



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY

MATRIMONIAL CAUSE NO. 1 OF 2012

BETWEEN:

PATRICK UKA.....PETITIONER

-AND-

ZIONE UKA .....RESPONDENT

CORAM: HON JUSTICE JACK N'RIVA

Petitioner present

Respondent not present

Counsel for the petitioner Mr Kara

Counsel for the respondent not present

Court clerk: Mrs Mtegha

JUDGMENT

This is the petition of Patrick Uka seeking the dissolution of his marriage with the respondent Zione Uka on ground of cruelty. There is a cross-petition for the dissolution of the marriage on the ground of adultery. However, the respondent did not attend the hearing of the petition and her cross-petition. Thus, I only heard the petitioner.

The petitioner and the respondent are both Malawians. They lawfully married before the Registrar of Marriage in Lilongwe on 26<sup>th</sup> April 1999 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).

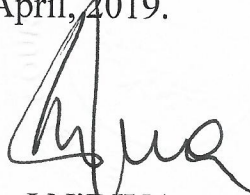
There are three children in the marriage born on 7<sup>th</sup> July, 1996, 21<sup>st</sup> July, 2005 and 20<sup>th</sup> July 2010.

The petitioner's story is that since the celebration of their marriage with the respondent, the respondent has treated him with cruelty. The particulars of the cruelty are spelt out in the petition and show that the respondent deprived the petitioner of his conjugal rights causing him to suffer mental anguish. Further, that the respondent had deserted the petitioner on 4<sup>th</sup> January, 2012 and had not returned to the matrimonial home to date.

I should consider whether the petitioner has proved that the respondent treated her with 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 *Bonhomme v Bonhomme* 13 MLR 70, the Court considered consistent refusal to have sexual intercourse to amount to cruelty. This is the case in this petition. I therefore find that the petitioner has proved cruelty on the part of the respondent. I grant a *decree nisi* dissolving the marriage between the petitioner and the respondent.

I will down another date to consider the issues incidental to the petition and the cross-petition.

**PRONOUNCED** this 15<sup>th</sup> day of April, 2019.



J N'RIVA

JUDGE