

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
LUSAKA  
(Divorce Jurisdiction)

2017/HPF/FD126

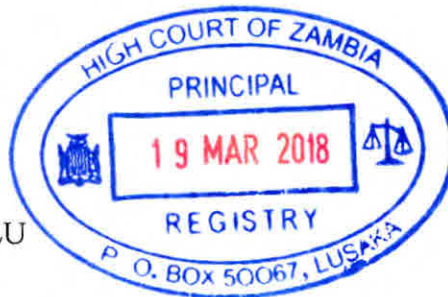
**BETWEEN:**

BESA R. BUNDA

AND

KIMON KANDINDE ZULU

CHANSA CHILESHE



PETITIONER

RESPONDENT

CO-RESPONDENT

**BEFORE THE HONOURABLE LADY JUSTICE M.CHANDA THIS 19<sup>TH</sup> DAY OF MARCH , 2018**

**APPEARANCES**

Petitioner : Ms I. E Suba appearing with a Leaner Legal Practitioner from Suba Tafenc & Associate

Respondents : Mr M. Mzonzo from SLM Legal Practitioners

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**J U D G M E N T**

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**LEGISLATION REFERRED TO:**

THE MATRIMONIAL CAUSES ACT NO. 20 OF 2007 OF THE LAWS OF ZAMBIA

On 17<sup>th</sup> May 2017 **Besa R. Bunda** the petitioner herein filed a Divorce Petition pursuant to **Section 8 and 9(1) (a) (b) of the**

on the ground that the respondent had committed adultery and behaved in such a way that the petitioner could not reasonably be expected to live with the Respondent.

In response to the petition **Kimon Kandinde Zulu** and **Chansa Chileshe** the respondent and co- respondent herein, filed an Answer and Cross Petition on 11<sup>th</sup> August, 2017. The respondents in their joint Answer did admit that they have a child together named **Lindiwe Zulu** born on 19<sup>th</sup> May, 2014 long after the petitioner had left the matrimonial home and purported to move on due to irreconcilable differences between her and the respondent. The respondents averred that the petitioner condoned their adultery.

The 1<sup>st</sup> respondent averred that their marriage had broken down irretrievably but denied that the breakdown had been solely caused by his behaviour as alleged. The respondent alleged that the petitioner left the matrimonial home on her own on 23<sup>rd</sup> January, 2013 with the child of the family and was always in the habit of talking about divorce even over minor dispute.

Hearing of the matter commenced on 19<sup>th</sup> March, 2019.

The gist of the petitioner's petition buttressed by her *viva voce* evidence in Court was that on 29<sup>th</sup> October, 2010 she was lawfully married to the respondent at Lusaka Civic Centre before the Registrar of Marriage. The petitioner averred that they last co-

habited as husband and wife in Lusaka on the 23<sup>rd</sup> January, 2013.

The petitioner told the Court that both the petitioner and the respondent are domiciled in Zambia and that there is one child of the family now living namely **Paston Zulu** having been born on 26<sup>th</sup> June, 2010 at the University Teaching Hospital, Lusaka Zambia, and resides with the petitioner at Plot number 26598/1 Alex Choola Road, Nyumba Yanga Lusaka.

The Petitioner told the Court that their marriage had broken down irretrievably on account that the respondent had committed adultery and behaved unreasonably such that the petitioner cannot reasonably be expected to live with him. The petitioner cited the particulars of the respondent's unreasonableness as follows:-

That the respondent has on too many occasions committed adultery and has continued committing adultery with the co-respondent namely **Chansa Chileshe** with whom he has a child named **Lindiwe Zulu** aged three years.

That due to the unreasonable behaviour of the respondent the petitioner had to vacate the matrimonial home out of her own accord to avoid injury to her as well as mental anguish and trauma.

That the respondent had on numerous occasions been in the habit of exchanging sexual text messages with various women on his cellular phone.

That the respondent has been throughout the marriage been a man of leisure and took to heavy drinking and always came back home each day heavily drunk.

That the respondent stayed away from the matrimonial home each evening returning either very late at night or in the early hours of the following morning leaving the petitioner with the child of the family on their own at family home.

That the respondent took to fighting as a result of his numerous drunken stupor and on many occasions caused actual bodily harm to the petitioner.

That sometime in December, 2012 the respondent severely beat up the petitioner whom he held upside down and as she feared for her life she had to hit the respondent with a China plate and managed to free herself.

That the respondent is a man of ungovernable temper who goes into tantrums and would insult the petitioner for any minor excuse and would use unpallable language in full view of the members of the family and or public.

That as a result of the aforesaid the petitioner has suffered mental stress, humiliation and embarrassment due to the respondent's behaviour. The petitioner finds it intolerable to continue living with the respondent as a result of his behaviour.

The Petitioner concluded her testimony by urging the Court to dissolve the said marriage and grant her custody of the child. That the co-respondent be condemned in damages and that the Court makes, an order for property settlement, maintenance of the petitioner as well as the child of the family.

The respondent and the co-respondent opted not to cross examine the petitioner. They indicated that they were not adducing any evidence in rebuttal to the petitioner's claims. They admitted to the claims adduced by the petitioner and closed their case.


Upon hearing the evidence from the petitioner and the respondent having admitted to the claims herein, this Court is satisfied that the marriage between the petitioner and the respondent has broken down irretrievably on the ground that the respondent has committed adultery with the co-respondent and the petitioner finds it intolerable to live with the respondent. I am also satisfied from the petitioner's evidence that the marriage between the parties herein has been rocked with physical and verbal abuse mostly at the instigation of the respondent. In view of the above it is hereby decreed that the marriage solemnised on 23<sup>rd</sup> January, 2013 at the Lusaka Civic Centre between Besa Bunda and Kimon Kandinde Zulu has broken down irretrievably and be dissolved

unless sufficient cause be shown to the Court within six weeks from the making of this decree why it should not be made *absolute*.

It is further adjudged that due to the unsavoury behaviour of the respondent and the co-respondent, they are condemned to pay the petitioner damages in the sum of K3, 000. That property settlement and maintenance orders shall be dealt with by the Deputy Registrar on formal application by either party. Custody of the child of the family shall be determined by this Court on formal application by either party. The costs of this action shall be borne by the respondent.

I order accordingly.

Dated at Lusaka this .....day of ..... 2018



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**M. Chanda**  
**High Court Judge**