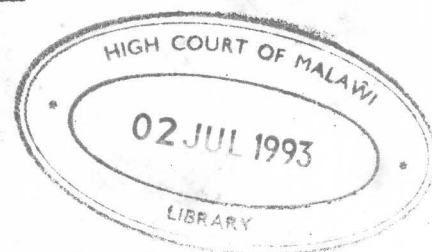


IN THE HIGH COURT OF MALAWI, BLANTYRE
PRINCIPAL REGISTRY
CIVIL CAUSE NO.141 OF 1987

BETWEEN:

MANUEL DA A. SANTOS PETITIONER

AND

MARIA MANUEL GOMES DA S. SANTOS RESPONDENT

AND

JORGE BETTENCOURT CO-RESPONDENT

CORAM: UNYOLO, J.

Msisha, Counsel for the Petitioner
 Respondent not present, unrepresented
 Chigaru, Official Interpreter
 Phiri, Court Reporter

JUDGMENT

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

The facts are that the petitioner and the respondent were lawfully married in accordance with the Marriage Act at St. Montfort Church, Blantyre on 5th February, 1983. The petitioner tendered in evidence Exhibit 1, namely a certificate which was subsequently issued by the office of the Registrar General in respect of the marriage. After the celebration of the marriage the couple lived and cohabited at Limbe in the City of Blantyre. There is no issue of the marriage.

I pause here to deal with the question of domicile. The petitioner is a Portuguese national. He came to Malawi towards the end of 1968 to join his father who was working in this country at the time. The petitioner said that he was 15 then and his father had come to Malawi in 1956. He has been here since - for some 20 years that is, except for a few brief spells when he went out on leave. He testified that he carries on business in Limbe and has got property there. It was also in the petitioner's evidence that he intends to settle in Malawi.

It is trite that any person sui juris can acquire a domicile of choice. What the court must consider is whether there is strong evidence of a positive intention on the part of the propositus to abandon his domicile of origin for a new domicile of choice. There must be strong evidence, in

other words, of an affirmative intention, formed independently of external pressures, to reside indefinitely or permanently in the new country of domicile of choice. In this regard it is not necessary that the propositus should change his nationality or civil status. vide Bond v. Bond Civil Cause No.407 of 1983 (unreported) and the several English cases cited there. Reverting to the case in hand I am satisfied that the petitioner has the necessary animus manendi to remain in this country indefinitely. I am satisfied therefore that domicile has been proved and that consequently this Court has jurisdiction to hear the petition.

The respondent did put in an answer denying the charge of adultery made against her by the petition. She further cross-petitioned for divorce on the ground of cruelty. She did not however appear before the Court at the hearing of the petition and the Court was shown letters, Exhibits 4 and 5, which the respondent wrote to her lawyers two months ago saying that she was not "interested in contesting the case". It is clear from the two letters that the respondent's instructions to her said lawyers were in effect that she did not wish to defend the petition or prosecute the cross-petition. There was also no news from and concerning the co-respondent. Messrs. Ng'ombe & Co. are however on record as being his legal practitioners.

The petitioner's evidence shows that the marriage here was an unhappy one right from the early years. The respondent lacked in affection toward the petitioner. It would appear from Exhibit 6, namely a letter the respondent wrote to her father in 1986, that originally the respondent intended to marry her cousin. Somehow that did not materialise and she ended up marrying the petitioner. She however loved her cousin but alas it appeared she had lost him for good since he got really hurt upon her marrying the petitioner. Consequently the respondent gave the petitioner a cold shoulder, so to say, most of the time. She became very touchy and on a number of occasions she quit the matrimonial home. The petitioner told the Court that one day in July, 1986 he saw the co-respondent in company of the respondent in Johannesburg, South Africa. That was not the only occasion. He saw them together again later. By then the petitioner and the respondent had been staying apart. He later noticed that the respondent was in the family way. The two were still living apart then. And when asked she disclosed that the man responsible for the pregnancy was the co-respondent. It was in the petitioner's evidence that the respondent was actually delivered of a still-born child at the end of the day. The petitioner tendered in evidence Exhibit 3, namely a letter written by the respondent to his legal practitioners confessing her adultery herein.

Pausing there I am mindful that a confession by one party is evidence against the maker alone. In the context of the present case this ordinarily means that the confession here is strictly evidence against the respondent alone and not

against the co-respondent. The facts in this case however go further. The respondent and the co-respondent were seen together on more than one occasion after the respondent had walked out on the petitioner. Then not long after that she was found to be pregnant and she disclosed that the co-respondent was the man responsible. She went on to repeat the confession in black and white. It is also significant that the co-respondent as I have indicated chose not to defend the petition. All in all I am satisfied that the petitioner has proved the allegation of adultery against both the respondent and the co-respondent. I find no bar to my granting the petitioner the relief sought.

Accordingly the petition succeeds and I grant the petitioner a decree nisi that the marriage solemnized between the petitioner and the respondent be dissolved.

I dismiss the cross-petition and the respondent is condemned to pay the costs of these proceedings.

PRONOUNCED in open Court this 3rd day of June, 1988 at Blantyre.

L.E. Unyolo
JUDGE

