

IN THE HIGH COURT OF MALAWI

AT BLANTYRE

CIVIL CAUSE NO. 628 OF 1979.

BETWEEN:

HENRY BERNARD BANDA ... .. PETITIONER

and

VIVIAN ZARRY BANDA ... .. RESPONDENT

and

D. DENDERA ... .. CO-RESPONDENT

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Coram: Jere, Ag. Chief Justice  
For the Petitioner - Nyirenda of Counsel  
Respondent and co-respondent unrepresented  
Official Interpreter - Nsandu  
Court Reporter - Hiddleston

J U D G M E N T

This is a petition of Henry Bernard Banda for the dissolution of his marriage to Vivian Zarry Banda. The parties were married on the 14th June, 1969 at the Registrar General's office, Blantyre. Since the celebration of their marriage the parties lived and co-habited at Ndirande and Bangwe. They are both Malawians by nationality.

There are two issues of the marriage, namely Victor who was born on the 17th October, 1969 and Madalitso who was born on 12th April, 1971. I am satisfied that the parties are domiciled in Malawi and that this court has jurisdiction.

The petitioner filed his petition on the 2nd October, 1979 which was served on the respondent on 24th October, 1979 but the co-respondent acknowledged service of the petition on the 16th October, 1979. The petitioner entered a memorandum of appearance in which she said that she was not going to defend the petition. However, she indicated that she wanted to be heard about the costs. On the date of the hearing Mr. Mnyenyembe of Legal Aid purported to appear on behalf of the respondent. It was pointed out to him that he has no locus standi in the matter. After conversation in Chambers he indicated that he did not want to formally appear for the respondent. The matter therefore proceeded as an undefended suit as originally indicated.

The grounds for seeking a divorce in this matter is adultery and desertion. The petitioner gave evidence that in 1972 he left Blantyre and went to Mulanje where he worked for a while. He then went to Lilongwe and was eventually employed by the Canadian/Malawi Railways Project. He asked his wife to join him but she refused. He later on discovered that she was pregnant and was in hospital. She then aborted. There is a medical report to that effect dated 7th December, 1973. As stated earlier he requested her to join him while in Lilongwe. However she wrote a letter and in it she refused to

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join him. He suspected that the letter was written by the co-respondent. He again wrote her a letter asking about the father of the child that she had. She replied that the father of the child was the co-respondent and asked him to ring various telephone numbers if he wished to confirm. In the letter it appears she vaguely makes accusations against him that he was in fact having affairs with other women openly.


It is also the evidence of the petitioner that the association between the co-respondent and the respondent has resulted in the birth of three children. These were born as follows, the first child was born on the 5th October, 1975, the second child was born on the 21st August, 1977 and the third child was born on the 30th July, 1979.

I accept the evidence of the petitioner. It is amply corroborated by various documents written by the respondent herself. The court called her to explain, as she had indicated in her memorandum of appearance, that she wanted to be heard on the costs. She confirmed that she has all these children by Mr. Dendera and she says that the only reason she was asking that Mr. Dendera should not pay towards the costs was because he was not responsible for the break-up of the marriage. I have considered the evidence of the petitioner. I accept it.

In these circumstances the two grounds on which the petition is based are both proved. I am satisfied that the petitioner did not connive or condone the desertion and adultery committed by the respondent. In these circumstances I declare that the marriage between Henry Bernard Banda and Vivian Zarry Banda be dissolved as prayed for.

There is no difficulty about the children. They are in the custody of the petitioner and the respondent does not wish to stay with the children because Mr. Dendera is not interested in them. However, I order that the respondent have reasonable access to the children. I have considered the question of costs. It is not up to the respondent to argue for the co-respondent. If he wanted to be heard on costs he should have argued himself. In these circumstances the costs for this petition will be born by both the respondent and the co-respondent.

Pronounced in Open Court this 17th day of January, 1980 at Blantyre.

  
N.S. MERE  
Ag. Chief Justice