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REPUBLIC OF MALAWI  
MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION  
CIVIL APPEAL CAUSE NO. 20 OF 2020  
(Before the Honourable Mr. Justice D. Madise)

BETWEEN

ZINENANI CHIWANDA .....APPELLANT

AND

JOHN JANA.....RESPONDENT

**CORAM:** Honorable Justice D. Madise  
Mr. Zinenani Chiwanda the Petitioner in person  
Mr. John Jana the Respondent in person  
Mr. Mathanda Official Interpreter

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Madise J,

JUDGMENT ON APPEAL

1. Zinenani Chiwanda approached this with court with an appeal against the decision of SGM Court sitting at Mbulumbuzi in Civil Cause No. 68 of 2020. In that case the Respondent had sued the Appellant for a petition for divorce on grounds of desertion. After a full trial the court below found that the marriage had irretrievably broken down due to the Appellant's fault. The marriage was divorced. The court further ordered the Appellant to take custody of the children but the Respondent was ordered to be paying maintenance.
2. The Appellant being unhappy with that decision now appeals to this court against the whole judgment. It is trite law that appeals in the High Court are by way of rehearing of all the evidence, the law applied and the reasons for the decision. The appellate court also reviews all that which took place in the court below.

### **The facts**

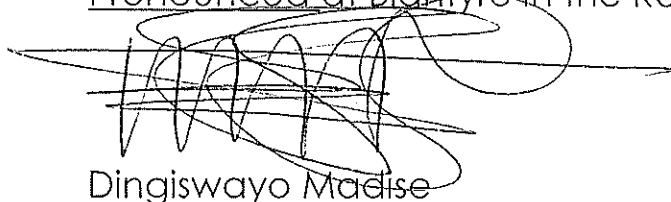
3. The Respondent told the trial court that the Appellant had misused K3, 000.00 meant for a person who was painting their house because she was sleeping with the painter and the K3, 000.00 was her payment for service rendered. The Appellant's relatives were informed. As the disagreement continued between the two, fights broke out and the Appellant was

heard crying. There after the Appellant stated parking her belongings and she left the matrimonial home.

4. After some days the Respondent went to Yoneco to complaint but nothing materialized and he then sought the aid of the court for desertion. On the other hand the Appellant told the court below that the Respondent was cruel and was not leaving food at home and he used to beat her up. In 2015 the family bought a piece of land where they built a house. She further stated that the Respondent built her house at her home and she went to stay there when the situation at home got worse.
5. The court below in its determination found that the Appellant was rude to the Respondent. The court found that the marriage was dissolved and the Applicant was found liable for the breakdown of the marriage. The Respondent was ordered to compensate the Appellant with K20, 000.00 as a token of divorce. The court below ordered that custody of the two children be given to the Appellant and that the Respondent should pay maintenance.
6. I have searched the record and I see nowhere, where the court distributed the matrimonial properties. Since the Respondent stated in her petition of appeal that the properties where not fairly shared I, order the trial court to give me, the record of proceedings where property was distributed. In the absence of such a record this court cannot review the order on

distribution of matrimonial property. The file is sent back to the trial court to furnish this court with the record of proceeding as directed as above within 21 days.

Pronounced at Blantyre in the Republic on 26 July, 2021.

A handwritten signature in black ink, consisting of several overlapping loops and horizontal strokes, positioned over the text of the judge's name.

Dingiswayo Madise

Judge