

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL APPEAL NO. 14 OF 2002**

**BETWEEN:**

**THELEZA STANYA ..... APPELLANT**

**AND**

**PATRICK KUTAMA ..... RESPONDENT**

**CORAM: MKANDAWIRE, J**

**JUDGEMENT**

This appeal comes from Nchalo Magistrate Court. The appellant and the respondent were husband and wife but the marriage was dissolved. Upon dissolution the lower court was called upon to distribute the matrimonial property which it did. The former wife now appellant was not satisfied with the distribution, hence this appeal.

The appellant said that during their marriage, they built eight houses which are rented out. However it turned out from the evidence which the lower court accepted that these were not houses. They are mere undetached rooms in the form of a circle with a tap of water in the center. These are at Nchalo. The respondent lives right there. The appellant told the court that the lower court made no mention of these so called houses. The respondent told the court below, that he had three wives in all and a total of 19 children.

He divorced the wives to concentrate on church matters. However he is keeping all the 19 children. Some of these children live in those rooms and only four of them are rented out. The magistrate carefully considered the issue concerning these rooms and he came to the conclusion that it would not be proper the appellant to have a share. The respondent lives right there and it would be a cause of great animosity if she was to have some of the rooms, I agree with this conclusion.

The appellant and the respondent were husband and wife for 26 years, or so, she must have contributed to the building of these houses or rooms. She used to enjoy rentals from the tenants. It was also prestigious to be a landlady. Now she has lost all that. Although she cannot have of the rooms, it is only fair that she must be compensated. In view of the children the respondent is keeping and bearing the fact that some of them live in these rooms, it would not be right to order that they be sold and share the proceeds. It is unfortunate that the value of this property is not known and further it is not known how much rent is fetched per month. In the absence of such information I consider that K20,000.00 would be sufficient to compensate the appellant. I therefore order that the respondent should pay her K20,000.00.

I now turn to the appellant appeal as regards a tree farm and house hold properties. The list of household properties is long but the monetary value is very little. In distributing the property the lower court took into consideration the fact the respondent is keeping 19 children of course some of these children are grown ups but the respondent's responsibility is big and the children. Certainly the children need the properties as well. The respondent had 8 children with the appellant. The appellant was compensated K10,000.00 of the tree farm and she was also had a number house hold items. Considering the number of children the respondent is keeping, it is my view that the appellant had a fair distribution of these properties.

To this limited extent the appeal succeeds. Each party to pay own costs.

Pronounced in open court this 4<sup>th</sup> of October 2002 at Blantyre.

**M.P. MKANDAWIRE**

**JUDGE**

