

**IN THE NATIONAL TRADITIONAL COURT AT LIMBE, BLANTYRE**  
**CAUSE NUMBER 16 OF 1979**

**BETWEEN**

**MRS E KHEMBO..... APPELLANT**

**AND**

**MR. S KHEMBO.....RESPONDENT**

**JUDGEMENT**

This is an appeal from the decision of Blantyre Traditional Court. The appellant and the respondent lived together under a *concubinage* which lasted for 9 years, and there were three children to that union. The appellant regarded the union as a marriage, but there were no advocates. The respondent assured us that no marriage was intended but mere friendship and that is why advocates were not produced by either party.

During the ninth year of their *concubinage*, there were some misunderstandings between them. The respondent accused the appellant of infidelity because sometimes when he went to see the children, he could not find the appellant at home. On one occasion, the respondent actually saw, or caught the appellant being driven, home in another man's car. After a brief quarrel that followed, the respondent decided to remove all the articles which he had bought and kept in the house he had constructed for the appellant. Later, the appellant petitioned the court for relief on the grounds of cruelty and unlawful removal of her property. The trial court ordered the parties' union to be dissolved without any compensation, but the court ordered the respondent to pay K12.00 monthly for- the maintenance of the three children indefinitely. The appellant appealed to this court on the grounds that the maintenance order was uncertain, and that the trial court erred by not ordering the respondent to pay her compensation for leaving her after he had cohabited with her for 9 years and bore him three children.

This appellate court, after a careful consideration of the grounds of appeal, found that the trial court was right by not ordering the respondent to pay compensation to the appellant because this was not a valid marriage under our customary law. We want to discourage marriages without *chinkhoswe* as much as we can possibly do. **A marriage without *chinkhoswe* is unlawful marriage in the eyes of our traditional customary law, and a party cannot derive benefits or obligations under a marriage which is void customarily.**

We highly appreciate what the respondent did by constructing a house for the appellant, but certainly, he was not under any obligation to do so. ***Chinkhoswe* does not only validate a marriage under customary law, but also creates rights and obligations enforceable by our courts of laws.** Civil Appeal Case No. 50 of 1973. Manchichi -vs- Manuel

Since the parties did not intend a marriage, this court concurs fully with the decision of the trial court that there never was a marriage between them.

As regards maintenance for the children, we agree with the appellant that the court erred by not defining the period within which the sum of K12 .00 monthly was to be paid. The court merely said,

*"Defendant to support children -by K12.00 monthly"*

In the absence of any explanation to the contrary the order meant that the defendant was to pay K12.00 monthly for life, that is to say, the order was to be determined at the defendant's death. In our view such order is ambiguous. We, therefore, set aside this order on the ground of ambiguity and we substitute therefore an order that the respondent pay maintenance for the children at the rate K12.00 monthly for 6 years from the date of the order of the trial court, which is 21st April 1978.

If the respondent can afford to pay a lump am at once, by all means he is free to do so in order to get the burden off his shoulders. **Appeal dismissed**

**HON. JUDGE CHIEF CHIMUTU (CHAIRMAN)**  
**HON. JUDGE CHIEF NAZOMBE (MEMBER)**  
**HON. JUDGE CHIEF MLONYENI (MEMBER)**  
**HON. JUDGE MR. C.C.J. CHIPINGA (MEMBER)**  
**HON. JUDGE MR N. J. MHONE (MEMBER)**

**PRONOUNCED IN OPEN COURT AT LIMBE, BLANTYRE THIS 15TH DAY OF JUNE, 1979**