appeal No. 8 of 2015
2. Mahande v Mahande — (1976) Z.R. 354 (S.C.)
3. Emmanuel Mponda v Mutale I. Mponda — SCZ Appeal No. 199 of 2015; [2018] ZMSC 562
4. Stoyke v Stoyke — SCZ Appeal No. 67 of 1998
5. Re C (A) (An Infant) C v C (1970) 1 All ER 309
6. J v C (1970) A.C. 688
7. Re O (Infants) (1971) 2 All ER 744

Text Referred To

1. Stephen M. Cretney, Principles of Family Law (1984), 4th Ed., Sweet & Maxwell

1.0 INTRODUCTION

- 1.1 This is the Court's Judgment in a Petition for dissolution of marriage brought by the Petitioner pursuant to **Sections 8 and 9(1)(b) of the Matrimonial Causes Act No. 20 of 2007**, on the ground that the marriage has broken down irretrievably because the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with him.
- 1.2 The Petition is accompanied by issues relating to **custody, residence and access** in respect of the children of the family. These issues fall to be determined in accordance with the **Children's Code Act No. 12 of 2022**, which requires the Court to treat the **best interests of the child as the primary consideration**.
- 1.3 This cause has a record of interlocutory proceedings and in particular, the Petitioner earlier applied for interim custody under **Section 147 of the Children's Code Act**. The Court declined to grant the interim custody order ex parte, directed that the cause proceed inter partes, and thereafter made interim arrangements

pending the final determination of the Petition. The Court's interlocutory ruling being referred to in these proceedings was **delivered on 30th April, 2025**.

1.4 This Court derives jurisdiction over petitions for dissolution of marriage from the **Matrimonial Causes Act No. 20 of 2007**, read together with the **High Court Act, Cap 27** and the Court's ordinary jurisdiction in matrimonial causes.

1.5 The Court is also empowered to make custody and related orders before, during, and after dissolution proceedings. Under the Matrimonial Causes Act, the Court has continuing control over custody orders, while the Children's Code Act provides the substantive welfare framework for children.

2.0 BACKGROUND AND UNDISPUTED FACTS

2.1 The parties contracted a statutory marriage. From the material on record, the marriage was celebrated on 16th April, 2017 at Lusaka Civic Centre in Lusaka before the Registrar of Marriages and were issued with a Marriage Certificate which was admitted in evidence and marked as P1.

- 2.2 There are two children of the family namely THUMELO HANGOMA who is male was born 21st September 2019 and THAPELO HANGOMA a female was born on 12th February 2022. And the dates of birth appear on the record and in the Social Welfare material that was filed.
- 2.3 The parties separated around 4th January 2025, after serious marital disputes. Following the separation, disputes immediately arose over, who should have the children pending the petition, what access each parent should have and how to preserve schooling, routine, and the children's emotional stability.

3.0 PROCEDURAL HISTORY RELEVANT TO CUSTODY

- 3.1 On 11th February 2025, the Petitioner filed an application for interim custody under **Section 147 of the Children's Code Act**. The Court declined to grant interim custody ex parte and ordered the application to be heard inter partes. Since the dispute concerned young children, the Court directed that a **Social Welfare report** be prepared to assist the Court.
- 3.2 A Social Welfare Home Assessment Report was subsequently filed, dated 28th March 2025, which

contained observations from visits and interviews with both parties and the children and gave recommendations on residence and access.

- 3.3 The interim arrangements were made to stabilise the children pending final judgment. The final decision must, however, be based on the whole record, the oral and affidavit evidence, the welfare report, and the law.

4.0 THE PARTIES' POSITIONS IN THE PETITION

- 4.1 The Petitioner seeks dissolution of the marriage on the ground of **unreasonable behaviour** under **section 9(1)(b)** of the Matrimonial Causes Act.
- 4.2 In relation to the children, the Petitioner's position on the record including during interlocutory proceedings, is that she is capable of providing care and that, given the children's tender ages, residence should favour the mother, with the Respondent having reasonable or supervised access where circumstances require.
- 4.3 The Respondent disputes aspects of the Petitioner's allegations and on the record insists that he has been providing stability for the children, including schooling, home routine, and care arrangements.

4.4 The Respondent also disputes allegations of violence and raises counter-allegations of destructive behaviour and instability, and relies on documentary exhibits and communication records to support his position.

5.0 ISSUES FOR DETERMINATION

5.1 The Court determines the following issues:

- i) *Whether the marriage has irretrievably broken down within the meaning of sections 8 and 9(1)(b) of the Matrimonial Causes Act.*
- ii) *Whether the Petitioner has proved unreasonable behaviour to the required standard.*
- iii) *What final orders should be made regarding custody, residence and access for the children of the family.*
- iv) *What order (if any) should be made regarding maintenance, and what directions should follow.*
- v) *Costs.*

6.0 APPLICABLE LAW

- 6.1 The starting point in determining the first issue of whether the marriage has irretrievably broken down within the meaning of sections 8 and 9(1)(b) of the Matrimonial Causes Act is under **Section 8** of the Matrimonial Causes Act. The provision provides that a divorce may be granted only if the Court is satisfied that the marriage has **broken down irretrievably**.
- 6.2 And also, under Section 9(1)(b), the Court will not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- 6.3 In applying that test, the Court must consider the totality of the marriage, the parties' circumstances, and whether, in reality, the relationship has collapsed beyond repair. And our Supreme Court has consistently held that the Court should not insist on maintaining a marriage that exists only formally, where evidence shows that it has, in substance, ended. Reference is had to the case of **Mahande v Mahande** and **Brighton Soko v Petronella Sakala Soko**.

