

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

**MATRIMONIAL CASE NO. 01 OF 2008**

**BETWEEN**

**JANINE BLUMRICK ..... PETITIONER**

**AND**

**GRANT BLUMRICK ..... RESPONDENT**

**CORAM** : **HON. JUSTICE MZIKAMANDA**  
: I. Wadi, Counsel for the Applicant  
: A. Chinula, Counsel for the Respondent  
: S. Mbewe, Court Reporter  
: Mrs. Munyenyembe – Court Interpreter

**JUDGMENT**

This is the humble petition of Jenine Blumrick seeking the dissolution of her marriage with the respondent Grant Blumrick on grounds of cruelty. There is a cross-petition for the dissolution of the marriage on the grounds of adultery.

I have considered the question of jurisdiction in the matter though neither party raised it. The petitioner and the cross-petitioner are both South African. They started living together as husband and wife although they were then not lawfully

married in 2002 in Pietermaritzburg, Republic of South Africa. In 2003 they both came to Malawi and continued to live together. The lawfully married at the office of the District Commissioner in Lilongwe. They have since lived in Malawi and have shown every sign that they have chosen to live in Malawi. I am satisfied that they have acquired a domicile of choice in Malawi. I am further satisfied that I have jurisdiction to deal with the petition (See *Kaunda v Kaunda* 16(2) MLR 545; *Dorrington v Dorrington* 16(1) MLR 73, *Fernandes v Fernandes & Another* 15 MLR 148).

The petitioner and the cross-petitioner lawfully got married on 19<sup>th</sup> November 2004 at Lilongwe in the Republic of Malawi. At the time they celebrated the marriage they had one child between them, a girl named Emily Blumrick born on 3<sup>rd</sup> March 2003. At the time the two came to Malawi they cohabited in Kasungu where the cross-petitioner worked as a forester. They cohabited in Kasungu from October 2003 to February 2006 when they moved to Lilongwe where again they cohabited until October 2007. The petitioner was not employed at the time. It was in October 2007 that the petitioner got a job as Administration Assistant with Capital Outsourcing.

It is the petitioner's story that since the celebration of their marriage with the cross-petitioner in November 2004 the cross-petitioner treated the petitioner with cruelty. The particulars of the cruelty are spelt out in the petition and show the cross-petitioner has never made effort to know the family of the petitioner, meeting her mother only three times. The petitioner has not been allowed to visit and stay with her family for more than 2 days. While in Kasungu the cross-

petitioner never allowed the petitioner to interact with anybody outside their home and never provided her with transport to go anywhere. The cross-petitioner has never appreciated food prepared by the petitioner and could at most instances refuse to eat the food, causing the petitioner anguish. The cross-petitioner has no respect for the petitioner and talks to her in a demeaning manner in front of the issue of the marriage. He abuses and insults her. She in consequence suffered Reactive Depression and was put on medication close to 8 months. In September to October 2007 the petitioner and the cross-petitioner went for counseling sessions as a couple, and separately, before Dr. Mazloum. Even after being married for six years, the Petitioner still felt like the cross-petitioner was a stranger to her.

As a result of the cross-petitioner's cruelty the two have been on separation three times. The petitioner had in April 2004 left the matrimonial home for about a month. When she returned she was treated with cruelty.

The petition showeth that there have been no previous proceedings in the High Court of Malawi or any subordinate court in Malawi with reference to the marriage by or on behalf of the petitioner or the cross-petitioner. The petitioner no longer loves the cross-petitioner.

The respondent's cross-petition shows that since the celebration of the marriage with the petitioner, the petitioner has committed adultery with one Shane Wynn Jones at Area 9 and Area 10 in the City of Lilongwe and at various other places in Malawi. The petitioner and the cross-petitioner have since October 2007 lived

separately. The cross-petitioner however denies ever treating the petitioner with cruelty since the celebration of the marriage.

When the petitioner took the stand in court, she adopted the contents of the petition. She however indicated that since she left the matrimonial home she has been harassed by the cross-petitioner who had been trying to prove that she had an affair. She said that although he is a hardworking person and a good father to their daughter he is very aggressive and very rude towards her.

Shane Wynn Jones is a friend of hers who helped her fix the small flat which she moved into. He fixed the pipes, washing machine, put a shade outside and fixed a jump-o-jump for the daughter. He also has been to the house several times to spray mosquitoes. He took her to hospital when she became sick with malaria. He has ever spent a night at her house.

In cross-examination she conceded to have travelled out of Lilongwe with Shane Wynn Jones to Salima and several times to Blantyre. They stayed one night at Pedros Lodge.

