



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

MATRIMONIAL CAUSE NO 26 OF 2015

BETWEEN

HILDA MANKHAMBERA-----PETITIONER

AND

THOMAS MANKHAMBERA-----RESPONDENT

CORAM: JUSTICEM.C.C. MKANDAWIRE

Kubwalo, for the Petitioner

Msowoya, for the Respondent

Mrs Munthunzi, Senior Court Reporter

Itai, Official Court Interpreter

JUDGMENT

This matter came before me for distribution of matrimonial property following the dissolution of marriage between the petitioner and the respondent by the Dedza Fourth Grade Magistrates Court on the 8th of April 2015. The petitioner and the respondent got married under customary law in 1999 and at the time of dissolution of their marriage, they had been living as husband and wife for 16 years. There is one child from their marriage aged 15 years. The respondent however had two children with his former wife who is now deceased. The property which is now subject the matter for distribution has been listed by the petitioner on the amended list of matrimonial properties dated the 31st of July 2015.

The respondent did not materially dispute the list of the properties as put by the petitioner. He however gave several explanations as to how the said property was acquired some during his first marriage with his deceased wife and others with the help of his daughter Laura Mankhambera from the first marriage. It is the respondent's evidence that the houses were built by himself alone from his personal salary and allowances from his work and supplemented by a loan of MK500,000 that he got from his late brother Christopher Mankhambera. The finishing of the 4 bedroom house was done by his daughter Laura. He further said that he was running a bottle store jointly with his friends and the savings from that business was used to supplement these projects. As for the motor vehicles he said that he bought them using his personal salary from work and also through a loan from his brother Christopher Mankhambera. The Plasma screen was bought through proceeds from the bottle store. As for the bank accounts, it was the respondent's evidence that these were personal and that all the little money that was there was his. He also said that the Standard Bank Account was opened before he met the petitioner. As for the Savings Bank Account, he said that this was a business account for the bottle store and that since the bottle store has gone down there is no money in this account worth distributing. He said that the only matrimonial property for distribution is the property that has been listed as households but the court should take into account that the petitioner had already taken some of these items such as pots, hair blower, duvets and mattresses. The respondent informed the court that there is a lot of information which the petitioner has not disclosed. For example, the petitioner did not disclose that she already collected several items from the matrimonial house. She also did not disclose that she has purchased 2 plots at Dedza although she has no means of earning income. The respondent also dwelt at length on the incident whereby the petitioner had allegedly stolen some money from her daughter Laura. I however found it inappropriate to delve into this matter because it being a criminal allegation, the state should have prosecuted the petitioner if at all they had the evidence. I will therefore not put any weight on the issue.

There were several witnesses invited to give evidence in this case. It was clear from the testimony of these witnesses that the petitioner and the respondent had

been doing some farming business in Dedza and Ntcheu districts respectively. In Ntcheu, the sister to the respondent was supervising the farm but this later on stopped. It is clear from the evidence that the farm in Ncheu if for the entire family of the Mankhamberas left to them by their late father. This farm can therefore not be a subject of distribution as it is not solely owned by the respondent. According to the respondent and her sister Rose Mankhambira who came as a witness, this estate is for all the surviving children of the late Mankhambera. It was in evidence that the respondent was just growing crops there such as tobacco and not that the estate has been transferred to him. Evidence was also brought by Mr Sphiwe Khofi that the bottle store at Biwi was a partnership between him and the respondent. Laura also gave evidence that she personally spent money on the finishing of the 4 bedroom house and she even invited the contractor Mr Gilbert to give evidence on what work he had done at the house.

