

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC CIVIL CAUSE NO. 28/2007**

JANE KAUNDEAPPLICANT

AND

MR KAUNDE.....1ST RESPONDENT

MRS KAUNDE2ND RESPONDENT

CORAM: HON. CHINANGWA,J

Mr T.C. Nyirenda, Counsel for the Applicant
Mrs Sentala, Counsel for the Respondents
Mr Chulu, Court Interpreter

RULING

The applicant Mrs Jane Kaunde through counsel Nyirenda of Legal Aid Department brought this application against the two respondents namely Mr. Kaunde and Mrs Kaunde. From the history of the facts in the court record the subject matter is matrimonial property.

The applicant married late Maxon Kaunde in 2002. The said late Maxon Kaunde was the son of the respondents. They are applicant's former parents inlaw. In 2004 the couple was blessed with a son named Wilson Kaunde. Unfortunately on 13th November, 2005 death claimed Maxon's life. He was buried on 14th November, 2005. Soon after the burial troubled brewed up between applicant and the respondents over matrimonial property. Perhaps, I should use the term household property.

It is alleged that on 17th November, 2005 the respondent sent away the applicant to her parents in area 25, Lilongwe.

On 25th November, 2005 the respondents went at the matrimonial house and took all household property. The applicant complained to village headman Chadza of Area 25 and to the Ministry of Gender, Children and Community Services. The Ministry ordered the respondents to return the household property. The respondents did not comply.

On 21st March, 2007 the applicant obtained from this court an order of injunction. That restrained respondents from dealing with property in any other manner.

The relief sought by applicant is as follows:

- (a) *Restoration of the property to herself.*
- (b) *Damages for trespass to the said property.*
- (c) *Damages for loss of use of the household property.*
- (d) *Any other relief the court may deem fit and appropriate.*
- (e) *Costs of the action.*

This application is brought under section 16(3) of the Wills and Inheritance Act (Cap 10:02) Laws of Malawi.

The said section 16(3) provides:

“Notwithstanding subsection(2) the customary heirs of a deceased man should not be entitled to any share in the household belongings used by a widow of the deceased during his lifetime, or in the doors, windows or other fittings of any house provided for a widow of the deceased in which she wishes to continue to reside.”

In this application the applicant prays among other reliefs the restoration of household property alleged to be in the custody of respondents. What is household belongings. Section 2 (1) of the Wills and Inheritance Act defines it as follows:-

“Household belongings-means furniture, beddings, crockery, cooking utensils, garden and farming implements and other articles used in and for the purpose of maintaining and enjoying a dwelling house.”

The applicant being a widow was entitled to retain in her possession household belongings which the respondents are alleged to have unlawfully taken possession.

The issue which exercises my mind is the nature of the household property. It is my view that it is insufficient to state household property without listing the exact nature of items. It would be unreasonable for this court to make an order and grant reliefs without adequate information regarding the nature and quantity of the household property.

It is observed that applicant deponed in her affidavit in paragraph 6.

“6. That my husband left behind various kinds of household property. Attached hereto is an inventory of household property left behind by my late husband, signed by both parties, ie male and female side marked ex JKI.”

The inventory is not in the file. At the end of this paragraph there are two question marks (??) made by the judge who granted the interlocutory injunction. Which shows that the inventory was not attached as deponed. I find this to be a fact.

The second issue is that the respondents do admit to have taken from the house in Area 25 household property. As deponed by their counsel it was because the landlord wanted to rent out the house to another tenant. They are ready to return the property to applicant.

Of course there is the issue that applicant has remarried. I do not think this could prevent the parties to amicably resolve this matter helped by their counsel.

Finally none of the reliefs prayed for are to be granted. On the ground that court does not know the nature and quantity the household property. Again in view of the fact that respondents are willing to return the property. This court would encourage an amicable

resolution of the matter under the wise guidance of their counsel.

Application dismissed. The interlocutory injunction is discharged forthwith.

Each party to bear own costs.

Pronounced on 14th day of January, 2008 at Lilongwe.

R.R. CHINANGWA
JUDGE