

IN THE NATIONAL TRADITIONAL APPEAL COURT SITTING AT LIMBE, BLANTYRE.

CIVIL APPEAL CASE NO. 34 OF 1979

MARTIN YOHANE

-VS-

KEPSON NTONDO

JUDGEMENT

This is an appeal at the instance of Martin Yohane. The appellant betrothed the respondent's daughter who was not matured; this is permissible under customary law prevailing in Chikwawa District. In that district, a marriage can only be validated by the payment of '*lobola*', but since the girl was not matured, the respondent told the appellant that payment of *lobola* would be deferred until such time as the parties would be blessed with three children in their family. This was sort of a trial period.

The appellant after paying a betrothal to the respondent, which consisted of a box of matches, some tobacco, two bottles of kachaso beer and K2.00 cash, took the girl with him to his home in Machinga, District, then Kasupe, where they lived and cohabited for 11 years. Four children were born to them, but one passed away. Each time a child was born, the appellant sent a word to the respondent in Chikwawa. After a third child was born, the appellant sent his *nkhoswe* to the respondent to find out the amount of *lobola* to be paid and the respondent charged a sum of K30.00. The appellant, however, failed, or neglected to pay this amount. After he had waited for the money for some time, the respondent sent for his daughter, and when she went to Chikwawa, the respondent gave her in marriage to another man, stating that since the appellant had failed to pay *lobola*, his continued cohabitation with her was unlawful. The appellant sued the respondent in damages for allowing, or giving his daughter in marriage to another man when she was lawfully married to him and had paid the requisite betrothal. After a full trial, the court found that in accordance with the customary law in Chikwawa District, the appellant had never been married to the respondent's daughter, but since he had paid a betrothal, the respondent should compensate the appellant with K12.00. As regards the children, the respondent told the appellant that he could take them away, but he had to pay him a sum of K66.00. The appellant appealed to the Chikwawa District Traditional Appeal Court, but the appeal was dismissed, and he appealed further to this Court.

We have considered the appellant's grounds of appeal in the light of the evidence obtaining on the records of the courts below, and we would like to point out to the parties as we have done in a number of cases before that, in those areas where the payment of *lobola* is the pre-requisite for the contraction of a valid marriage, there can be no marriage until *lobola*, or part thereof, has been paid, and this court, or any other Traditional Court, for that matter, does not and will not recognise a union, with cohabitation of any duration whatsoever, as amounting to a valid marriage in the absence of *lobola*. In these circumstances, we sustain the decisions of the courts below in that there

never was a marriage between the appellant and the respondent's daughter and, accordingly, we dismiss the appeal and also quash the order for the payment of K12.00 to the appellant.
Appeal dismissed.

HON. JUDGE CHIEF CHIMUTU (ACTING CHAIRMAN)
HON. JUDGE CHIEF KATULI (MEMBER)
HON. JUDGE GRIEF MSAKAMBEWA (MEMBER)
HON. JUDGE CHIEF CHIPINGA (MEMBER)
HON. JUDGE M. B. W. KALUKUSHA

DELIVERED IN OPEN COURT AT LIMBE, BLANTYRE THIS 1ST DAY OF
NOVEMBER, 1979