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IN THE HIGH COURT OF MALAWI, BLANTYRE

CIVIL CAUSE NO. 657 OF 1979

BETWEEN: IRENE NDASOWA.....PETITIONER
and
EPHRAIM NDASOWA.....RESPONDENT

O R D E R

After the Registrar's certificate and before trial, the legal practitioners for the Petitioner purported to file an amended petition. It is trite law that after service of a petition it may only be amended with leave: see Rule 15(1) Matrimonial Causes Rules 1950.

In the instant case the Petitioner's legal practitioners, by the amended petition, purport to add further charges against the Respondent, namely those of adultery with a lady who they purport to add as a party. In those circumstances, it would be impossible for me to rectify the position by giving leave to amend the petition now because in effect a whole new case is opened up.

Even if leave of the Registrar had been obtained, it would have had to provide for a stay of the hearing until the Registrar's certificate had been renewed. It seems to me that the only course open to Mr. Chiudza Banda now is to seek leave to amend his petition. It will be necessary for the Registrar, if he grants such leave, to provide for a stay of the hearing until the Registrar's certificate has been renewed: see Rule 15(5)(b) of the Matrimonial Causes Rules. Thereafter Mr. Chiudza Banda will have to comply with Rule 15(6). When he has so complied, it will be necessary to apply for the renewal of the Registrar's certificate.

There is one further comment to make upon the state of the Petitioner's papers. The Petitioner wishes to seek the discretion of the court and indeed in the answer to the cross petition there is such a prayer, but I think it would be correct for such prayer to appear in the amended petition.

There is a further difficulty, this time in relation to the Respondent's case. A considerable time before the application for the Registrar's certificate, the Respondent was given leave to make what I describe as formal amendments to the answer and cross petition. The amended pleading was only filed today. This could have been formalized by sanctioning an amendment now, but the case must go back anyway and, in any event, Mr. Fachi may find himself in a position of having to plead back as a result of the amendment of the petition.

I make no order as regards costs; I reserve the question of costs.



J. J. Skinner
CHIEF JUSTICE

1.10.81