



REPUBLIC OF MALAWI

IN THE CHILD JUSTICE COURT SITTING AT LILONGWE

CHILD CASE NUMBER 636/2022

BETWEEN

MADALITSO CHIKOMOLAAPPLICANT

AND

IBRAHIM MATOLA.....RESPONDENT

Coram: H/w Fred Juma Chilowetsa	:	Child Magistrate
Applicant	:	Present/unrepresented
Respondent	:	Present/unrepresented
A.A. Chigwenembe	:	Official Interpreter

JUDGMENT

INTRODUCTION

This is the matter of child maintenance applied for under *section 9 of Child Care Protection and Justice Act No. 22 of 2010*.

The Applicant is **Madalitso Chikomola**.

The Respondent is **Ibrahim Matola**.

ISSUE FOR DETERMINATION

Whether the respondent maintains the 3 child or not.

THE APPLICANT'S CASE

The applicant Madalitso Chikomola aged 34 years old of Mdzoole village, T/A Mtema Lilongwe district. A shop Assistant at LEO Pharmacy, explained to the court that the Respondent is her husband, but currently they are not staying under one roof. They got separated on 12th January, 2022.

She is the one in custody of the two children. And that these children are lacking food, shelter, school fees, clothing and educational needs as well as transport.

In cross-examination she stated that she took custody of the children because they were not properly being taken care of. And that she is not yet married and that the respondent did not leave the vehicle with her.

She further stated that the Respondent gives the children financial needs and her gives them love.

The applicant argued that the children were largely being taken of by maid, who has got no parenting skills. And that she is failing to satisfy the needs of the children due to lack of enough resources.

The **CW 2** Bright Chikomola aged 43 years of Mdzoole village, T/A Mtema Lilongwe district an Accountant by profession. He told the court that the applicant is his sister. The Respondent is his brother-in-law. These people are currently on separation.

The applicant is in custody of two children, one is at school. And that the life of their children has been so hard up to the point that the CW 2 comes in to pay school fees of them, assisting his sister. He added that he sends K80,000.00 to his sister every month for her general upkeep.

The respondent did not challenge this piece of evidence in cross-examination. The applicant closed her.

THE DEFENCE'S CASE

The Respondent Ibrahim Matola aged 36 years of Kafulama village, Dedza district. A mechanic by profession. In response to the application made by the applicant he told the court that the applicant is his wife and that he is not maintaining the children. He is maintaining the one who is at school. And that he will be maintaining his wife.

In cross-examination he stated that he will be maintaining all of his children. And that he did not know where the Applicant stays with the children.

The respondent closed his case.

THE LAW

CUSTODY

Child Care Protection and Justice Act No 22 of 2010 does not define what child maintenance is.

Section 23(3) of the constitution of the Republic of Malawi provides that children have the rights to know and be raised by parents. Mac Millan dictionary defines raising the children means providing the child with food, clothing and a place to live to financially supporting the children, to provide medical care

Section 3 (1) (b)

(a) shall not deprive a child of his or her welfare;

Has responsibilities whether imposed by law or otherwise towards the child which include the responsibilities to: -

- (i) Protect the child from neglect, discrimination, violence, abuse, exploitation, oppression and exposure to physical mental, social and immoral care hards;
- (ii) Provide proper guidance, care, assistance, and maintenance for the child to ensure his or her survival and development, including in particular adequate diet, clothing, shelter and medical attention.

ANALYSIS OF THE LAW AND EVIDENCE

The Applicant told the court that the respondent is her husband, currently they are on separation. The applicant is the one in custody of the two children because one is at school. And that she is struggling to meet the needs of children and that she is staying with the children in a rented house.

The respondent in response to the application made by the applicant told the court that he was just assisting the child who is at school and that he will start assisting the other children.

This piece of evidence qualifies the fact that the respondent was not maintaining the two children, which was a breach of **section 23(3)** of the constitution and **section 3 (i) (b) (ii)** of Child Care Protection and Justice Act No. 22 of 2010.

Therefore, the court has found that the applicant proved the case beyond reasonable doubt as per the diction in the case of **Miller-vs Ministry of Pensions 1947**. As such I find the respondent liable for failing to maintain his two children who are under the custody of the Applicant



Fred Juma Chilowetsa

CHILD MAGISTRATE

4/10/2022

ORDER

The Applicant says children are lacking food, clothing, school fees medical care and a shelter. She went on telling the court that her income is K80,000.00 per month, but she is renting a house of K150,000.00 per month, she did it because the child used to live a self-contained and fenced house.

The Respondent says that his maximum income is K200,000.00 per month, he uses the same to pay the house rent of K110,000.00 per month, paying school fees and all the bills.

Section 10 of child Care Protection and Justice Act No. 22 of 2010 provides the factors that the court takes into consideration when making the financial order. Such as follows: -

- (a) Income and wealth of both parents of the child;
- (b) Impairment of financial responsibility of the person liable to maintain the child,
- (c) The financial responsibility of the person with respect to the maintenance of other children;
- (d) The cost of living in the area the child is residing.

Therefore, balancing the factors raised by the respondent and the best interests of the children I make the following orders: -

- (i) The Respondent will be awarding the children K30,000.00 each for the upkeep.
- (ii) The Respondent will be paying school fees of the children.
- (iii) The Respondent will be buying clothing of the children 3 times a year.
- (iv) The respondent will be paying medical bills if any.
- (v) The Respondent should be contributing to the house rent of K100,000.00 per months. the Applicant will be contributing the K50,000.00 to the rentals every month.
- (vi) The Respondent should fix the problems that are at the vehicle and the blue book should immediately be surrendered to the Applicant so that it will be used to escorting the children to school.
- (vii) The Applicant should continue keeping giving love, proper care and balanced diet to the children.

The orders are with effect from the month end of October, 2022. Orders are subject to vary upon change of the circumstances of the children and improvement of financial status of the respondent.

DURATION OF THE MAINTENANCE ORDER

Section 15 of child Care Protection and Justice Act No. 22 of 2010 provides when the maintenance ceases, that it ceases when each child attains the age of 18 years has married, has got permanent employment and has died.

CONTINUATION OF THE MAINTENANCE ORDER

Section 16 of Child Care Protection and Justice Act. No.22 of 2010 provides that order ceases when each child obtains the first university degree.

Right of appeal to the High Court is granted within 14 days from today.

Pronounced in chambers today the 04th October, 2022 here at Lilongwe Child Justice Court.



A handwritten signature in black ink, appearing to read "Fred Juma Chilowetsa".

Fred Juma Chilowetsa

CHILD JUSTICE MAGISTRATE