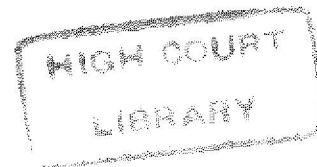


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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

FAMILY AND PROBATE DIVISION

CIVIL APPEAL CAUSE NO. 10 OF 2020

(Being Civil Cause no. 06 of 2020 before the Third Grade Magistrate Court Sitting at Limbe)

BETWEEN

SIMEON NYIRENDA.....APPELLANT

-AND-

GRACE NYIRENDA.....RESPONDENT

CORAM: THE HONOURABLE JUSTICE A. KANTHAMBI

Mr. C. Masanje

Counsel for the Appellant

Mr. Mbwana

Counsel for the Respondent

Mrs. M. Chilemba

Official Court Interpreter

## JUDGMENT

### 1.0 The Facts

1.1. The parties herein appeared before the Third Grade Magistrate at Dalton Road where they contested in a divorce matter. After a full trial, the Court dissolved the marriage and further granted custody of the couple's 7-year-old child to the Respondent. The Court further ordered the Appellant to be paying maintenance of K20,000.00 per month. The Appellant has appealed against the Order awarding custody of the child to the Respondent. This being an appeal from the lower Court, this Court is mindful that an appeal from such a Court comes to this Court by way of re-hearing and that as an appellate Court, this Court is not in any way bound by the decision of the lower Court but can give the weight it deserves to the decision.

## 2.0 The Grounds of Appeal

The Appellant framed his grounds of appeal in the following manner;

- 1.1. The lower Court disregarded the welfare of the child when it gave custody to the Respondent in total disregard of the evidence and the lower Court's finding that the Respondent has no time for family.
- 1.2. Alternatively, the lower Court erred in not taking evidence on custody of the issue between the Appellant and the Respondent before deciding on the same.
- 1.3. The lower Court erred in law in not making an order of access to the child by the Respondent.

## 3.0 The Appellant's Arguments

- 3.1. It was the Appellant's contention that the lower Court made a pronouncement awarding custody of the child herein to the Respondent because the child is young. That the Court below made a sweeping statement that the law is that young children should be placed in the custody of their mother, when the legal position the lower Court stated is not cast in stone. The Appellant argues that the Court is required to consider all matters and circumstances before determining the person to be granted custody. Tender age is not the only consideration.
- 3.2. The Appellant also argued that, having heard that the Respondent was seldom at home both on weekdays and week-ends and thus had no time for the home the learned Magistrate failed to go on a proper inquiry to determine what the best interests of the child would be in the circumstances. He further contended that the parties were well before the lower Court but the Court did not further investigate them to determine their suitability to be custodian of the child. The Appellant expressed surprise that even with the information that was before it, the Court below still granted custody of the child to the Respondent.
- 3.3. The Appellant further argued that it has been stated that a trial Court ought to make an exhaustive examination of the issue of custody before making an order. That in Nkhalamba v. Nkhalamba (op.cit), the Court says it expected to see evidence of a *real hearing* on the aspect of custody which the Court did not do. In his wisdom, the judge ordered a rehearing which is also open for this Court to make.
- 3.4. The Appellant also expressed surprise that the Court only made an order for custody but did not make any direction regarding the Appellant's right to access or visit the child. That the lower Court kept that aspect unregulated. It was further argued by the Appellant that it is trite that upon making an order for custody, the Court addresses the issue of access or visitation so as to make sure there is no tension between the parties.

#### 4.0. The Law

4.1. According to section 22 of the Courts Act Cap 3:01 of the Laws of Malawi, on hearing of civil appeals, this Court has the following powers;

*(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. "*

4.2 The Appellant's counsel was of the view that in the present matter the Court has a wide latitude in terms of orders that it can make to afford the parties an effective remedy arguing that that is why it is always emphasized that an appeal in the High Court is by way of re-hearing.

