

IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE No. 733 of 1979

BETWEEN:

ANNE KADAWATI PETITIONER

and

EDISON KADAWATI RESPONDENT

Coram: VILLIERA, J.

Mbalame of Counsel for the petitioner

Respondent present: not represented

Kaundama : Official Interpreter

Mazibuko : Court Reporter

J U D G M E N T

The petitioner prays for the dissolution of her marriage to the respondent on the ground of cruelty by the respondent to the petitioner. The respondent denies the charge but pleads that if there was any cruelty, then the same was condoned by the petitioner.

The parties were married at the office of the Registrar of Marriages at Blantyre on the 28th June, 1972. At that time, the petitioner was working for the Ministry of Agriculture and Natural Resources and was stationed at Thuchila Agricultural Training Centre in Mulanje. It was necessary therefore for the respondent to commute regularly to this place to see and be with the petitioner as he was working with the Post Office at Blantyre. Two children were born to the parties - the first Chikondi Kadawati was born on the 17th September, 1974 and the second, Ndaona Kadawati, on the 31st December, 1976. I am satisfied from the evidence that the petitioner and the respondent are domiciled in Malawi and that therefore this court has jurisdiction to adjudicate on the marriage.

In early 1976, the petitioner was transferred to Lunzu Agricultural Training Centre as matron and was offered a house at the centre. The respondent who was still working in Blantyre took up residence with her there and was commuting to Blantyre on a daily basis. It appears that the petitioner's marriage to the respondent was a reasonably happy one except when the respondent had taken too much drink, which according to the petitioner was often. He would then violently and for very trivial or indeed no reason at all assault the petitioner. On the 24th June, 1976, the respondent returned home at about 11 p.m., rather the worse for drink. He accused the petitioner of having gone to Blantyre without permission and of having returned in a landrover with a gentleman whose name she was unwilling to disclose. He assaulted her rather viciously to the head and chest with fist blows. She was obliged

to escape to the house of Training Centre Principal who opened one of the offices where she spent the night. On the following day, the petitioner was unwell. She went to Mlambe Mission Hospital nearby where she was admitted. It was suspected that she had a head fracture. Fortunately, this was not so and after three days, the petitioner was discharged. She returned to her house and after a suitable period, cohabitation resumed. It is clear from the evidence of Mr. Chitimbe, the Principal of Lunzu Agricultural Training Centre at the time that the petitioner had never been to Blantyre on the 24th June, 1976 as alleged by the respondent. The respondent's allegation was therefore groundless and it is not clear why he assaulted the petitioner as he did. The petitioner says she forgave the respondent of his ill-treatment of her. There is very little she could have done as the respondent was then living in her house and it would be wrong, in my view, to equate that forgiveness with a dondoning of the cruelty. She would no doubt have been accused of needlessly seeking to break up the marriage if she had there and then ordered the respondent to leave her house. If I am wrong in thinking that the cruelty on that occasion was not condoned, then it was revived by the respondent's subsequent conduct towards the petitioner.

In 1977, the petitioner resigned from the Ministry of Agriculture and Natural Resources and joined Blantyre City Health Department as a Senior Homecraft Supervisor. She was once again provided with a house by the City Authorities at Soche. The respondent left his own house and joined her there. On the 9th June, 1979, the respondent accused her of speaking on the telephone to a man who he suspected was her man friend. The respondent told the court he had overheard the petitioner's conversation with the other man on an extension to the telephone in the bedroom. The extension to the telephone was apparently installed in October, 1978 and the respondent claims that the petitioner was unaware that it was working. It is most unlikely, however, that the petitioner who is obviously an intelligent person would have been unaware of the extension working and thereby proceed to make an assignation with a man while her husband was in the bedroom. The petitioner explained that she had been speaking to a friend, Miss Thunyani. Miss Thunyani gave evidence and stated that she had spoken to the petitioner during the afternoon of that day. The respondent however disbelieved the petitioner at the time and assaulted her severely. He became remorseful later on and took her to Queen Elizabeth Central Hospital. She was required to attend as an out-patient for a period of seven days. On the 11th June, 1979, the petitioner approached the Department of Legal Aid and asked them to commence divorce proceedings. The respondent was given formal notice to vacate the petitioner's house and the parties have not lived together since that time.

The respondent readily admits having assaulted the petitioner on the two occasions but states that he did not beat her as seriously as she alleges. He contends that he was merely disciplining her. I have studied the two medical reports admitted on behalf of the petitioner from the Mlambe Hospital and the Queen Elizabeth Hospital. Both reports indicate that the petitioner was seriously assaulted on the two occasions. I reject any suggestion that in this day and age, a man is entitled to discipline his wife by beating her even moderately. It may be that such practices do take place but women such as the petitioner must surely be entitled to relief by this court if the ill-treatment has not been condoned. I find that the petitioner has not condoned either of the two assaults on her by the respondent and that there are no other bars to relief.

I pronounce a decree nisi of divorce in favour of the petitioner. The costs of these proceedings are to be borne by the respondent. Custody of the children of the family is awarded to the petitioner and the question of their maintenance is adjourned into chambers.

Pronounced in open court this 21st day of June, 1980 at Blantyre.


J.B. VILLIERA
JUDGE