

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 491 OF 1985

BETWEEN:

F.P. CHIRWA.....PETITIONER

-and-

M.C. CHIRWA.....RESPONDENT

Coram : MBALAME, J.

Petitioner present/unrepresented
Respondent present/unrepresented
Til Namvenya, Official Interpreter
Court Reporter.

JUDGEMENT

The petitioner in this case Fides Perdita Chirwa, prays for the dissolution of her marriage with the respondent, Mwiza Chippis Chirwa. The parties were lawfully married at the office of the Registrar General in Blantyre on the 12th August, 1972. They, thereafter, lived at Chitawira Township until the month of September, 1980 when they parted company.

There is issue of the marriage, namely Thinkhani Chirwa (female) born on the 7th day of April, 1973 and Mwiza junior born on the 21st day of September, 1977. The petitioner is currently studying for a doctorate degree in mathematics in the United States of America while the respondent is a civil servant working at the Malawi Correspondence College here in Blantyre. I am satisfied from what the petitioner has told this court that both parties come from and are domiciled in Malawi and that this court has therefore jurisdiction to hear the petition which is undefended.

Being an undefended petition I have duly warned myself that in cases of this nature the onus still lies on the petitioner to prove her case against the respondent. She still has to prove her case to the requisite standard. I have again similarly warned myself of the danger of collusion.

The petitioner gave evidence in this court. It was her evidence that the family was never a happy one right from the word go. The husband took to excessive drinking and usually returned home in the early hours of the morning after late night

drinking sessions. When asked why he came late the respondent resorted to beating her. It was in her evidence that on one of such occasions during the month of March, 1977 the respondent struck her violent blows with clinched fists causing injury to her health. She lost one of her incisor teeth from the lower jaw and now has to wear a false tooth in its place. In yet another allegation of cruelty she said the respondent again violently assaulted her all over her body in the month of September, 1980 again at her matrimonial home in Chitawira. On the material day the respondent said he could not go to work as he was unwell. He stayed home while the petitioner proceeded to work. On her return in the afternoon she found their housemaid crying who when asked as to what was wrong disclosed that she had just managed to escape from the respondent's attempt to have sexual intercourse with her. She confronted the respondent who said he was surprised that the servant was reporting such incident to the petitioner for the first time as there had been similar incidents before. He then violently assaulted her with clinched fists causing her bodily injury. She sustained bruises all over. When the dust had settled he asked her to leave the matrimonial home and gave her a letter to her employers for purposes of obtaining alternative accommodation. She left and has since lived separate and apart from him. She said she never forgave him for these two acts of cruelty and that although she continued to live with him after the first incident she only did so hoping that the respondent would change his bad habits. Since she was sent packing from the matrimonial home the respondent has continued to refuse to take her back and has not bothered to visit her or the children.

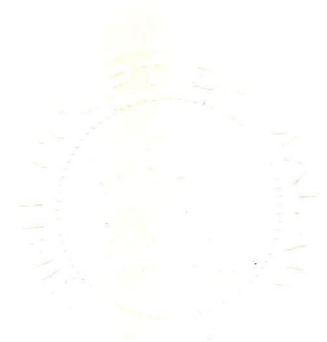
The petitioner filed three grounds for the sought divorce. Namely, adultery, desertion and cruelty. To support her ground of adultery she alleged that the respondent had frequently committed adultery with one Lidi Chauwa and also with his housegirl Ethel. I need not go into the evidence she tried to adduce in respect of this allegation as it was, in my judgement all hearsay. The court further took up a preliminary point with counsel for the petitioner respecting this ground. It is observed that neither Lidi Chauwa nor Ethel were made part of these proceedings. I indeed would even be surprised if any of these is aware of these proceedings at all. They should have been made co-respondents to this action. According to Section 3(2) of the Matrimonial Causes Act 1950, on a petition for divorce presented by the wife on the ground of adultery the court may, if it thinks fit, direct that the person with whom the husband is alleged to have committed adultery be made a respondent. I do not consider proper to do so in this case and that ground falls away.


Turning to the rest of the evidence I am satisfied from the evidence adduced before me that the respondent did commit acts of cruelty on the petitioner and that she has as a result thereof suffered injury to her health. I am further satisfied that the

petitioner was chased away from her matrimonial home on 30th September, 1980 and that she has since not been allowed to return and therefore constitutively deserted. In my judgement the allegations of cruelty and desertion have been proved and I see no bar to granting the relief prayed for. I grant the petitioner a decree nisi which I now pronounce.

I grant custody of Thinkhani and Mwiza Chirwa to the petitioner and adjourn the question of alimony and maintenance to Chambers. Costs to the petitioner.

Pronounced in open court this 30th day of June, 1986 at Blantyre.




R. P. Mbalame
JUDGE