

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 801 OF 2005**

BETWEEN

**AGNESS KAMANGA PLAINTIFF
VS**

**JOSEPH PHIRI1ST DEFENDANT
ARDRION PHIRI 2ND DEFENDANT**

CORAM HON. JUSTICE NYIRENDA

Kumange Counsel for the Defendants
Counsel for the Plaintiff
Mr. Kafotokoza Court Interpreter

N/A Sibande

RULING

This matter came to court at the instance of the plaintiff seeking courts determination and ruling that the house in Chilinde Township on Plot No. 21/836 in the City of Lilongwe be given to her as widow of Azarius Phiri who died intestate on 3rd March 2000.

At the hearing of matter the plaintiff and her counsel were absent despite clear evidence of service on them. This matter has been postponed on several occasions in the past on account of the plaintiff not being present and upon the court insisting that there be both sides present in court because of the nature of the matter. It would be unfair to continue postponing the matter which has remained urgent since it was brought to court.

Perhaps it is not surprising that the plaintiff is showing a change of heart in this matter. The defendant's have brought to the attention of the court the fact that the

property in question was long distributed by the District Commissioner Mchinji in consultation with the District Commissioner Lilongwe. I have before me letters from both District Commissioners, that of the 28th June 2005 from Mchinji and that of 19th July 2005 from Lilongwe. Both District Commissioners found it fit and proper to give the house in question to the defendants within their authority in matters of intestate property, the matter having been referred to them.

The involvement of the two District Commissioners was apparently because the property in question is in Lilongwe while the late Azarius Phiri was originally from Mchinji. The Determination of the District Commissioners was that the house on plot No. 21/836 be and was allocated to the defendants and their mother with whom late Azarius Phiri acquired the plot and built the house during his life time. Other properties which I need not mention in this judgment were allocated to the plaintiff and her children.

I see no reason for faulting the determination of the District Commissioners. I accordingly uphold it. House on plot No. 21/836 shall be that of the defendants to the exclusion of the plaintiff and her children.

The defendants have made a further prayer that the plaintiff should be made to account for rentals she has received over the years. I do not believe this is necessary. It will only result in protracting the disagreement between the plaintiff and the defendants further. I make no order in that respect and hope that this judgment closes the chapter to this long standing dispute.

I make an order for costs against the plaintiff.

MADE in Chambers this 10th day of August. 2007.

A.K.C. Nyirenda
J U D G E