

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MATRIMONIAL CAUSE NO. 14 OF 1999

BETWEEN:

JOYCE Z. MPANDO.....PETITIONER

AND

WILLIAM MPANDO.....RESPONDENT

AND

KARON ONG.....CO-RESPONDENT

CORAM: MKANDAWIRE, J

Kanyuka (Mrs) of Counsel for the Petitioner

JUDGEMENT

The petitioner in this case is praying for the dissolution of her marriage to the respondent on the ground of adultery with the co-respondent and the parties cited.

The petitioner is a bank clerk and work for the Commercial bank of Malawi in Blantyre. The respondent is a legal practitioner and has law firm in Blantyre. They are both Malawians. The petitioner and the respondent were lawfully married in June, 1992 at the Registrar's General office in Blantyre. After the celebration of their marriage they cohabited in Blantyre. The parties are domiciled in Malawi. There are two children of the marriage namely T. M. born on [date] and D. M. born on [date].

There divorce proceedings are not defended. I must therefore remind myself of the dangers of collusion. I am satisfied on the evidence that there is no collusion.

It would appear the trouble in the family started with the parties parents. Their mothers quarreled. That problem was discussed and resolved but then the petitioner was surprised when the respondent announced that marked the end of the marriage between them. The petitioner could not believe it and she stayed in the matrimonial home for the next 3 days. The respondent then assaulted her and she had to leave. She joined here relatives in Soche East. She took with her D. while the older child T. remained with the respondent.

The petitioner had hoped that they would reconcile but that was not to be. The respondent started seeing other women. On an unsatisfied day, she saw a woman by the name of Chimwemwe Makhuwira with her child T.. The petitioner took interest in the woman who was with her child. This was at Ginnery Corner in the City of Blantyre and as it happened both women were coming out of the same minibus and it was T. who first saw and recognised his mother. The petitioner asked the other woman how come she was with T.. Chimwemwe Makhuwira's explanation was she was living with the respondent and that on that day she was taking the child to the hospital for treatment. Chimwemwe

Makhuwira further explained that T. was not causing any problems. On another occasion the petitioner saw Chimwemwe Mkhuwira with T. at the Zoo in Blantyre.

After sometime again on an unspecified day, the petitioner met the respondent at Lunzu. The respondent was in the company of a woman by the name of Blandina Khozi. Naturally the petitioner took interest in the other woman. They greeted each other and Blandina Khozi explained that she was living with the respondent. She told the petitioner that T. was fine. Blandina Khozi went on to say that she wanted to see the other child D.. The petitioner said she would bring her.

On yet another occasion, the petitioner saw the respondent with a white woman by the name of Karon Ong. It was the petitioner's evidence that the respondent is living with Karon Ong who is the co-respondent in these proceedings. It was further the petitioner's evidence that the respondent and the co-respondent went through a ceremony of marriage at the respondent's village in Ntcheu. That was on 3rd July 1999. By December 1999 the co-respondent was pregnant.

I now pause to evaluate the evidence. I start with Chimwemwe Makhuwira and Blandina Khozi. The petitioner told the Court that these two women were living the respondent. I have no reason to doubt the evidence of the petitioner. If the respondent was living with these women, the only inference to be drawn is that he was committing adultery with them. How else would he live with them. As to proof adultery I can only refer to the case of **Banda v Banda Matrimonial** Cause No. 10 of 1991 in which Banda C.J. had this to say:

“It is not always possible to prove adultery by direct evidence. It is indeed rare that parties are surprised in the very act of adultery. Where there is no confession the fact of adultery is interred from circumstances which lead to a fair inference that adultery has been committed. But before, such, inference can be satisfied that there was mere

opportunity before it will find that adultery was committed.”

In my view where a man and a woman are living together like the respondent was with these ladies, it would be fair and reasonable to infer that adultery has taken place. I am therefore satisfied that the respondent committed adultery with Chimwemwe Makhuwira and Blandina Khozi.

I now turn to the co-respondent. The respondent and the co-respondent were served with both the petition and the notice of trial. They chose not to defend. In the case of **Njikho v Njikho** Civil Cause No. 828 of 1986 (unreported) Unyolo J, said that failure to defend is enough corroboration of adultery. I cannot agree more. In the instant case that respondent and the co-respondent went through a ceremony of marriage and are living as man and wife. By December 1999 the co-respondent was pregnant . What better of evidence of adultery would a Court be looking for. I am therefore satisfied with the respondent has indeed committed adultery with Karon Ong, the co-respondent.

In the result I find that the respondent is guilty of the matrimonial offence of adultery. I see no bar in granting the relief the petitioner is seeking. I grant the decree nisi that the of marriage between her the respondent be dissolved. The respondent and the co-respondent are condemned in the costs of these proceedings.

The question of custody of the children is to considered in a separate application

Made in open Court this 16th day of February 2000 at Blantyre.

M P MKANDAWIRE

JUDGE