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REPUBLIC OF MALAWI  
MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION  
APPEAL CAUSE NO. 36 OF 2018

BETWEEN

LYDIA SIGOLOTI..... APPELLANT

-and-

RENNEX SIGOLOTI.....DEFENDANT

**Coram: Honourable Mr. Justice D.T.K. Madise**

Ms Lydia Sigoloti Appellant present/unrepresented

Mr. Rennex Sigoloti self as Defendant present/unrepresented

Mr. M. Mbekeani Official Court Interpreter

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**Madise, J**

JUDGEMENT

two (2) gardens in issue belong to the family of the deceased and no one in the clan could claim possession.

2.3 The story as told by the Respondent was supported by Emma Sigoloti the Respondent's sister. She told the court that the Appellant was her aunt. Her evidence was that the father told her while he was still alive, that the said tea Gardens, the Appellant is claiming belong to their family. She stated that even the cards used for plucking tea are in the name of Charles Sigoloti her father.

2.4 Loveness Bendulo told the court that the deceased married her mother and she was an adopted child. She also stated that the two (2) tea gardens in issue belonged to her stepfather and that the Appellant had three (3) of her own gardens.

2.5 In defence the Appellant told the court that the disputed tea gardens first belonged to a white man called James who shot his wife and then shot himself. Government then took over the Gardens and distributed the land to the locals. Her father received five (5) gardens in total. Thereafter her father started planting tea in the gardens. She stated that her father had been using the five (5) for twelve (12) years. Later on he fell sick and died. After his death the Appellant stated that she continued using the five (5) tea gardens.

2.6 At this time her brother was staying in Lizulu. After the death of her father she was detailed to go and fetch her brother in Lizulu and bring him back home. Upon arrival he was given two (2) gardens. When he died, the family chose Charles Sigoloti to be the head of the family and look after the gardens since he was not employed. The Appellant told the court that she had advised Charles to buy his own garden for his children since the other gardens belonged to the clan.

After sometime Charles fell sick and died, on 22<sup>nd</sup> December 2016. The family then sat down to discuss the issue of the five (5) gardens. Surprisingly the children of Charles started claiming two (2) gardens as their own.

2.7 Radson Benesi told the court that he was once an employee of the tea gardens. He told court that his boss the Respondent's grandfather told him he had a son called Charles who was living in Lizulu. When the boss died Charles arrived in the village and married in Benesi's village and he had children.

### **3.0 The Law**

3.1 Section 16 Deceased Estates (will's, Inheritance and protection) Act 2011.

*"If a person dies interstate without leaving a will valid under section 6, there shall be an intestacy in respect of the property to which he or she was entitled at the date of his or her death.*

*Provided that if the deceased person left a will which does not dispose of all his or her property there shall be intestacy in respect of the property which in not disposed of by will.*

3.1 Section 17 Deceased Estates (will's, Inheritance and protection) Act 2011

*upon intestacy the person entitled to inherit the property shall be the members of the immediate family and dependants of the intestate and the shares shall be ascertained upon the following principles.*

*(a) Protection shall be provided for members of the immediate family and dependants from hardship so far as the property available for distribution can provide such protection.*

#### 4.0 Decision

- 4.1 The facts reveal that there are five (5) tea gardens. Originally the Appellant claimed she was using all of them just after her father had died. However. When her brother arrived from Lizulu he was given two (2) gardens and she remained with three (3)
- 4.2 Now that her brother Charles died the Appellant is now claiming the two (2) gardens. The Appellant in this matter did not buy these gardens. She inherited them from her father upon his death. Charles Sigoloti was her brother who was perfectly entitled to inherit property from his father. Now since Charles inherited the tea gardens from his father, I see no reason why Charles's children should not inherit what the father left behind.
- 4.3 Charles did not inherit the tea gardens from his sister the Appellant. He got the gardens from his father and his children after him can and must also inherit from their father.
- 4.4 On a balance of probabilities I see nothing wrong with the decision of the court below. This appeal was ill conceived and a waste of our precious time. It was not supposed to see the light of day in our court. In these premises the decision of the court below is confirmed and the order of stay of execution of the judgment is set aside. The appeal is dismissed in its entirety with costs.

I so order

Pronounced in open court at Blantyre in the Republic on 16<sup>th</sup> January 2019.



Dingiswayo Madise

**Judge**