

Ellen Tewesa v Chimwemwe S. Tewesa

Matrimonial Cause No. 9 of 2012

Summary

Court:	High Court of Malawi
Registry:	Family and Probate Division
Bench:	Honourable Justice S.A. Kalembera
Cause Number:	Matrimonial Cause No. 9 of 2012
Date of Judgment:	August 31, 2020
Bar:	Mr Matumbi for the Petitioner Respondent, unrepresented

The Petitioner initiated proceedings in the High Court, Principal Registry, for the determination of matrimonial property distribution following the dissolution of her customary marriage to the Respondent in the Third Grade Magistrates' Court on 27 April 2012. The lower court had previously ordered the Respondent to compensate the Petitioner with K300,000.00 and to build a matrimonial house or pay K150,000.00 in lieu, but deferred the property distribution to the High Court due to a want of jurisdiction. The Petitioner sought declarations that the Respondent's educational qualifications (Bachelor of Education Humanities and Diploma in Education) constituted family property, in which she had a beneficial

interest due to her significant contribution during their 20-year marriage, and sought a 50/50 distribution of these and other household properties. She also appealed against the inadequacy of the compensation and the sum ordered for house construction by the Magistrate. The Court noted that there were no children from the marriage, thus custody was not an issue. The Petitioner, a housewife, contributed to the family's well-being while the Respondent, a teacher turned lecturer, pursued his education.

The High Court considered principles of matrimonial property distribution, emphasizing that both the Constitution and customary law mandate fair and just distribution upon divorce, and that individual contributions are not the sole factor. The Court found that there is "property" in educational qualifications, but clarified that they are not "family property" as they are uninheritable and personal to the holder. While acknowledging that Malawian precedent on educational qualifications as marital property was absent, the Court referred to American case law which offers differing views but generally denies professional degrees the status of marital property with an exchange value. The key reasoning of the Court was that fairness is the cardinal principle in property disposition upon dissolution of marriage, requiring consideration of all circumstances. The Court implicitly allowed the application regarding the inadequacy of compensation and the house, ordering the Respondent to build a house for the Petitioner or pay K2,000,000.00 as an alternative sum. Each party was ordered to bear its own costs.