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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO.92 OF 1986

BETWEEN: JUNE EMILY ANDERSON PETITIONER

- and -

ROBERT ANDERSON RESPONDENT

Coram: BANDA, J.
Msaka of counsel for the petitioner
Respondent, not present, unrepresented
Longwe, court reporter
Kalimbuka, official interpreter

JUDGMENT

The petitioner, June Emily Anderson, prays for the dissolution of her marriage to the respondent, Robert Anderson.

The parties were lawfully married according to the rites of the Church of Scotland, on the 24th September, 1952 at the Woodlands Church, Glasgow, Scotland. After their marriage the parties lived and cohabited in Glasgow from September 1954 to June 1957. Thereafter they moved to the then Salisbury, Rhodesia where they stayed from June 1957 to September 1961 when they moved back to Glasgow where they stayed from September 1961 to January 1963. They then moved to Malawi where they stayed from January 1963 to April 1965 and then from April 1965 to November 1967 they lived in Lusaka, Zambia. They have lived in Malawi since November 1967 to this day. They have therefore lived continuously in this country for a period of 19 years. I am satisfied that their residence in this country is of sufficient permanence to found domicile. I find, therefore, that the petitioner is domiciled in Malawi.

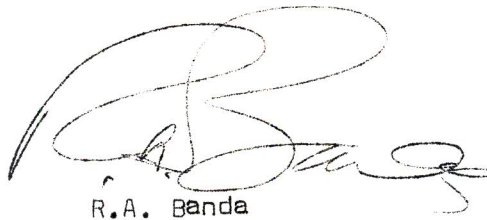
There are two children of the marriage now living namely David Fergus Anderson who was born on the 20th May 1959 and Melanie Helen Anderson who was born on the 15th September 1966. The case is undefended and I must therefore direct my mind to dangers of collusion. I have carefully considered the evidence and I am satisfied that there was no collusion in bringing these proceedings to court.

The ground on which this petition is based is adultery. I direct myself to the standard of proof in such cases and that standard is slightly higher than the normal standard of proof in civil matters. I have heard the evidence of the petitioner and it was clear to me that the whole episode is a shattering blow to her and I could see that she was fighting to restrain herself from breaking down. The petitioner told the court that the respondent admitted committing adultery and that the admission was made in the presence of her solicitor and daughter. A letter purporting to come from the respondent has been produced and the letter is an admission of adultery by the respondent. I have been told that the letter was written after the necessary warning was given. Vide Watson v. Watson, Civil Cause No. 494 of 1982 (unreported). I have also heard evidence from the petitioner's maid who told this court that the respondent was in the habit of bringing women to the matrimonial home when the

petitioner was away on duty. She stated that she remembered the night of 31st December 1985 when the respondent and a friend brought to the matrimonial home two African ladies. She stated that the respondent slept with one of the ladies in the bedroom of the matrimonial home. She further stated that when she went to prepare the bed on the following morning she noticed that the beddings were wet and she was told by the respondent to put the mattress out to dry.

As I have held in other cases it is not always possible to prove adultery by any direct evidence as the indulgence is invariably committed in private. The court must therefore look to the surrounding circumstances from which it can find that from the nature of things adultery has been committed. I have carefully considered the evidence adduced before me and I am satisfied that the allegation of adultery has been substantiated to the requisite degree of proof. I am satisfied that there is no bar to the granting of the relief sought and I therefore grant the petitioner the decree nisi. The respondent is condemned in the costs of these proceedings.

Pronounced in open Court on this 1st day of October, 1986 at Blantyre.



R.A. Banda
JUDGE