

IN THE HIGH COURT OF MALAWIPRINCIPAL REGISTRYCIVIL CAUSE NO. 878 OF 1986BETWEEN:

WILLIAM BICKFORD PETITIONER

- and -

MARY BICKFORD RESPONDENT

ADRIAN GUNDA 1ST CO-RESPONDENT

CLAUDE DUVAL 2ND CO-RESPONDENT

JOHN EGON JENSEN 3RD CO-RESPONDENT

KURT RASMUSSAN 4TH CO-RESPONDENT

- and -

FESTA MULENGA PARTY CITED

CORAM: UNYOLO, J.

Msiska, Counsel for the Petitioner

Respondent, unrepresented

Manda, Court Reporter

Namvenya, Official Interpreter

JUDGMENT

The petitioner prays for the dissolution of his marriage to the respondent on the ground of the respondent's adultery with the four co-respondents.

The petition was originally defended. The respondent did file an Answer denying the petitioner's allegations. She went on to cross-petition for the dissolution of the marriage on the ground of the petitioner's adultery with the party-cited. Only two of the co-respondents, the first and the fourth, did enter appearances. Neither filed an answer, though. When the case was set down for hearing a notice was served upon the respondent and the co-respondents also in the usual manner. On the appointed date only the respondent appeared and then I was informed, in open Court, that she did not wish to contest the proceedings or pursue her cross-petition and that consequently she wanted to withdraw both the answer and the cross-petition. She was allowed to do so. She however remained in court and attended the entire hearing of the case as an observer.

The petitioner and the respondent were lawfully married at the Office of the Registrar General, Blantyre, on 8th April, 1983. Thereafter the parties lived and cohabited at Chigumula in the City of Blantyre. The petitioner came to Malaŵi to work over twenty years ago. He has since retired from aactive employment and presently does consultancy work - to try and beat down boredom, really. He is quite advanced in age. He is 67 years old.

The petitioner told the court that he has bought a house for himself at Chigumula and that he intends to settle in Malawi permanently. Considering the total facts I am satisfied that the petitioner has the necessary animus manendi to remain in this country indefinitely. I am satisfied, therefore, that domicile has been established and that this court has jurisdiction to hear the petition. I am also satisfied that there has been no collision in the preting of the petition.

The first allegation of adultery concerns the first co-respondent. It was in the petitioner's evidence that sometime in 1984 he had reason to suspect that the respondent was having an affair with someone. She became pregnant and subsequently gave birth to a baby girl. The baby was not his. From the look of things its father had to be an African. Later he discovered that the man responsible was the first co-respondent. She confessed. He then sent for the first co-respondent who came. They discussed the matter and the first co-respondent also confessed. In consequence he sent the respondent packing. She left the matrimonial home, together with the baby, and went to stay with the first co-respondent. Things did not fare well with her there. Life was tough. She telephoned the petitioner pleading for forgiveness. It was in the petitioner's evidence that out of pity he accepted to receive her back if she was serious she wanted to change her way of life and reform. She returned to the matrimonial home. The petitioner told the court that he made it abundantly clear to the respondent that he had accepted her back on condition that she would reform and that they would not in the interim share relationships - meaning that there would be no sexual relationships between them. He said that as a matter of fact they occupied separate bedrooms.

This brings me to the second allegation viz. that the respondent also committed adultery with the second co-respondent. The adultery on this aspect is said to have taken place after the respondent was accepted back into the matrimonial home following the events I have recounted above. If the petitioner had really hoped that the respondent would change her behaviour and become faithful to him he was soon to get a shock. The petitioner testified that one day the respondent asked him to take her to Shire Highlands Hotel where there was a drama festival and leave her there. She said she would find him at his office (he was running a photographic studio in Limbe at the time) after the festival was over between 5.00 - 6.00 p.m. She did not show up. The petitioner went to the Hotel to check. She was not there. Later she telephoned saying she was back at the house. The petitioner smelt a rat, so to say. He later drove to the house and as he was approaching the premises he saw the respondent driving out with a white-man. This was in the evening. He failed to intercept them and they disappeared. The respondent did not return to the house that night. When she appeared the next day she was evasive in her explanation. He checked her handbag only to find a business card bearing the name J.E. Jensen. He asked her about this man and in the end she disclosed that this was the man she had gone out with the previous day. She again asked for forgiveness. Incidentally the said J.E. Jensen is the third co-respondent in this case. It was in the petitioner's evidence that after discussing the matter over he forgave her again conditional on her changing her behaviour. This incident occurred about May, 1986.

