

IN THE HIGH COURT OF MALAWIPRINCIPAL REGISTRYCIVIL CAUSE NO. 828 OF 1986BETWEEN:MODESTER E. NJIKHO PETITIONER

- and -

ALICK B. NJIKHO RESPONDENT

- and -

MISS MTHIRAMANJA CO-RESPONDENTCORAM: UNYOLO, J.

Kondowe, Counsel for the Petitioner
Respondent, absent, unrepresented
Manda, Court Reporter
Mkumbira, Official Interpreter

J U D G M E N T

The petitioner in this suit prays for the dissolution of her marriage to the respondent on the grounds of the respondent's adultery with the co-respondent.

The petitioner and the respondent were lawfully married at the Office of the Registrar of Marriages in Mwanza District on 12th November, 1982. After the celebration of the marriage the parties lived and cohabited at Tchale Village, the petitioner's village, in Mwanza District, already mentioned. There is one issue of the marriage, Jonathan Njikho, born on 5th January, 1984. I am satisfied from the evidence of the petitioner that the petitioner and the respondent are domiciled in Malawi and that this Court has jurisdiction to hear the petition.

Perhaps I should mention here before I go any further that the petition is undefended. The respondent did not seek to defend it, neither did the co-respondent. I remind myself all the same that the burden lies on the petitioner to prove her case to the satisfaction of the court : section 7(2) of the Divorce Act.

The petitioner testified that on 28th December, 1983, the respondent left the village saying he was going to his home in Nkhata Bay to see his relatives. To her surprise he did not return. She later discovered that the respondent was actually working at Mwanza and staying with the co-respondent as man and wife. She said that she proved this for herself when she went to the Boma and found the respondent and the

co-respondent together. It was in her evidence that both the respondent and the co-respondent told her that they had joined in matrimony and that she should not waste her time. The petitioner went on to say that as a matter of fact the co-respondent now has two children by the respondent.

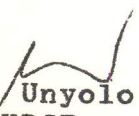
The petitioner was the only witness. She however impressed me as a witness of truth and looking at the totality of the facts in this case I am disposed to take the view that the fact that the respondent, and indeed the co-respondent, did not seek to defend the case by denying the charge of adultery made against them does, in my judgment, amount to a confession of the adultery and a corroboration of the petitioner's evidence. I am, I think, supported in this view by the holding in Pidduck v. Pidduck and Limbrick (1961) 105 Sol. Jo. 632. All in all I am satisfied that the respondent is guilty of adultery with the co-respondent. I am also satisfied that the petitioner had not in any way connived at this adultery nor has she condoned it. I find that there was no collusion in the presentation of the petition and can find no bar to my granting a decree.

Accordingly the petitioner's prayer is granted and I grant her a decree nisi that the marriage which was solemnized between her and the respondent be dissolved.

I condemn the respondent in the costs of these proceedings.

The question of custody and maintenance of the child is adjourned to Chambers.

PRONOUNCED in open Court this 15th day of April, 1988, at Blantyre.


L.E. Unyolo
JUDGE