



IN THE HIGH COURT OF MALAWI
CIVIL CAUSE NO. 26 OF 1973.

BETWEEN

MAHOMED YUSUFPETITIONER

AND

JUBEDA NATHOO YUSUFRESPONDENT

Coram: Skinner, Chief Justice.

Savjani, Advocate for the Petitioner.

Chizumira, Advocate for the Respondent.

Kadyakale, Court Clerk.

JUDGMENT

The parties were married on the 1st of May, 1971, and the husband now applies to file a **petition for dissolution of the marriage notwithstanding that three years have not elapsed since its celebration.**

The ground relied on is that the husband has suffered **exceptional hardship** as a result of the wife's conduct. The intended petition seeks relief on the grounds of **cruelty** and **desertion**. The husband in his affidavit filed in support of the Summons says that there were harmonious relations between himself and his wife for two months after the marriage, but that in the month of August, 1971, the wife commenced to quarrel with him and that marital relations ceased in September. He deposes to various acts of cruelty on her part including the smashing of furniture and the burning of the wedding photographs and he says that from October, 1971 onwards she refused to perform any domestic work in the house or to cook his meals. She also informed him that she had no affection for him and she removed the remaining furniture from the houses She told him that since October, 1971, she was having sexual relations with a European. The husband's health deteriorated and he attended a psychiatrist. The exact length of time he attended on the psychiatrist is not made clear, but it is evident that he was attending from before November, 1971. and at least up until the 11th of September 1972. He suffered from reactive depression. In addition, the wife deserted the husband and refuses to go back to him.

The wife has filed an affidavit in reply in which many of the matters alleged by the husband are denied, and she says that he was ill from a time prior to the marriage. The approach to applications of this nature has been well set out by **Sir Jocelyn Simon, P., in W v W., (1966), 2 All E.R. 889 at 892.**

"On what material should the court form a judgment whether the case is one of exceptional hardship or exceptional depravity? I think that the approach of the court here is similar to that of the Divisional Court in applications under r.36 of the Matrimonial Causes Rules, 1959. In other words, the court cannot at this stage try whether the case is one of exceptional hardship or exceptional depravity, since this would involve deciding whether the allegations in the proposed petition are true: **all that the court can do is come to a conclusion that the allegations made in the affidavits filed on the applications are such that, if true, they would amount to exceptional hardship or depravity;** see **GODDARD, L.J., in Winter v Winter.** Nevertheless, the court is not bound to accept such evidence uncritically: it can consider it against the general background of the marriage as disclosed at this stage, and against any evidence filed in opposition."

I am of the opinion that what is deposed to in the affidavit of the husband discloses much more than the normal hardship which is present in most divorce cases, **and if true would amount to exceptional hardship.** I have taken into consideration the affidavit filed in opposition. There has been no notice by either party of a desire to cross-examine the deponents. All in all, I feel that I should allow the application. It is significant that the medical reports attached to the husband's affidavit show that the doctor was of the opinion that the reactive depression was caused by his unhappy relationship with his wife.

In addition to what I have already said I have taken account of the fact that there are no children of the marriage and that there seems to be no prospect of a reconciliation.

I order that the husband, Mohamed Yusuf, be at liberty to file a petition for the dissolution of his marriage with Jubeda Nathoo Yusuf, which was solemnized on the 1st of May, 1971 notwithstanding that three years have not yet passed since the time the said marriage was celebrated.

Pronounced in Chambers this 16th day of February, 1973.

SKINNER, CHIEF JUSTICE