



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL APPEAL CAUSE NO. 58 OF 2008**

BETWEEN:

EVANCE KAMAKANDA APPLICANT

-and-

FELISTA KAMAKANDA..... RESPONDENT

CORAM: Hon. Justice M.L. Kamwambe
Mrs Gangata, Official Interpreter

JUDGMENT

Kamwambe J

The parties in this case appeared unrepresented and they conducted their own arguments.

The Appellant's appeal is based on the fact that the Appellant told the lower court that he was unemployed but it still ordered him be paying K5,000.00 per month until three children attain the ages of 18 years respectively. He wonders why the lower court did not distribute the matrimonial property. He wants to care for the children himself, which I take to mean that he wants to be in custody of them.

The marriage was dissolved in court following the fact that the marriage advocates had also already done so. The order of the lower court was that the Appellant do complete the project of building the house for the Respondent at Respondent's home as custom requires by December 2008 or in the alternative give the Respondent the sum of K100,000.00 for the construction of her house. If he chose to

pay money he had to pay a first instalment of K50,000.00 by end July 2008 and pay the balance by December 2008. Custody of the children was placed in the hands of the Respondent and the Appellant was ordered to be responsible for their education and welfare, to pay school fees and buy them uniforms until they finish their studies. Further as stated above he is to pay into Court K5,000 every month on the last Friday for upkeep of the three children. The Respondent was also to be responsible for the medical costs of the children. Such is the order the Appellant was not pleased with, hence this appeal.

The Appellant wants custody of the children who are 9, 6 and 3 years old. In his appeal he has admitted that he is very poor and that yet all along he has been keeping three orphans. It would appear these orphans are still with him. He reveals that he even fails to get K4,000.00 due to poverty. Evidence reveals that soon after he separated from the Respondent he found another companion as a wife. The eldest boy who went to live with the Appellant was brought back by the Appellant to the brother of the Respondent in Ndirande because the Appellant could not keep him. The boy has since gone to the Respondent's home. More likely, the Appellant was not happy to stay with the boy because he has another woman in his house at Goliyo. The Respondent does not refute that he dispatched the boy away to his mother. No good and proper reason is given. I do not see any justification why this time around he should seek custody of the children. I am reluctant to disturb the finding of the lower Court on this score, hence the Respondent should continue to be in custody of the children, I am very sure that this will be in the interest of the children. To make things worse, the Appellant has to date not supported the children in any material way. He does not come to court with clean hands.

The Appellant is on record saying that he was then receiving K4,500.00. The lower Court ordered that he pays the Respondent K5,000.00 every month for the children's upkeep. The lower court should have considered the means of the Appellant. It is not possible that he pays K5,000.00

every month in the circumstances. He is not a man of means to be paying that much even if he does some photography work during weekends. Even if he says he is not at work he did not refute that he is working somewhere at Chirimba. In the circumstances I order that he be paying the Respondent for children upkeep the sum of K2,000.00 failing which it shall be taken as court contempt.

The other order of the lower court was that the Appellant should either erect a house at the Respondent's home or pay the Respondent K100,000.00 for construction of the house. Custom demands that a man builds a house for the wife at her home. I do not see how the Appellant intends to escape from this responsibility. It is naïve to think that he can avoid the responsibility.

I note that one of the Appellant's claims is for distribution of the matrimonial property. The Appellant who left the matrimonial house first ignored the Respondent's plea to help in safekeeping of such property. He had nothing then to do with the property. He was defiant. For him to come around and request for the distribution of property smacks of bad faith. However I deem it necessary that I show the appellant some lenience by substituting the order for K100,000.00 with K90,000.00 and consequently whatever matrimonial property is in the hands of the Respondent should continue to be hers.

I note that the Appellant is not rendering help to the children and has not started building the house. This time around we should see to it that he is duly complying with the court orders. It is so decided.

Pronounced in opened Court thisday of October, 2008 at Chichiri, Blantyre.

M.L. Kamwambe
JUDGE