



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
CIVIL DIVISION  
PRINCIPAL REGISTRY  
CIVIL CASE No. 290 OF 2018

BETWEEN:

BEATRICE MPHAKELA PEMBA ..... CLAIMANT

-AND-

SIGERE PEMBA KASISI ..... 1<sup>ST</sup> DEFENDANT

-AND-

GLADYS PEMBA CHAGUNDA ..... 2<sup>nd</sup> DEFENDANT

CORAM: THE HONOURABLE JUSTICE JACK N'RIVA  
Ms A. Tolani for the Claimant  
Mr. K. Kunitengo for the defendant  
Mrs. D Nkangala, Court Clerk

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RULING

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This is a summons for a hearing to distribute the deceased estate of Levison Kavala Pemba to all the beneficiaries of the deceased. The application is supported by a Sworn Statement made by the claimant. In the statement, the claimant argued that she has two children with the deceased. The two are the minors aged 15 and 13. The deceased had three other children from his previous marriages namely Mathews

Pemba (deceased), Sigele Pemba and Gladys Pemba. The three were all adults with children and grandchildren.

During his life time, the deceased gave some of his property to the said children and grandchildren. She said the deceased gave his driving school to Mathews, house and land in Chilimba to Sigele and bought a house for Gladys and partitioned part of his land where their matrimonial home is and gave it to some of his grandchildren.

At the time of his death, the only properties which he had was the maize mill at Chemusa and the land at Chemusa where the matrimonial home is.

After the death of the deceased, the defendants took over control of the maize mill at Chemusa and receive rentals from those operating business on the land. The defendants do not share the proceeds with the claimant and the two minors. She said *"part of the land where our matrimonial home was built was given to some of the respondent's children and the rest of it were using as a family, Now the respondents are also interfering with my use of the part of the land which I was using with the deceased prior to his death"*. She said her relationship with the respondent has deteriorated due to the wrangles over the deceased property and she believed it would not be possible for them to have joint control over the property.

She said the deceased bequeathed most of his property to the defendants and their children while he was alive. The only thing that remained was the matrimonial house, its surrounding land as well as the business at Chemusa.

There is a sworn statement by Gladys Pemba Chagunda opposing the application. Her sworn statement was to the effect that the claimant was not being truthful in her statement. She said at no point did the deceased purchase a house for her. She said she and her husband bought the house she is staying in at Kameza. She also refuted that she and her relatives have been collecting rentals from the maize mill at Chemusa. She said the maize mill at Chemusa has not been functional since 2016. This is due to huge electricity bills since the claimant has failed to settle the bills at the time at the time she was running it.

She further said the land at Kameza was purchased by her late father in 1972 with intention that it should be a family land. She said they have always regarded the Kameza land as their home village and have been protecting this land from the claimant who has always intended to sell the land to some foreign nationals.

The house at Kameza was built by her late father as a matrimonial home with her late mother before their separation and he was staying with her next wife before marrying the claimant.

Therefore, she is not justified to consider it as her own property. During his life time, the deceased constructed a house for the claimant at Ntaja and she was supposed to relocate to that house after the deceased's death but they allowed her to continue living in the house. She said the claimant was subjecting herself to undue hardship by insisting on living in the city where she has no proper means of survival, instead of relocating to the village.

She further said that during his life time, the deceased was supporting several grand children who were directly dependent on him and bestowed some of the land at Kameza to them.

The claimant has always been at loggerheads with the grand children whenever she encroaches on the land which was bestowed on them and to cut down their trees for sale. She further said that the claimant has sold almost all the property left by the deceased: motor vehicle, household items, pieces of land and numerous trees. She said they have at times allowed the claimant to be collecting rentals from the households with her compounds *"but money will never be enough for her as long as she insists on living beyond her means and sending her children to expensive schools."*

She said during his life time, the deceased disputed being the father of the claimant's children *"and we will only be concerned about their welfare if a DNA test can be conducted so as to prove that they are really biological children of our late father, Mr. Lemison Kavala Pemba."*

She, therefore concluded by saying there is no property in the deceased estate to be subjected to distribution.

The claimant replied to the sworn statement in opposition. She said the land in Kameza is where she stayed with the deceased and regarded it as a matrimonial home. She said the land consists of the house and part of the land which she was selling to pay school fees and support her children. On the maize mill, she refuted the allegation that there were unpaid bills. She said that the maize mill uses pre-aid units.

She also refuted the allegation that the deceased constructed a house for her at Ntaja.

She further said that there was property for distribution:

- a house at Kameza
- Land at Chemusa
- Maize mill at Chemusa
- Land and house in Chilimba

Basically, the claimant was asserting that the sworn statement by the second defendant was not true. She, in other words, was maintaining her claim. She insisted that the house in Kameza and the land on which it is, belonged to her as a matrimonial property.

The first defendant, likewise, filed a sworn statement. In essence she was disputing the claims by the claimant.

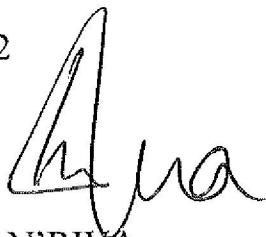
Some arguments were like those of the second defendant.

Having narrated the parties' arguments, it is quite clear that the facts in this dispute are contentious. The issue in dispute can hardly be determined by the way of Sworn Statements, as the parties suggested earlier on. Since there are contentious issues, the matter has to be settled through a hearing.

I, therefore, direct that the matter herein be referred to trial to resolve the dispute. I exempt the matter from mediation.

The matter shall proceed before another Judge in the Probate Division of the Court.

MADE this 13<sup>th</sup> day of September, 2022

  
J. N'RIVA  
**JUDGE**