



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

MATRIMONIAL CAUSE NUMBER 04 OF 2014

BETWEEN

DAWA FRANCISCA LOGA-LEMBERGER-----PLAINTIFF

AND

MATHEW LANDON LEMBERGER-----RESPONDENT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Namasala, Counsel for the Plaintiff

Defendant, Absent

Mrs Jere, Court Reporter

Itai, Court Interpreter

JUDGMENT

The Petitioner Dawa Francisca Loga Lemberger petitioned this court for the dissolution of her marriage to the respondent Mathew Landon Lemberger on the ground of cruelty. I am satisfied that the petitioner is domiciled in Malawi and that at the time when this petition was made, the petitioner was domiciled in Malawi. I am also satisfied that although this petition is uncontested, there is no collusion between the parties.

The petitioner and the respondent celebrated their marriage on 28th February 2003 at Manitowoc, County Registrar Deeds in Manitowoc, Wisconsin in the United States of America and later celebrated their marriage on 18th September 2004 in Malawi by having it officiated at St Louis Montfort Parish in Balaka, Malawi. The two have one child called Anana Loiose Lemberger born on 2nd of January 2011. The petitioner and respondent have been on separation for four years and each one of them is living on their own. The petitioner lives in Lilongwe Malawi and the respondent lives in the United States of America.

It is the petitioner's evidence that since the celebration of their marriage, the respondent has persistently treated her with cruelty and contempt and that his conduct has been so grave and weighty such that she can't reasonably be expected to live with him any longer. It is further in her evidence that the petitioner lied to her that upon being incarcerated for fraud against insurance yet documents from the website in the United States of America showed that he pleaded guilty for the offence and she only discovered when she was in Malawi. Further the petitioner says that the respondent has exposed her to loss of property, integrity, finances, reputation and credibility in the society and in the eyes of right thinking members of the society.

In conclusion the petitioner says that the respondent has been disrespectful and dishonest to her and has shown no commitment to marriage. The petitioner intentionally burnt down their two matrimonial houses one in Manitowoc and the other in Green Bay that led to his arrest. All these were calculated to claim money from insurers until he got detected and arrested. The respondent has also shown ungovernable temper in conducting himself which conduct has put the petitioner into ridicule and an emotional tailspin.

Cruelty as a ground for divorce is established once there is evidence of conduct of such a character as to cause danger to life or limb or to give rise to reasonable apprehension of such danger. In the case of Tembo vs Tembo 1995 IMLR 331, it was held that,

"Actions or words actually or physical or directed at the petitioner may be cruelty even though there is no intention to injure."

It is very clear from the petitioner's evidence, which evidence is unchallenged that the actions of the respondent amounted to cruelty. Such conduct by the respondent caused mental and emotional stress on the petitioner whereby injuring her mental health.

I am therefore satisfied that the allegations of cruelty have been established and proved. There appearing to be no any bar to my granting the petitioner the relief sought, I pronounce a decree nisi of divorce with costs to the petitioner.

DELIVERED THIS

DAY OF MAY 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE
