



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
BLANTYRE PRINCIPAL REGISTRARY
CIVIL DIVISION
APPEAL CAUSE NO. 10 OF 2017

ENELESI KAPALASA.....APPELLANT

-and-

EFELO SOMANJE.....RESPONDENT

Coram: Honourable Mr. Justice D. Madise

Appellant present Unrepresented

Respondent absent Unrepresented

Mr. M. Manda Official Court Interpreter

Madise, J

JUDGEMENT

1.0 Introduction

1.1 The parties first appeared before the First Grade Magistrate Court at Chisejere over an issue of cattle. After a full trial the court below ruled in favour of the Respondent. The Appellant was not happy with that decision and she now appeals to this court against the whole judgment.

1.2 It is trite law that appeals in the High Court are by way of hearing of all the evidence that was presented, the law applied and the reasons for the decision.

2.0 The Brief Facts

2.1 According to the Appellant the Respondent took her cattle without her consent. The Appellant was keeping cattle belonging to the Respondent. The agreement was that when the cattle gave birth for the first time the young calf was to be taken by the owner of the cattle. Where there was a second birth, the calf was going to go to the Appellant who was keeping the animals.

2.2 According to the evidence presented below the Respondent the owner of the animals has been paying Chakhola to the Appellant for keeping her animals. It has been alleged that the Appellant sold the Respondent's cattle to one Joyce Banda without the latter's consent. When the Respondent went to get her animals, some were not there.

2.3 When the matter was referred to the police It was resolved that the Appellant owed the Respondent 8 animals in total. On the day that was agreed for the Appellant to give back the animals she was nowhere to be seen. On the next appointed date, the Appellant made

another excuse and she was nowhere to be seen. When the matter was referred to the village headman it was resolved that the Respondent should send her boys to collect the animals.

2.4 The Appellant then went to complain to T/A Chigaru, where she admitted receiving Chakhola as well as selling the Respondent cattle. Being unhappy with T/A Chigaru who ruled in favour of the Respondent, she then decided to go to court.

2.5 The court below found that the Appellant was receiving her share of the agreement (Chakhola) and further found that the Appellant sold the Respondent cattle to one Joyce Banda without her consent. The court below found the Appellant at fault for taking the Respondent's cattle and for failing to attend the several meetings which were organised to resolve the matter amicably.

2.6 The village headman then ordered that the Respondent should send her boys to collect her cattle which were 8 in total. In conclusion the court below found that the Appellant had failed to prove her case on a balance of probabilities and the matter has dismissed.

3.0 Conclusion

3.1 I have gone through the evidence and I see nothing wrong with the decision of the court below. The Appellant was keeping the Respondent's cattle and she was given what was due to her. The Appellant sold the Respondent's cattle without consent.

3.2 The village headman ruled that the Respondent had to collect 8 cattle from the Appellant. This was done. I can not fault the court below. I confirm the decision and orders made by the court below.

3.3 This appeal was a waste of time and resources. It is dismissed with costs.

Pronounced in open Court at Blantyre in the Republic on 25 July 2018.

A large, complex blue ink signature scribble, consisting of many overlapping loops and lines, covering the text "Pronounced" and extending to the right.

Dingiswayo Madise

Judge