

IN THE HIGH COURT OF MALAWI
CIVIL CAUSE NO.10 OF 1989

HIGH COURT
LIBRARY

BETWEEN:

COSTA POLENAKIS PETITIONER

AND

ANDROULLA POLENAKIS RESPONDENT

AND

DOROTHY CHINTHENGA PHIRI PARTY CITED

CORAM: MAKUTA, CHIEF JUSTICE

Chirwa, Counsel for the Applicant
Msaka, Counsel for the Respondent
Kadyakale, Official Interpreter
Phiri, Court Reporter

JUDGMENT

This is an application by the respondent for maintenance. The parties were lawfully married on 1st February, 1976 at Mutare in the Republic of Zimbabwe. On 29th March, 1990 this court pronounced a decree nisi for the dissolution of the marriage on the ground of the petitioner's cruelty.

The applicant informed the Court that during the subsistence of the marriage she never worked and she depended entirely on the petitioner who used to give her K1000.00 every month for housekeeping. She is now working at Zomba Bakery as manager earning K1000.00 per month gross. She however emphasised that it is a temporary job and she got it after the owner, a Greek, heard that she had problems with her marriage. It should be mentioned that the applicant is also a Greek from Cyprus. Her father died and her mother, who still lives in Cyprus, is old and has no means of assisting the applicant. The applicant is living in a house belonging to the Bakery. She does not pay for water, electricity and she gets free bread.

The petitioner is a farmer. He grows tobacco on a loan from the National Bank. The cash flow prepared by the Bank allows him to draw a salary of K2000.00 per month. The name of the farm is Tisaiwale Estate and it belongs to Mrs. Makwinja to whom he gives K250.00 a month as rental. This sum comes from the K2000.00. His other expenses are K600.00 for food, K650.00 for fuel, K230.00 for telephone, K150.00 to feed six dogs and K110.00 for pocket money. The total expenses come to K1990.00 per month leaving a balance of K10.00 from the K2000.00. He also has an obligation to pay the costs of the divorce proceedings. He has no other source of income. On profits, he informed the court that he lost K25,000.00 last year and this year he has already lost K100,000.00 because of poor rains which affected the yield.

HIGH COURT
LIBRARY

As a rule it does not lie in the mouth of a wrongdoing husband to say the wife ought to go out to work simply in order to relieve him from paying maintenance: see Rose v. Rose (1950) 2 All E.R. 311. But it does not mean that the standard of living of a wife should be put significantly higher than that of a husband since to do so would amount to imposing a fine on him for his matrimonial offence. In determining the relevant standard of each party the court should take into account the inescapable expenses of each party, especially though not exclusively, expenses of earning an income and of maintaining any relevant child. If the wife is earning an income that must be taken into account in determining the relevant standard of living: see Attwood v. Attwood (1968) 3 All E.R. 385. At the end of the case, the court must ensure that the result of the order is not to depress the husband below subsistence level: Ashley v. Ashley (1965) 3 All E.R. 554.

In the present instance the applicant has applied that she be paid K1000.00 maintenance every month. This is what she was getting to run the house during the subsistence of the marriage. The responsibility for running a house for two people is no longer there. She has not told the court what her expenses are. Considering the circumstances of the husband and his expenses I am of the view that payment of K1000.00 would depress the petitioner to below subsistence level. But it must be borne in mind that the applicant was forced to take up employment in consequence of disruption of the marriage by the husband; so the whole of the applicant's income should not be taken into account so as to enure to the husband's benefit. I therefore order, in the circumstances of the case, that the respondent should pay K150.00 per month. Should the applicant's condition change, she may apply to court for fresh consideration of the order.

PRONOUNCED in open Court Court this 18th day of July, 1990 at Blantyre.

F.L. Makuta
F.L. Makuta
CHIEF JUSTICE