4.3 In terms of the custody of a child, Counsel invited the Court to examine the prescripts of section 8 of the Child Care Protection Justice Act which provides that;

*1) A parent, a family member or any other appropriate person may apply to a child justice Court for custody of a child;*

*2) The child justice Court shall consider the best interests of the child and the importance of the child, on account of age, being with his mother when making an order for custody or access.*

*3) Upon application for custody or access under this section the child justice Court may make an order granting the applicant custody or the access to the child, and may attach such conditions as the Court may consider appropriate.*

4.4 He also argued that it has been emphasized that in determining custody of a child, the paramount consideration is the best interests of the child as stated in **Fernandes v Fernandes and another** [1992] 15 MLR 148 (HC).

4.5 Counsel also submitted that at common law the guideline is that all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the best interests of the child's welfare". See **Fredrick v. Fredrick** Matrimonial Cause number 30 of 2013 (High Court) (unreported), **J & Anor v. C & Ors** [1974] 2: M: LJ, 51, 52

4.6 Counsel also made reference to the case of **J v C** [1969] All ER 720 in which Lord MacDermott defined the paramountcy of the child's welfare in custody proceedings in the following terms—

*"It seems to me that those words (welfare and happiness of the child) must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they consider a process whereby when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other factors are taken into account and weighed, the course to be followed will be that which is most in the interest of the child's welfare as the term now has to be understood. That is the first consideration, because it rules or determines the course to be taken. The essence of this paramountcy test is that the child's welfare must prevail over any other consideration."*

4.7 Counsel for the Appellant further made reference to the case of **Archibald v Archibald** [1998] He averred that in that case, the Courts appreciated the need to also preserve *status quo* where the said children were already living with a said parent for a number of years. The Court's attention was also directed to the case of **D v M** [1982] 3 All ER 897, where it was stated at 902-903, whilst referring to the case of **Evans v Bartlam** [1937] 2 All ER 646 —

*"In our opinion the justices attached much too little weight to three important considerations. In the first place, it is generally accepted by those who are professionally concerned with children that particularly during the early years, continuity of care is a most important part of a child's sense of security and that disruption of established bonds is to be avoided whenever it is possible to do so. Where as in this case a child of two years of age has been brought up without interruption by the mother (or a mother substitute) it should not be removed from her care unless there are strong counter valuing reasons for doing so. This is not only the professional view; it is commonly accepted in all walks of life."*

4.8 The Appellant's Counsel also referred the Court to the case of **Eveness Nkhalamba v. Alex Nkhalamba**, Civil Appeal Cause No. 212 of 2015 (Unreported) and stated that the Court addressed the issue of the procedure to be adopted in contested custody matters. Mkandawire, J (as he then was) said;

*"On the issue of custody of children, I find it peculiar that the trial Court went ahead to decide on this very important issue without hearing the parties. The Court record does not show any real hearing on this matter. The only consideration that the trial Court had taken into account in ordering for the custody of children to the Respondent was just because he the Respondent was the bread winner. The trial Court should have conducted an exhaustive examination of this issue. That certainly should not be the only paramount consideration to be taken into account."*

4.9 Counsel then submitted that in that case, the Court ordered a rehearing of the said issue of custody and distribution of matrimonial property.

4.10 The Appellant's Counsel then submitted that as between the parties herein, the lower Court did not take evidence from the parties to determine the suitable parent to have custody. He argued that had the Court done so, it would have realised that the Respondent was not suitable as she is seldom at home all week. The Court would also have heard that the Appellant had already been staying with the child until he was taken away violently by the Respondent which act distressed the child. The Court would also have learnt that the Appellant is the one better suited to advance the child's education interests and all-round physical and spiritual development. He then prayed that the appeal herein be allowed and for the Court to reverse the lower Court's order granting the Respondent custody of the child.

## 5.0 The Respondent's Case

5.1 The Respondent's response was short and concise. She submitted, through her Counsel that the lower Court did not err in law and fact in granting the Respondent custody of the child. The argument was that the child is a minor and the Respondent is a proper party to have custody. She then prayed that the Court upholds the order of the lower Court and dismiss the appeal with costs. In terms of the law, the Respondent's Counsel referred this Court to the case of **In Re Chitaukire** 8MLR 45, in which Chatsika J stated that before custody of a young child is granted to a father against a mother, a case against the mother must be so strong as to leave the Court in no doubt that she is completely incapable of bringing up the children. In other words, she must be proved to be totally unsuitable to be granted custody of her own children. Counsel further averred that it is generally accepted that mothers are the most suitable people to be granted custody of young children. He then contended that in the present case, he was unable to say that the Respondent has been proven irresponsible.

