

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL APPEAL NO. 24 OF 2006**

**BETWEEN**

**PATRICIA KADZIPONYE ..... APPELLANT**

**AND**

**USMAN ASSANI ..... RESPONDENT**

**CORAM : CHOMBO, J.**

:	Appellant	-	Unrepresented
:	Respondent	-	Unrepresented
:	Mrs. Mbewe	-	Court Reporters
:	Mr. Chulu	-	Court Interpreters

**JUDGMENT**

The marriage of the appellant and respondent was dissolved in the lower court. At the close of the day the matrimonial property was distributed. The appellant, not satisfied with the said distribution now makes this appeal.

It was her submission that their property included a house, a shop with property worth about K200,000.00, various kitchen utensils, radio, TV Screen motor vehicle, two bank accounts and 2 single beds. The lower court gave the respondent the house, shop, 2 bank accounts and the motor vehicle. Her point of appeal is that the respondent got the bulk of the property whilst she was given a plot with a house, which house has since fallen.

Their marriage followed two different customs, the Chinkhoswe was in accordance with the Chichewa custom and the marriage according to Mushm customary law; commonly called “Ndowa”. The respondent, after the celebration of the marriage built two houses at his wife’s parents’ home.

The appellant submitted further that she contributed towards the construction of the shop and house in which the respondent is now living in and she would like to have a share of the same. It was actually her submission that the money used for building the shop and house came from the profits of the shop. The money used to start the shop, so the ..... Submitted came from the sell of mandasi and ufa that the two had.

The repellant also complained that the respondent had burnt all her clothes just before she left his house and would like to be compensated for that. The repellant wanted to find out on what grounds the lower court not only condoned but in fact went further to approve the burning of her clothes and assault by the respondent.

The respondent on his part admitted that he burnt some clothes belonging to the appellant but it was only what the appellant had brought home alleging that they belonged to her sister. The respondent admits assaulting the appellant but denies that it was of such a serious nature that it warranted hospitalization or even any medical attention. It was his argument that hospitalization would have necessitated notification of all advocates – but his advocate was only notified about the need to report to Police three days after the appellant had left his house.

The respondent submitted that he built two houses at the appellant's home and when court officials visited the scene they found only one house standing. It was his evidence that he used to send money and materials to his parents in law to maintain the one house but he does not understand how the house was let to collapse.

On the joint business the respondent testified that when he came to Kasungu from the Southern Region he was operating a bakery business on a piece of borrowed land that belonged to somebody else. When the owner of the place demanded to have the place back the respondent's business was disrupted and he changed his business and started dealing in shoes. He invested K7,000.00 in the shoe business then married the appellant.

The appellant became full housewife and was not engaged in any business. Before the respondent married the appellant she used to sell mandasi for her mother but stopped upon getting married to the respondent. The shoes business was being managed by the respondent until the appellant voiced her suspicions with the respondents relationships with women. In a bid to save his marriage the respondent told the appellant to take over operations of the shop. However, he still used to travel to Lilongwe to buy more shoes for stocking up the shop. To date the shop holds stocks of about K50,000.00 and has never reached the K200,000.00 stock-levels that the appellant talked about. Nor does the respondent have two bank accounts.

Whilst custody of the children was awarded to the appellant the respondent wanted court to note that all the children are with him on their own volition and that he has no problems keeping them.

As I went through the record of the lower court I was anxious to see the medical report testifying of the hospitalization of the appellant after the assault. The same was absent either through inordinate omission or simply because the same was never issued. In the absence of the said medical report it can only be assumed that the appellant was not hospitalized as the respondent alleged. This becomes an important point because the appellant is seeking for some compensation for the assault suffered at the hands of the respondent. I can only agree that the assault, which the respondent admits did take place, was not of such a nature that it would require hospitalization.

Nevertheless, it will be important to mention that any assault in the home is an act of violence and the law and this court condemns that. If the appellant had submitted the necessary documents, this court would have taken the necessary steps to ensure that justice takes its course. The medical report would have assisted court to assess the degree of damage suffered by appellant.

On the burning of the clothes, the respondent admitted burning some, and not all, clothes of appellant. The respondent submitted that he did that deliberately to cause the owner of the clothes, purported sister of the appellant to complain to him about this. I note with concern that this is not the right cause of action for the respondent or anybody to take as it amounts to taking the law into one's own hands. The appellant submitted that the clothes were worth K30,000.00 and these were all her clothes. The respondent submitted that it was only the strange clothes that the appellant had brought in their home that he burnt. When the appellant cross-examined

the respondent I was convinced that it was only those clothes that the appellant had brought home that the respondent had burnt. I therefore think a compensation of K10,000.00 would suffice under this head.

On going through the lower courts' record I did see that the appellant was given other household properties in addition to what she told court about. The wife was given the two houses in her parent's premises, a dinning set, radio, one bed and mattress and three quarters the kitchen utensils. The appellant said there were two bank accounts but failed to give details of the other bank account which is directly connected with the shoe business. The court awarded the shoe shop to the respondent. It follows therefore that, that particular account should also be awarded to the respondent.

The appellant claims that she has no house to live in now that she has moved out of the respondent's house. Evidence has been given that there were two plots at her parents' home which were developed by the respondent. When court visited the place at least one house was still standing. Under Chikamwini system of marriage the wife is entitled to a matrimonial house as of right from the day of her marriage.

The respondent did try to maintain one of the two houses but he testified that his efforts were frustrated by the appellant's father who was using the money sent by the respondent for beer drinking. It would be too much to expect him to raise that house again. Suffice to say that the appellant still has one house to her name and she can use that. I bear in mind that the respondent now has custody of the 3 children.

At the end of the day, and after examining all the evidence on record I find that the distribution done by the lower court was equitably done. I would therefore endorse it except to order that in addition to the K8,000.00 that the lower court ordered respondent to pay he should pay an additional K10,000.00 for burning the clothes of the appellant.

If the distribution of the property was not effected as per the lower court's order, it is ordered that the same be done and the marriage advocates witness it.

MADE in Open Court this 31<sup>st</sup> January, 2008.

E.J. Chombo  
**J U D G E**