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HIGH COURT  
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IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO: 56 OF 2018

BETWEEN:

MRS. ELINA CHIMIMBA PHIRI.....CLAIMANT

AND

MARIAM CHIMIMBA PHIRI.....1<sup>ST</sup> RESPONDENT

RAYMOND CHIMIMBA PHIRI.....2<sup>ND</sup> RESPONDENT

TAMARA CHIMIMBA PHIRI.....3<sup>RD</sup> RESPONDENT

CORUM : JUSTICE R.M CHINANGWA

Katundu Counsel for the Claimant

Karim Counsel for the defendants

Nyirenda Court Clerk

RULING ON APPLICATION TO STAY EXECUTION OF JUDGEMENT PENDING

APPEAL

**1. Introduction**

The claimant sought declaratory orders in the following terms:

- a. A declaration that the matrimonial house in Chinsapo, the Nissan Tiida, the bottle Stores at Biwi, the tractor, 4 sewing machines, the saloon equipment, 16 acres of land at Chala, 50% of the harvests, beddings, entertainment unit, kitchen unit and ½ of the sofa sets are a reasonable share of the deceased estate to the claimant.

- b. A declaration that the Claimant herein and her son Rowland are entitled to fair distribution of the deceased estate, being the wife and minor child of the deceased.
- c. A permanent injunction restraining the Defendants from dealing and or interfering with the affairs of the matrimonial home at Chinsapo, the Tractor the bottle stores at Biwi, the 16 acres of land at Chala and any other property acquired by the claimant from the deceased estate herein.
- d. A mandatory injunction ordering the Defendants to release and or submit the ownership documents of the house at Chinsapo, the bottle stores at Biwi, the 16 acres of land at Chala, the Nissan Tiida and the Tractor.
- e. An account of the deceased estate.
- f. An order for fair distribution of the deceased estate to the Claimant with consideration that she helped acquiring the property therein.
- g. Costs of this action.

In defence the respondents opposed the claim for several reasons. After full hearing judgement this court pronounced its judgement on 10<sup>th</sup> February 2021 in the following terms: 'The deceased estate is shared as follows: the claimant, being the surviving spouse is to retain the matrimonial home and all household belongings. These are to be surrendered immediately. The remainder of the estate will be shared in the amounts given above. The Administrator General is appointed to distribute the remainder of the estate shares spelt out above'.

Being dissatisfied with the decision of this court, the respondents have applied to suspend enforcement of the judgement pending appeal.

## **2. The Arguments**

The respondents have prayed that enforcement of judgement be stayed pending appeal on the following grounds:

- a) Granting the claimant and her son to the exclusion of six other beneficiaries a five bedroomed house (the matrimonial home) is unfair distribution of the deceased estate.
- b) the five bedroomed house was constructed with the deceased earlier wife (also deceased) and used by the deceased and his children from previous marriage and union prior to his death and is considered as their home.

deceased spouse and other beneficiaries of the estate. It is not in dispute that the five bedroomed house was the matrimonial home of the claimant as a spouse of the deceased. The reasons of her leaving the matrimonial house may be in dispute but surely it was not account of divorce or distribution of matrimonial property. That being the case, the law entitles the deceased spouse to the matrimonial home. The respondents have not shown any special circumstance nor prospects of success of the appeal to disentitle the claimant from the matrimonial home pending the appeal. The fear that the house may be sold has not been substantiated. A mere suspicion cannot be regarded in evidence. This court finds that the application must fail.

#### **5. Finding**

The application fails. The claimant is awarded costs of the action.

**Pronounced this 16<sup>th</sup> day of March 2021 at LILONGWE**

A handwritten signature in black ink, appearing to be 'R.M. CHINANGWA', written over a horizontal line.

**R.M CHINANGWA**

**JUDGE**