

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 598 OF 1986

BETWEEN: MERLIN CHALENGAPETITIONER

- AND -

EDSON CHALENGA RESPONDENT

- AND -

EUNICE KENNIE CHALENGA CO-RESPONDENT

Coram: MKANDAWIRE, AG. J.

Msosa of Counsel for the Petitioner

Respondent, not present

Kadyakale/Katunga, Official Interpreters

Gausi (Mrs), Court Reporter

J U D G M E N T

By her petition, the petitioner prays for an annulment of her marriage to the respondent on the ground that at the time of the alleged marriage, the respondent was already married to the co-respondent, and this marriage was still subsisting. The respondent did not file an answer and did not appear at the hearing. I am satisfied that he was duly served and that he was aware of the date of hearing. Service on the co-respondent was dispensed with.

On 3rd February, 1984, the petitioner and the respondent went through a ceremony of marriage at the Office of the Registrar of Marriages, Blantyre. The respondent was described as being a single person. The certificate of marriage No. 2232 was produced in evidence. After the celebration of this marriage the parties lived together at Lumbadzi and Area 25 in the City of Lilongwe and then in 1986 they moved to Zomba. The petitioner now lives in Lilongwe and the respondent is in Mzuzu. It was the petitioner's evidence that the respondent did not want her to join him in Mzuzu. There is one issue of the union, Rex Chalenga, born on 19th October, 1984.

It was the petitioner's testimony that in 1985, her Church, the Seventh Day Adventist Church, informed her that before marrying her the respondent was already married to the co-respondent and that, that marriage was still subsisting. She then confronted the respondent about this but he refused. In the course of their living together, she discovered that the respondent had in his possession, two letters from the

Department of Legal Aid dated 14th August, 1984, and 20th November, 1985. Those letters were put in evidence as Exhibit P2 and Exhibit P3. It is quite clear from the contents of those letters that the respondent was intending to institute divorce proceedings against the co-respondent. On discovering those letters she again confronted the respondent who is said to have confessed that he was indeed married to the co-respondent. A copy of the certificate of that marriage was produced in Court as Exhibit P4 and in that certificate the condition of the respondent was described as divorced. It appears to me that the respondent is the type of man who can properly be described as a marrier.

Mr. Torbens Mhone, PW2, who is an officer from the Department of Legal Aid, Blantyre, testified that he was familiar with letters produced in Court as Exhibits P2 and P3. He told the Court that in 1984 the respondent had approached that Department with a view to seeking legal representation in divorce proceedings with the co-respondent. At first the Department agreed to act for him, but before the petition was prepared it was discovered that the co-respondent had also approached the Department. It was then decided to extend legal aid to the co-respondent who was without substantial means. As a result, the co-respondent remained unaided. According to this witness, the co-respondent did not pursue the matter so that that marriage is still subsisting to this date.

I am satisfied on the evidence before me that at the time the petitioner and the respondent went through the ceremony of marriage at the Office of the Registrar of Marriages, Blantyre, on 3rd February, 1984, the respondent was already married to the co-respondent and that this marriage was still in force. In terms of section 12(d) of the Divorce Act (Cap. 25:04) I declare the marriage had and celebrated between the petitioner and the respondent at the Office of the Registrar of Marriages on 3rd February, 1984, to be null and void on the ground that at that time the respondent was already lawfully married to another woman.

It was further the evidence of the petitioner that she keeps Rex Chalenga and maintains him. The respondent does not visit the boy and he does not even maintain him. It appears to me that the welfare of the boy would best be looked into if he continues staying with his mother. I therefore grant custody of the said Rex Chalenga to the petitioner; the respondent is to have reasonable access.

The respondent is condemned in the costs of these proceedings.

DELIVERED in open Court this 23rd day of December, 1988.

M. P. Mkandawire
ACTING JUDGE