5.2 Counsel for the Respondent also made reference to the case of **Kamanga v Kamanga** (2004) MLR 138,139 in which Chombo J is quoted saying that

*"in considering what is in the best interest of the child, the Courts must examine all issues surrounding the custody of the child before deciding which party must have custody...the plaintiff has submitted that she has found a house and has a net monthly salary of about K70, 000.00. Her job does not require her to work out of town and therefore she will be available at home for her son. I have no doubt whatsoever that no servant can look after a child better than its own mother. The defendant may possibly earn more than the plaintiff, but financial provision alone is not adequate to meet all the needs of a child. I therefore find that custody of the child must go to the mother, the plaintiff."*

5.3 In **Somanje v Somanje and Others** (1) 16 (2) MLR 824, Banda CJ as he then was said at page 826 that:

*"In questions of custody it is the child's welfare and happiness which is paramount consideration. The Court will not take into consideration the issue of whether the right of either of the parents is superior to that of the other. I have considered the evidence of the Respondent and there can be no doubt, in my view, that it will be in the interests, welfare and happiness of the children of the marriage if they continued staying with their mother who has a secure employment and a home for them."*

## 6.0 The Determination

6.1 Both parties have correctly argued in terms of the law and are in agreement in that in so far as the law is concerned, when considering custody of children, the best interest of the child is of paramount importance. Reference has been made to a number of cases, and this Court appreciates. This Court also agrees with the parties that the best interest of the child is of paramount interest in deciding which parent to grant custody of the child to. The first question that needs determination is whether or not the lower Court erred in law and fact by not granting the Respondent custody of the issue of the marriage. The Appellant's contention is based on the belief that the Court did not take into account the best interest of the child and disregarded that the Respondent didn't have time for the family when it granted custody to the Respondent on account of the age of the child.

6.2 The Appellant also argued that the lower Court did not take evidence on custody of the child before deciding on the same. That, all that the record shows is that the evidence that was adduced was to substantiate the divorce proceedings, but there was not enough clear evidence to support the granting of custody to the applicant. That the matter should be reopened and the parties should be heard on the issue of custody. While this Court agrees with the Appellant that there was not a separate hearing on custody of the issue, this Court does not agree with the Appellant's contention that there was not clear evidence on which to base a decision on the custody of the child. The High Court has already made determinations on several occasions as to what to consider when it comes to custody of children, and I find no reason to depart from the same. It was stated in the case of **Katimba v Katimba** supra, that when a question relating to the custody of the child arises, the primary considerations is the welfare, happiness and interests of the child and in considering this question, **the Court must consider all the practical aspects or the circumstances of the case.** [Emphasis supplied]

6.3 The Court in the Katimba case supra, went on to quote Chief Justice Richard Banda as he then was, in the case of **Frank Vinkhumbo v J. C. Vinkhumbo**, Matrimonial Cause No. 5 of 997 (unreported), where he stated that the fundamental principle which must guide the Court is the welfare and happiness of the children. Similar sentiments made in the case of **Irene Ndasowa v Ephraim Ndasowa** Civil Cause No. 657 of 1979 (unreported), in which the Court said:

*"I direct myself that on any application for custody of any children, I must regard the welfare of the children as the first and paramount consideration. I must not take into account the consideration whether the claim of the father or that of the mother is superior. It is the welfare, interest and happiness of the children which I must consider. The question of the guilty party does not arise..."*

6.4 In **Re: F** (1968) 2 AllER 766 at 768 Megary J explained the principle in this manner: -

*"I do not think that one can express this matter in any arithmetical or quantitative way, saying that the welfare of the infant must, in relation to other matter, be given twice the weight or five times the weight, or any other figure. A 'points system' is in my judgement, neither possible nor desirable. What the Court has to deal with are the lives of human beings, and all these cannot be regulated by formulae. In my judgement I must take into account all the relevant matters, but in consideration their effect and with I must regard the welfare of the infant as being first and paramount".*

6.5 In **Re: F T and Chitaukire (Minors) V Chitaukire** 8 MLR 38, it was held by the Court that the welfare of the children had to be the paramount consideration of the Court and it was therefore necessary for the Court to examine all the issues and give judgment on the merits of the case. The Court further held that before custody of the children so young could be granted to their father as opposed to their

mother, it would need to be shown that the mother was totally unsuitable to have custody, a fact that had not been established in that case.