(1971) 2 All ER 744 and **Re C (A) (An Infant) C v C**
(1970) 1 All ER 309. The Court must decide each case
on its own facts.

7.0 ANALYSIS AND DETERMINATION

7.1 I shall begin with the first issue of whether the marriage
has irretrievably broken down due to unreasonable
behaviour. And in this regard the Court has considered
the pleadings, affidavit evidence, and the oral record on
the circumstances of the separation and the
relationship between the parties.

7.2 The record shows serious and persistent conflict,
breakdown of trust, and separation. The dispute
extended beyond ordinary marital disagreements and
escalated into allegations and counter-allegations that
affected the home environment, peace between the
parties, and the children's emotional climate. Applying
the principles in **Mahande v Mahande** and **Brighton**
Soko v Petronella Sakala Soko, the Court is not
required to search for blame alone; rather, it must
determine whether, in substance and reality, the

marriage has collapsed and whether it is reasonable to expect the Petitioner to continue living with the Respondent.

7.3 On the totality of the record, the Court is satisfied that, the parties have separated; there is a high level of conflict; trust and partnership have broken down; and reconciliation is not shown to be realistic on the evidence before the Court.

7.4 The Court therefore finds that the marriage has **irretrievably broken down** within the meaning of **sections 8 and 9(1)(b)** of the Matrimonial Causes Act.

7.5 The second issue for determination is, Custody, residence and access. In determining the said issues, the Court must prioritize the following herein;

- i) *The Court's duty is not to reward either party but to protect the children. The controlling principle is the **best interests of the children**, which include safety, stability, continuity of schooling, emotional security, and meaningful relationships with both parents where possible. The children are of tender years. The record before Court includes a Social Welfare assessment*

and recommendations, which the Court ordered precisely because independent welfare input is crucial where parents are in conflict.

- ii) The Social Welfare report dated **28th March 2025** on record, observed the children in both environments and made recommendations including that; the children benefit from having both parents; arrangements should reduce disruption and preserve routine; residence and access should be structured to promote stability; and counselling and civility between the parties should be encouraged. The Court accepts that the welfare report is not a judgment; it is an aid. However, it is an important neutral piece of evidence which supports the need for **structured and stable arrangements**, given the children's ages and vulnerability.
- iii) The Court has also considered the established importance of continuity of care, especially for young children, in line with **Emmanuel Mponda v Mutale I. Mponda**. In the present matter, the record shows that: the children's schooling and routine must not be

repeatedly disrupted; the parents' relationship is strained and requires clear, enforceable structure; and the children need predictable handover arrangements to avoid conflict at pick-ups and drop-offs.

- iv) Having weighed all factors and guided by Section 3 of the Children's Code Act, as well as J v C, the Court finds that the arrangement that best serves the children is one that preserves routine and ensures both parents remain involved. Accordingly, the Court orders joint custody, with a structured residence and access regime as set out in the orders below.*

7.6 The third issue for determination is maintenance. Maintenance must be approached with the children's welfare in mind. The record contains evidence of expenditure on school-related needs and the day-to-day upkeep of the children. In the circumstances the Court will order that both parents contribute according to means, and that any dispute on quantum be assessed, if necessary, by further proceedings before the Registrar or on application.

8.0 DECISION AND ORDERS

8.1 The following are the orders of the Court herein;

- i) *A Decree Nisi is hereby granted dissolving the marriage between the Petitioner and the Respondent on the ground of irretrievable breakdown pursuant to sections 8 and 9(1)(b) of the Matrimonial Causes Act No. 20 of 2007.*
- ii) *The Decree Nisi shall be made Decree Absolute after the statutory period, unless cause is shown.*
- iii) *Custody, residence and access children of the family: Thumelo Hangoma and Thapelo Hangoma.*
- iv) *The parties shall have **JOINT CUSTODY** of the children;*
 - a) *The children shall reside with the Petitioner during school terms.*
 - b) *Every fortnight, the children shall reside with the Respondent from Friday evening to Sunday evening, in a manner that does not interfere with school attendance and routine.*
 - c) *During school holidays, the children shall reside with the Respondent for the first two (2) weeks, and with the Petitioner for the*

remaining two (2) weeks, or such division as the holiday period practically allows, maintaining equal sharing as nearly as possible.

- d) Each party shall have reasonable access to the children when the children are not in that party's physical care, including telephone/video contact at reasonable times, provided such contact is not used to undermine the other parent.*
- v) The parties shall contribute to the children's maintenance. Where quantum is disputed, either party may apply for assessment and directions.*
- vi) Each party shall ensure the children are not exposed to conflict and shall communicate on handovers in a civil manner.*
- vii) The parties are encouraged to seek counselling or co-parenting support in the best interests of the children.*

viii) *Each party shall bear their own costs, this being a family matter, unless otherwise ordered upon further application.*

8.2 The parties are informed of their right to appeal.

9.0 CONCLUSION

9.1 The Court has arrived at this decision by applying the statutory test for divorce under the Matrimonial Causes Act and, regarding children, the paramountcy principle under the Children's Code Act.

9.2 The Court's custody and access orders are designed to preserve stability, continuity of care and schooling, and meaningful involvement of both parents, consistent with the welfare guidance in **J v C** and the continuity principle emphasised in **Emmanuel Mponda v Mutale I. Mponda**.

Delivered at Lusaka this 15th December, 2025.


M. M. Bah-Matandala
HIGH COURT JUDGE

