



IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE NO. 810 OF 1980

BETWEEN

ANDREW NKONOPETITIONER

AND

TISSIE NKONORESPONDENT

Coram: Villiera, J

For the Petitioner	:	Mhone of Counsel
For the Respondent	:	Chiume of Counsel
Court Interpreter	:	Kaundama
Court Reporter	:	Kelly

JUDGEMENT

The petitioner, Andrew Nkono, prays for the dissolution of his marriage to the respondent on the ground of desertion by the respondent for a period of three years immediately before the presentation of the petition. The respondent denies being, guilty as alleged. She cross-petitions for the dissolution of her marriage to the petitioner on the grounds of constructive desertion. She avers that she was obliged to leave the matrimonial home because the petitioner's cruelty to her.

The parties were married at the office of Registrar of at Blantyre on the 12th October 1974. They thereafter cohabited at various places in district of Blantyre and finally at Chibembe Village within the district. There are no children of the union and I am satisfied from the evidence that both the petitioner and the respondent are domiciled in Malawi.

The petitioner informed the court that before he and the respondent were married, they discussed their religious beliefs. He was led to believe that both belonged to the Zambezi Evangelical Church. He was therefore surprised and shocked to learn after the marriage that the respondent and her parents belonged to the proscribed Jehovah's Witnesses sect. He tried to dissuade the respondent from associating with anyone who claimed to belong to the sect. He does not appear to have been successful because according to him, the respondent continued to invite persons of that

sect to the matrimonial home in his absence for scripture studies. In addition, these persons brought tracts and publications to his house. According to the petitioner, he ordered the respondent on numerous occasions to remove the offending publications from the matrimonial home and to conduct the bible studies elsewhere than in the house. The respondent on the other hand assiduously tried to convert the petitioner to the belief of the banned sect and was, according to the petitioner, disappointed when he refused to be converted.

There were other difficulties. It appears that after eleven months of marriage, the respondent was unable to conceive. She and the petitioner went to various hospitals for treatment without success. The marriage advocates were prevailed upon to assist but their efforts in bringing traditional medicines were also unsuccessful. The respondent says the petitioner was unhappy about this situation. She claims that he constantly mocked her and assaulted her with a view to her leaving the matrimonial home. At that time, the petitioner and respondent were living at the respondent's home. The respondent claims further that the ill treatment continued when they moved to Chibembe Village. According to the respondent, the petitioner severely assaulted her on the 10th November 1976, and locked her out of the matrimonial home. She collected her belongings and went to her own village. She then went to the petitioner's home in Chiradzulu and reported to the advocate. The parties have never lived together since that date.

The petitioner on the other hand conceded that he was not happy about their childless marriage but claimed he had never assaulted the respondent for that reason or any other. He explained that the respondent's parents were picked up by the Police in November 1976, and that he had warned the respondent, once again, to remove any incriminating banned publications from the matrimonial home. She was annoyed and a quarrel broke out which resulted in her assaulting the petitioner on the thigh with an iron rod. According to the petitioner, the respondent did not sleep in the matrimonial home but he denies having locked her out of it. There is a conflict as to what happened in February 1977, when the parties and their advocates met at the respondent's home to discuss the problems, which had arisen. The petitioner and his witnesses say that the respondent declared at the meeting that she no longer loved the petitioner and that as far as she was concerned the marriage was at an end. The respondent is said to have authorised the petitioner to marry another woman, if that is what he wanted. The respondent and her witness on the other hand claim that the petitioner declared that he no longer loved the respondent.

I have had some difficulty in deciding as to what happened at the meeting. I did not believe that either of the parties have told me the truth. I have the distinct impression that both the petitioner and respondent tried to appear before me in the best possible light. The parties, however, have lived apart and separate to this day and the respondent claims that she not attempted to return to the matrimonial home because the petitioner had threatened her serious injury if she did so. There was an attempt by the petitioner to effect a reconciliation through the good offices of the Department of Legal Aid. The respondent is said to have refused to return. The present proceedings were accordingly commenced.

I have tried to ascertain the real reason why the marriage has broken down. The respondent claims that she was obliged to leave the matrimonial home because of the petitioner's cruelty as a result of her inability to conceive. Has it been satisfactorily proved that the petitioner was cruel to the respondent? The evidence is not very satisfactory. The parties lived in three different places before

they broke up. Although the respondent claims that the ill treatment to her persisted in all these places, she nevertheless continued cohabitation. It has been submitted on behalf of the petitioner that if his conduct was so reprehensible, she should have left the matrimonial home much earlier than she did.

It seems to me from a perusal of the evidence and from my observation of the parties that this marriage has collapsed because of conflicting religious beliefs. The respondent has admitted that she and her parents used to belong to the outlawed Jehovah's Witnesses sect. In November 1970, the authorities thought it necessary to detain her parents. The respondent herself was picked up for questioning by the Police. It is very likely that the petitioner had tolerated the respondent's religious beliefs so long as the authorities were unaware of what was happening. The situation drastically changed when the Police started investigations. I have not received evidence on this point but it is reasonable to assume that the petitioner did not want to be involved. He may have informed the respondent not live in his house unless she gave up her beliefs. He may also have assaulted her in order to reinforce the warning. On the other hand, the respondent may not have been willing to renounce her beliefs in order to save her marriage

I do not for a moment, believe that the petitioner was cruel to the respondent or that the marriage has broken down because of the respondent's inability to conceive. The marriage broke down only after two years. The parties were fairly young persons when they married and one would have waited a longer period if the problem in the family was their inability to have a child. My own view is that the parties had reached a point where the petitioner was saying that the respondent should leave him if she did not renounce her religion and the respondent, though in love with the petitioner, could not or was unwilling to do so. The respondent is in my view, solely to blame for the marriage breakdown. She persisted in adhering to the proscribed sect. I fully appreciate that the respondent is entitled to believe in Jehovah's Witness but it would be wholly unreasonable to expect the petitioner to continue to live with her under these circumstances. In Fletcher v. Fletcher 1945 1. A.E.R. at page 582, the husband insisted on the wife living with him in a religious community where the wife found conditions irreconcilable with a proper married life. It was held that he had deserted and she was granted a decree of divorce.

The Jehovah's Witness sect is proscribed in this country and it is an offence to profess to its beliefs. The petitioner was fully justified in ordering the respondent to renounce her beliefs or leave the matrimonial home. She chose to leave and I find, in my judgement, that she had no reasonable cause for doing so. She is in desertion. I dismiss her cross-petition and grant the relief prayed for. I pronounce a decree nisi of divorce in favour of petitioner on the ground that the respondent has for a period of three years immediately before the presentation of petition been guilty of desertion. Each party will bear his or her own costs of the proceedings.

Pronounced in open court this 14th day of March, 1981, at Blantyre

J.B. VILLIERA
JUDGE