6.6 As evident from the cases cited above, which are very persuasive, there is no particular formula for determining what is the best interest of the child. In most cases it would indeed be necessary and important to have a separate hearing so as to exhaustively inquire into the circumstances of the parties. In other instances, the circumstances of the parties and their impact on the welfare of the child would be evident even during divorce proceedings. What is important is to take into account all the relevant circumstances in the matter.

6.7 In the instant case, it is indeed true that custody was granted to the Respondent on the basis of age. Should this decision of the lower Court then be set aside? Although the lower Court fell short of accurately stating the position at law, this Court does not find that the lower Court's decision conflicts with considerations of the best interest of the child. It is true that age is not the only consideration, but it is one of the considerations. In relevant circumstances, it might be the all-important factor that influences the Court's decision. Upon examining all the evidence before the lower Court, and the parties' arguments in this Court, this Court notes that the Appellant has stated that the lower Court disregarded the fact that the Respondent comes home late and doesn't have time for family. This Court also notes that, in the same breath the Applicant states that the Respondent spends her time with her parents at Soche and takes their child there, something he is vehemently opposed to. It is therefore this Court's view that it is not true that the Respondent neglects her family, in this case her child. It is on the lower Court's record that the Respondent does spend time with the child, and so cannot be said to be neglecting the child. Therefore, this ground of appeal doesn't hold water, and fails.

6.8 Going further in this Court's examination of the circumstances of the case, it is also on the lower Court's record that the Appellant at some point just took the child out of school, made him miss classes, all because he had a disagreement with the Respondent. The age of the child at the time was 7 years, which is what the Court below had in mind when it said that the child was young, a fact not disputed by the Appellant. The circumstances of the case in so far as the conduct of the Appellant where the child was concerned could not be disregarded simply because a separate hearing was not done.

6.9 Also noteworthy in the circumstances of the present case is that, prior to the divorce proceedings, there were protection orders taken against the Appellant who had been violent against the Respondent and had abducted his own child, just to revenge against the Respondent who was taking the child to her parents, his in-laws. Whereas the Respondent was taking the infant to her parents during weekends, and would return home, the Appellant took the child during the week, causing him to miss classes, and hid him from the Respondent. He was not picking up her calls when she tried to find out where he was. The Respondent called his mother thinking he had taken the child there, but he was not at his mother's place.

6.10. Further, having 'abducted' his own son, the Appellant told the Respondent that he was transferred to Mzuzu and so the Respondent went as far Mzuzu looking for her child, but he was not there. Only after the Appellant's mother called him did he return the Respondent's call. He had not even gone to Mzuzu but was still in Blantyre. The Appellant, in the protection order, was ordered to return the child to the Respondent, but he disobeyed and resisted until he was forced to with contempt of Court proceedings. The lower Court had to use the State machinery to force him to surrender the child. This Court is of the view that all this cannot be disregarded when deciding on whether or not to overturn the lower Court's decision on who to be granted custody.

6.11. It should also be remembered that the divorce proceedings came on the heels of an application under the Prevention of Domestic Violence Act Chapter 7:05 of the Laws of Malawi. There are so many factors to be considered when deciding on the best interest of the child, and among others, age being one of them. As already discussed above, financial stability alone is not enough. In this particular case, this Court is of the considered view that although the lower Court only stated the age of the child as the only consideration, there is enough clear evidence on which to uphold the lower Court's decision granting custody of the child to the Respondent herein, when other factors including the financial stability and the behaviour of the parents, especially the unreasonable behaviour of the Appellant is taken into consideration.

