



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
(LILONGWE DISTRICT REGISTRY)
CIVIL APPEAL NUMBER 88 OF 2017

(Being Civil Cause No.373 of 2017 before the Third Grade Magistrate Court sitting at Lilongwe)

BETWEEN:

DOROTHY MATIKI.....APPELLANT

-AND-

STEVEN MATIKI.....RESPONDENT

Coram:HON JUSTICE DR. C.J.KACHALE, Judge

Appellant, Present but without any Legal Counsel

Respondent, Present but without any Legal Counsel

Namagonya (Mrs.), Court Reporter

Choso (Mrs.), Court Clerk and Interpreter

JUDGMENT

1. On 30th March 2017 the magistrate court below dissolved the marriage of *Dorothy Matiki* to *Steven Matiki*. In its decision the court basically concluded that the ungovernable temperament of the appellant was the reason for the irretrievable breakdown of her marriage to the respondent. It was the clear factual conclusion of the magistrate based on the evidence from the respondent as well as its own observation of the appellant in the course of trial (both in court and around the court premises) that she was a rude woman who had serious problems relating with others; she was even insulting the respondent and his family when they came to attend court proceedings.

2. As regards the distribution of matrimonial assets the trial court relied upon the terms of section 74 of the Marriage, Divorce and Family Relations Act 2015 (MDFR Act 2015). That provisions reads as follows:

A court shall equitably divide and re-allocate property upon the dissolution of a marriage taking into account

- (a) The income of each spouse;
- (b) The assets of each spouse;
- (c) The financial needs of each spouse;
- (d) The obligations of each spouse;
- (e) The standard of living of the family during the subsistence of the marriage;
- (f) The age and health of each spouse; or
- (g) The direct and indirect contributions made by either spouse, including through the performance of domestic duties.

3. In its analysis of the evidence, the lower court specifically found that the appellant made no contribution (directly or indirectly) to the acquisition of their matrimonial home; thus it was awarded to the respondent. The court also gave the appellant several household properties of varying value; in addition a specific order was made (considering the capacity of the respondent) for him to build his ex-wife a house at her home. To that end aa specific order was given ordering him to pay K800, 000 into court for that purpose (considering the soured relationship and how impractical it might have been to expect him to actually arrange the actual construction at her home village).
4. Being dissatisfied with the order of distribution the appellant lodged the present appeal. She alleged that the lower court decision was against the weight of evidence pertaining to her contribution in acquiring the assets and generally to the role played by the husband in undermining her initiatives to engage in gainful businesses. This being an appeal, this court has had the benefit of re-examining the record of evidence *de novo* and reaching its own factual conclusions. In the end, having regard to the evidence which has been presented in these proceedings, one is at pains to

find a basis for faulting the conclusions and orders of the trial court in the manner proposed by the appellant.

5. In totality, therefore, one is unable to find any basis for the allegations made by the appellant in the present proceedings. The lower court properly exercised its jurisdiction under section 74 of the MDR Act 2015 in distributing the assets in the manner it; in proceedings of this nature where little or no documentary proof is adduced and the demeanor of the witnesses becomes critical in assessing credibility of witnesses, the trial court enjoys a considerable advantage over an appellate forum like this one. Indeed, it is fair to state in the order that the temperament of the appellant in hearing the present appeal did come across as described by the magistrate below. Thus this court disagrees with her and upholds the conclusions and decision of the magistrate court below.
6. In closing, therefore, the present appeal is dismissed for lack of merit. Instead the decision of the magistrate court below is hereby affirmed as a fair conclusion on the equitable distribution of the matrimonial assets; let the same be enforced accordingly.

The parties not being legally represented the court makes no order for costs.

Made in open court this 29th day of May 2018 at Lilongwe.

C.J.Kachale, PhD
JUDGE