



MALAWI

IN THE HIGH COURT OF MALAWI

**PRINCIPAL REGISTRY
CIVIL CAUSE NO. 17 OF 2003**

BETWEEN:

JUDITH LIZZIE
NYIRENDA.....PETITIONER

and

ZAKEYO ROY KENNETH
NYIRENDA.....RESPONDENT

CORAM: HON. MR JUSTICE F.E. KAPANDA
Mr Mwala, of Counsel for the Petitioner
Counsel for the Respondent - Absent
Moyo (Mrs), Official Interpreter
Gondwe (Mrs), Court Reporter

Date of hearing : 12th July 2004
Date of Judgment: 12th July 2004

Editorial Note

The matter before this Court is a petition for divorce on grounds of cruelty. The principal issue for the Court's determination, therefore,

is whether a decree nisi for divorce should issue.

JUDGMENT

Kapanda, J

B. Introduction

Mrs Judith Lizzie Nyirenda, the Petitioner, is desirous of having her marriage to the Respondent, Zakeyo Roy Kenneth Nyirenda, dissolved. Accordingly, on 10th November 2003 she filed a Petition for Divorce. The record shows that, the Respondent on 21st November 2003, indicated his intention to defend the Petition. A Registrar's Certificate was thereafter issued on 5th March 2004. However, on the appointed day for the hearing of the matter he was not available to defend the Petition. Further, the Court record will show that the respondent had instructed Mr Mwakhwawa, of Lexon and Lords, to represent him. As it turned out, not even Mr Mwakhwawa was available to represent the Respondent.

Both the Respondent and his said legal representatives did not communicate with the Court the reason why they were not present. The Court decided to proceed to hear the Petition for to postpone the hearing would have meant a delay in delivery of justice in family law cases. This Court has observed that any delay in family law cases should be avoided.¹

The Petition

The Petition filed before this Court shows that the Petitioner and the Respondent married on the 18th day of August 2000 at the Registrar General's Office at Blantyre in the Republic of Malawi. The Petitioner and the Respondent, the Petition shows, have since the celebration of their marriage lived and cohabited in Chilomoni Township in the City of

¹*Jamal Jubeda Jamal vs Ibrahim* Matrimonial Cause No. 1 of 1999 (High Court decision) (unreported) where Mwaungulu, J. made the following pertinent observations:

“Obviously procrastination in processing this petition raises concern about justice delivery in domestic family law—“

Blantyre of the said Republic of Malawi. Further, it is noted that both parties are domiciled in Malawi. At the time of filing the Petition there was only one issue of the marriage Isabel Nyirenda a girl of three(3) years. There are now two children born out of this marriage.

It is also common cause that the Petitioner is employed while the Respondent is not in employment. Moreover, the Petition on file discloses that there have been no previous proceedings in this Court, or any subordinate Court, involving the marriage between the Petitioner and the Respondent. Further, the Petition shows that the Petitioner has not connived or colluded with the Respondent in presenting or prosecuting this petition for divorce.

The Petitioner is praying that this Court should dissolve her marriage with the Respondent on ground of cruelty. She has, in this regard, given the particular of cruelty². Moreover, the Petitioner denies condoning, or being an accessory to, the cruelty set forth in the petition for divorce.

B. **Evidence**

The only evidence that this Court received is that of the Petitioner. Since she was not cross examined, her evidence uncontroverted.

The Petitioner told this Court that she wants her marriage dissolved on ground of cruelty. It was her testimony that the Respondent beat her when she was 27-28 weeks pregnant. The beating occurred on 18th October 2003. She produced in evidence a medical report to confirm the beating and that she was attended to by a Medical Practitioner after the incident.

² The particulars of cruelty are set out in paragraph 7 of her petition and are as follows:

7. **THAT** since the celebration of the marriage the Respondent has treated the Petitioner with cruelty.

Particulars of Cruelty

- (i) Nagging and verbally abusing the Petitioner unnecessarily from November 2002 to a point that the Petitioner left the matrimonial home for three weeks.
- (ii) Burning all the Petitioner's belongings when the Petitioner had left the matrimonial home in November 2002 with some of her belongings.
- (iii) The Respondent has taken a course of conduct calculated at breaking the spirit of the Petitioner by engaging in constant verbal abuse of the Petitioner and repeatedly asking her to leave the matrimonial home.
- (iv) Spitting at and beating the Petitioner in or around December 2002 and January 2003 for no reason.
- (v) Beating the Petitioner on 18th October 2003 while 26 to 27 weeks pregnant.
- (vi) Insulting the Petitioner every time he is angry.

Verbally abusing insulting the Petitioner's relations and requiring them to leave the matrimonial home

The Petitioner further told this Court that at one time the Respondent spat at her.

The above was the testimony in support of the petition for divorce. The testimony of the Petitioner stands undisputed.

C. **Findings and Law**

This Court finds that there has been no collusion in the presentation of this petition. Further, it is the finding and conclusion of this Court that, with the uncontested testimony of the Petitioner, it is clear that the Respondent inflicted bodily injury upon the Petitioner. It is settled law that a party to a marriage will be guilty of cruelty where he/she inflicts bodily injury upon another party or where a party has conducted himself/herself towards another so as to render continued habitation dangerous³. What the Respondent did to the Petitioner amounts to cruelty of the highest order especially if seen in the light of the fact that the assault occurred when the Petitioner was 26-28 weeks pregnant. Accordingly, there is no doubt in this Court's mind that the Respondent conducted himself towards the Petitioner in such a manner as to endanger the health of the Petitioner. Thus, the Petitioner has proved her case against the Respondent. Further, on the evidence on record, this Court finds and concludes that the Petitioner did not condone the conduct of the Respondent.

D. **Conclusion**

For the reasons given above, I find no bar to my granting a decree nisi for the dissolution of her marriage to the Respondent. It is so ordered. As regards the issue of maintenance and custody of the issues of the marriage it is this Court's view that the same should be dealt with in Chambers.

Finally, the Court orders that the Respondent pays the Petitioner the costs of these proceedings.

Pronounced in open Court this 12th day of July 2004 at the Principal Registry, Blantyre.

³ *Namalomba vs Namalomba* [1990]13 MLR 287, *Natho vs Natho* Matrimonial Cause No. 62 of 1983 (unreported) See also *Kamlangira vs Kamlangira* {1966-68}ALR

F.E. Kapanda
JUDGE

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