

IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLD AT LUSAKA  
(Civil Jurisdiction)

2016/HP/1886

BETWEEN:

IN THE MATTER OF AN APPLICATION TO BE APPOINTED AS  
ADMINISTRATOR OF THE ESTATE OF LATE WILSON KAPANDA

AND

AN APPLICATION UNDER SECTION 9, 15, 19 AND 34 OF  
INTESTATE SUCCESSION ACT CHAPTER 59 OF THE LAWS OF  
ZAMBIA FOR THE ADMINISTRATOR TO RENDER ACCOUNT

LUCKY KAPANDA (Suing as beneficiary of  
the Estate of the late Wilson Kapanda)

APPLICANT

AND

WILSON KAPANDA JNR  
SIDNEY CHIMPAMPWE  
DAVID ZULU  
JAMES MUNTHALI

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT



Before Honourable Mrs. Justice S. M. Wanjelani on the 16<sup>th</sup> day  
of July, 2018.

For the Applicant: Mr. J. Nyasulu, Messrs Legal Aid Board

For the Respondent: Absent

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## JUDGMENT

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### Cases referred to:

1. Wilson Masauso Zulu V Avondale Housing Project (1982) ZR 172
2. Khalid Mohamed V the Attorney General (1982) ZR 66



3. *Rosemary Chibwe V Austin Chibwe SCZ Judgment No. 38 of 2000*

**Legislation referred to:**

1. *Intestate Succession Act, Cap 59 of the Laws of Zambia*

The Applicant commenced this action by way of Originating Summons seeking the following reliefs:

1. *That the Applicant be appointed as the Administrator of the Estate of the late Wilson Kapanda;*
2. *That there be an Order declaring that the Applicant and other children of the Deceased Wilson Kapanda as beneficiaries of House No. 12/05, Chunga Lilanda West, Lusaka and that they are entitled to it;*
3. *That the sale of the House No. 12/05, Chunga, Lilanda West, Lusaka, by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent be declared null and void;*
4. *That there be an Order that the 3<sup>rd</sup> Respondent and any persons unknown occupying House No. 12/05, Chunga, Lilanda West, Lusaka, vacate the premises;*
5. *That there be an Order that the Applicant takes vacant possession of House No. 12/05, Chungu, Lilanda West, Lusaka;*
6. *Any other relief the Court may deem fit; and*
7. *Costs incidental to this action.*



The Applicant filed an Affidavit in Support of the application in which he averred that he was a child of **Wilson Kapanda**, (hereinafter referred to as "the Deceased") who died intestate in 1997, leaving behind **House No. 12/05 in Chunga, Lilanda West, in Lusaka**, and that at the time of his death, the Deceased had a "*Building Loan Material Card*" as proof of ownership as per exhibit "**LK1**".

The Deponent averred that he had been living in the subject house with his five siblings since 1980 till the Deceased's death and no one obtained letter of administration for the Estate.

The Deponent averred that in April 2012, the 3<sup>rd</sup> Respondent evicted the family from the house alleging that it had been sold to him by the 1<sup>st</sup> Respondent, but that the 1<sup>st</sup> Respondent did not have authority to sale as he was not the Administrator. He averred that the actions of the 1<sup>st</sup> Respondent left the family destitute.

It was the Deponent's contention that at the time of the alleged sale, he was a minor with no one to protect his interests nor those of his siblings and that efforts to resolve the matter amicably with the 3<sup>rd</sup> Respondent had proved futile. The Deponent averred that as he had now attained the age of majority at 27 years, he should be appointed as the Administrator of the Estate of the late **Wilson Kapanda**.

During the hearing, the Respondents did not appear despite being aware of the date as per Affidavit of Service dated 24<sup>th</sup> May 2018.



In addition, they did not file any opposition despite having been served through Substituted Service and the 4<sup>th</sup> Respondent's representative appearing before Court on 8<sup>th</sup> May, 2017. I, therefore, allowed the Applicant to proceed, who relied entirely on his Affidavit in Support of the application and prayed that the reliefs sought be granted.

I have considered the Affidavit in Support as well as the provisions of the **Intestate Succession Act**, upon which the application is premised. The specific sections relied on include **section 9** which deals with the surviving spouse and children being entitled to the house, **sections 15** and **19** on the letters of administration and duties of the administrator while **section 34** provides that an Administrator shall not derive benefit from the property of the Deceased.

The Applicant contends that the late **Wilson Kapanda** owned **House No. 12/05, Chunga Lilanda West, Lusaka** and stated that proof of this ownership was the "**Building Loan Material Card**" exhibited and marked "**LK1**". The said exhibit is not clear and despite the Court requesting Counsel for the Applicant to avail it with a clearer copy or the Original, this was not done, even at the time of writing this Judgment. I have scrutinized the said exhibit whose details cannot be clearly discerned. I am unable to ascertain which institution issued it, which building or house it relates to or how a building loan can be deemed proof of ownership. No further document was produced before Court to show proof of ownership. I



am therefore unable to make an informed determination of whether or not the Deceased **Wilson Kapanda** was the owner of the house in contention.

It is trite that the **Intestate Succession Act** applies to the Estates of the Deceased that die without leaving a Will. The Act provides for the appointment of the Administrators, the distribution of the Estate and the duties as well as offences in relation to the Administrators so appointed. The Applicant seeks that he be appointed as the Administrator of the Estate of the late Wilson Kapanda. It goes without saying that in order for one to be appointed an Administrator of an estate of a deceased person, there has to be proof of the death such a person over whose estate an appointment as administrator is sought. However, the Applicant has not produced a copy of the Death Certificate or any other document to show that the said **Wilson Kapanda** is Deceased and that the Applicant was his child.

It is also the position of the law that the burden of proof lies on the party that alleges, as alluded to in a plethora of authorities including the case of **Wilson Masauso Zulu V Avondale Housing Project**<sup>(1)</sup> and **Khalid Mohamed V the Attorney General**<sup>(2)</sup> where Mr. Justice Ngulube, DCJ, as he then was, stated inter alia that:

***“an unqualified proposition that a Plaintiff should succeed automatically wherever a defence has failed is unacceptable to me. A Plaintiff must prove his case and***



***if he fails to do so, the mere failure of the opponents defence does not entitle him to judgment.”***

In addition, the Supreme Court stated in the case of **Rosemary Chibwe V Austin Chibwe<sup>(3)</sup>**, that:

***“the Court can only make a decision based on the evidence on record.”***

Based on the evidence on record and the foregoing authorities, I find that the Applicant has failed’ on a balance of probabilities, to prove his case. I, therefore decline to grant all the reliefs sought and dismiss the matter. I make no order on costs.

**Delivered at Lusaka this 16<sup>th</sup> day of July, 2018.**

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**S.M.WANJELANI**  
**JUDGE**