

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 494 OF 2000**

**BETWEEN:**

ENIFER MANGISONI.....PLAINTIFF

-and -

DR JULIUS MANGISONI.....DEFENDANT

**CORAM: CHIMASULA PHIRI J.**  
Ching'ande of Counsel for the plaintiff.  
Kadwa of Counsel for the defendant  
J. P. Nsomba - Official Interpreter.

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**JUDGMENT**

The plaintiff and the defendant are a wife and husband under a customary law marriage. The plaintiff's claim is for the sum of US\$28,025.10 and interest thereon. Secondly, the plaintiff claims general damages in respect of alleged enslaving and tortuous conduct suffered by the plaintiff whilst the plaintiff and defendant were living together in the USA. Lastly, the plaintiff claims a fair and equitable distribution of property allegedly jointly acquired and owned.

The defendant has challenged these claims and in turn made a counter-claim. The defendant claims that he had earned K128,000.00 in separate accounts with Commercial Bank of Malawi in 1994 and that the plaintiff withdrew and used all the monies for her benefit. Secondly, that the plaintiff took the defendant's vehicle (Mazda 323), a television and video set to her father at Mbulumbuzi and the plaintiff has not accounted for this property. The defendant claims for the return of this property. Lastly the defendant claims that he bought a maize-mill and its accessories whilst he was in USA through the plaintiff's father and that the plaintiff is in the sole custody of maize mill at her home. The defendant claims for the return of the maize mill and damages for loss of business. The plaintiff has also challenged the defendant's claims.

The plaintiff called 2 witnesses. In her evidence the plaintiff stated that on 26th August 1995 she left Malawi for USA with her 2 children to join her husband. Her husband had gone there in 1994 for studies. The plaintiff states that the defendant had invited her and the children. This point has been challenged by the defendant in his pleadings. However, it is my finding that the plaintiff was invited. This finding is based on mainly two aspects. Firstly, the defendant had to show his financial capacity to support his family in USA. This he did by swelling his accounts with money. Secondly, the defendant made arrangements to welcome his wife and children on arrival at the airport. Lastly, even in his submissions, the defendant stated that he invited his family members to join him in USA. The plaintiff could not secure employment immediately. As a result she enrolled for a nursing assistant course. It is in evidence of the defendant that he paid for her enrolment. The plaintiff has not challenged this aspect. The

plaintiff secured a job at Lyngblosten Care Centre from 22nd January, 1996. I can comfortably make a finding that from August 1995 to January 1996 the plaintiff was under the care and support of the defendant and there is no evidence that the plaintiff was tortured and enslaved by the defendant.

The plaintiff stated that she returned to Malawi on 5th September 1999. She tendered in court documents showing her income and tax refunds for the period from 22nd January 1996 to 29th August 1999. The plaintiff alleges that on receipt of her fortnightly wage she would take it to the defendant. The defendant had instructed her to deposit all her earnings in the defendant's check-in account. Whenever foodstuff was required, the defendant would sign a blank cheque and give her to purchase such foodstuff. Even where the plaintiff wanted to send money to her mother, she would request to be given such money by the defendant. The plaintiff also alleges that the defendant had a savings account to which he was siphoning money from the check in account.

In February 1998 the defendant came to Malawi for research. The plaintiff and the children remained in USA. The defendant returned to USA in June 1998, For the period too, I do not find any tortuous and enslaving behaviour on the part of the defendant. It is the plaintiff's evidence that whilst the defendant had come to Malawi for research, the plaintiff opened her own savings account. When the defendant came he ordered the closure of that account. I find this to be normal because there was no prior discussion between the plaintiff and defendant for the plaintiff to do this.

Problems seemed to have found fertility in this marriage when the defendant returned to USA after his research in June 1998. It appears that the defendant suspected infidelity on the part of his wife during his absence to Malawi. I cannot decide on that aspect because it was not pleaded and was merely touched on in evidence in passing. It appears to be more of suspicion than factual. Further, when the defendant returned to the USA after research, he alleged that his wife was sending a lot of money to her relatives in Malawi. The defendant became suspicious that probably there was some money which the plaintiff was not handing over to him. My view is that it became unhappy marriage up to the time the parties returned to Malawi in September 1999.

The plaintiff has produced records of her income and tax refunds as stated in her statement of claim. In so far as her income is concerned the records are very well supported. However the same cannot be said of the defendant's earnings. The evidence relied upon by he

plaintiff is either mere speculation or inadmissible hearsay evidence. For example the plaintiff would say in her evidence that she gathered information from wives of fellow students of her husband on similar programmes. The plaintiff is not competent to tell this court about the earnings of the defendant. It was even the defendant's own evidence that he earned other monies through research funds and seminar facilitation. The plaintiff's claim for US\$28,025.10 is based on wrong premise. Again, if one is strict about accountability of earnings, it has to be observed that from end of August 1995 up to January 1996 the plaintiff was wholly dependant on the defendant's income but that has not been taken into account in her claim. I would therefore dismiss the claim for US\$28,025.10 and also relative claim for interest.

