



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MATRIMONIAL CAUSE NUMBER 18 OF 2019**

**BETWEEN:**

**AKHONA JUBA**

**PETITIONER**

**AND**

**KONDWANI KAMWENDO**

**RESPONDENT**

**CORAM: JUSTICE M.A. TEMBO,**

L. Mbvundula, Counsel for the Petitioner  
H. Panyanja, Counsel for the Respondent  
Mankhambera, Official interpreter

**JUDGMENT**

1. This is the decision of this Court on the petition for the dissolution of the marriage between the petitioner and the respondent. The petitioner filed the petition seeking dissolution of the marriage on the ground that marriage has irretrievably broken down on account of the psychological abuse and torture on the part of the respondent.
2. The respondent filed a cross-petition by which he did not contest the petition but denied causing the alleged psychological abuse and torture to the petitioner. He sought alimony on account of the marriage being dissolved without a fault on his part.
3. This Court heard the evidence from both parties after being satisfied that it has jurisdiction in the matter in terms of section 60 (1) (a) of the Marriage,

Divorce and Family Relations Act, the petitioner having been domiciled here at the time of presentation of the petition herein.

4. From the evidence adduced in this matter it has been established that the parties herein got married on 20<sup>th</sup> May, 2016 and have one child.
5. It was also established that their marriage had problems from around the end of 2017. The petitioner, who is originally from the Republic of South Africa where the two herein met, asserted that she was being stopped by the respondent from getting a job. She added that, despite the fact that she was dependent on the respondent, he never provided for her and their child. She indicated that she sought assistance from various quarters including the Victim Support Unit of the Malawi Police Service, the Department of Social Welfare and the Chief. These disagreements were eventually discussed at the Church where both parties attend at the Thyolo Seventh Day Adventist Church.
6. Although the respondent denies ever causing psychological abuse to the petitioner, he admitted during cross-examination that indeed the petitioner visited the Department of Social Welfare to seek assistance herein. He also indicated that he stopped the petitioner from getting work since her residency permit had expired and she was in Malawi illegally and he did not want to be a party to the illegality. The petitioner however countered that she was in Malawi properly based on her marriage to the respondent.
7. Due to the disagreements and the lack of support from the respondent, the petitioner left the matrimonial home. She has since secured employment.
8. The respondent alleged that the petitioner is married to the co-respondent but no supporting evidence was adduced in that regard.
9. This Court observes that the burden of proof in civil cases like the present one rests on the one who asserts the affirmative. See *Commercial Bank of Malawi v Mhango* [2000-2001] MLR 43. The standard of proof in matrimonial matters is slightly higher than that in ordinary civil proceedings in which it is on a balance of probabilities but it is lower than in criminal matters in which it is beyond a reasonable doubt. See *Yotamu v Yotamu* [1995] 2 MLR 702, *Maosa v Maosa and Msiska* matrimonial cause number 4 of 2011 (High Court) (unreported).
10. This Court further observes that the applicable law in this matter is the Marriage Divorce and Family Relations Act which came into force on 3<sup>rd</sup> July 2015 as per Government Notice No. 20 of 2015.
11. This Court observes further that in terms of section 61 (1) (b) Marriage Divorce and Family Relations Act, upon satisfying itself that that a

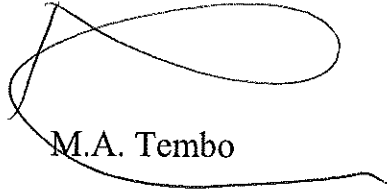
marriage has irretrievably broken down it can grant a decree of divorce to dissolve the marriage.

12. Further, that in terms of section 63 (1) Marriage Divorce and Family Relations Act, a petition for divorce may be brought by either party to a marriage on the sole ground that the marriage has irretrievably broken down. In terms of section 63 (2) Marriage Divorce and Family Relations Act, this Court shall have regard to all the relevant facts regarding the conduct and circumstances of the parties in deciding whether a marriage is indeed irretrievably broken down or not. It will however refuse to grant a decree where the petition is founded exclusively on the petitioner's own wrongful conduct.
13. This Court observes that section 64 of the Marriage Divorce and Family Relations Act lists down some of the factors that the Court will consider in deciding whether a marriage is irretrievably broken down. Such factors include the following on the part of the respondent, namely, cruelty, a conviction for the offence of rape, unsoundness of mind and adultery. These factors are however not exhaustive. The Court will consider any other factors that it considers relevant.
14. This Court has considered the facts as established on the evidence in this matter. The petitioner clearly was in distress due to the conduct of the respondent. She was compelled to seek assistance from the Department of Social Welfare and from the Victim Support Unit. Such steps on the part of the petitioner are indicative of the high likelihood of abuse on the part of the respondent. The respondent cannot therefore not maintain that he never caused psychological abuse to the petitioner.
15. In the circumstances, this Court finds as proved to the requisite standard the allegation that the respondent psychologically abused the petitioner as alleged. This Court therefore concludes that, as admitted by the respondent, it has been proved by the petitioner that the marriage herein irretrievably broke down due to the abusive conduct of the respondent towards the petitioner. The respondent did not provide for the petitioner and their child whilst at the same time he stopped her from getting a job for reasons that are difficult to understand given that the petitioner is a spouse of a citizen.
16. This Court therefore finds that the marriage is irretrievably broken down through the fault of the respondent. There is however no proof that the petitioner herself caused the breakdown due to her own wrongful conduct.
17. Consequently, this Court grants a decree nisi of divorce to the petitioner herein.
18. The respondent sought maintenance from the petitioner on account of the alleged fault on the part of the petitioner in causing the breakdown of the marriage herein. That is untenable on the evidence.
- 25 The parties indicated in their papers that they prefer joint custody of their child and this Court grants the said joint custody.

26 If there are any other ancillary reliefs sought the same shall be taken up on application to be mad within 21 days in chambers.

27 Each party shall bear its own costs as sought by the petitioner.

Made in open court at Blantyre this 21<sup>st</sup> July, 2021.

A handwritten signature in black ink, consisting of a large, stylized loop that starts on the left, goes up and over, then down and under, ending with a horizontal stroke to the right.

M.A. Tembo

**JUDGE**