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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL APPEAL CASE NUMBER 15 OF 2019

BETWEEN:

MAYAMIKO SPECHA

APPELLANT

AND

SILIYA SPECHA

RESPONDENT

CORAM: JUSTICE M.A. TEMBO,

Appellant, present and unrepresented
Respondent, present and unrepresented
Mankhambela, Official Court Interpreter

JUDGMENT

This is this court's judgment following a hearing of the appeal in this matter.

The appellant appeals against the decision of the lower court by which the lower court dissolved the marriage between her and the respondent.

The appellant had sought dissolution of her marriage herein on account of the fact that the respondents stated that he no longer wanted her as a wife in view of their marital problems.

The lower court heard the evidence and determined the matter in favour of the appellant and dissolved the marriage.

The lower court then distributed the matrimonial property between the parties. However no hearing was had prior to the order on distribution of matrimonial property on the question of what was the matrimonial property and who should get what out of the same.

No order on maintenance was made despite custody of children being given to the appellant.

There was no order as to compensation on dissolution of the marriage.

Being dissatisfied with the lower court's decision, the appellant filed several grounds of appeal attacking the lower court's decision on distribution of matrimonial property, on compensation on the divorce and concerning the matter of maintenance of the children.

On hearing of civil appeals, this Court has the following powers as provided in section 22 of the Courts Act

In a civil appeal the High Court shall have power—

- (a) to dismiss the appeal;
- (b) to reverse a judgment upon a preliminary point and, on such reversal, to remit the case to the subordinate court against whose judgment the appeal is made, with directions to proceed to determine the case on its merits;
- (c) to resettle issues and finally to determine a case, notwithstanding that the judgment of the subordinate court against which the appeal is made has proceeded wholly on some ground other than that on which the High Court proceeds;
- (d) to call additional evidence or to direct the subordinate court against whose judgment the appeal is made, or any other subordinate court, to take additional evidence;
- (e) to make any amendment or any consequential or incidental order that may be just and proper;
- (f) to confirm, reverse or vary the judgment against which the appeal is made;
- (g) to order that a judgment shall be set aside and a new trial be had;

(h) to make such order as to costs in the High Court and in the subordinate court as may be just.

The appeal is by way of rehearing. That means this Court will subject the evidence before the lower court to a fresh scrutiny. Of course, this Court is always mindful that when sitting as an appellate Court it should never lose sight of the fact that the lower court had the advantage of determining the credibility of the witnesses first hand.

During arguments on the appeal it was clear to this Court that it is impossible for this Court to determine the appeal on matrimonial property distribution as there was no hearing on the same before the lower court and there is therefore no evidence to inform the appeal in that regard.

This Court also noted that there is indeed no order on maintenance. That is a grave anomaly on the part of the lower court. The case is the same with regard to the issue of compensation on divorce.

This Court is of the view that in the foregoing circumstances it should exercise its powers under section 22 (d) and (g) of the Courts Act to order a re-trial of the matter by a Resident Magistrate to be assigned by the Chief Resident Magistrate at Blantyre.

The court should during re-trial direct the parties to testify and provide evidence on distribution of matrimonial property.


The re-trial shall also similarly deal with the issue of maintenance of children and decide on the issue of compensation on the dissolution of the marriage herein.

It is therefore ordered that the re-trial shall be done by a Resident Magistrate to be assigned by the Chief Resident Magistrate Court at Blantyre as soon as is reasonably practicable

It is further ordered that to preserve the peace, as this matter has been very emotive, each party shall preserve the property it got on the irregular distribution of matrimonial property until the re-trial is done.

Considering the circumstances of the appeal, especially the error of the lower court, each party shall bear its own costs on this appeal.

Made in open court at Blantyre this 27th May 2019.



M.A. Tembo
JUDGE