

IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE NO. 379 OF 1985

PRINCIPAL REGISTRY

BETWEEN:

MARGARET NYIRENDA PETITIONER

- and -

DIAMOND K. NYIRENDA RESPONDENT

- and -

LILIAN DINDI CO-RESPONDENT

Coram: BANDA, J.

Msosa (Mrs.), Counsel for the Petitioner
Fach, Counsel for the Respondent
Manda, Court Reporter
Chalunda, Official Interpreter

J U D G M E N T

The petitioner prays for the dissolution of her marriage to the respondent. The parties were lawfully married on 11th October, 1969, at the Offices of the Registrar General in Blantyre. After the said marriage the petitioner and the respondent lived and cohabited together in Zingwangwa Township in Blantyre, at Nkhata Bay and finally at Kasungu Boma.

There are issue of the marriage. The petitioner is now living at Chiwembe Township and the respondent continues to stay at Kasungu, where he works as Chief Accountant for General Farming. The petitioner comes from Nanseta Village, T.A. Chimaliro in the Thyolo District and the respondent comes from Mlombwa Village, T.A. Mankhambira in Nkhata Bay District. I am satisfied, therefore, and I find that both parties are domiciled in Malaŵi.

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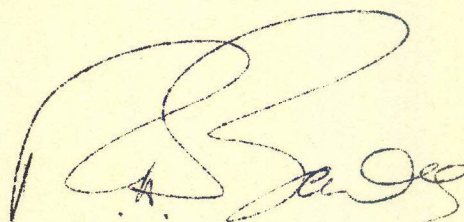
The case is undefended and Mr. Fachi only appeared on a watching-brief basis. This being an undefended case I must direct my mind to the dangers of collusion. I have carefully considered the evidence and I am satisfied that there was no collusion in bringing these proceedings to court.

The evidence of the petitioner is that when they arrived in Kasungu she noticed that her husband's behaviour changed and that he started coming home late at night. Later on she began receiving telephone calls from a woman who identified herself as a Miss Lilian Dindi. She was able to prove on two or three occasions that her husband was going to Dindi's house because on one occasion she found her husband in the bed-room of Lilian Dindi while the latter was putting on only a piece of cloth. This was in the evening. On the second occasion the petitioner found her husband dropping Lilian Dindi at her house and this, again, was in the evening.

There was also evidence that the respondent has now married another woman with whom he has a baby and that the woman is staying with him at his house. It is not necessary to prove adultery by direct evidence as it is an indulgence which is committed in private. The court must look to the surrounding circumstances from which it can find that from the nature of things adultery was committed. I direct myself to the standard of proof in such cases which is slightly higher than the normal standard in civil cases. Looking at the evidence in its totality I am satisfied that the allegation of adultery has been proved against the respondent and this petition must, therefore, succeed on the ground of adultery. I am satisfied that there is no bar to granting relief and I, therefore, grant the petitioner a decree nisi. The respondent is condemned in the costs of these proceedings.

The issues of custody and maintenance are adjourned to Chambers.

PRONOUNCED in open court this 24th day of April, 1986,
at Blantyre.



R.A. Banda
JUDGE