

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 606 OF 1986

BETWEEN:

N. ABELES PETITIONER

- AND -

O.I.O. ABELES RESPONDENT

CORAM : THE HON. THE CHIEF JUSTICE (MR. F. L. MAKUTA)

Ng'ombe, Counsel for the Petitioner
Mkumbira, Official Interpreter
Maore, Court Reporter

JUDGEMENT

The petitioner prays for the dissolution of his marriage with the respondent on the ground of cruelty.

The parties were lawfully married at the office of the Registrar of Marriages in Lilongwe on 3rd December, 1982. After the celebration of the marriage the parties lived and cohabited together first, in Area 12 in the City of Lilongwe, and then at Nancholi in the City of Blantyre. There is no issue of the marriage although there is an adopted child namely, Sabina Madupeola Abeles born on 27th July, 1984. This case is not defended, and I accordingly warn myself of the dangers of collusion. I am, however, satisfied that there was no collusion in the presentation of this petition.

It is pertinent to mention that the parties met in Nigeria when the petitioner was working there. He met her through her relatives whom he knew before 1972. The respondent is a Nigerian. The petitioner was born in Austria and he fled to England when he was 15 years old. He was educated in England and he then joined Her Majesty's Service and was posted to Nigeria where he worked up to 1964. After some spell in Kenya he was posted back to Nigeria from 1967 to 1972 when his first wife died. He then left Nigeria but returned in 1979, this time working for Dunlop. He then joined an International Organisation and was posted to Malawi. In 1983 he was appointed to lecture at the Polytechnic in Blantyre until 1985 when he retired. The petitioner bought a house at Nancholi in the City of Blantyre. He is, however, at the moment working as an Engineer in Lilongwe. The petitioner is a permanent resident of Malawi and this court, therefore, has jurisdiction to hear this case.

The petitioner told court that his relationship with the respondent got strained. This was because the respondent and her children were usually engaged in conversation in Yoruba language which the respondent does not understand. This put the petitioner out of place and he complained about it but to no avail. On a certain day in April, 1986, Yoruba was being spoken during breakfast and it would appear that the petitioner showed some disapproval of this. The respondent then poured some hot water on him causing severe burns on the arm and the body. On 29th July, 1986, again at the matrimonial home at Nancholi in the City of Blantyre, the respondent together with her two daughters and her niece, physically assaulted the petitioner with blows on the head, chest and abdomen. He sustained injuries on the head, nose, eye and was bleeding from the nose. He was also bitten on the finger and this caused some infection on it. The petitioner received some medical attention at the Queen Elizabeth Central Hospital. Again on 31st July, 1986, at the same place the respondent, with her daughters, beat the petitioner with clenched fists, tore off his clothes and locked him up in a room for a period of five hours. He also sustained injuries on the nose and bites at the back which were treated with stitches at the hospital.

The petitioner is not a young man. He is elderly and is not that robust. To have more than two people, male or female, set on him in combat, is certainly an exercise which will overwhelm him in minutes. Such was his ordeal. To lock up such a vanquished man in a room for five hours, and in need of some medical attention is, in my view, torture. There is no wonder at all that although the matrimonial home at Nancholi is his he dare not go to it because the respondent is staying there and he fears he might face the same ordeal. One can read the fear on his face. Despite some plea by the respondent on the petitioner, in a letter dated 30th December, 1986, to return, the petitioner has not done so. One can understand why!

On the evidence, I am satisfied that the allegations of cruelty are proved. I can find no bar to my granting the petitioner the relief he is seeking. Accordingly, I pronounce a decree nisi that the marriage between the petitioner and the respondent be dissolved. The respondent will pay the costs of this action.

PRONOUNCED in open Court this 31st day of August, 1988
at Blantyre.

F. L. Makuta
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CHIEF JUSTICE