

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL APPEAL NO. 46 OF 2006**

**BETWEEN**

**LEDSON JAMISON ..... APPLICANT**

**AND**

**DIVERIYASI JAMISON ..... RESPONDENT**

**CORAM : HON. JUSTICE NYIRENDA**  
: Counsel for the Applicant, Unrepresented  
Counsel for the Respondent, unrepresented  
Court Reporter, Ms Z. Mthunzi  
Court Interpreter, Mr. M. Gonaulinji

**JUDGMENT**

The appellant and the respondent are brothers. The appellant's claim in the lower court was for the return or replacement of his cattle which he said were taken away from him by his brother when he returned from Zambia. By his claim he expected to be given six cattle. The lower court

found in his favour but only awarded him one cow. He appeals to this court basically seeking that he be given more than one animal.

I have carefully read through the lower court record and also listened to the appellant before this court. The truth in this case is in the testimony of the witnesses that were called on both sides before the lower court. Virtually all the witnesses confirm that the sharing of the cattle when the respondent came back from Zambia took a number of considerations into account including the fact that the appellant had worked hard in the village to keep the family cattle while his brother the respondent was away to Zambia for several years.

At the top of the agenda was the fact that the cattle in fact belonged to the respondent and their late father. The respondent left the village and went to work in Zambia, occasionally coming home. During that time appellant was the one looking after the animals in the village. The exact extent of the appellant's toil in taking care of the animals must no doubt have been taken into consideration by elders in the village. It is clear to me that the decision of the trail magistrate merely followed the path of what was found appropriate by the elders.

It is this kind of case that present difficulties for courts because the little details of what might have gone on between the parties is not documented and perhaps only better known to relatives and others in the village. For as long as the trial magistrate has found favour and trust in the testimony of some of the witnesses, unless the findings are , the appellate court will not tamper with findings of fact and trust in the testimony of some of the witnesses unless the findings were perverse. And unless the exercise of discretion is clearly unjustifiable on the facts it would not be appropriate for the appellate court to overturn it. I find nothing on the analysis of the facts by the trial magistrate that compels me to overturn that decision.

This appeal is therefore without merit and I dismiss it. The appellant will be given one cow as determined by the trail magistrate.

**PRONOUNCED** in Open Court at Lilongwe this ..... day of May 2008.

A.K.C. Nyirenda

**JUDGE**