

IN THE NATIONAL TRADITIONAL APPEAL COURT SITTING AT LIMBE,
BLANTYRE.
CIVIL APPEAL CASE NO. 25 OF 1979

BETWEEN

PANGANANI PANJAAPPELLANT

-VS-

MARGARET MAGOMBORESPONDENT

CORAM:

HON. JUDGE CHIEF CHIMUTU (CHAIRMAN)
HON. J JUDGE CH I CHIEF NAZOMBE (MEMBER)
HON. JUDGE CHIEF MLONYENI (MEMBER)
HON. JUDGE MR. C. C. J. CHIPINGA (MEMBER)
HON. JUDGE MR. H. J. MHONE (MEMBER)

JUDGEMENT

This is an appeal from the decision of Mapanga Traditional Court against an order for a dissolution of marriage.

The appellant and the respondent were lawfully married for one and a half years. During that period, a child was born to them but died. After the death of the child, the parties were advised that they had to cease sleeping together pending the expiration of the period of ritual observation in connection with the death in accordance with customary law. The appellant, however, would not wait for that, and he left the matrimonial home and went to marry another woman elsewhere. The period expired, but the appellant did not return to the village. After waiting for some time, the respondent instituted court proceedings on the ground of **desertion**. Mapanga Traditional Court ordered a dissolution of the marriage and that the appellant should pay a compensation of K25.00 to his wife which was to be used by her to find medicine to *protect* herself against death for having been damaged by the appellant by reason of his having married and slept with another woman, and part of the money was to be used for building a house for herself and for clothing. The appellant approached elderly people at the village and apologized for what he had done, stating that he realized that he had damaged his wife but he would now want to resume married relations with his wife. The elders, however, pointed it out to him that he was *hot* because he had been sleeping with another woman, and his wife was *cold* because she was observing the ritual rites and had not slept with any man. To normalize their relations, they should first find another man, a hired man *'fisi'* (hyena) to sleep with his wife before he himself would be allowed to sleep with her so that she, too, should be *hot* when they should meet for the purposes of sleeping together, otherwise she was going to die., But the appellant would not approve of the idea of hiring a *'fisi'* to sleep with his wife with his knowledge, and so he appealed to Thyolo District Traditional Appeal Court. Before the

appeal was heard, rumours reached him that his wife was cohabiting with another man a '*fisi*' presumably. The District Appeal sustained the decision of the court of first instance and dismissed the appeal and the appellant appealed further to this court.

In his grounds of appeal, the appellant argued that he did not see any reason why they should hire a '*fisi*' for his wife when he had apologized to them for what he had done. Moreover, the court erred by dissolving their marriage because he and the respondent still loved each other.

As regards the maintenance of the child, (?) we observe that the appellant was ordered to pay K15.00 per month for one and a half years that is to say, for 18 months. The record shows that the appellant has paid a total of K427.00. If we deduct the sum of K48.00 from this amount, there is a balance of K379.00. And when we divide this amount by K15.00, we find that the appellant has paid instalments amounting to 24 months. This means that the appellant has not only satisfied the court order, but has, as a matter of fact, paid more than what he was required to pay in one and a half years. And in the circumstances, the order is hereby determined. In allowing the appeal, however, we would like to make it very clear to the appellant that the child is his, and therefore, he should give the child every possible assistance from time to time, but we make no specific order in this respect. Appeal allowed.

PRONOUNCED IN OPEN COURT AT LIMBE, BLANTYRE THIS 11TH DAY OF JUNE, 1979.