

IN THE HIGH COURT OF MALAWI, BLANTYRE

PRINCIPAL REGISTRY

CIVIL CAUSE NO.440 OF 1986

BETWEEN:

JOYCE CROMER ..... PETITIONER

AND

DON JAMES SERACHAN CROMER ..... RESPONDENT

AND

PAMELA MSOWOYA ..... CO-RESPONDENT

CORAM: MAKUTA, C.J.

Saidi, Counsel for the Petitioner  
Mbendera, Counsel for the Respondent & Co-Respondent  
Phiri, Court Reporter  
Mkumbira, Official Interpreter

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JUDGMENT

The petitioner prays for the dissolution of her marriage to the respondent on the ground of adultery.

The parties were lawfully married on 6th November, 1965 at the office of the Registrar General in Blantyre. After the celebration of the marriage the parties lived and cohabited together at Blantyre from 1965 to 1980 and thereafter at Margate, South Africa, from September 1980 to January, 1981 when they returned to Blantyre where they stayed until June, 1981. In June, 1981 they went back to South Africa where they stayed up to September 1984 when he, alone, returned to Blantyre. The petitioner is residing at Margate in South Africa. Although there are no children of the marriage there are two adopted children, both adults, living in South Africa.

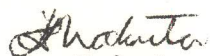
The question of domicile did cause a bit of bother. The respondent is not a Malawian. But nationality is distinct from domicile. Domicile is determined not only on the basis of nationality but also on the basis of permanent residence if there are circumstances tending to show that there was intention to establish a permanent home here: see *Coombe v. Coombe and Reid* (1923-60) 1 ALR 115. In the instant case the respondent came to Malawi in 1964 and has got business interests in this country. He owns and is the main shareholder of Petroleum Services Limited in Blantyre and Lilongwe. He owns thirty-three and one-third per cent of shares in Glens Removals. He has a house in Sunnyside, Blantyre, and he also owns two plots on Mandala

Estate, along Mahatma Gandhi Road in the City of Blantyre. One of these plots is being developed. There is no doubt at all that the respondent has a stake in this country and everything points to the respondent having a fixed and settled intention to make his permanent residence in this country and has therefore acquired a domicile of choice here. Since the domicile of a wife is that of her husband while the marriage subsists, the petitioner's domicile is that of the respondent. I am therefore satisfied that the parties are domiciled here and this Court has jurisdiction to hear this case.

The petitioner told the Court that since 1984 the respondent has committed adultery with the co-respondent, Pamela Msowoya. During Christmas, 1984, she came to Malawi only to find that the respondent was cohabiting with the co-respondent who was by then pregnant. The respondent admitted to the petitioner that he was responsible for the pregnancy and had built a house for her at Chilomoni in the City of Blantyre. The admission was verbal and he never asked for forgiveness. Since that time they have not lived together as husband and wife and there has been no sexual intercourse. She has not, in any way, condoned the adultery.

I am satisfied on the evidence that the allegation of adultery has been proved. I find no bar to my granting the petitioner the relief she seeks from the Court. Accordingly, I grant the petitioner a decree nisi that the marriage which was solemnised between her and the respondent be dissolved. The respondent and co-respondent will pay the costs of this action.

PRONOUNCED in open Court this 29th day of August, 1988  
at Blantyre.

  
F.L. Makuta  
CHIEF JUSTICE