

78

IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE No. 412 of 1979

HIGH COURT  
LIBRARY

B E T W E E N:

JOYCE MASANGANO

....

....

PETITIONER

and

HENDREC MASANGANO

....

....

RESPONDENT

CORAM: VILLIERA, J.

For the Petitioner: Mbalame, Principal Legal Aid Advocate

Respondent present: unrepresented

Nsandu: Official Interpreter

Kelly: Court Reporter

J U D G M E N T

This is a petition by Joyce Masangano for the dissolution of her marriage with the respondent, Hendrec Masangano, and for the custody of the four children of the marriage. The petition is presented on the ground that since the celebration of the marriage the respondent has treated the petitioner with cruelty and that the petitioner has thereby suffered injury to her health.

The petitioner and respondent were married at the office of the Registrar General at Blantyre on the 22nd December 1973 and thereafter they co-habited at divers places in Malawi and finally at Chimwaukhunda location in the City of Blantyre. There are four children of the marriage and I am satisfied from the petitioner's evidence that both the petitioner and respondent are Malawi citizens and that they are therefore domiciled in Malawi.

The marriage between the petitioner and respondent appears to have been a reasonably satisfactory one until the 5th November 1978, when it is alleged by the petitioner that the respondent twisted her hand and assaulted her. As a result of this ill-treatment the petitioner left the matrimonial home on the following day and has never since returned to it. The petitioner's mother gave evidence and stated that on the 6th November 1978 she observed the petitioner with a swollen hand.

Although the respondent is said in the petition to be a man of violent and ungovernable temper there is no evidence to indicate that prior to the incident on the 5th November 1978 he was in the habit of assaulting the petitioner. The respondent in fact denied having assaulted the petitioner on the day in question or at all and averred that she had left the matrimonial home of her own volition on the 14th October 1978. I was fully prepared to disbelieve the petitioner but was surprised to note that the

/respondent

HIGH COURT  
LIBRARY

respondent failed to cross-examine her about the alleged assault. He said that he had neglected to do so because he thought he would bring up the issue when he went into the witness box to give evidence. It seems to me also that if the petitioner is alleged to have left the matrimonial home on the 14th October 1978 corroborating evidence should have been led to prove that fact. This was not done.


I am satisfied therefore that the respondent did on the 5th November 1978 twist the petitioner's hand, thereby causing it to swell out and further that he assaulted her with fists. Although only one instance of ill-treatment has been pleaded in the petition, I find that the assault on the petitioner caused injury to her health and that cruelty has been proved.

I am satisfied further that the petitioner has not been accessory to or connived at or condoned the cruelty and that the petition is not presented or prosecuted in collusion with the respondent.

I therefore pronounce a decree nisi that the marriage which was solemnised at the office of the Registrar of Marriages at Blantyre on the 23rd December 1973 between petitioner, Joyce Masangano, and the respondent, Hendrec Masangano, be dissolved. Costs of the petition to the petitioner.

I adjourn to Chambers the question of the custody of the children, their maintenance and the maintenance of the petitioner.

Pronounced in open court this 3rd day of November 1979 at Blantyre.

  
J.B. VILLIERA  
JUDGE