

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MATRIMONIAL CIVIL CAUSE NUMBER 9 OF 2004

BETWEEN:

MAURICE ISAAC CHIKAPA

PETITIONER

AND

JOANA CHIKAPA

RESPONDENT

CORAM: Hon. Justice Katsala

Kalua of the counsel for the petitioner

The respondent, absent

Mrs Mbewe, official interpreter

JUDGMENT

Katsala J,

The petitioner prays to this court for the dissolution of his marriage with the respondent on the ground of cruelty. The respondent neither challenged the petition nor attended the hearing of the petition. There is also an issue as to the custody of the child of the marriage and settlement of property.

The parties were married on 4th September 1998 at the Registrar General's Office in Blantyre. However, on the insistence of the respondent, the parties did not live together until 8th April 2000

after the marriage was officiated at a Roman Catholic Church. There is one issue of the marriage, Innocent, born on 16th June 1999.

The petitioner's case is that during the marriage he has been subjected to diverse acts of cruelty perpetrated by his wife. In the year 2000 after they officiated the marriage, they stayed together for only one month. Thereafter the respondent went to stay with her parents in Balaka District. She said her parents were having family problems and that she needed to be there. This was done without prior arrangement with petitioner.

At one point, the petitioner lost his job. He looked for another one. He found one but tenable in Mozambique. However, he failed to take it up because the respondent hid his passport. She only gave it back after the offer of employment had lapsed. He does not know why the respondent did this.

In May 2001 he purchased a house in Chilobwe Township in the City of Blantyre. He agreed with the respondent that ownership should be registered in the name of the child. However, the respondent went behind his back and fraudulently changed ownership of the house into her own name. Now she claims that the house belongs to her. At times, she chases the petitioner from the house. She even throws his clothes out of the house whenever they quarrel.

In February 2003, the petitioner fell ill. The respondent refused to look after him. She even refused to prepare food for him. He had no choice but to leave the matrimonial home and stay with his sister at Chilomoni Township in the City of Blantyre. It would appear that the respondent is a woman of ungovernable temper. Most of the times, she beats the petitioner when they quarrel. When he locks himself in the bedroom, she breaks the door open using an axe or a panga knife. These acts cause fright and fear in the petitioner such that he is forced to sleep out of the house.

The respondent frequently brought into the matrimonial home concoctions of traditional medicine without the petitioner's knowledge. When asked about them she would get angry and become uncooperative. On one occasion, the petitioner put the concoctions in his motorcar.

However, in response to this the respondent smashed the motorcar. At one point on return from a trip to RSA, the petitioner found traditional medicine inside a pillow. He complained about this to his sister who took the liberty of confronting the respondent about it. The respondent admitted putting the medicine in the pillow. She said it was meant to protect their child against unknown diseases, which would have been caused by the petitioner's promiscuity.

Most of the times the petitioner was psychologically devastated and worried because of the respondent actions. He therefore moved out of the matrimonial home on 5th March 2003. He believes that the marriage has irretrievably broken down.

Cruelty is conduct of such a character that would cause danger to life, limb or health (bodily or mental) or to give rise to a reasonable apprehension of such danger, *Dorrington v Dorrington*[1993] 16(1) MLR 73.

Counsel for the petitioner has submitted and I am in total agreement with him that the evidence before the court proves that the respondent is guilty of the matrimonial offence of cruelty. In *Kayambo v Kayambo*, civil cause number 162 of 1983 (unreported) the court held that the administration of African medicine to the other spouse without their consent amounts to legal cruelty. In the instant case the respondent used to bring traditional medicine into the matrimonial home for unexplained purposes. When asked about them she became violent. I have no doubt in my mind that indeed the petitioner must have felt that his life was in danger. In the circumstances of this case it is my considered view that the petitioner is justified in fearing that further acts of violence will be perpetrated against him if he continues to stay with the respondent as husband and wife. The conduct of the respondent in damaging the petitioner's motor car, breaking the matrimonial bedroom's door, throwing of his clothes out of the matrimonial home, and failing to look after him when he fell ill, render credit to such fear. He has a reasonable apprehension of suffering bodily and mental injury.

In *Kamlangira v Kamlangira*[1966-68] ALR Mal. 301 it was held that proof of willful neglect to maintain may be sufficient to establish cruelty as a ground for divorce. In my view, the respondent's willful refusal to prepare food and or look after the petitioner when he was ill

amounted to cruelty.

Both the petitioner and the respondent are domiciled in Malawi. I am satisfied that there was no condonation of the cruelty and that there has been no collusion between the parties. This is a case in which it is proper to pronounce a decree nisi of divorce against the respondent on the ground that since the celebration of the marriage between them she has treated the petitioner with cruelty, and I order accordingly. Costs are for the petitioner.

Arguments on the issue as to the custody of the child of the marriage, Innocent and as to settlement of property will be heard in chambers.

Pronounced in open court at Blantyre this 22nd day of February 2005.

J Katsala

JUDGE