

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

MATRIMONIAL CAUSE NO. 9 OF 2006

BETWEEN

PENG AICHUN VAUX PETITIONER

AND

JOHN VAUX RESPONDENT

CORAM : CHOMBO, J.

: Mwale, Counsel for the Petitioner
: Jere, Court Reporter
: Chulu, Interpreter

JUDGMENT

This judgment arises out of two separate applications by the petitioner. The first application was for the dissolution of marriage. The subsequent one was an application for maintenance. The Court decided to combine the two applications and deliver one judgment for convenience.

The petitioner obtained the Registrar's certificate for the case to be heard undefended in an application for the dissolution of marriage on the grounds of cruelty. I must therefore exercise caution and guard against the dangers of collusion. The petitioner and respondent are both permanent residents of Malawi. The Court therefore has jurisdiction to hear the matter.

The evidence, according to the petitioner, was that she got married to the respondent in 1999 at the Lilongwe District Commissioner's Office. Since the celebration of the said marriage the two have cohabitated together in Area 47 and Area 10. As a result of the said cohabitation there is one issue – a girl aged four years now.

It was the evidence of the petitioner that from the time of the celebration of the marriage the respondent has treated the petitioner with disdain and neglect. The applicant recounted various acts of the respondent that constituted the acts of cruelty complained of. Some of such acts were that the respondent would go drinking and not come back home until 4 or 5 in the morning. The respondent would refuse to provide for the petitioner and the issue of the marriage. If, at any time, the petitioner asked the respondent to buy anything for their daughter, the respondent would ask for his money back. Not only would the respondent fail to provide for his family but he would also take money from the petitioner's handbag and use it for beer drinking. The petitioner would plead with the respondent not to smoke in the presence of their daughter but he would refuse to take advice and he would also refuse to stop or reduce the drinking. The respondent used to be angry with the petitioner for suggesting that they seek counsel.

The petitioner opened a restaurant and, in a bid to spend more time with the respondent invited him to be drinking at the restaurant. But this only worked for a month. Then she opened a bar but the respondent would only go there to drink and many times end up quarrelling with the bar manager. When the petitioner tried to intervene in the quarrel he pushed the petitioner against the wall and held her by the neck. The respondent used to

send the petitioner to go demand things from his business partners. If she refused he would chase her around the car park trying to beat her. The respondent would scream at the petitioner in the presence of their child and if the petitioner told him to stop the screaming he would wave his fist in her face. When all efforts to improve their marriage failed she moved out of the matrimonial home and filed for divorce. It was her evidence that she moved to a friend's house in Area 3 and now she has secured her own house where she is staying with her daughter and they are both much happier. After going through the evidence I come to the conclusion that there was no evidence of collusion.

Since the petitioner and her daughter moved out of the matrimonial home the respondent has not supported them financially, thus the second application for maintenance. The respondent visits them once in three or four months. The petitioner is paying school fees and upkeep for the child.

The petitioner owns a shop called K99, the sole source of her income. The respondent is a Quantity Surveyor by profession, employed by Shire Construction Limited and he also owns the Chinese Restaurant situated at Portuguese Club in Area 3. The petitioner has no inclination of the respondent's income but the estimated expenses are in excess of K900,000 per annum. The petitioner's gross income is K150,000 and out of this she pays rent for the shop of K45,000 and she has other expenses. The petitioner is asking for 50% contribution towards the child's upkeep and school fees. The respondent now leaves in the matrimonial home alone, and the house is jointly owned by the two.

The Declaration on the Elimination of Violence Against Women provides in Article I that

*“For the purposes of this Declaration, the term **“violence against women”** means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”*

The petitioner testified that she suffered diverse acts of violence including violence and threats of violence as a result of her marriage to the respondent. No doubt the respondent took advantage of the unequal power relations between him and the petitioner which resulted in psychological suffering to the petitioner. It was her evidence that she is much happier now leaving with her child on their own. The evidence on record clearly shows that the respondent had no respect for the equal rights of the petitioner as an equal partner in the marriage relationship. Women, as provided by Article 3 of the same, are

“entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

The rights and freedoms include:

“(a) the right to equality.

- (b) The right to liberty and security of person.
- © The right to the highest standard attainable of physical and mental health.
- (d) the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment”

The respondent subjected the petitioner to treatment that denied her right to equality in the marriage relationship. As already observed the respondent took advantage of the unequal power relation between him and the petitioner and subjected her literally to conditions that did not enable her attain the highest standard of physical and mental health. Even mere suggestion that they seek marriage counsel would provoke the wrath of the respondent with finger pointing in her face or actual violence. Most acts of domestic violence occur in secret and, if left unchecked could even result in the death, ill health or mental disorder of the disadvantaged spouse. The petitioner has been subjected to acts of torture by the respondent who, not only refused to provide for her and their daughter financially, but constructively stole money from her handbag to satisfy his beer drinking habits. Not only is this torture, cruel and inhuman treatment but it is also degrading treatment. Evidence has been given that whenever the petitioner asked the respondent to buy things for their daughter he would ask for refund of his monies and yet the respondent was free to deep into her handbag and steal her money. This treatment threatened the petitioner’s right to liberty and security of person.

The petitioner’s evidence was that the respondent’s acts of violence were manifest indiscriminately even in the presence of their child of tender age.

This is a serious violation of fundamental human rights of both the petitioner and the child. It is important that children grow up in an environment that promotes their psychological and emotional wellbeing contrary to the respondent's home environment. Without belabouring the point further I find that the evidence on record shows that claims of cruelty are well grounded and I must therefore grant the petitioner's prayer for dissolution of the marriage accordingly.

The respondent has, by failing to provide for his own child, failed in his responsibility as a father. As earlier pointed out, the proceedings are undefended, despite the fact that the respondent was served with the summons. If the respondent had come to court it would have been appropriate to examine him as to his means in relation to the petitioner's application for maintenance. As the respondent exercised his right by not attending the said proceedings this court can only rely on the submissions of the petitioner. The petitioner has submitted her list of expenditure in respect of the child and has asked the court for at least 50% contribution from the respondent.

According to the simple calculations that I made, the child presently needs not less than K947,280.00 per year for her upkeep and school fees. According to the petitioner's application this is made up of K10,000 per month for food (including snacks for school) and donations and events at school, K1,140.00 monthly contribution towards MASM, K663,600 school fees for the year and K150,000 per year for clothes, entertainment and other needs. The petitioner indicated that the respondent now resides in the matrimonial home that the two purchased together. The petitioner has not

indicated how much she contributed towards the purchase of the house. Suffice to observe however that she is not asking for any share in the matrimonial property; to which she would have been perfectly entitled.

I must therefore make an order as follows:

- (a) the respondent shall be responsible for the payment in full of the child's school fees and clothing and entertainment until the child reaches the age of 18 years or completes her secondary school education.
- (b) The petitioner shall be responsible for food, housing medical contribution, and any other incidental expenses for the said child.

MADE in Court this 28th day of December, 2007.

E.J. Chombo
J U D G E