

THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL APPEAL CASE NO. 25 OF 2008

BETWEEN

BERNADETA MALOLA CHAMBOTIAPPELLANT

AND

EVANCE CHAMBOTIRESPONDENT

CORAM: HON. JUSTICE CHOMBO

Appellant, unrepresented	:	Present
Respondent, unrepresented	:	Present
M.Kabaghe Mrs	:	Court Reporter
F.Njirayafa	:	Court
Interpreter		

JUDGMENT

This is an appeal after dissolution of marriage and distribution of property by the lower court. The appellant contends that the court had originally ordered that she be compensated with K50,000.00 by the respondent. Without any explanation and in her absence, the magistrate unilaterally charged the sum to K15,000. The appellant further submitted that when the property in the grocery jointly owned with the respondent was finally distributed she ended up

with only 10% of the property despite the fact that she was the sole contributor of the initial capital. Thee court ordered that one house be given for the children but up to now the respondent is refusing to handover the house or rentals to the children.

It was her evidence that she started the grocery business with money from the sale of zitumbuwa(banana cakes) and then loans that she got from a volunteer called Rose who was working for St Annes Hospital. Out of the proceeds from the grocery shop the two managed to acquire quite a few other property for their home. A number of properties were listed. The appellant was not allowed to collect a number of items from the house belong to other people (her relations) like a fridge, 2 plate hot-plate, toilet washers, these belong to her brother and sister. And from the matrimonial property she was only given a few things and most of them were either broken or damaged.

In response the respondent submitted that when he married the appellant he was still at Bembeke College doing his teacher training course. At the time he married the appellant she was not doing any business. She had a child fathered by another man and she had stopped going to school and he sent her to school using his own money. The respondent's father had stopped supporting the respondent and his sickly mother so he started business to try and meet all his financial obligations. He used to buy sugar and give it to women around their area so they could brew kachasu and sell on

his behalf. He built a house at the appellant's home village and that's the house they were staying in until he finished his studies. He asked the appellant that they start grocery business within her village but she refused because it was going to be in competition with her father's business. He got a business place from a friend working for Forestry office who was moving away and that is how he started his business. In order to get the capital he got a loan through Rose, a Project Officer of WFP and he got the loan through Commercial Bank (as it then was called). He submitted two bank documents in this court. He paid back the loan to Rose by depositing the money to the bank. I note however that the two documents that the respondent is relying on as evidence of withdrawing money are actually titled "Foreign currencies Bought/sold" and there was no explanation as to the reason for this. In the absence of any such explanation it would be difficult for the court to place any reliance on these documents. In his evidence the respondent stated that he used to collect the money from the bank. It would have been expected therefore that the appropriate forms would be used.

I had occasion to look at all the evidence in the lower court file and the issue of distribution of property. Firstly I do not find any evidence of the compensation being pegged at K50,000.00. The record shows that right from the very beginning the magistrate had made an order of K15,600.00 which was to be paid as follows:

November K3,300.00

December K3,300.00

January K3,000.00

February K3,000.00

March K3,000.00

I do not find any evidence where court had ordered payment of K50,000.00 that the appellant has talked about. I find that this ground of appeal is baseless. All that the court can say on this issue is to order that if the monies have not been paid as ordered by the court then it should be paid now.

On the evidence of the grocery shop I find that both are claiming that they put their monies in the shop. As I have already said I will not rely on the two exhibits of the respondent. The court will therefore rely solely on the evidence submitted in court. This means the court actually weighing the evidence of the two parties against each other.

I had occasion to listen to both parties on the appeal. The respondent stated in his evidence that he started the business from sale of kachasu that some women used to brew and sale on his behalf and that money he slowly built his capital; then he got a loan. He testified that he never used to allow the appellant to operate the shop because she had previously stopped him from opening a business that would compete with her father's in her village. The respondent further stated that he took over a business premises from his friend, a forestry officer who was moving out of

Bembeke. This evidence has not been disputed by the appellant. If the evidence was not true there is no doubt that the appellant would have disputed it as she did all other evidence of the respondent. I had no problems accepting the evidence of the respondent in this respect. I now decide what portion of the business the appellant should be awarded. It was said that the appellant was only given 10% of the property in the shop. It was stated in evidence, and the appellant did not dispute, that she collected some property from the house of the respondent even before the property had been distributed, she collected water containers, even some that did not belong to the respondent. These things were additional to what was given to her by the court; this was undue advantage. I have considered all the facts before me and I consider that it would be in the interest of justice if the appellant was awarded with a further K10,000.00 to make up for any shortfalls on the property of the grocery, especially bearing in mind that it has been found by this court that the business must have been started by the respondent without funds from the appellant. Evidence was given that the appellant used to work in the shop and so to compensate her for her labour the court has awarded her the K10,000.00 after which she will not be entitled to any other goods from the shop or from the house of the respondent.

The appellant also stated that there are goods that she collected, or borrowed from her relatives that she has not been allowed to collect from the matrimonial house. These include a fridge and items that her sister asked her to sell on her behalf. However the respondent

testified that he has so far spent K28,000 repairing the fridge which the two got from the appellant's brother. He testified that when they got the fridge from the appellant's brother it was not working. The respondent has spent substantial amounts of money on this and it would be unfair just to take it away from him as if the fridge was working at the time he got it. It is ordered here that the appellant be allowed to collect only the 2 plate hot coil and 5 toilet washers. I bear in mind the fact that the The appellant claimed that most of the things that she got were damaged or not working. I have taken a close examination of the distribution list done by the lower court. I note actually that apart from the damaged radio that the appellant is complaining about she also got 1 other radio that was in good working condition and a smaller radio also in good looking condition whilst the respondent only got 1 radio. In the end she had two radios in working condition and 2 damaged ones. The other items were distributed almost equally and the court recorded only 2 radios as damaged. On the maize the court recorded that there were 10 bags and 5 bags were given to the respondent and 2 to the appellant. It is on record that the appellant was given 2 only because she had already collected some bags of maize before the distribution. The lower court record is very clear and I would find very little reason for varying it apart from what I have already changed, for the reasons given.

The house that the appellant is claiming belongs to the children and is shown as having been awarded to the children is actually supposed to be for the respondent. It was ordered by court that the

respondent should use the proceeds to help the children. The appellant now decided to collect the children from their father's house on the allegation of witchcraft. The court is not sure how the appellant proved the allegation of witchcraft against the respondent but this is a serious allegation and, unless the appellant has clear evidence about the matter it is not good for her to feed the children with such information. Since she chose to collect the children from their father where they were supposed to be it means she has the means to look after them and the court will have nothing to do about the matter. However, now that the appellant has decided to keep the children, the respondent should not be prevented from visiting the children or the children visiting their father. It should be borne in mind that the children have nothing to do with the breaking of marriage between the appellant and the respondent.

The appeal therefore only succeeds this far.

MADE in open court this 19th day of June, 2008.

Chombo,J
JUDGE