

IN THE HIGH COURT OF MALAWI, BLANTYRE

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 856 OF 1986

BETWEEN:

TRINITY CHATAIKA PETITIONER

- and -

PATRICK CHATAIKA RESPONDENT

Coram: MBALAME, J.

Chizumila, Counsel for the Petitioner
Respondent, absent, unrepresented
Manda, Court Reporter
Nkhoma, Official Interpreter

J U D G M E N T

The petitioner in this case Trinity Chataika, to whom I shall refer as the "petitioner" in the rest of this judgment, prays for an order declaring her marriage with one Patrick Chataika, the "respondent", null and void. The petitioner and the respondent went through a form of marriage at the office of the Registrar General in the City of Blantyre on 3rd November, 1979. After the said ceremony the parties lived and cohabited as husband and wife at divers places and finally at Chinyonga in Blantyre and thereafter the respondent left for Mutare in the Republic of Zimbabwe, where he is currently residing. There are now living two children of the union.

The question of domicile did exercise my mind to some extent during the trial and this was because, in his affidavit of 16th December, 1986, which was to support an application to dispense with service of the petition on the respondent, Counsel for the petitioner deposed that the respondent had taken up Zimbabwean citizenship and that he had decided to reside there permanently. At the close of the case for the petitioner, I recalled her and examined her on this point. It was her evidence that the respondent, although now residing in Zimbabwe is still a Malawian his permanent address being that of Kasiya in Lilongwe District. The petitioner comes from Nsanje District. On the evidence before me I am satisfied that both parties are domiciled in Malawi and that this Court has jurisdiction to hear the petition.

The petitioner gave evidence to support her case. She said it was first of all arranged by the parties that their marriage should be celebrated at Lirangwe Catholic Parish in Blantyre in July 1977. On the day of the wedding they went to the said church only to be told that there was a caveat

entered by a woman who claimed to be the respondent's wife and that the marriage could not, therefore, be officiated. To overcome this sudden huddle they went back to the petitioner's current village in Chief Chigaru's area in Blantyre where the parties were married under customary law. This, as a matter of fact, was the essence of PW2's evidence. PW2 was the petitioner's advocate (nkhoswe). On 3rd November the parties then decided to register the marriage and did so as aforesaid; a certificate of the purported marriage at the Registrar General's Office was exhibited and marked Exhibit 1.

It was the petitioner's testimony that throughout her partner professed to have been single prior to any of the two ceremonies they underwent. It was not until three years later that the respondent's wife approached the petitioner and showed her a certificate of her marriage with the respondent which she said was officiated at Guillime Catholic Parish in Mchinji District. The respondent, confronted by the petitioner with the new evidence, had nothing more to say but admit the allegation. The petitioner then decided to end the marriage and eventually the respondent left for Zimbabwe. While in Mutare the respondent wrote a letter to the Parish Priest of St. Pius Parish in Soche, Blantyre, on 8th January, 1985. In that letter he confessed having lied to the petitioner that he was single at the time they registered their marriage and that she could now be set free to practice her christian faith at that parish. This letter was marked Exhibit 2. It was acknowledged by the parish priest who declared the petitioner free to marry and declared there had been no marriage between the parties. With respect without diminishing the province of the parish priest which I should always wish to honour and respect, I think he over-stretched his jurisdiction and in so doing went a bridge too far. He should have left to Ceaser what was Ceaser's. He had no jurisdiction to declare a marriage under the Marriage Act null and void and this is why the petitioner is now before this Court.

The petition is undefended and I direct myself to the dangers of collusion in such cases. I am satisfied, however, that there is no evidence of collusion in the presentation of these proceedings. I am satisfied on the evidence before me that the respondent was lawfully married to another woman, Mrs. Lucy Chataika (nee Lucy Nyirongo), at the time he purported to marry the petitioner at the Registrar General's Offices in Blantyre on 3rd November, 1978, and that the marriage was still subsisting on that day. The petitioner's marriage with the respondent was, therefore, null and void abinitio and I so declare.

I award the costs of these proceedings to the petitioner.

PRONOUNCED in open Court this 29th day of April, 1987, at Blantyre.



R.P. Mbalame
JUDGE