

IN THE HIGH COURT OF MALAWI AT BLANTYRE
CIVIL CAUSE NO. 514 OF 1979



BETWEEN:

ESNATI TSITSI PETITIONER

~~and~~

DAVIDE B. TSITSI RESPONDENT

~~and~~

MRS. A.E. TSITSI CO-RESPONDENT

Coram : Unyolo, J.
Nyirenda of Counsel for the petitioner
Tsitsi, respondent, in person
Kalimbuka - Official Interpreter
Ngalu - Court Reporter

JUDGMENT

The petitioner prays for the dissolution of her marriage to the respondent on the ground of his adultery with the co-respondent. The respondent denies the allegation and in turn he cross-petitions for the dissolution of his marriage to the petitioner on the ground of cruelty.

The petitioner and the respondent joined together in matrimony sometime in 1973. However it was only on 31st May, 1975 when they married under the Act at the Office of the Registrar-General in Blantyre. They lived and cohabited together first in Ndirande location in Blantyre and subsequently at Kawale location in Lilongwe. Both the petitioner and the respondent are Malawians resident and domiciled in this country. There is issue of the marriage, namely Manuel Tsitsi, a boy born on 26th October, 1973; Sofina Tsitsi, a girl born on 16th May, 1975; and Mabvuto Tsitsi, a boy born on 12th February, 1979.

I propose to deal first with the petition. Put briefly, the petitioner's case on the pleadings is that since June, 1978 the respondent has habitually committed adultery with the co-respondent and that he has as a matter of fact purported to marry her.



Pausing there, it is common case that the parties here lived and cohabited together happily but only for a few years. It was not long before the marriage soured. Matters then came to a head in 1978 when the respondent sent the petitioner packing to go and stay with his parents in the village. She was there for three months and thereafter she returned to the matrimonial house only to be despatched to a rented house in one of the locations on the outskirts of Lilongwe.

The evidence relied on by the petitioner is basically circumstantial. She told the court that in the first instance the respondent did intimate to her, before he sent her away from the matrimonial home, that he wanted to marry another woman from his home area. It was the petitioner's evidence further that when she returned to the matrimonial home (from the respondent's home, that is), she found a woman there who however disappeared before she had a chance to talk to her to find out who she was. She said that when however the respondent came he disclosed to her that the woman was his "wife" and accused her of interfering. Finally, the petitioner said that she saw the woman a second time at the matrimonial home when she went there on a subsequent occasion. And she testified that when she entered the house she found a Bible with the name "Mrs. A.E. Tsitsi" written on it.

On these facts the petitioner asks the court to draw the inference that the woman she says she found at the matrimonial home on the two occasions is the co-respondent named in this case and further that the respondent committed adultery with her.

I have given the matter most anxious consideration. The respondent does not dispute having sent away the petitioner from the matrimonial home. He said the petitioner was herself to blame for this in that she took to nagging at him all the time with the result that he reckoned it was dangerous for them to continue living under one roof. The respondent went on to say that after the petitioner had left the matrimonial home he employed a nanny, Nabanda by name, to look after his three children from a previous marriage. He denied having brought the co-respondent to the matrimonial home either as a wife or at all and/or having committed adultery with her. Indeed he said he does not know anybody by that name. Finally it was the respondent's evidence that it was only in January 1980, long after the issue of the petition in this case, that he succumbed to an adulterous relationship with one Janet Jabes. He disclosed that he is now living with that woman in adulterous union and that already there are three children, the first having been born in December, 1980.

I pause there to observe that the respondent emerged unshaken in his evidence. It is also to be observed that the petitioner failed to trace the co-respondent. Having so failed she then applied to the court to serve the petition upon the co-respondent by advertisements in the local press.

Even then the co-respondent did not surface. In my judgment these facts tend to lend credence to the respondent's contention that the co-respondent does not exist.

I said earlier that the petitioner said she got the co-respondent's name from a Bible. She did not however bring the Bible in question to the court.

Further it is the petitioner's own evidence that on both the two occasions she went to the matrimonial home the woman quickly disappeared. Surely, if the woman were the respondent's other "wife" one would expect her to have remained there rather than turntail.


All in all I am not satisfied that the inference of adultery can safely be drawn upon the available evidence. Accordingly the petition fails and is dismissed.

But before moving on to deal with the cross-petition I should perhaps mention that I have sympathy for the petitioner. There can be no doubt that she has gone through very humiliating experience. It will however be recalled the respondent admitted at the hearing that he has since January, 1980 habitually committed adultery with one Janet Jabes. The petitioner may therefore bring fresh proceedings if she is still minded to have the marriage dissolved. But let it not be thought that I am, in saying this, in any way encouraging her to do so.

I now turn to the cross-petition. The respondent's case on the pleadings was firstly that the petitioner is a woman of drunken habits and, secondly, that she treated him and his children from his previous marriage with cruelty. However, when the respondent's turn to give evidence came he simply defended the petition and said that that was all he had to say in this case. It was only when the court drew his attention to the cross-petition that he came up with some evidence. With respect the evidence adduced on this aspect was by and large hearsay. Indeed even if the same were to be accepted, the incidents disclosed were of a trivial nature which cannot stand the test of legal cruelty. In short, there is no merit in the allegations. Accordingly I dismiss the cross-petition.

Each party is to pay its own costs.

PRONOUNCED in open Court this 12th day of October, 1984 at Blantyre.


L.E. Unyolo
JUDGE