The story continues. Actually it sounds almost like fiction but it is nonetheless a true story as I will show in a few moments. That

very year, in June, 1986, the respondent left the country for Zimbabwe saying she was going to visit her relatives there. She said she would be away for one month. Three months passed. She was nowhere to be seen. She did not for that matter write. One day while she was still out to Zimbabwe the petitioner received a letter through the post addressed to the respondent. It was from Mauritius. He opened it and saw that it was from a Mr. Claude Duval, the second co-respondent. The petitioner did not know this man though. He did not know Duval from Adam, to use a well-known English expression. The letter was tendered in evidence, Exhibit P2. It speaks for itself. It shows that the respondent and the second co-respondent met at Victoria Falls in Zimbabwe and had unholy sexual relationships together. That was the final blow for the petitioner. He could not take any more. Livid with rage he hastily wrote to the respondent through her uncle in Zimbabwe saying that he was through with her and that there would be no further discussion in the matter. Enough was enough, he said. And when later the respondent returned home the petitioner stuck to his guns and told her to vamoose. She went away to her parents. She has not come back to the matrimonial home since.

Finally, the petitioner testified that in November, 1986, he discovered that the respondent had gone to join the fourth co-respondent and that the two were living as man and wife in Chigumula. One day he actually followed them at night from Apollo Cinema to Chigumula and he watched them as they came out of the car and entered the house. They stayed in the seating-room for a while and then moved to the bedroom and switched off the lights. He then left and returned to his house, with a broken heart, no doubt. He said that he saw the respondent and the fourth co-respondent together again at Ryall's Hotel and other places.

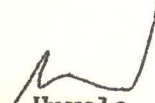
Such was the uncontroverted evidence of the petitioner. Perhaps I should mention that the petitioner impressed me as a truthful witness and I accept his evidence completely. Indeed two other witnesses testified and these corroborated the petitioner's evidence in material particular.

In short I find that the acts of adultery charged by the petitioner have been proved to the requisite standard. The point which exercised my mind a great deal was whether the first and second acts were condoned by the petitioner and whether it can be said that the petitioner connived at these and the subsequent acts. As to what constitutes condonation and connivance in law is clear. Considering the petitioner's total evidence I am satisfied that he neither connived at or condoned the adultery in this case. Here really was an old and frail husband inundated with love for a very young, pretty girl who was in fact over forty years younger than him. In fact she was very much like his grand-daughter. He loved her dearly and tried to keep the marriage together but the two were incompatible. The respondent, to make matters worse, was a sex maniac and fragile as the petitioner was she went out, unabashedly, on a floric. Perhaps I should mention that I am not here saying or suggesting that the respondent's unholy acts can in any way be justified. She knew full well from the beginning that she was marrying an old, frail man. She should therefore have taken him for what he was, talem quare. Anyway even if the petitioner were to be said to have condoned the two earlier acts of adultery, I would go on to say, on the facts, that the two other, subsequent, acts did effectively revive the earlier offences.

All in all I am satisfied that the petitioner has proved the acts of adultery alleged in the petition. I find no bar to my granting a decree in accordance with his prayer. Accordingly I grant the petitioner a decree nisi that his marriage to the respondent be dissolved.

I condemn the respondent in costs of these proceedings.

PRONOUNCED in open Court this 6th day of May, 1988,
at Blantyre.


L.E. Unyolo
JUDGE