6.12. From the lower Court's record, the circumstances of the case include the fact that both parties were earning an income and so well able to meet the child's needs. As a matter of fact, the record shows that the Respondent managed to take care of her family financially even when the Appellant fell on hard times. Therefore, both parties have the financial capacity to enable them meet the needs of the child. According to section 3(1)(b)(iii) of the Child Care Justice and Protection Act, in addition to the duties and responsibilities imposed by section 23 of the Constitution, a parent or guardian has the responsibility whether imposed by law or otherwise towards the child which include the responsibility to ensure that **during the temporary absence of the parent or guardian, the child shall be cared for by a competent person.** [Emphasis supplied]

6.13. in view of the foregoing, this Court finds that the contention that the Respondent comes home late from her place of business is not sufficient grounds on which to deny her custody, in the absence of any proof that during her temporary absence, as she goes to earn a living, the child is not cared for by a competent person as required under section 3(1)(b) (iii) above. The law, in the aforementioned section does recognise that there will be times a parent or parents will temporarily be absent. In those instances, the expectation is that adequate arrangements for the proper care of the child should be made.

6.14. In the present case, evidence on the record would show that both parties worked away from home. There was no one working from home all the time. There does not seem to be any problems in that department. The only problem it would seem is the Appellant's emotions; he is unhappy about the odd hours the Respondent comes home, and considers that neglecting family. This Court therefore does not agree with the Appellants contention that the Respondent was not suitable as she is seldom at home all week. The evidence shows that the Respondent was an entrepreneur who was going to her place of business and returning home every day. Just because the Respondent was going to earn a living the whole week and came home later than he expected her to be home from her business does not mean she was neglecting her family. She was actually working to have the means to take care of her family.

6.15. As the law provides, a parent's responsibility includes providing proper guidance, care, assistance and maintenance for the child to ensure his or her survival and development. This includes provision of adequate diet, clothing, shelter and medical attention. As evident from the provision, a parent's responsibility is not just about meeting the child's needs as far as money can buy, but also providing moral support and a safe space for the growth and development of the child. It includes providing a safe space where the child is nurtured emotionally, physically, morally or spiritually. This is about the parents being exemplary in their conduct or character as well by, among other things, not being violent and abusive towards the children, each other or other people, but rather being civil at all times so as not to emotionally traumatise the child.

6.16 Looking at all the circumstances of the present case which includes, but not limited to the set of rules that the Appellant had set for his ex-wife, it would appear that the Appellant, is rather controlling and unreasonable. He instructs his ex-wife not to pay attention to what the Court or the Police says. Instructing the ex-wife to rebel against lawful authority does not appear to be reasonable conduct. This

then makes the Court to be question what he would be instructing his child or the kind of example he would be setting for his child in that regard. In the mind of this Court, that attitude would only act against the Appellant in so far as custody of the child is concerned.

6.17. Further, what is unnerving in the instant matter, is that the Appellant was blatantly disrespectful of lawful authority and disregarded a Court order to return the child. One cannot help but wonder if the Respondent would be allowed to visit with the child if he was legally allowed to have custody of the child, if a Court order failed to convince him to relinquish the child. His conduct doesn't paint a favourable picture.

6.18. In the case of **Kaluma v Mandala and Mandala** Miscellaneous Civil Cause Number 314 of 2005, which this Court also finds very persuasive, the High Court stated that a child needs parental care for his proper growth and development. Such care, as already discussed above, does not only entail the provision of material resources but also the provision of moral support, affection and guidance. It is therefore necessary that a child should grow in an environment which has these aspects of human life in sufficient levels especially during his formative years.

6.19. The conduct of the Appellant has, in the view of this Court, shown that he would most likely not provide a conducive environment for the child's enjoyment of the moral support, affection and guidance from both parents which would only be possible by allowing the Respondent access. His hiding the infant from the Respondent, his denial to surrender the child to the Respondent and consequent noncompliance with a Court order points to a likelihood of him denying the mother access to her child and so depriving the child the right to be raised by her as well, and to be nurtured by both parents for his proper growth and development.

6.20. According to section 3 subsection 3 of the Child Care Justice and Protection Act, a parent is not entitled to act in a way which would be incompatible with any Court order made in respect of the child. The Appellant disregarded a Court order until when he was faced with contempt proceedings. The record of the Court below would show that he became violent when the Court had ordered him to return the child to the Respondent, and the Police had to be involved. All these facts put together are enough and clear evidence of the circumstances in which the child found himself.

