



REPUBLIC OF MALAWI  
IN THE SUPREME COURT OF APPEAL  
SITING AT LILONGWE  
CIVIL APPEAL NO. 10 OF 2022

(Being High Court of Malawi, Lilongwe District Registry, Matrimonial Cause  
No. 259 of 2015)

BETWEEN

AMOS PHIRI.....APPELLANT

AND

VIOLET PHIRI.....RESPONDENT

CORAM: HON. DEPUTY CHIEF JUSTICE L.P. CHIKOPA SC, JA

HON. JUSTICE E.F. KAPANDA SC, JA

HON. JUSTICE J. KATSALA SC, JA

HON. JUSTICE I. KAMANGA SC, JA

HON. JUSTICE M.C.C. MKANDAWIRE SC, JA

HON. JUSTICE S.A. KALEMBERA SC, JA

HON. JUSTICE D. MADISE SC, JA

HON. JUSTICE R. MBVUNDULA SC, JA

HON. JUSTICE D. nyaKAUNDA KAMANGA SC, JA

Mr Songeya of Counsel for the Appellant

Mr Kita/Ms Phiri, of Counsel for the Respondent

Mr W. Shaibu, Principal Judicial Research Officer

Mrs Chimtambe/Minikwa, Court Clerks

Mr Mutinti/Mrs Msimuko, Court Reporters

# JUDGMENT

## ***Kapanda SC, JA***

1. I concur with the reasoning and conclusion of the lead judgment, but I wish to offer additional observations and emphasize certain points that I believe are crucial to the resolution of this appeal.

### *Lack of Analysis in the Court Below*

2. It is evident from the record that the judgment of the Court below lacks a proper analysis of the issues, evidence, and legal principles. The failure to offer a detailed explanation or reasons behind the distribution of matrimonial property cannot be overlooked. As highlighted in the Standard Bank case, judicial officers are duty-bound to provide reasons for their decisions. This is fundamental not only for transparency and accountability but also to afford the parties and any appellate court a clear understanding of how the decision was reached.

### *Failure to Assess Contribution and Intention*

3. The distribution of matrimonial property, particularly in cases where there are disputes regarding ownership, requires a careful analysis of both parties' contributions—financial and non-financial—and their intentions during the acquisition of the property. The Appellant's contention was that the Respondent failed to prove her contribution or any intention that certain properties were to be jointly owned. While the Court below might have been correct in determining that some properties were matrimonial in nature, it erred in failing to provide a clear basis for its conclusions. The mere assertion that the property was "to be enjoyed jointly" is insufficient without an accompanying explanation of how this conclusion was reached.

### *Role of the Registrar*

4. The blanket order for the Registrar to distribute any omitted property equally is particularly troubling. It reflects a lack of engagement with the specific facts and circumstances of each property in dispute. The task of distributing matrimonial property is not one that should be delegated without proper judicial guidance, as this undermines the court's role in carefully adjudicating the parties' rights and interests.

### *Right to a Proper Hearing and Judgment*

5. The parties in this case are entitled to more than a perfunctory allocation of their property. They are entitled to a judicial process that involves a thoughtful and thorough consideration of their evidence, followed by a reasoned judgment. The absence of such a process in the Court below necessitates that this matter be remitted for rehearing.

### *Principle of Equality in Distribution*

6. While it is true that the principle of equality is often applied in the distribution of matrimonial property, especially in long marriages where both parties have made substantial but perhaps differing contributions, this principle cannot be applied arbitrarily. The Court below failed to explain why it opted for equal distribution in certain instances and not in others. Such decisions must be based on sound reasoning that considers the unique facts of the case, rather than a blanket application of equality without supporting justification.
7. In conclusion, I agree with the decision to remit this matter to the Court below for a proper rehearing and judgment. It is imperative that the parties receive a full and reasoned analysis of their respective claims and that the court fulfills its duty to deliver a judgment that provides transparency and fairness. For these reasons, I concur with the lead judgment that the matter be heard afresh within 90 days, and the costs be in the cause.

### ***Mkandawire SC, JA***

8. This matter came before the Court by way of an appeal following the judgment of the Court below contained in the ruling dated 6<sup>th</sup> day of August 2016 but which came to the attention of the parties on 16<sup>th</sup> of November, 2018.
9. On 30<sup>th</sup> of June 2015, the marriage of the Appellant and the Respondent was dissolved through a consent order before the Lilongwe First Grade Magistrate Court. The issue of distribution of matrimonial property was referred to the Court below for determination. On 6<sup>th</sup> of August 2016, the Court below delivered its ruling on the distribution of matrimonial property. The distribution of the property was as follows;

- i. for two houses in Area 25, the Appellant was given one two bedroomed house whilst the respondent was given one house being one-bedroomed.
- ii. on NRC plot, the determination of the Court below was that it is the sole property of the Appellant.
- iii. on the Isuzu ten tonner truck the determination was that the parties should share 50% of its value.
- iv. the Area 18 house was held to be distributed equally between the parties.
- v. that the Njewa plot was exclusively property for the Respondent as well as the Toyota Corolla.
- vi. the Chinsapo house did not qualify to be disposed of as matrimonial property.
- vii. the Court below also stated that if any property was skipped in the ruling, the Registrar will see to it that it is shared equally between the parties.

