



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION

CIVIL APPEAL NUMBER 18 OF 2010

Being Civil Cause Number 121 OF 2009 in the court of Principal Resident  
Magistrate sitting at Blantyre

BETWEEN

BRIDGET SAIWALA ..... APPELLANT

AND

MACFERSON SAIWALA.....RESPONDENT

Coram: The Honourable Justice Jack Nriwa, Judge

Appellant Present

Mr Mandala Mambulasa Counsel for the appellant

Respondent not present and not represented

Clerk Mrs Mtegha

RULING

This is an appeal against the decision of the Principal Resident Magistrate sitting at Blantyre. Before the court was a matter of divorce. The marriage was dissolved and the court made incidental orders of maintenance.

There are several grounds of appeal on the matters incidental to the divorce. The issues hovered around the maintenance of the appellant and children from the marriage. The issues included payment of educational and medical expenses of the children and construction of a matrimonial home for the appellant

Construction of a matrimonial home is a customary law requirement. Dissolution of a marriage does not release that obligation.

During the hearing of this appeal, it became apparent that the parties in the appeal were married outside customary law norms. The marriage was more or less by repute. No party raised this issue in the trial court and in this court of appeal.

I strongly believe that if the issue had arisen, the starting point would have been to consider the question of jurisdiction of the court. Under section 39 of the Courts Act, Courts of Magistrates have no jurisdiction over validity or dissolution of the marriages except under customary law.

The provision reads:

...no subordinate court shall have jurisdiction to deal with, try or determine any civil matter ....

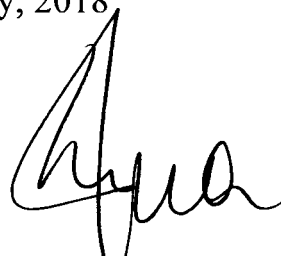
(e) except as specifically provided in any written law for the time being in force, wherein the validity or dissolution of any marriage celebrated under the Marriage Act or any other law, other than customary law is in question.

It is clear, and this was put before the trial court in the evidence of the appellant that the marriage was not celebrated under customary law. The court had no jurisdiction to hear the matter in the first place. The Court conducted the trial in want of jurisdiction. From the start, the trial was a nullity. Technically, there was no trial.

The matter has gone through several processes, including the hearing of the appeal itself.

It is my strong conviction that it is open for the appellant to pursue the issues in the High Court for the matter to be properly disposed off.

DELIVERED the 9<sup>th</sup> day of February, 2018,



J N RIVA

JUDGE