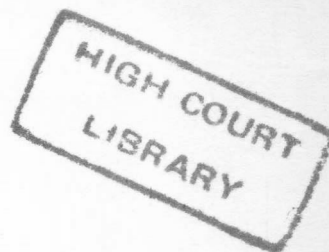


IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.6 OF 1989



BETWEEN:

LUCY MALATA (Female).....PETITIONER

- and -

VINCENT P. MALATA (Male).....RESPONDENT

Coram:

MKANDAWIRE, J.

Ng'ombe, Counsel for the Petitioner
Respondent, present, unrepresented
Kadyakale, Law Clerk
Longwe, Court Reporter

JUDGMENT

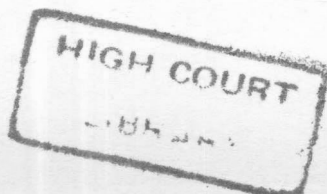
The petitioner in this case, Lucy Malata, is praying for the dissolution of her marriage with the respondent, Vincent P. Malata, on grounds of cruelty. The petition is undefended and this being the case I must warn myself against collusion. On the evidence before me I am satisfied that there is no collusion in the presentation of this petition.

It is common case that the petitioner and the respondent were married at the office of the District Commissioner, Chikwawa, on 2nd May, 1977. Thereafter they cohabited at Nchalo in Chikwawa District. Both parties are Malawians and they come from Mulanje District. They are therefore domiciled in Malawi and this court has jurisdiction to hear the petition.

There are seven children of the marriage and the petitioner is also praying for custody.

The only witness in the case was the petitioner herself. She told the court that the respondent is so jealousy that he does not want her to chat with her friends. Whenever he sees her with her friends he beats her. He is not even happy when the petitioner is visited by her own relatives. On 17th June, 1988, he beat her so severely that she bled both through the nose and mouth. The matter was reported to Parish Priest and the respondent confessed. Two weeks

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later he beat her again and he took to heavy drinking. By 17th June, 1988, when the respondent beat her heavily, she was three months pregnant.

The respondent's bad behaviour was reported to the advocates who talked to him but that did not help. In July, 1988, the petitioner got information that the respondent was threatening to kill her. She then got leave from her employment and went to her home. She was home the whole of August. She went back to the matrimonial home on 31st August, 1988. The respondent was away on his drinking errands. He came home at around 2.00 a.m. and beat the petitioner so badly that she bled through the nose. It was her evidence that she could have gone off to her parents but then she had just returned from there. She was still pregnant then. That time the respondent used to beat her every week. Then one day in November when she was eight months pregnant, he got a leather belt and beat her severely. This was in the presence of the children and they all started to cry. She then left the matrimonial home and went to Mulanje but she returned shortly afterwards.

It was her evidence that in about November, 1988, the Police summoned them and the respondent was severely warned against beating his wife. Perhaps it was as a result of what he was told at the Police Station for during that very month he wrote the petitioner a letter of apology and promised never to beat her again. That promise did not last for he beat her again on 1st January, 1989. As if the petitioner had not already suffered enough beatings, on 30th March, 1989, the respondent got a metal rod, struck her with it and threatened that he was going to push it through her private parts. That threat frightened her so much that she quit the matrimonial home. She feared that he was going to kill her. She has never gone back to the matrimonial home and hence these proceedings.

As I already said, this petition is undefended; even then, I have subjected the petitioner's evidence to a careful scrutiny. I am satisfied on the whole that she was telling the truth. If the facts of this case cannot come within the meaning of legal cruelty then I do not think that any other case ever will. The petitioner had all the reason to fear for her life and as a matter of fact her life was in real danger. Some earlier incidents may be said to have been condoned as, for example, the assault of June, 1988, but this can be so with the later incidents.

I think that the petitioner is entitled to the relief she has sought. I therefore grant her a decree nisi. The respondent is condemned in the costs of these proceedings.

I adjourn the question of custody of children into
Chambers.

Pronounced in open Court this 29th day of June, 1990.


M.P. Mkandawire
JUDGE