

IN THE HIGH COURT OF MALAWI, BLANTYRE

CIVIL CAUSE NO. 554 OF 1979

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BETWEEN:

ESTA SICHA MAKWINJA ..... PETITIONER

and

ERASMUS GRATIA MAKWINJA ..... RESPONDENT

and

JESSIE MAKWINJA ..... CO-RESPONDENT

Coram: The Hon. Mr. Justice Villiera

Msosa : of Counsel for the Petitioner  
Respondent : unrepresented/absent  
Manda : Court Reporter  
Kadyakale : Official Interpreter

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JUDGEMENT

By her amended petition, the petitioner prays for an annulment of her marriage to the respondent on the ground that at the time of her alleged marriage, the respondent was already lawfully married to the co-respondent and that this marriage was still subsisting. The respondent has not filed an answer and did not appear at the hearing.

The petitioner and respondent went through a ceremony of marriage at the office of the Registrar of Marriages on the 2nd March, 1971. A copy of the Marriage Certificate was produced. The respondent was described as a single person at the time. The parties lived together for only a month because the petitioner then discovered that the respondent was already a married person. The petitioner and respondent were living at Soche Hill College and the co-respondent was living at Chirimba. It appears that the respondent lived alternatively with the petitioner and co-respondent.

The co-respondent gave evidence to the effect that she was married to one Erasmus Chagona at Cape Town, South Africa, in 1964. She produced a Marriage Certificate to that effect. She stated further that her husband is also known as Makwinja, and that the person named Erasmus Gratia Makwinja, who went through a ceremony of marriage with the petitioner, is her husband. Finally, the co-respondent stated that her marriage to the respondent is still subsisting.

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I am satisfied from the evidence that at the time the petitioner and respondent went through the ceremony of marriage at Blantyre in 1971, the respondent was already married to the co-respondent and that this marriage was still subsisting. I accordingly declare in terms of section 34 of the Marriage Act (Cap 25:01) that the marriage had and celebrated between the petitioner and the respondent at the office of the Registrar of Marriages on the 2nd March, 1971, to be null and void on the ground that the respondent was at that time already lawfully married to another woman.

The respondent is condemned in the costs these proceedings and the Chief Public Prosecutor to whom a copy of this judgement is to be forwarded by the Registrar of this Court, is to decide whether there should be a prosecution for bigamy.

Delivered in open court this 11th day of October, 1980.

  
J.B. Villiera  
JUDGE