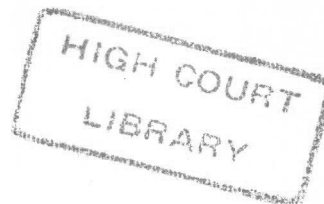


IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 16 OF 1988



BETWEEN:

STELLA NAMALOMBA PLAINTIFF

- AND -

D. NAMALOMBA DEFENDANT

CORAM: UNYOLO, J.

Chisanga of Counsel for the Petitioner
Respondent, absent, unrepresented
Kadyakale, Official Interpreter
Gausi (Mrs), Court Reporter

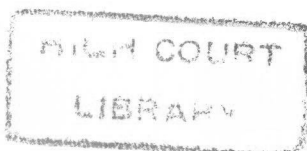
J U D G M E N T

This is a wife's petition for divorce on the ground of cruelty. It is undefended.

The petitioner and the respondent were lawfully married on 9th September, 1978, at the Office of the Registrar General in Blantyre. Thereafter the parties lived and cohabited at Ndirande, in the City of Blantyre. There are seven children of the marriage. Both the petitioner and the respondent are Malawians, resident and domiciled in this country and the court has, therefore, jurisdiction to hear the petition.

As earlier indicated, the petition is not defended. In accordance with practice, I have duly warned myself of the danger of possible collusion in such a case. After fully considering the total facts I am however satisfied that there is no collusion in the presentation of the petition.

The petitioner was the only witness. Put briefly, she testified that her marriage was a happy one but only from the first few years. Thereafter the respondent showed his true character as a man of violent and ungovernable temper. He beat her often, sometimes alleging that she was unfaithful to him and at other times over trifles. On several occasions he assaulted her so badly that he caused her serious bodily harm necessitating medical treatment. Well-wishers tried to remonstrate with him but to no avail. If anything his conduct and



behaviour got worse, turning the matrimonial home into a house of horror and bondage. Then he began stopping her from going to her church. When one day she did not heed this, he followed her to the church, stormed right in and forcibly and angrily took away her Bible and hymn-book and went out, all this happening in the face of the other worshippers and naturally causing her great embarrassment, humiliation and fear. The petitioner testified that she tried very hard to put up with the respondent's pugnacity, nagging and abuse simply with a view to giving the marriage a chance to succeed but in the end she feared for her life and decided to institute these proceedings. Things then got so bad that eventually she felt compelled to leave the matrimonial home on 23rd March, 1989, and she has not gone back since.

The law is clear. As was observed in Natho v Natho Civil Cause No. 62 of 1983 (unreported) a husband is guilty of cruelty towards his wife where he has inflicted bodily injury upon her or where he has conducted himself towards her so as to render continued habitation dangerous to her. Another pertinent case is Kamlangila v Kamlangila (1966-68) ALR Mal. 301.


I have already recounted the evidence adduced by the petitioner in the instant case. It is uncontradicted. Indeed I gained the clear impression that the petitioner was a witness of truth. As we have seen, the respondent caused the petitioner actual bodily injury on several occasions and considering the total evidence there can be little doubt that the respondent conducted himself towards the petitioner in such a manner as to render continued cohabitation dangerous to her. I find that there was no condonation. As already indicated at first the petitioner did simply try to give the marriage a chance to succeed. She was also concerned about the welfare of the seven children of the marriage, otherwise she did not forgive him. Things did not, however, work.

All in all, I find that the petitioner has proved her case against the respondent and I can find no bar to my granting her a decree. Accordingly, I pronounce a decree nisi that the marriage between the petitioner and the respondent be dissolved.

I adjourn to Chambers the question of custody of the children and any other ancillary relief.

Finally, I order that the respondent pay the petitioner's costs of these proceedings.

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


L. E. Unyolo
JUDGE