

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 582 OF 2017



BETWEEN

CHRISSY SAMUEL-----PLAINTIFF

AND

CHISOMO WAILESI-----DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Itai, Court Interpreter

ORDER

This matter was referred to me by the Chief Resident Magistrate (Centre) so that I should give directions on the road map following the confusion that has arisen in view of the two court orders that the subordinate courts have made in relation to the matrimonial property. These decisions were made by the Third Grade Magistrate at Kasakula and the First Grade Magistrate at Ntchisi in civil cases number 21 of 2015 and 15 of 2015 between Chrissy Samuel and Chisomo Wailesi.

This is what has happened:

In civil cause number 21 of 2015 between Chrissy Samuel and Chisomo Wailesi, the Third Grade Magistrate ordered the defendant Chisomo Wailesi to compensate the plaintiff with MK98,000.00. The parties were also ordered to share the property accordingly and that the children from the marriage should be cared for.

It is very clear from the court record that the Third Grade Magistrate Court on the 15th of June 2015 through Mr L.W. Chunga who represented the Magistrate proceeded to distribute the property to the parties. The record does not however show what property was available for distribution. All that is there on the attachment from the court is that each party was given one location.

The same matter later on found itself at the door steps of the First Grade Magistrate in Ntchisi as civil cause number 15 of 2015. Between Chisomo Samuel and Chisomo Wailesi. There is however no evidence on record to show who had transferred or referred the matter to the First Grade Magistrate at Ntchisi. What is however clear from the court record is that on 31st of August 2016, the First Grade Magistrate at Ntchisi sat to distribute the property. The court even visited the places where some of the real property was situated and thereafter it distributed the property on 25th October 2016. I have however noted that the list of properties as recorded by the court contradicts the actual order of distribution. There are more properties listed than what was actually distributed. It is therefore not amazing that there have been complaints from both sides as to how this distribution was done.

This court has noted with very great concern that there are so many irregularities on both files. In order to remedy the situation, I order that both distribution orders by their worships are set aside. I now make the following orders:

1. The Chief Resident Magistrate or his/her delegated Magistrate of not below the rank of Senior Resident Magistrate to distribute the property.
2. The two judicial officers at Kasakula and Ntchisi to be supplied with this order.
3. The distribution of property to be done within 30 days from the date hereof.
4. The Chief Resident Magistrate to engage the concerned Magistrates on the seriousness of judicial work.

MADE THIS DAY OF NOVEMBER 2017 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE