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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRAR

CIVIL DIVISION

CIVIL APPEAL CAUSE NO. 16 OF 2018

BETWEEN

DOROTHY NG'OMA.....Appellant

-AND-

WILLIAM NG'OMA.....Respondent

CORAM: THE HON. MR. JUSTICE D. MADISE
Appellant present/unrepresented
Represented absent/unrepresented
M. Manda, Official Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

1.1. The petitioner, Appellant herein first appeared before the 3rd Grade Magistrate court sitting at Ngwengwe under Civil Cause Number 2 of 2017 seeking clarification as to why her husband was divorcing her. The court below after a full trial made a determination as follows.

- a) The marriage between Dorothy Ng'oma and William Ng'oma is hereby dissolved without any one paying compensation.
- b) This is a lobola type of marriage as such children belong to the husband. However, in accordance with the Child Justice and Protection Act, children have the right to be raised by either party where they wish to go.
- c) Regarding the matrimonial property, this will be done in a separate application.

1.2 Being unsatisfied with the decision of the trial court, she now appeals to this court against the whole judgment. In mindful that appeal in this court are by way of rehearing of all the evidence, the law applied and the reasons behind the decision. The Appellant court will look at all that which took place at trial and determine whether the court below was within jurisdiction.

2.0 The Finding

2.1 According to the facts the parties started staying together in 1990 and they have four issues of the marriage aged 24, 21, 19 and 16. The appellant/petitioner apparently commenced their proceedings because she had been chased away from the matrimonial house. According to

the record the petitioner did not call any of the marriage advocates to testify.

- 2.2 According to the respondent it was the petitioner who had asked the village headman to dissolve the marriage because the husband was not helping her in the gardens. When confronted the petitioner/appellant told the court below that she was no longer interested in the marriage.
- 2.3 I have gone through the record and the evidence before the trial court and I see nothing wrong with the order that was made dissolving the marriage. I farther see nothing wrong with the order that no one should pay compensation to the other.
- 2.4 However I fault the court below for not making an order on maintenance of the last born child who was under age plus school fees. The evidence was there that the youngest child was 16 years. The court could have made an order of maintenance including payment of school fees. I hereby directed that the trial court makes such an order effective the date of judgment (23rd February 2017).
- 2.5 I further fault the court below for not making a determination on matrimonial property. It was wrong for the court to order that a separate application be filed in respect of the family property. The common and recommended practice in our courts is that all matters relating to divorce under customary law, custody of children, child maintenance and matrimonial properties are dealt with together under one trial and in one application which comes as a single package, it is wrong to order parties to file separate applications in matter ancillary to divorce proceedings.

- 2.6 I therefore order the trial court to proceed to invite the parties and hear them out and make an order in respect of matrimonial parties within 21 days.
- 2.7 On the issue of custody I find that the determination was within the ambit of the law. This appeal therefore must partly succeed with 50% of the costs awarded to the appellant. I so order.

Pronounced in open Court at Blantyre on 24th October, 2018

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Dingiswayo Madise.

Judge