

IN THE HIGH COURT OF MALAWI AT BLANTYRE
CIVIL CAUSE NO. 266 OF 1979

BETWEEN:

JACOBA MAILOSI PLAINTIFF

- and -

RAFAEL MAILOSI RESPONDENT

- and -

MARY MAILOSI CO-RESPONDENT

Coram: VILLIERA, J.

Counsel for the Petitioner	:	Mrs. Msosa
Respondent, present	:	Unrepresented
Co-Respondent, absent	:	Unrepresented
Court Reporters	:	Manda/Longwe
Official Interpreter	:	Mpalika

JUDGMENT

The petitioner, Jacoba Mailosi, prays for the dissolution of her marriage to the respondent, Tsora Rafael Mailosi on the grounds of the respondent's adultery and cruelty. Particulars of these charges appear in the petition. The respondent admits that he has committed adultery with the woman named but avers that the offence was instigated by the petitioner who has condoned it. Additionally, the respondent admits assaulting the petitioner on only one occasion as a result of some provocation when she was unable to produce a sum of K200 entrusted to her by the respondent.

The parties were married on the 21st April, 1961, at the Magistrate's court at Salisbury in the then colony of Southern Rhodesia. After the marriage, the parties lived at divers places in the colony and eventually they came to Malawi in 1969. The reason for the removal to Malawi is simple. The respondent is a Malawian and comes, according to his evidence, from Chikwawa. He was merely bringing his wife and family home. There are five children of the marriage and I am satisfied from the evidence that the parties are domiciled in Malawi. This marriage was contracted in a foreign country and ordinarily there should have been evidence indicating whether this was a valid monogamous marriage according to the law in the then Southern Rhodesia.

I have not received any such evidence except the petitioner's verbal claims that it was a valid monogamous one. The marriage certificate, which was produced, however, clearly shows that the marriage was contracted under and by virtue of the Marriage Act (Chapter 150 of the Statute Law of Southern Rhodesia). I have perused this statute and I am satisfied that it provided for the celebration of monogamous marriages between British subjects in the colony. I accordingly have jurisdiction to try the issues in these proceedings.

It is quite clear to me that the respondent is, as has been alleged, a man of violent and ungovernable temper. He has freely admitted that early in 1977 he severely assaulted the petitioner with an iron rod which resulted in her sustaining a big cut on the forehead. That wound required some eight stitches at the Queen Elizabeth Central Hospital and the respondent was convicted at the traditional court for the assault and was sentenced to pay a fine of K17.00. The respondent alleges that he had assaulted her to this extent because she had been unable to produce a sum of K200 that was entrusted to her. The petitioner has denied this allegation and I believe her. It is quite clear to me that the petitioner has never had such a sum given to her. I accept her story that she has for the most part had to fend for herself and the family because the respondent does not earn enough to feed the family and that the little that he earns is spent on kachaso and other intoxicating liquor.

It is clear also that when the respondent is in his drunken mood, then he is invariably violent. During the latter part of 1977, he knocked out two of the petitioner's front teeth. Even at this stage she appears to be in a very sorry state. She is shrunk and has difficulty in enunciating words clearly. It may be that she is ageing naturally but quite frankly her present physical appearance is a result of the respondent's treatment of her. The local Chairman of the Malawi Congress Party at Machinjili, where the parties were living in 1978, for example gave evidence of a horrifying incident. He stated that during the evening of a certain day, the petitioner rushed to his house for protection. She was being pursued by the respondent who was wielding an axe and was intent on murdering her. I am not exaggerating the story because the witness appeared very upset when the respondent denied the allegation in court. I have seen the axe and I am satisfied that the petitioner would not have been around pleading for a divorce if the respondent had accomplished his purpose on that day. After this incident, the petitioner left the matrimonial home and went to live with her married daughter. On several occasions the respondent went there and threatened to assault her. He actually assaulted her on one occasion.

While the petitioner was living with her daughter, the respondent started living with another woman. He admits that he now has two children with this woman. He alleges that the petitioner encouraged him to take another wife as she was weak after some prolonged illness. The petitioner has denied ever having encouraged the respondent in committing the adultery. She says that the respondent took the other woman because he alleged the petitioner was old. I have seen the petitioner and observed her. I do not think she would freely allow the respondent to be involved with another woman. I accordingly believe her story.

I do not think that I need, in a case of this nature, cite any relevant authorities. The facts speak for themselves. The allegations of cruelty and adultery have amply been proved. The petitioner is entitled to the relief prayed for. I accordingly grant a decree nisi of divorce to the petitioner on the grounds that the respondent has been guilty of cruelty and adultery since the celebration of the marriage. Costs of these proceedings will be paid by the respondent and consideration of the other reliefs is adjourned into Chambers.

PRONOUNCED in open court this 3rd day of April, 1981, at Blantyre.


J.B. Villiera
JUDGE