



IN THE HIGH COURT OF MALAWI

**LILONGWE DISTRICT REGISTRY
CIVIL APPEAL NO. 61 OF 2011**

BETWEEN

EDWIN SOKO APPELLANT

AND

JOYCE SOKO RESPONDENT

CORAM : KAMANGA, J.

: Salima, Counsel for the Appellant
: Unrepresented, Counsel for the Respondent
: Mrs. Namagonya, Court Reporter
: Kafotokoza, Court Interpreter

JUDGMENT

This determination is with regard to distribution of property after divorce. The parties herein, Edwin Soko and Joyce Soko appeared before the First Grade Magistrate court where Edwin Soko petitioned the court for divorce. After hearing both parties, the learned First Grade Magistrate dissolved the marriage. The parties presented a list of the property of the marriage and after considering the lists from both parties, the trial court determined that it was outside its jurisdiction hence referred the matter to this court for distribution. At the same

time the application herein Edwin Soko was not satisfied with the determination and appealed against the same. Then there were applications for occupation orders and protection orders under the Prevention of Domestic Violence Act.

When we proceeded with the issue of distribution of the matrimonial property the same was by way of rehearing.

In the trial court, Edwin Soko presented his list of property as follows:-

- House in Zomba valued at Nine Hundred Thousand Kwacha (900,000.00).
- Land bought at K200,000.00).
- Land bought at K80,000.00).
- Built a house from gratuity and other resources valued in excess of K3 million.
- 1 TV Screen.
- 1 Double bed.
- 1 Three quarter bed.
- 2 Single beds.
- Dining set
- Display Cupboard
- Blankets

The respondent, Joyce Soko equally presented the property that she considered for distribution as follows:-

- A house in Zomba.
- A house at Mitundu Secondary School
- A plot (garden) at Chango Village valued at K80,000.00)
- A fridge
- A sofa set valued at K35,000.00
- 2 Dining sets
- 6 beds & mattresses
- A bid display cupboard
- Kitchen utensils valued at K40,000.00
- TV screen with stand valued at K35,000.00
- Radio with a stand
- DVD Player

During the rehearing, this court had a hearing at the parties matrimonial home at Mitundu.

The applicant herein Edwin Soko testified and he was cross-examined by Joyce Soko. Edwin Soko stated that he used to work for Bunda College of Agriculture as a plumber. Then there was retrenchment at the College and he was one of the people that were affected. He was given K1.2 million as his benefits.

Prior to the retrenchment, he bought the plot on which the matrimonial house is built from a Mrs Kamanga, at the same from part of his salary benefits and proceeds from farm produce sales. The house was partly built by Mrs Kamanga.

The payment was in two installments. The first installment was K350,000.00. The second installment was K95,000.00.

When the applicant was retrenched from employment and he obtained his dues, he invested most of the payment in the property and farming.

He intensified his Farm produce business. He was buying and selling maize. He was also raising chickens. And he invested a total of K3.2 million in the property.

As the house was partly built at time of sale, he invested in burnt bricks. One Hundred and Eighty bags of cement traces, window frames, doors, iron sheets, water from Lilongwe Water Board as well as Wiring. He stated that the respondent contributed about K85,000.00 towards infrastructure on this property. The applicant also stated that at the time of the hearing he considered himself as a farmer. He was renting gardens and investing in farming.

The applicant stated that he also bought a plot at Chingo Village at K85,000.00. There are no developments on this land.

The applicant stated that apart from the real property in Lilongwe. They also had property in Zomba at Chikanda. He acquired this property when he was working for the government. When they moved to Lilongwe, they did not take good care of the property and it is in a dilapidated state. There is a guard who takes care of the property.

The respondent Joyce Soko also testified. She stated that she is a primary school teacher. At the time of the hearing, she had worked for nineteen years. She stated that the property at Mitundu was bought as matrimonial property. And at the time that it was bought, the structure was at window level. The applicant bought the property on her advice. The respondent could not afford to buy the property since she was a mere teacher so she advised her husband, the applicant to invest for the family. The applicant bought the initial plot from Mrs. Kamanga and he bought adjoining plots with time and extended the yard.

The respondent confirmed that there is a house at Chikanda in Zomba. She stated that this house has two bedrooms, a sitting room, dining room and a store room. She also said that there is a tenant who pays K7,000.00 per month. The respondent also mentioned the land at Chingo Village.

When the court visited the property in Mitundu, the court noted that there is a house made of burnt bricks and corrugated iron sheets. It has a Dining room, Kitchen, Sitting room, a self-contained main bedroom, 2 other bedrooms, a toilet and bathroom.

There is also an outside bathroom and storeroom on the property. The respondent stated that this was built during the applicant's absence. Again, the court noted that there is another house which is semi-detached with one bedroom. It was built with burnt bricks and has an iron roof. The respondent stated that this house was built on the property by their daughter. This daughter is an adult.

DETERMINATION OF THIS COURT

After visiting the properties in Mitundu and looking at all issues with regard to this matter. I find that the applicant in this matter contributed greatly towards the acquisition of the property in Mitundu on which there are houses. The big house was meant to be matrimonial property. It is therefore joint property. I also find that the other property that the respondent alleges that was built by the daughter of the family is in fact part of the matrimonial property. It was built by the respondent and not a daughter. And if at all, the daughter contributed in any way towards the building of the smaller house, she was taking a risk. For she is an adult and she should have found her own land to build her own house. The property in Zomba at Chikanda also forms part of the joint property of the parties herein. Equally all land that was bought during the existence of this marriage forms part of the joint property.

I note that the applicant herein depends on his skill as a plumber to source income. He also mentioned that he is a farmer, who engages in buying and selling farm produce. He did not state that this provides him with a steady source of income. I note that the respondent herein is a primary school teacher. She stated that she only gets K52,000.00 net salary per month and that this is not enough as maintenance for herself and the children. The parties herein have capacities to start afresh on their own.

I should also mention that the relationship between the applicant and the respondent has turned completely sour. It would appear to this court that the

respondent has also turned the children of the marriage against their father to the extent that the applicant sought on several occasions Police intervention against his son.

Protection orders have also been sought and granted in this matter. With the background as stated I order as follows:-

- The property that comprises of the matrimonial house in Mitundu, Lilongwe should be sold. The proceeds thereof should be distributed equally between the applicant and respondent so that they should each have a house to live on.
- The other vacant plot at Mitundu Chingo Village will go to the respondent for respondent to build a house for her and the children from the proceeds of sale of matrimonial house.
- The property in Chikanda, Zomba should be sold. The proceeds thereof shall be divided as follows: Two thirds of the proceeds of sale shall go to the respondent as she has custody of the children. One third of the proceeds shall go to the applicant.
- All other land should be sold and the proceeds be distributed equally between the applicant and respondent.

With regard to the other movable properties, I order as follows:-

- The applicant shall get the double bed, small display cabinet and one dining set.
- All other movable property mentioned shall go to the respondent.

Considering the animosity that exists between the parties herein, the sale of the property shall be done through the office of the Registrar.

PRONOUNCED in Open Court this 30th day of October 2017.

I.C. Kamanga

JUDGE