When the cross-petitioner took the stand he stated that he did not agree with the allegations of cruelty. He said that the petitioner and Shane Wynn Jones have spend weekends or days in Blantyre and Salima. She also travelled with him to mount Mulanje. He Conceded visiting the petitioner one night to attempt reconciliation but she refused. Her association with Shane Wynn Jones began even before she left the matrimonial home.

During cross examination he stated that although he made no provision of car for the petitioner they could meet a few times or at least once in a week with friends. He sold his boat and motor cycle to set up a company. The petitioner is a very good cook but sometimes after a long day's work he did not feel hungry and could not eat her food. A number of times he suffered from Malaria and did not feel hungry to eat her food. He conceded that there were quarrels and bad language had been used but that was not one sided. He is aware that the petitioner was treated for depression and that there were counseling sessions. That was in the final six months before the petitioner moved out.

He stated that within two months of her leaving the house in Area 10, she admitted that she had feelings for Shane Wynn Jones. He said that the petitioner and Shane Wynn Jones had several opportunities for committing adultery in Salima and at Pedros' Lodge in Blantyre. He did not see her having sex with Mr. Jones. Yet they spend several nights together. Jones had been a mutual friend for him and the petitioner.

Now cruelty is a ground for divorce. It is not sufficient merely to allege cruelty. There must be proof of cruelty. Cruelty for purposes of divorce takes different forms. Cruelty is defined as conduct of such character as to have caused danger to life limb or health, bodily or mental harm or give reasonable apprehension of such danger. (*Somanje v Somanje Civil Cause No. 40 of 1983 unreported; Hayter v hayter and Another 14 MLR 94*). It is sufficient that there is a single act of cruelty if that act is gross and raises reasonable apprehension of being repeated. Conduct that poses danger to the mental health may amount to cruelty. In the

present case there are matters that have been alleged to amount to cruelty but do not amount to cruelty. There are matters that have been said to amount to cruelty which do amount to cruelty. The purchase of a boat to be used by the family occasionally instead of a car for the wife to be used to visit friends does not in my view amount to cruelty towards the wife in the circumstances of the present case. However, frequently refusing to eat food cooked by the Petitioner and causing her mental anguish amounts to cruelty. I am unable to appreciate that someone who has worked hard all day would end up not having the appetite to eat, especially food prepared by someone the cross-petitioner described as a very good cook. It is like a situation where there is consistent refusal to have sexual intercourse which was held in Bonhomme v Bonhomme 13 MLR 70 to be cruelty. Further to cross- petitioner conceded to have perpetually quarreled with and used bad language against the petitioner, although he said it was both sides responsible. However, only the petitioner suffered depression in consequence and had to be treated for depression besides going through counseling sessions. I am satisfied that cruelty has been established herein as against the cross-petitioner.

I turn to the cross-petition and to the ground of adultery. The petitioner denies adultery although she admits to have associated with Mr. Shane Wynn Jones and to have spent a night or nights with him. For purposes of divorce a single act of adultery is enough if not condoned. It is trite that it is very rare that adultery will be committed in the open for all to see, if at all, just as it is rare to find persons in the act of committing adultery. Adultery is rarely proved by direct evidence (See Mhango v Mhango (1). 16(2) MLR 613, Hayter v Hayter and another 14 MLR 94;)

Inclination coupled with opportunity is often accepted by courts as proof of adultery unless the presumption is rebutted. According to Kumange, J. in Tembo v Tembo and Another 1995 (1) MLR 331 cohabitation between a man and his paramour amounts to adultery. In other words if the circumstances leave no doubt that adultery has been committed and that no other reasonable conclusion can be arrived at, adultery would have been proved.

In the present case it is admitted that the petitioner and Mr. Shane Wynn Jones spent nights together, alone, and at places including her own flat and at Pedros' Lodge in Blantyre. It is further proved that Shane Wynn Jones would pick the petitioner in the night and not return home that night and that the petitioner told the cross-petitioner that she had feelings for Mr. Jones. In-deed she would refuse to go home with the cross-petitioner, preferring to go with Shane Wynn Jones. In all these circumstances there can be no other reasonable conclusion to be drawn than that the petitioner committed adultery with Shane Wynne Jones. I find that the allegation of adultery has been proved beyond reasonable doubt in this case.

The result is that both the cruelty in the petition and the adultery in the cross-petition have been proved. This is a proper case to grant a *decree nisi* dissolving the marriage between the petitioner and the respondent/cross-petitioner. I grant a *decree nisi*.

This is a situation where either party has been responsible for the breakdown of the marriage. Costs are in the discretion of the court. Each party will bear its own costs.

As to custody of the child both parties are happy with their present arrangement of shared custody. They seek the court's endorsement. I am satisfied that the arrangement between the parties puts the welfare of the child as paramount and I endorse it.

**PRONOUNCED** at Lilongwe this 17<sup>th</sup> day of April, 2009.

R.R. Mzikamanda

**J U D G E**