



CIVIL CAUSE NO.146 OF 1979

BETWEEN:

JANE NKOMBEZI.....PETITIONER

- and -

KENNETH NKOMBEZI.....RESPONDENT

- and -

EMMA MULANGA.....CO-RESPONDENT

Coram: J. J. Skinner, Chief Justice

For the Petitioner:	Mbalame, Acting Chief Legal Aid Advocate
Respondent Present:	Unrepresented
Co-respondent absent:	Unrepresented
Official Interpreter:	Kaundama
Court Reporter:	Caffyn

J U D G M E N T

This is a petition for divorce brought by Jane Nkombezi praying, inter alia, for the dissolution of her marriage with Kenneth Nkombezi on the grounds of the respondent's adultery and his cruelty to her.

The petitioner alleged that since the celebration of the marriage the respondent committed adultery with the co-respondent, and that since the month of May, 1978, the respondent has frequently and habitually committed adultery with the co-respondent, both in Zomba and Monkey Bay.

It is further alleged in the petition that the respondent has, since the celebration of the marriage, treated the petitioner with cruelty, and that she has thereby suffered injury to her health. The first of such acts of cruelty is alleged to have happened on the night of 10th December, 1978, at the then matrimonial home in Zomba, when it is said the respondent struck the petitioner violent blows, thereby causing her bodily harm. It is further pleaded that on the 22nd December, 1978, at the matrimonial home, the respondent again struck the petitioner many times.

The respondent, in his answer, denies the allegations of adultery but then goes on to say that he cohabited with the co-respondent during the month of October, 1977, but that it did not happen in either Zomba or Monkey Bay. He denies the allegations



of cruelty and says that on both occasions in December the petitioner threatened to commit suicide and that he struggled with her to stop her from doing so. There is a reply denying the allegations contained in the answer.

Mr. Mbalame called the petitioner and no other witness. The evidence of the petitioner concerning adultery is that she found one letter which she identified as being written by the co-respondent and one letter written by the respondent. I am satisfied from her evidence that both of these letters were found in the respondent's clothing. I thought she was a truthful witness. She was vague, but I thought she was telling the truth. She also produced two photographs which I believe she found in the respondent's clothing.

Her evidence relating to the allegations of cruelty was that on the 10th December, 1978, she met her husband and the co-respondent in Zomba, and later that evening her husband returned to the matrimonial home and slapped her in the face because he accused her of giving information to his employers concerning his relationship with the co-respondent. She was unable to say how many times she was slapped, but said that she was not hurt and that she did not receive treatment. She again gave evidence concerning an incident on the 22nd December, 1978, when she said her husband beat her with his open hand. Again she did not remember the number of times she was hit and she said nothing concerning pain, suffering or injury.

The respondent gave evidence and he denied the allegations of adultery as contained in the petition. He further denied the allegations of cruelty. He admitted, however, under cross-examination, that he did have an adulterous association with the co-respondent, but that this was in 1977. He denied writing the letter, Exhibit 5, or receiving the letter, Exhibit 4.

I was not impressed by his evidence. I preferred the evidence of the wife.

On the facts alleged in the petition the first point for determination is whether or not the respondent and the co-respondent were guilty of adultery as set out in the petition. I have no hesitation in finding that the respondent was guilty of adultery in 1977. I have his own admission on oath in cross-examination on this. I have to consider whether he is guilty of the specific offences set out in paragraph 8 of the petition. I have had no evidence which satisfies me that the adultery took place at Monkey Bay in the month of May, 1978. I am however satisfied, insofar as the respondent is concerned, that there is evidence to show his adultery during the course of the marriage, both in the year 1977 and in the year 1978, because I think that his admission, coupled with the two exhibits, proves that.

I now turn to the allegations of cruelty. In support of these allegations I have the evidence of the petitioner. As I have said earlier, her evidence is somewhat vague and particularly so in relation to this aspect of the case. She was vague as to both the number and intensity of the blows.

She gave evidence of the two occasions; she says she was not hurt on the first occasion; she was silent as to any pain or injury on the second occasion. I have to ask myself whether that evidence persuades me that the husband was guilty of conduct of such a character as to have caused danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger. I do not think it has been shown that the husband's conduct amounted to that. He hit her with an open hand. There was no evidence of any injury or bodily harm; there were two occasions only. I do not find the allegations of cruelty proved.

As I have said earlier, I find that the general allegation of adultery contained in paragraph 7 of the petition has been proved and I grant a decree nisi in accordance with the prayer of the petitioner.

The respondent is condemned in costs subject to taxation. The question of maintenance and custody is adjourned to Chambers.

Pronounced in Open Court this 7th day of March, 1980, at Blantyre.

  
J. J. SKINNER  
CHIEF JUSTICE