



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY**

**CIVIL CAUSE NO. 30 OF 2008**

**BETWEEN:**

**CATHERINE ZAKALIYA ..... PLAINTIFF**

**-AND-**

**GEORGE CHIPHIKIRA ..... DEFENDANT**

**CORAM: THE HONOURABLE JUSTICE H.S.B. POTANI**

The Plaintiff unrepresented but present

The Defendant unrepresented but present

Manda, Court Clerk

Ms Chiphwanya, Secretary/Typesetter



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## JUDGMENT

This is an appeal by Catherine Zakaria Chipchikira. The appeal arises from the divorce proceedings that were before the South Lunzu (Machinjiri) Magistrate's Court. That court dissolved the marriage between the appellant and George Chipchikira, the respondent. This was after the appellant petitioned the court for the divorce on the ground that the respondent had chased away from the matrimonial home without proper reasons.

The appellant filed six grounds of appeal which can be condensed into 3.

1. ***It is the respondent who declared before the Village Head and court that he did not want the appellant as his wife yet the court ordered the appellant to compensate the respondent in the sum of K10,000.00.***
2. ***Having granted a decree of divorce, the court did not distribute the matrimonial property.***
3. ***At the time the appellant was chased from the matrimonial home she left behind her stocks of trade which she acquired through a loan as a result she is unable to do her business.***

In addition, she left behind K18,900.00 cash meant for repaying a loan she got.

Regarding the appellant grievance that the court ordered her to compensate the respondent yet it is the respondent who declared lack of interest in the marriage. It is to be observed that from the evidence adduced in the matter,

what made it difficult for the appellant and respondent to continue living together as husband and wife is that there was animosity between the appellant and her step children, that is, the respondent's children from earlier associations. The evidence shows that the bad blood between the appellant and her step children was mainly because the appellant sort of resented the idea of staying with the children. It was on that account that the lower court found, rightly so, that it is the appellant who was responsible for the marriage breakdown hence the order for compensation. In the circumstances, there is no merit in that ground of appeal.

Moving on to the ground of appeal regarding the omission by the court to distribute the matrimonial property the property that featured in evidence is a Television set and a Fridge. Perhaps there are the only items since the marriage lasted for just about 3 years. The respondent alleges that the Fridge was sold in order to boost the appellant's business and that the TV was smashed by the appellant during one of the disagreements but he has since repaired it. The appellant disputes that the Fridge was sold and insists that it is still with the respondent. On the totality of the evidence, the appellant's story seems to be more credible than that of the respondent. This is because the evidence shows that the appellant used to get money for her business from benevolent lending Institutions such as Finca and World Vision International. If at all the fridge was sold on has since been sold, then most likely that was solely for the benefit of the respondent. It is therefore ordered that the appellant should get the TV screen.

Regarding the ground of appeal relating to some second hand clothes for her business which the appellant left at the matrimonial home it is plainly

admitted that such items were indeed left. According to the respondent he has always been willing to allow the appellant to collect them together with her other personal effects after the Village Head so directed but the appellant for some unknown reason has chosen not to collect them. It is the respondent's assertion that as a matter of fact, the items are in a packed state. It is therefore ordered that the appellant be at liberty to collect the items without any impediment from the respondent.

Then there is the sum of K18,900.00 which the appellant also alleges she left in the house when she left. The respondent disputes such a claim and asserts that if anything whatever money the appellant had came from him. It is to be observed that there is no dispute from the evidence that the appellant was in the business of selling second hand clothes. The evidence also shows that even before she got married to the respondent she was already in business. Further, the evidence shows that the appellant left the house at 10.00 pm and in not peaceful circumstances. It is therefore more probable that she left the money she realised from the day's business in the house. It should also be noted that according to Panganani Marko who was summoned to testify by the court when the appellant went to him to complain, in his capacity as representative of Chief Gamula, she complained that some money which she intended to use to pay back a loan was taken from her by the respondent. It is therefore ordered that the respondent should pay back to the appellant the sum of K18,900.00.

(ROA explained)

Pronounced in open court this day of January 21, 2009 at Blantyre.

**H.S.B. POTANI**

**JUDGE**