

19th July 1989

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 5 OF 1989

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BETWEEN:

ADELLA MARIA CARMEN KARIM PETITIONER

and

MOHAMED HANIF ABDUL KARIM RESPONDENT

CORAM : MAKUTA, C.J.

Ng'ombe, Counsel for the Petitioner
Respondent, Not present, Unrepresented
Chigaru, Official Court Interpreter
Maore, Court Reporter

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JUDGMENT

The petitioner prays for dissolution of her marriage to the respondent on the ground of desertion. The parties were lawfully married at the office of the Registrar General on 28th February, 1976. After the celebration of the marriage they cohabited in divers places, namely Kanjedza and Mpingwe in the City of Blantyre.

There are two children of the marriage namely, Melany Leah Karim born on 16th August, 1976 and Stephany Amanda Karim born on 16th October, 1977.

The case is undefended. I therefore direct my mind to the dangers of collusion. I have carefully considered the evidence and I am satisfied that there was no collusion in bringing the proceedings to Court.

The evidence of the petitioner is that on 15th September, 1983 the respondent deserted the petitioner without cause. The desertion has been continuous for a period of more than 3 years prior to the presentation of this petition. It was stated that the respondent had gone away to Portugal where he continues to reside. Since he left he communicated with the petitioner the first three months and stopped. He has never sent any money to support the children or the petitioner.

The question of domicile caused some concern to me because the respondent came to Malawi as a refugee. Whilst here, however, he not only got married but was

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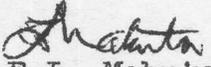
running some business successfully. According to Mrs Lora Onions, the petitioner's mother who gave evidence during the proceedings, the respondent had intended to build a house and a plot had been found at Nyambadwe in the City of Blantyre. He had intended to remain there permanently.

The parents of the petitioner had occasion to meet the respondent in Portugal when they went there on holiday. Although they met the respondent he did not seem to show much interest in his family here.

It would seem, however, in my judgment that the respondent acquired a domicile of choice while in Malawi. There is no indication that he has abandoned this domicile of choice. This Court therefore has jurisdiction to entertain this petition. Should I be wrong on this, section 2(a) of the Divorce Act Cap. 25:04 confers jurisdiction to the Court in the circumstances of the case. The section provides in effect that if a wife has been deserted without cause and immediately before desertion the husband was domiciled in Malawi this Court shall have jurisdiction for the purpose of any proceedings for dissolution of marriage or judicial separation, notwithstanding that the husband has changed his domicile since the desertion.

I am satisfied that the allegations of desertion are proved in this case. I find no bar to my granting the petitioner the relief she seeks from this Court. Accordingly I grant the petitioner a decree nisi that the marriage which was solemnised between her and the respondent be dissolved. The petitioner will have custody of the children.

PRONOUNCED in open Court this 19th day of July, 1989,
at Blantyre.


F.L. Makuta
CHIEF JUSTICE