It is clear from the evidence on record that the petitioner and the respondent have been together as husband and wife for 16 years. It is also very clear that the petitioner was just a house wife whilst the respondent is employed by the government of Malawi and he has risen up to the rank of Deputy Director. This shows that the respondent has been in regular employment and he had a steady income. The respondent in his evidence made it very clear that the petitioner was a mere passenger in the family and that there is nothing that she has contributed to in all these properties that he has personally amassed. The petitioner however consistently put it on record that although she was not employed like the respondent, she however assisted to run some of the affairs of their businesses. She gave an example of the farm in Dedza which generated a lot of income for the family and that some of the investments they had such as the houses and some of the cars were from such income. She also put it very clear in the affidavit that she had been caring for the respondent and such contribution has to be acknowledged. There were several other contributions that she had given which she said this court has to take into account when distributing the property.

In determining distribution of matrimonial property, Section 22 of the Republic Constitution comes into play. This section guarantees protection of each member of the family. The court has to look at the direct and indirect contribution to acquisition and improvement of the matrimonial property. In most of our customary marriages in Malawi, it is very rare to find that both spouses are working class. The other spouse and in most cases the wife usually contributes to the family mostly in the form of domestic labour keeping the family unit and marriage intact and nurturing the other spouse and children thereby facilitating the wellbeing of the wealthier party. The court therefore should be extremely careful when it comes to distribution of property in such an arrangement, where the other spouse is claiming that he/she was the principal bread winner and financial provider in the family. This is what the respondent is saying in this case. Therefore, if courts use financial muscle as the main basis for criteria on distribution, then it will forever mean that the weaker spouse will always walk away empty handed.

The court should also consider section 24(1) of the Republic Constitution which provides that on dissolution of marriage, women have a right to fair disposition of property that is held jointly with the husband. Joint property would mean where there is evidence to show direct or indirect contribution or towards its acquisition for the joint enjoyment of both parties during their marriage. It does not matter whether such property was registered in the name of one spouse. What is important is whether the parties regarded the property as theirs as a family.

From the totality of the evidence on record, the properties herein were all acquired during the subsistence of the marriage between these two parties. There is no evidence to show that the respondent had shown intention to acquire the properties separately apart from the contribution that his daughter Laura had made to the 4 bedroom house at the finishing stage. The respondent relied a lot on mentioning his brother Chistopher and friends who he said had given him loans to acquire the properties. Apart from mentioning the MK500,000 which he said had come from his brother, he did not even mention the amounts of loans that had come from his friends. The evidence on record shows that the petitioner was aware of most of the details of the businesses and enterprises of the family a

sign that she was part and parcel of the enterprise. She even collected some rentals from one of the tenants and even banked the money to the accounts in issue. My finding is that the two operated as a unit and the petitioner although not employed, had contributed to the accumulation of the properties.

I therefore distribute the property as follows taking into account that the two parties had acquired it as a family unit.

1. The 4 bedroom house at area 36 in Lilongwe should go to the respondent.
2. The 3 bedroom house at area 36 in Lilongwe should be sold and the proceeds to be shared into half.
3. The Toyota Colora CK2514 and Toyota Camry SA 1642 to go to the respondent and the Toyota Canter to go to the petitioner.
4. As for the household properties, from the evidence on record, the petitioner had already collected some of the things. In this distribution, the respondent shall therefore give to the petitioner the properties less what was already collected by her. I therefore order that she should have the flat TV 32 inch, one sofa set to be released to her, a mini cooker black, 4 ceramic dogs for decorations, clothes for Fidelia, 3 ceramic pots decorations, 1 DVD player, 1 multi-choice decoder, 1 double mattress 6 inch, 8 cooking pots, a hair blower, 4 duvets, 2 $\frac{3}{4}$ mattress 4 inch, 2 water buckets and 4 sets of bed sheets.
5. The respondent is ordered to take a deep freezer fridge, a sofa set, a plasma TV screen 32 inch, a TV stand, 1 micro wave, 1 multi-choice decoder, 1 DVD player, 1 display cabinet, a double mattress 6 inch, 1 $\frac{3}{4}$ mattress, 1 big cooker white in colour, 8 cooking pots, 4 duvets, 4 sets of bed sheets and the bottle store.

DELIVERED THIS 21ST DAY OF DECEMBER 2015 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE