

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 649 OF 1986

BETWEEN:

TRYSON MWENDA PETITIONER

- and -

NTEBO EVELYN MWENDA RESPONDENT

- and -

S.S.N. PHIRI CO-RESPONDENT

Coram: Unyolo, J.

Nampota, Counsel for the Petitioner
Respondent, not present, unrepresented
Co-respondent, not present, unrepresented
Manda, Court Reporter
Namvenya, Official Interpreter

JUDGMENT

The petitioner, Tryson Mwenda, prays for the dissolution of his marriage to the respondent, Ntebo Evelyn Mwenda, on the ground of the respondent's adultery with the co-respondent, S.S.N. Phiri.

The proceedings are undefended. I have duly warned myself of the danger of collusion in such cases.

The petitioner and the respondent were on 14th May, 1970 lawfully married at the offices of the Bantu Affairs Commissioner, Germiston, Transvaal in the Republic of South Africa. A certificate of marriage bearing the same date has been produced in evidence and I am satisfied on the facts that this was a valid monogamous marriage. After the celebration of the marriage the petitioner and the respondent lived and cohabited at Germiston, aforementioned and in August, 1970 the couple came to Malawi. Here, the petitioner and the respondent lived and cohabited at Chintheche in Nkhata Bay District where the petitioner comes from. Thereafter the couple moved to Dedza. There is one issue of the marriage, namely Lelawaka Sherin Mwenda, a girl born on 14th November, 1971. The parties are evidently domiciled in Malawi.

The petitioner told the Court that not long after he and the respondent returned to Malawi the respondent got a job at Dedza Secondary School. He and the respondent accordingly moved to Dedza and the respondent was allocated a house at the Secondary School. The petitioner decided to do business. He engaged in fishmongering. This business kept him away from the matrimonial home often. One day he returned from his trip only to find that the respondent had quit the matrimonial home. He later discovered that she had gone to join the co-respondent in an unholy matrimony at Dedza Boma. It was his evidence that to this day the respondent is living with the co-respondent and that she actually has two children by the co-respondent.

I have indicated that the proceedings are uncontested. Indeed although the notice of hearing in this case was served on both the respondent and the co-respondent, neither bothered to attend Court.

As for the petitioner, I can say at once that he gave me the impression that he was a truthful witness and I am satisfied the only inference to be drawn on the available facts is that the respondent has committed adultery with the co-respondent.

In short I find that the allegation of adultery has been proved. I can find no bar to my granting the petitioner a decree. Accordingly I pronounce a decree nisi that the marriage between the petitioner and the respondent be dissolved.

Before I conclude there is one further matter to which I should refer. It relates to a claim made in the petition for damages against the co-respondent. It is to be observed however that no evidence, absolutely none, was led by the petitioner as regards that claim. Clearly the duty was on the petitioner to substantiate the claim. Several matters had to be shown before the Court could justifiably condemn the co-respondent in the damages sought. For example, the petitioner had to show that the respondent was enticed from the matrimonial home by the co-respondent or that the co-respondent enticed her to remain with him. That claim must therefore fail and it is dismissed.

The question of custody of the child of the marriage is adjourned to Chambers.

The respondent is condemned to pay the costs of these proceedings.

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PRONOUNCED in open Court this 11th day of March,
1988 at Blantyre.

L.E. Unyolo
JUDGE