

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 564 OF 1985

BETWEEN:

HANIFA ARAUJO ..... PETITIONER

- and -

FERNANDO LUIS ARAUJO ..... RESPONDENT

Coram:

The Hon. F. L. Makuta, Chief Justice  
Makhalira/Chirwa of Counsel for the Petitioner  
Kumange of Counsel for the Respondent  
Manda : Court Reporter  
Namvenya : Official Interpreter

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J U D G M E N T

The petitioner prays for the dissolution of her marriage with the respondent on the ground of cruelty. On 2nd March, 1973 the petitioner, then Hanifa Karim was lawfully married to the respondent at the Registrar's office at Lilongwe. After the celebration of the marriage the parties lived and cohabited at Lilongwe. The respondent, who is a panel beater, is employed by United Transport (Malawi) Limited at Lilongwe. The petitioner is a secretary but she is not working at the moment.

The respondent is a Portuguese National and he originally came to Malawi from Mozambique in 1966. He has ever lived in Malawi. He has told the court that he does not intend to go back and intends to stay here permanently. The petitioner is a Malawian. I am satisfied that the respondent is resident in Malawi and consequently I find that both parties are domiciled in Malawi.

There are five children of the marriage namely Paulo Araujo born on 31st October, 1972, Nicolle Araujo born on 1st May, 1974, Rui Araujo born on 29th January, 1976, Dennis Araujo born on 24th September, 1978 and Mark Araujo born on 1st April, 1982.

The petitioner told the court that since the celebration of the marriage the respondent has treated her with cruelty in that he frequently struck her and abused her.



Sometime in 1977 the respondent struck her, pulled and lifted her by the hair and banged her head against a wall. As a result her face got swollen. She then left the matrimonial home but subsequently returned. In February, 1983 the respondent beat her and her face got swollen again. The matter was reported to Lilongwe Police where the respondent was made to sign a bail bond dated 23rd February, 1983 to "keep peace".

Further evidence of beating is that on 20th July, 1985, the respondent severely hit the petitioner and she suffered serious injuries. It is said that she fell unconscious. Her face was swollen again and she could speak only with considerable difficulties. A doctor was called. She was treated first, at the matrimonial home for two days and further treatment took place at Kamuzu Central Hospital. After this incident the petitioner left the matrimonial home and is living with her parents at Mpemba in Blantyre District. When asked whether she will go back, she replied, in effect, that she will not because her life is in danger and she therefore decided to file the divorce proceedings.

Mr B. B. Ngonda, a clinical officer at the Kamuzu Central Hospital, Lilongwe, testified that he treated the petitioner. His report stated that both angles of the jaws were painful but x-ray showed that there was no fracture. The left ear was painful and she complained of headache. There was also haematoma which was improving. The report is dated 25th July, 1985.

Another witness was Mr Salim Karim, who is the petitioner's brother. He is a transporter stationed in Blantyre. He told the court that on 23rd July, 1985 he was in Lilongwe on duty. Whilst there he decided to visit the Araujo's family. When he arrived at the house he was met by the respondent who informed him that he, the respondent, had beaten the petitioner and she was lying in bed. The respondent took the witness to the bedroom. According to the witness the petitioner had a swollen face and it was blue. She could not talk and the only thing that came from her were tears from her eyes. When asked whether she had been taken to hospital the respondent replied that a doctor had come to treat her there. When the witness was leaving the respondent implored not to report to his mother because the respondent was scared of her.

The evidence of this witness and that of Mr Ngonda was not disputed at all.

The respondent has admitted in his evidence that he hit the petitioner. He stated that he did this because of her provocative attitude. According to him the beating was not bad. He told the court that after their marriage they lived happily but later on she changed and she was not looking after the home properly. It is his view that the petitioner's

relatives, especially her mother, has a lot to do with her changed attitude. The respondent further alleged that the petitioner brought these proceedings because she wants to enjoy alone the proceeds of a house which was built jointly in Lilongwe on Plot No. 47/115. The plot is registered in her name and the house on it is being rented out in the sum of K7,800 per annum. The allegations by the respondent have been denied by the petitioner. The issue of the house may perhaps be subject of subsequent proceedings.

I have very carefully examined the evidence and I am of the view that as a result of these acts of violence the petitioner suffered severe hardships, distress and injuries to her health. The allegations of cruelty, have in my judgment, been proved. I am satisfied that she has not condoned the violence of 20th July, 1985. I am satisfied that there is no collusion in the presentation of this petition. There is, therefore, no bar why relief should not be granted to the petitioner. I grant decree nisi and the respondent is condemned in costs of these proceedings.

The question of custody of children is adjourned to chambers.

PRONOUNCED in Open Court this 20th day of October, 1986,  
at Blantyre.

  
F. L. Makuta  
CHIEF JUSTICE