

IN THE HIGH COURT OF MALAWI

CIVIL CAUSE NO. 477 OF 1979

BETWEEN:

LUCY M. DUMBO ..... PETITIONER

and

N.P.C. DUMBO ..... RESPONDENT

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CORAM: J.J. SKINNER, CHIEF JUSTICE

For the Petitioner: Mbalame, Principal Legal  
Aid Advocate

Respondent: Not present/Unrepresented

Official Interpreter: Mpalika

Court Reporter: Brown

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JUDGMENT

The petitioner, Mrs. Lucy Dumbo, prays for the dissolution of her marriage to the respondent on the grounds of desertion.

I will deal with the question of the petitioner's marriage first. The petitioner gave evidence that she was married to the respondent at an Interdenominational Church in the city of Waterville in the State of Maine in the United States of America. She produced a certified copy of a marriage certificate issued by the city clerk of the city of Waterville. Her evidence was that after the marriage, she and the respondent lived and cohabited together and she bore him three children. I have had no evidence that under the laws of the State of Maine the certificate would be accepted as prima facie evidence of the marriage. Her counsel, Mr. Mbalame, says that due to the poverty of the petitioner, he would be unable to obtain such evidence. However, in the circumstances of this case, I find that there is a presumption of the validity of the marriage from the evidence of the ceremony followed by the cohabitation of the parties. There is authority for the proposition that where there is evidence of a ceremony of marriage and cohabitation of the parties follows, everything necessary for the validity of the marriage can be presumed in the absence of evidence to the contrary. I find that the marriage has been proved.

I now turn to the question of desertion. The evidence of the petitioner is that she came back to



Malawi in 1974 as her student's visa to remain in the United States of America had expired. She returned to Malawi by arrangement with her husband and he was to come six months afterwards. She brought the children with her. The respondent has never returned to Malawi. He has given her no explanation of his failure to do so. She has written to him on a number of occasions asking him to come back and he has never told her whether he is going to stay in America or come back to Malawi. He wrote to her one occasion suggesting that she should go to the United States of America. She replied stating that she was willing to do so and asking him about the arrangements and whether she was to bring the children. He never replied. Apart from that he has never asked her to join him. She has not got the money to go to the United States of America. He is a chemist, he works for a chemical company there. As far as she knows, there is no reason why he should not return to Malawi. He has failed to support the petitioner or the children though he has sent small amounts of money on occasions.

I am satisfied that the respondent withdrew from cohabitation when he failed to return to Malawi. I find the factum proved.

I am satisfied from the evidence that the respondent had the necessary animus deserendi. In my view he failed to return to Malawi because he intended to bring the cohabitation between himself and the petitioner permanently to an end. I am further satisfied that the petitioner did not consent to his leaving her permanently. She intended that they should be apart for six months or thereabouts and never envisaged a long separation.

I am further satisfied that there was no conduct on her part which would justify the petitioner in bringing the cohabitation to an end. I further find that there is no bar to the dissolution of her marriage.

I grant a decree nisi in accordance with the prayer of the petitioner. I grant the petitioner the custody of the children of the marriage. The respondent is condemned in costs.

Pronounced in Open Court this 7th day of April, 1979  
at Blantyre.

*James J. Skinner*  
J.J. SKINNER  
CHIEF JUSTICE