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HIGH COURT

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL APPEAL CAUSE NO. 9 OF 2020
BETWEEN

STELLA CHIBISA.....APPELLANT

-AND-

FRIGHTON NKHAMBALA.....1stRESPONDENT

CORAM: THE HON. MR. JUSTICE D. MADISE
Appellant present, unrepresented
Asante Mussa for Respondent
Mr. Mathanda Clerk of Court

Madise, J

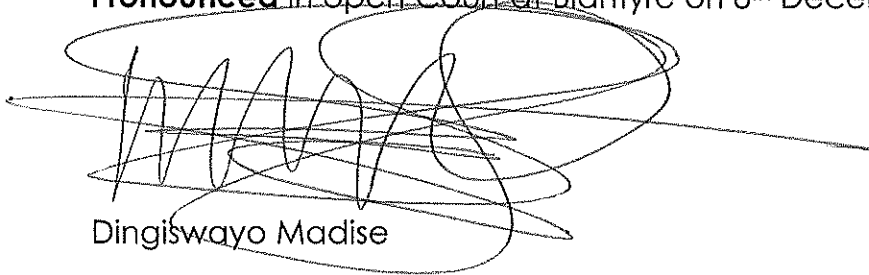
JUDGEMENT

- 1.1 The Appellant first appeared in the First Grade Magistrate court sitting at Nchalo under Civil Cause No 19 of 2020. The Appellant sought relief over a marriage dispute for abandonment and desertion against her husband the Respondent herein. In its judgment the court below dissolved the marriage and blamed both parties for the failure of the marriage. The court further ordered the Respondent to compensate the Appellant with K375 000 and that the Respondent should build her a house at a place of her choosing.
- 1.2 Custody of three elder children was given to the father while custody of a four year child was given to the Appellant. The Respondent was ordered to be paying K10 000 as maintenance per month. The Appellant being unhappy with the judgment now appeal to this Court against the whole judgment. I'm mindful that appeals in this Court are by way of re hearing.
- 1.3 The facts are that the Respondent left the matrimonial home and married another woman. The Respondent had accused the Appellant of committing adultery with a man who was frequently seen with the Appellant. This was confirmed by Hilbert Chibisa. The accusations of adultery were further confirmed by Macford Nkhambala. When the Appellant was confronted she denied. When she was ordered to leave the house she refused. At that point the Respondent decided to leave the house. Hence the Appellant sued for desertion.
- 1.4 The court below in its judgment blamed both parties for the breakdown of the marriage. The court then ordered that the Respondent should be paying K10 000 as maintenance, ordered the Respondent to build a house for the Appellant and pay her K375 000. There has been no mention of gardens in the evidence or the judgment and I wonder where the Appellant has taken this issue from. Unfortunately this is a re hearing of the evidence presented in the court below.
- 1.5 Burden and standard of the proof in civil matters is that he who alleges must prove. The burden of proof is fixed and settled at the beginning of the trial by the state of pleadings and as a matter of law remains unchanged

throughout the duration of the trial. The standard required by the civil law is on a balance/preponderance of probabilities. It is evidence which is more convincing to the mind and accords with reason and credibility. Where at the end of the trial the probabilities are evenly balanced, then the party bearing the burden of proof has failed to discharge his duty.

1.6 I have looked at the evidence and the reasons for the judgments and orders made and I see no error in whatever transpired in the court below. In these premises this appeal is dismissed with costs. The judgment of the court below stands.

Pronounced in open Court at Blantyre on 8th December 2020

A large, complex handwritten signature in black ink, consisting of multiple overlapping loops and lines, positioned above the printed name.

Dingiswayo Madise

Judge