

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MATRIMONIAL CAUSE NO. 1 OF 2005**

BETWEEN:

SANDRA ISRAEL CHINMA..... PETITIONER

-AND-

FRED CHISASULA..... RESPONDENT

CORAM: HON. CHINANGWA, J

Petitioner, Present /unrepresented
Respondent, Absent/Unrepresented
Msiska, Court Interpreter
Nthunzi, Court Reporter

JUDGMENT

The petitioner, Sandra Israel Chinma prays for the dissolution of her marriage to the respondent Fred Chisasula on the ground of desertion. The petition is undefended. The parties contracted their marriage on 18th August, 2000 at the office of the Registrar of Marriages in Lilongwe. After the celebration of marriage they lived and cohabitated together at area 47 in the city of Lilongwe.

The petitioner is a Nigerian and the respondent a Malawian by birth. By reason of marriage the petitioner acquired a

Malawian domicile. I am satisfied that they are both domiciled here, therefore, this court has jurisdiction to hear this petition. I have said that the petition is undefended. Accordingly I have inquired into the facts alleged, as far as I reasonably can, and I am satisfied that the petition is not presented or prosecuted in collusion with the respondent.

The petitioner told court that she married the respondent on 18th August, 2000 at the office of the Registrar of Marriages (the District Commissioner), Lilongwe. She tendered a copy of a marriage certificate. After the celebration of the marriage they lived and cohabited in area 47.

But 6 months later a woman came home looking for the respondent. When the petitioner enquired the purpose of her visit. The respondent replied that he owned her K500. Later petitioner learnt that respondent had impregnated her. She gave birth to a baby girl. Petitioner visited the woman at Kamuzu Central Hospital. She presented baby clothes.

The respondent told the petitioner that the woman wanted K5,000 so that she could fend for herself and the child. The petitioner gave him the money. The petitioner reported the matter to her parents in law. To her shock, the respondent left the matrimonial home to live with this woman.

The respondent never came home again. According to her evidence the respondent married yet another woman. There are two children from that association. He now lives with this woman in Salima.

The petitioner further told court that she tried to find out what matrimonial offence she had committed. She was told that respondent alleged to have been tired to speak only English in their house.

The petitioner told court that she moved out of the Area 47 house because she could not raise rents of K3000 per month. She lives with her cousin a Mr Alick Uche. The petitioner prayed to this court that she be granted divorce since the respondent deserted her in 2001. There is no issue of the marriage.

The starting point is section 5(b) of the Divorce Act (Cap 25:04) Laws of Malawi. It provides:

“5. A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent:-

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition;”

In this petition there is proof that they are husband and wife. The marriage certificate issued on 18th August, 2000 is documentary evidence thereof. From the evidence it is clear that the respondent has been out of the matrimonial home for over three years. That satisfies the requirement under section 5(b) of the Divorce Act on desertion. Thus, I find desertion proved against the respondent. Of course there are elements of adultery as well. The petitioner did not press much on this ground other than being evidence proving the cause for desertion.

In the circumstances I am satisfied that the marriage is irretrievably broken down. I grant a decree nisi of divorce.

Pronounced in Open Court on this 25th May, 2007 at Lilongwe.

R.R. Chinangwa
J U D G E