

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

**MATRIMONIAL CASE NO. 09 OF 2007**

**BETWEEN**

**CARL LOPES ..... PETITIONER**

**AND**

**KARIMA ICAM LOPES ..... RESPONDENT**

**CORAM** : **HON. JUSTICE MZIKAMANDA**  
: Mwale, Counsel for the Applicant(s)  
: Malera, Counsel for the Respondent  
: Mrs. Kabaghe, Court Reporter  
: Mr. Kaferaanthu, Court Interpreter

**JUDGMENT**

This is the petition of Carl Lopes seeking the dissolution of his marriage with Karima Icam Lopes on the ground unreasonable behavior. The respondent has cross-petitioned for the dissolution of her marriage with the Petitioner on the grounds of adultery.

The Petition shows that the Petitioner Carl Lopes married the respondent Karima Icam Lopes then Karima Icam Ibrahim on 19<sup>th</sup> May 2000. The marriage was

celebrated at the Office of the District Commissioner, Lilongwe in the Republic of Malawi. After the celebration of the marriage the parties lived and cohabited at divers places in Mzuzu and Lilongwe, Malawi. There are two issues of the marriage namely Tyraan and Tabitha aged 6 years and 2 years respectively. The petitioner is self-employed, operating in the style of Doxa Holdings Limited and the Respondent is an Administration Manager at Entyres Limited. The Petitioner and the Respondent are domiciled in Malawi. Since the celebration of the marriage the Respondent has behaved unreasonably so much so that the petitioner can not be expected to live with her in that she has shouted at and physically attacked the Petitioner both at home and public places. There have been no previous proceedings in the High Court or any subordinate court in Malawi with reference to the marriage. The petitioner has not in any way been accessory to or connived at or condoned the Respondent's behavior and that the Petition is not presented in collusion with the Respondent.

In response the Respondent denies being guilty of unreasonable behavior as alleged or at all. She denies shouting at and physically attacking the Petitioner at home or in public places. The Respondent cross-petitioned for the dissolution of her marriage with the Petitioner on the ground that the Petitioner has frequently committed adultery with Mona Khukkerrud. The particulars of the adultery are that between April, 2007 or thereabouts to the date of the petition the Petitioner has committed adultery with the said Mona Khukkerrud and that the Petitioner admitted having an affair and committing adultery with the said Mona Khukkerrud. She avers that she has not in any way been accessory to, connived

at, condoned the adultery or presented the cross-petition in collusion with the Petitioner.

In Court the Petitioner stated that his marriage with the Respondent has for the past seven years been going down hill, with no respect for each other and sometimes became violent. They would get into big argument in public places and the Respondent would throw things at him. A few times they invited the intervention of their Pastor at the Capital City Baptist Church but that did not take them very far. They have lived separately for a year and nine months.

During cross-examination he stated that he lives in Area 12 with three other people in the house. These are two males and two females. He conceded that he did commit adultery with Mona and that he admitted this fact to the Respondent. That happened after he moved out of the matrimonial home and after he had petitioned for divorce. He said that there were numerous incidents when the Respondent threw things at him. They shouted at each other and had arguments and there was no understanding such that they could not live together in the same house. The Respondent conceded that in 2003 and 2004 she threw things at the Petitioner because he had an affair and he confessed. Thereafter he had an apartment and he had a second affair with a lady from Beira, Mozambique. They separated for three months and then reconciled. Even then things were not going on well and the Petitioner became very cold, very distanced and very disrespectful. The second affair was with Mona between 2006 and 2007. The Petitioner and the respondent decided to separate.

Such is the evidence in the matter. The Petitioner and the Respondent are domiciled in Malawi. I am satisfied that this petition has not been brought in collusion between the Petitioner and the respondent.

I have to consider the petition first. The Petitioner seeks to dissolve the marriage on the ground of unreasonable behavior on the part of the respondent. I have struggled to fit that ground in any of the known grounds of divorce under the Divorce Act. I am unable to place unreasonable behavior anywhere. The petition particularizes the throwing of items at the Petitioner and the use of abusive words. In the Petitioner's words that conduct came from both the Petitioner and the Respondent. How then could the same conduct be unreasonable when it comes from the Respondent and not when it comes from the Petitioner? At one point a thought crossed my mind that the Petitioner might have wanted to invoke cruelty as ground of divorce. However he did not use cruelty as ground for divorce. I imagine he did so deliberately knowing that what he called unreasonable behavior did not amount to cruelty at law. Cruelty is conduct that may cause danger to life, limb or health, bodily or mental harm or gives reasonable apprehension of such danger. (See *Hayter v Hayter and Another* 14 MLR 94). The Petitioner has not shown that the conduct of the Respondent had such a character as to amount to cruelty. The Respondent explained her conduct of throwing objects at the Petitioner saying that she was angered by the fact that the Petitioner had an affair with another woman and that the Petitioner admitted this to her. That assertion was never challenged. In those circumstances it is difficult to see how the conduct of the Respondent could be said to be unreasonable. The Petition is not made out.

The cross-petition by the Respondent is for the dissolution of the marriage on the ground of the Petitioner's adultery. The Petitioner admitted the adultery when the Respondent confronted him and he admitted in this court. There can be no better proof of the adultery than the Petitioner's own voluntary admission to the fact of adultery. The cross-petition succeeds as there has been proof of the adultery by the Petitioner. The Petition failed but the cross-petition succeeds. I grant *decree nisi* for the dissolution of the marriage between Carl Lopes and Karima Iqram Lopes.

Custody adjourned to Chambers.

R.R. Mzikamanda

**J U D G E**