

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL APPEAL CAUSE NO. 26 OF 2002

BETWEEN:

GERTRUDE GONDWE.....PLAINTIFF

- and -

MATIASI GONDWE.....DEFENDANT

CORAM: TWEA, J

Absent, of Counsel for the Appellant

Respondent present in person

Jere, Official Interpreter

JUDGMENT

This is an appeal from the Second Grade Magistrate court sitting at Limbe. The appellant appeals against the Magistrate order only. She has claimed that she was not compensated for living with the respondent and was not given any of the household goods, or the plot they owned, she claimed she had nowhere to live with the child since she has no house.

The facts of the case are that the appellant, a standard seven (7) girl then, fell in love with the respondent, the respondent proposed marriage and the issue of marriage advocates was initiated. This however, did not materialise as the respondent father was reluctant and asked the respondent to think over the marriage proposal. In the meantime the appellant moved in with the respondent. Again the issue of formal marriage arrangement did not materialise. The two had a child in the course of all this. The respondent then fell ill and was hospitalised. The respondent's parents, it is recorded, took away the

household goods from the house and on discharge, the respondent went to live with his parents for care. It was then discussed between the parties that they should acquire separate accommodation, but the respondent still wanted time to be under the care of his parents before he could move out.

It was in the course of this that some misunderstandings arose when the appellant refused to be examined on whether or not she had been raped following an incident with two unknown men at the respondent's father's garden. There were allegations of infidelity and the respondent decided that the appellant should return to her father. The parties failed to resolve their differences and the appellant took out summons for dissolution of marriage.

The court correctly found that there was no marriage at custom, that this was mere friendship. However, taking into account that there was an issue of their union, he ordered that the respondent pays the appellant K500.00 a month for 3 years as compensation.

I have considered the finding of the Magistrate and her order. I agree that there was no marriage at custom and in my view the union would not, on the facts, be viewed as a marriage by cohabitation or repute. The union was less than two years old and there were marriage negotiations going on, although not fruitful. The parties were minors and need parental consent. I find that the finding that this was mere friendship, notwithstanding the birth of the child, correct.

The evidence in the trial court did not refer to any plot owned by the respondent at all and it is my view that this claim cannot be sustained in this court and must fail.

The ground of building a house too must fail as this was only friendship where parents were negotiating to formalise into a marriage. A word need to be said about the conduct of the parents in this case as was said by the trial Magistrate. What the parents did in this case is most deplorable. There was no formality but they allowed the children to live together. This is very irresponsible. When the respondent fell ill, the parents had to take care of him because the parties were young and still in need of care. Parents should not allow children to co-habit until marriage.

Last, I consider the order made by the Magistrate; that the respondent pay K500.00 a month for 3 years because the appellant has a child by him. Such an order can only be made in the sense of S.3(c) of the Affiliation Act, that the respondent did care for the child after its birth and should share the responsibility of raising the child. According to S.5(1) as amended, the order should be for not less than K250.00 a month, for maintenance and education until the child attains the age of 16 years or sooner dies. I

therefore order that the respondent pay for maintenance and education for the child at K500.00l a month until the child is 16 years or sooner dies. The parties may apply for variation if circumstances change.

The respondent will bear costs of this appeal.

Pronounced in open court this 24th day of September, 2002 at Blantyre.

E.B. Twea

JUDGE