10. Dissatisfied with the ruling of the Court below, on 30<sup>th</sup> of November 2018, the Appellant filed a Notice of Appeal to the Court. The Notice of Appeal was in respect of the houses in Area 25, Isuzu Truck, Tippers, maize mill and Area 14 house.

11. The basis of the appeal was that the Judge erred in law and in fact in ordering equal distribution of the said properties when the Respondent never showed any beneficial interests in the said property; the respondent never proved her contribution towards the acquisition of the said property; the respondent never proved that the intention of the parties was that the property should be owned jointly; that the Respondent never proved the extent of her contribution towards the acquisition of the property.

12. The Appellant therefore prays to the Court to set aside and/or reverse the ruling of the Court below relating to the distribution of the Area 25 one bedroomed house, Isuzu truck, Tippers, maize mill and Area 14 house.

13. The Respondent vehemently challenged the appeal. The Respondent however reasserts that the intention at all material times was for the property to be enjoyed jointly as such in so far as it formed matrimonial

property, it was subject to distribution equally to protect the rights of both parties.

14. The Respondent asserted that she had beneficial interests in the property subject for distribution irrespective of contribution. What mattered was the parties' intention to jointly own the property.
15. We have carefully gone through the matter before us. Whilst it is very tempting to comment on multiple issues that arise as a result of twists and turns that characterized the delivery of the ruling in the Court below, the one significant observation is that the ruling/judgment leaves a lot to be desired.
16. In the case of *Standard Bank Limited vs Tourism Investment Ltd and Euro Industries Ltd* Civil Appeal Number 17 of 2018 (unreported), this Court held as follows:

"Sadly, in the present case, the judge wrote a one sentence judgment, to wit 'summary judgment or judgment on admission is entered as prayed.' We must say, this falls far short of what is required and expected of a judgment from a court of law, especially the High Court of Malawi. The most we can say is that such casualness and shoddiness should never find a place in the courts. Needless to say, that judges (all judicial officers) need to be methodical in the way they do their business. As a basic rule, judgments and orders must contain reasons/grounds for the decision they carry. That is the only way judges can ensure that they remain transparent in their decisions and/or work. A decision which has no grounds or reasons supporting it hangs in the air shrouded with mystery. It deprives the parties, the public and even the appellate court the opportunity to appreciate how and why the judge made the decision. It is a serious affront to judicial transparency and accountability. It denotes arbitrariness. And it is a recipe for the unwanted perception that bribery, corruption, underhand dealings and other extraneous considerations are the drivers of the wheels of justice which, inevitably, erodes public confidence in the justice system. We do not want that in our jurisdiction and we urge all judges to always bear this on their minds when discharging their duties."

17. Having navigated through the entire judgment, we noted that out of the 47 pages, pages 2 to 45 pages contained affidavit evidence submitted by the parties. In just two thin pages that contain seven thin paragraphs, the Judge in the Court below made his orders of distribution. We find that the Judge below never carried out any proper analysis of the evidence. The Judge did not give any reasons as to why he had distributed the property in the way he did. We unanimously found that the judge abdicated from his duty. There is actually no judgment in this case. What we have before us is just an assembly of affidavits. The judge in the Court below was also wrong to have made a blanket distribution directing the Honourable Registrar to equally distribute any remaining property that the judge might have omitted.

18. It is therefore our unanimous decision that this matter must be sent back to the court below, for rehearing and distribution of the property. Hearing to be conducted within 90 days from the date of this judgment. Judgment in this matter should strictly be delivered within the statutory period. We so order and costs are in the cause.

Pronounced in open Court at Blantyre this 17<sup>th</sup> day of December, 2024.

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**HON. DEPUTY CHIEF JUSTICE L.P. CHIKOPA SC**

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**HON. JUSTICE F.E. KAPANDA SC, JA**

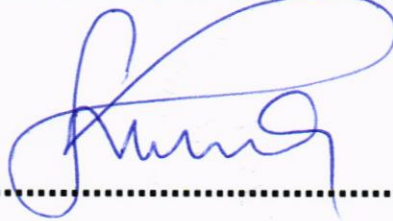
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