

No

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 70 OF 1987



BETWEEN:

AMINA SURESH LAXMIDAS

PETITIONER

- and

SURESH PREMJI LAXMIDAS

RESPONDENT

Coram: UNYOLO, J.

Nampota, Counsel for the Petitioner
Respondent, absent, unrepresented
Manda, Court Reporter
Chigaru, Official Interpreter

J U D G M E N T

The petitioner, Amina Suresh Laxmidas, seeks an order of this Court declaring her marriage to the respondent, Suresh Premji Laxmidas, a nullity on the ground that the respondent was already married to another woman at the time he went through a ceremony of marriage with her.

By his amended answer to the petition and cross-petition, the respondent denies this allegation. He alleges, in turn, that the petitioner has since the celebration of the marriage committed adultery with various men including the party-cited, P.T. Khomba. In conclusion the respondent asks the Court to dismiss the petition on the ground that both he and the petitioner are domiciled in the United Kingdom. The petitioner filed a reply in which she denies these allegations.

It is, I think, pertinent to mention at this juncture that the respondent did not care to appear before the Court at the hearing of the case. He simply wrote a letter from some address in the United Kingdom saying he would not come and that the Court should proceed with the case in his absence. He reiterated, though, that he and the petitioner are domiciled in the United Kingdom. I think that I must deal with this point straight-away. The argument made by the respondent, read between the lines, is that if he and the petitioner are domiciled in the United Kingdom then this Court would have no jurisdiction to hear the petition or grant the relief sought by the petitioner.

Section 2(b) of the Divorce Act (Cap. 25:04 of the Laws of Malawi) is pertinent. It provides as follows:

"Nothing hereinafter contained shall authorise --

- (b) the making of any decree of nullity of marriage unless the petitioner is domiciled in Malawi at the time when the petitioner is presented or unless the marriage was solemnized in Malawi."

It is, of course, a notorious fact that in the case of a petition for the dissolution of a marriage validly contracted under the Marriage Act, the petitioner would have to prove that he/she was domiciled in this country at the time of bringing the petition. If this could not be shown then the court would have no jurisdiction to hear the petition. Section 2(b) mentioned above does, however, introduce a further aspect in the second limb in relation to petitions for nullity as opposed to, and distinct from petitions for dissolutions of marriage, vide the phrase under-lined. It is, in my judgment, clear for the phrase in question that in petitions of nullity it is sufficient to confer jurisdiction upon the court if the petitioner shows that the purported marriage was solemnized in this country.

Referring to the present case, the undisputed facts are that the purported marriage between the petitioner and the respondent was solemnized in Malawi, at Lilongwe, as will be shown presently. That is sufficient and it was not necessary for her to prove, in addition, that she was domiciled in this country. The respondent's argument on this aspect, therefore, fails.

I now turn to the merits of the case. It is not disputed that the petitioner and the respondent were lawfully married at the office of the District Commissioner in Lilongwe on 15th April, 1983, and that thereafter the couple lived and cohabited at Area 2 in Lilongwe and at Chilomoni Township in the City of Blantyre. There is one issue of the union, Shamim Laxmidas born on 3rd March, 1984. The petitioner emerged uncontradicted in her testimony that subsequent to the celebration of the said marriage she discovered that the respondent had on 7th May, 1975, gone through a ceremony of marriage under the Marriage Act with one Margret Bhayani. She produced in evidence Exhibit 2, a certificate issued by the Registrar of Marriages, in relation to this earlier marriage. It was in the petitioner's evidence that this earlier marriage between the respondent and the said Margret Bhayani still subsisted at the time that she and the respondent joined in matrimony in 1983. With respect, I found no reason to disbelieve the petitioner. Indeed I have just discovered during my research that the marriage in question was only dissolved by an order of this Court dated 31st December, 1986. Civil Cause No. 391 of 1982, (unreported), refers. And as an aside, it is interesting to note that in that case the respondent testified that he was domiciled in Malawi, not in the United Kingdom, as he now alleges.

As mentioned earlier, there is then the allegation made by the respondent in his cross-petition that the petitioner committed adultery with the party-cited. The petitioner actually admitted this allegation in her evidence. She said that she committed adultery with the party-cited once. However, this admitted "adultery" is in my view of no legal consequence in so far as the nullity of the marriage between the petitioner and the respondent is concerned. Simply, no marriage subsisted as between the two parties here.

To conclude I find that the petitioner has proved her case and I accordingly declare that the petitioner's marriage to the respondent was null and void. The cross-petition is dismissed for lack of substance.

The petitioner is to have her costs of the petition only. The question of custody of the child and any other ancillary matters is adjourned to chambers.

Pronounced in open Court this 11th day of February, 1988,
at Blantyre.


L.E. Unyolo
JUDGE