6.21. The child herein has a parent who ought to know that a child needs both parents, yet while the other parent lives and is willing to be present in the child's life, deliberately and out of malice engages in conduct aimed at depriving the other parent access to the child in pursuit of a personal vendetta and thereby disregards the child's best interest and needs. The Appellant then cannot be said to be mindful of, let alone carrying out his responsibility to nurture and care for the child in a manner that fosters that growth and development as is envisaged by the law. The Appellant will do well to quickly realise and accept that their child needs both parents to be available, to nurture and care for that child regardless of what is going on between the parents. In the present matter it is clear that the Appellant by his conduct shows that it is his interests that are a priority and not his child's, and that toxic attitude cannot be helpful for the growth and development of a child.

6.22. This Court does also not agree with the Appellant's contention that the lower Court would also have heard that the Appellant had already been staying with the child until he was taken away violently by the Respondent which act distressed the child. That the Court would also have learnt that the Appellant is the one better suited to advance the child's education interests and all-round physical and spiritual development. The evidence in the lower Court's record shows that the child was staying with the Appellant following his having snatched him from school, and following his refusal to obey a lawful

Court order. This kind of contempt therefore cannot be used as a basis for arguing that the Appellant was already in custody of the child.

**6.23.** The Appellant cannot be held to have the best interest of the child when he was the one who disregarded the child's need to be in touch with his mother, ignored the child's education all in the name of depriving the Respondent access to the child. He was willing to hurt and disadvantage his own child because he wanted to exact a 'punishment' on his wife. A parent who uses his child as a pawn, at the expense of the child's education, to make his partner suffer can hardly be said to have the child's education interests, let alone emotional and spiritual development at heart. If he is serious about the child's academic life, then he should not unnecessarily uproot him from what he is familiar with and so disturb him, but rather continue to financially support the child by paying his school fees.

**6.24.** As stated earlier on, contrary to the Appellant's contention, it cannot be said that there was not enough clear evidence on which to grant custody of the child, neither can it be said that the lower Court disregarded the welfare of the child when it gave custody to the Respondent in total disregard of the evidence and the lower Court's finding that the Respondent has no time for family.

**6.25.** This Court has the power on appeal 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. In view of such powers, this Court holds that the appeal cannot not succeed on account of all the preceding. Consequently, the lower Court's decision on custody is confirmed.

**6.26.** On the last question, did the lower Court err in law in not making an order of access to the child by the Respondent? To begin with the Malawi Constitution as stated above, recognises that children, for their proper growth, must be raised by their parents. This Court must therefore, ensure that the child's rights under section 23 are promoted. See **Katimba v Katimba** Matrimonial Cause 6 of 2008. A child therefore, not only has the right to know their parents, but also to be raised by both of them. The evidence in the lower Court's record would show that there is indeed no order on the Appellant's access to the infant. The Appellant has the right to access his child, but his rights will not be above the interest of the child.

**6.27.** In view of the Appellant's recorded erratic behaviour, this Court is of the view that the Appellant is so full of anger towards the Respondent that it compromises his relationship with his child because he involves the child. Until his anger issues are sorted out, and a new attitude on co-parenting is adopted, this Court is of the view that there is high likelihood of him behaving in a manner that is not consistent with the best interest of the child. In the best interest of the child, this Court would be reluctant to order that he has physical access until he has had psychological counselling and certified as having full understanding of, first the need for him to be civil towards the Respondent, and second, the implications and impact of hostile and violent actions and divorce on the infant so that he does not traumatise or victimise the child.

**6.28.** In that regard, this Court orders that before an order of physical access to the child can be made in favour of the Appellant, the Appellant undergoes psychological assessment and/or counselling at Queen Elizabeth Central Hospital or any other nearest Government Hospital offering psychiatry/counselling services. The Appellant is to bring proof of his attendance of such sessions as certified by a Medical Practitioner in the field. This Court will then consider the issue of physical access upon such a certification and recommendation of a competent Medical doctor in the field.

**6.29.** In the interim, the Appellant is to maintain contact with the child via telephone or cell phone (audio and video) calls until such a time that he is certified stable enough to have a physical contact with his child without any threats of child abduction or negative actions towards the child's mother, the Respondent herein.

**7.0 Costs**

**7.1.** Cost normally follow the event. The Appellant being unsuccessful in this appeal, costs are awarded to the Respondent.

Delivered on this 24<sup>th</sup> day of June, 2022 at Chichiri, Blantyre.

  
A. Kanthambi  
**JUDGE**