The plaintiff has equally claimed that part of their joint earnings was used to buy household items such as TVs, cooker, refrigerators and a motor vehicle among others. Prices thereof have been quoted. No evidence was tendered to confirm the prices. This too has a bearing on the joint net income for the couple. The plaintiff claims that this property arrived in the sole possession of the defendant after the plaintiff and defendant had gone on separation from 11th October 1999. The plaintiff has claimed a fair and equitable distribution of these assets. After a lengthy trial the parties could now see sense in talking to each other through their lawyers. The court urged the parties to try to settle some of the property issues. There is a court exhibit 1 which is an agreement between the parties on the distribution of some properties between the parties. The court ordered immediate implementation of that agreement. The agreement left out three main items for the determination by the court, i.e. the plaintiff's claim for US\$28,025.10 and interest; damages for enslaving and tortuous conduct and a fair and equitable distribution of maize mill, a Toyota motor vehicle and properties which were bought immediately before returning to Malawi in 1999. The claim for US\$28,025.10 and interest has already been disposed of.

Briefly, I will deal with the evidence of Mr Simika, who is the father of the plaintiff. I must say he appeared to be a very honest and dignified person except for few lapses of memory on some aspects. He is in the business of maize mills. He explained that he gave the plaintiff K36,000 for air tickets of the plaintiff's 2 children when they were going to USA in 1995.

Further in 1998 when the defendant came for research he discussed with Mr Simika about investing for the children in maize mill business. This is expressly admitted in the evidence of the defendant. Using the monies from USA, Bunda College and CBM account for the

defendant, the witness purchased a maize mill and up to date is still unpacked because the defendant has not given instructions where it should be planted. Both the plaintiff and defendant claim that they should share the maize mill because both contributed towards its acquisition. It is very clear from the evidence of the plaintiff, defendant and Mr Simika that the maize mill was acquired for the 2 children. Why should it be that the plaintiff and the defendant want to grab this property from the children? I dismiss both the plaintiff's claim and the defendant's counter-claim for the maize mill. I order that a trust be set up for Deidre Mangisoni and Beston Mangisoni for this maize mill. I could have equally dismissed the counter-claim for reasons that it is well known to the defendant that the maize mill is with Mr Simika and not the plaintiff. Why does the defendant claim from the plaintiff for the return of a maize mill not in her possession? I need to dispose of the entire counter-claim at this stage. The evidence from the defendant and Mr Simika is that the defendant ordered the sale of the Mazda 323 and TV set with a view to raise money for the purchase of maize mill mentioned above. How can it then lie in the defendant's mouth that he wants the Mazda 323 and TV set from the plaintiff? The defendant, at his level and status in society, must act responsibly and avoid making embarrassing claims out of anger and emotions. The defendant knows the truth but deliberately wishes to distort that truth concerning the K128,000.00, the Mazda 323 and TV set. I dismiss the counter-claim in its entirety.

Reverting to the plaintiff's claim for damages for tortuous conduct, I wish to state that the plaintiff mainly relies on the fact that the defendant ordered to deposit all her salary in his account. The plaintiff would wish to indicate that the defendant did not have time for the family. It is very clear that the defendant had gone to USA as a PhD student and that programme was very heavy. Nobody wants to fail an examination and particularly when you sourjourney into foreign land. The evidence from both the plaintiff and the defendant does not convince me that the defendant deprived the plaintiff of conjugal rights and affection. The fact that the defendant could not spend more time with his family should not be taken to mean that he abandoned his family. My finding is that there was no torture and enslaving conduct for which the plaintiff can claim damages.

Lastly, on the property listed down in paragraph 11(f) of the Statement of Claim i.e. property which was bought immediately before the couple's return to Malawi in September 1999, my finding is that both of them contributed in the acquisition of that property. I will assume that all the property except the vehicle has been shared fairly and equitably in the parties

agreement. The vehicle was acquired for use by the family. The plaintiff has been deprived use of that vehicle. I order the value of the vehicle should be assessed by either the dealers in Malawi or the Government Chief Motor Vehicle Examiner. Thereafter the vehicle should be sold at that value with first option being given to the parties. Should a party opt to buy this vehicle, such a party shall only pay 2/3 of the assessed value. Out of this money 1/3 shall be paid to the other party while the remaining 1/3 shall be invested in the Trust above created for the children. If the vehicle is sold to an outsider, the parties shall have 1/3 share each and the other 1/3 shall still be for the children's trust. The valuation of the vehicle shall be done within 60 days of this order and initiated by the defendant who is in possession of the vehicle. Failure to comply with order shall be treated as contempt of court. If the plaintiff is unhappy with the valuation, she will be at liberty to appoint her own assessors from reputable garage or insurer to do another valuation at her own expense.

I have also considered the issue of legal costs for these proceedings. I feel there is no winner or loser but that the parties rights to fairness and equity have been determined. I am happy to order that each party shall meet own costs.

**PRONOUNCED** in open court this 3rd day of July 2003 at the High Court in Blantyre.

Chimasula Phiri  
**JUDGE**