

IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE NO. 629 OF 1985

BETWEEN:

ANNETTE MITTAWA.....PETITIONER

- and -

DR. B. E. MITTAWA.....RESPONDENT

- and -

MARTHA PHIRI.....CO-RESPONDENT

Coram : MTEGHA, J.

Fachi of counsel for the Petitioner
N/A of counsel for the Respondent
N/A of counsel for the co-respondent
Chalunda - Official Interpreter
Longwe - Court Reporter.

JUDGMENT

The petitioner, Annette Mittawa, prays for the dissolution of her marriage to the respondent Dr. Bisalome E. Mittawa on the sole ground of the respondent's adultery with Martha Phiri, the Co-respondent.

These proceedings are undefended, and this being the case I have directed myself to the dangers of collusion. I have, however, been satisfied that there is no collusion in the presentation of the petition in this case.

The petitioner and the respondent were lawfully married on 26th April, 1972 at the Registrar General's Office in Blantyre. A marriage certificate, to prove the marriage, was tendered in court as Exh.1. After the solemnisation of the marriage the couple lived in Blantyre, Nkhota kota and finally at Zomba. There are two issues of this marriage, namely Rodgers Mittawa who was born on 2nd January, 1973 and Ronald Mittawa who was born on 24th July, 1974. Both these children

are at a Boarding School, to be specific at St. Andrews in Blantyre. Both the Petitioner and respondent are Malawians, domiciled in Malawi.

The petitioner was the only witness in these proceedings. She told the court that on the 10th October, 1985 she came here in Blantyre from Zomba where she was residing with her husband. She returned to Zomba and went to the matrimonial home at 9.00 p.m. She knocked at the door of the house, and the respondent, who was in pyjamas, opened for her. When she entered the house she found a lady by the name of Martha Phiri, the co-respondent, coming out of the kitchen carrying a plate of rice and meat. She then went into the sitting room where they were seated. The respondent and co-respondent sat on bigger sofa while the petitioner sat on another chair. The petitioner asked the co-respondent if she was sick, since her husband is a doctor and sometimes patients were treated at their home. The co-respondent replied that she was not sick but that the respondent had invited her to watch video; yet the video was not on. The co-respondent further told the petitioner that they made arrangements for her to be picked up at Kandodo. The petitioner then went into the first bedroom. She found the bed was in disorder indicating clearly that sexual intercourse took place on the bed. She then called the co-respondent into the bedroom and questioned her. The co-respondent asked for forgiveness since she had just committed adultery with the petitioner's husband. In the bedroom the petitioner found a wristwatch which belonged to the co-respondent. It was tendered in court as Exh.2. Thereafter a document was written by the petitioner stating that the co-respondent was found with the respondent committing adultery. The co-respondent signed and so did the petitioner. Unfortunately this document has not been traced by the petitioner. The petitioner then asked the co-respondent to leave. She was escorted by the respondent.

The petitioner also told the court that during all this time she did not ask her husband about Martha Phiri because she and her husband were not in talking terms since 29th September, 1985, when the respondent brought into the matrimonial home five people - two men and three women and one of the men pointed out that one of the girls was his girl-friend. She recognised the girl because she had seen a photograph of her in her house, brought by the husband. This photograph was tendered in court as Exh.3.

On the basis of this evidence, the petitioner prays for the dissolution of her marriage on the grounds of adultery.

I remind myself of the standard of proof in petitions for divorce. It has been accepted by our courts that the standard of proof in divorce case is slightly higher than that of the ordinary civil case - see the observations made by Villiera, J. as he was then in the case of Nyangulu -vs- Nyangulu : Civil Cause No. 108 of 1982 (unreported).

Looking at the evidence by the petitioner, it is quite clear that the respondent committed adultery with the co-respondent. It is not necessary to prove adultery by direct evidence, since adultery is an andulgement which is committed in private. I am therefore satisfied that the petitioner has proved her case. I am more fortified in coming to this conclusion by the conduct of the respondent himself and the co-respondent in choosing not to defend the petition, becuae an ordinary man should try to defend his moral integrity in cases where his moral integrity is at stake. In my view the petitioner has proved the allegation of adultery, and has in no way condoned it. I therefore grant her a decree nisi that the marriage which was solemnised at the Registrar's General's Office, Blantyre on the 26th of April, 1972 between the petitioner and the respondent be dissolved.

The respondent to pay costs of these proceedings which should be agreed upon and if not agreed upon, they should be taxed by the Registrar of the High Court.

The question of custody and the question of maintainance of the two children of the marriage is adjourned into Chambers.

PRONOUNCED in open Court this 7th day of March, 1986
at Blantyre.



H. M. Mtegha
JUDGE