

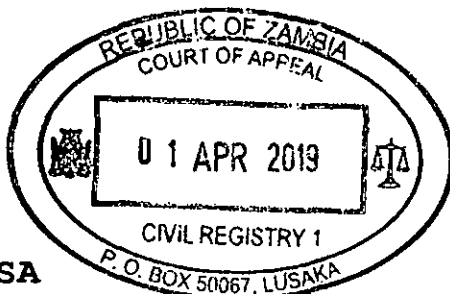
IN THE COURT OF APPEAL OF ZAMBIA APPEAL No. 91/2018
HOLDEN AT LUSAKA
(Civil Jurisdiction)

BETWEEN:

MIRRIAM MUTASA
JENNIFER MUTASA

AND

JANE PHIRI MUTASA



1ST APPELLANT

2ND APPELLANT

RESPONDENT

Coram: Mchenga, DJP, Chashi and Mulongoti, JJA

On 23rd January 2019, 24th January 2019 and 1st April
2019

For the Appellants: M. Kapapula-Miyoba, SLM Legal Practitioners

For the Respondent: H.M. Mweemba, Principal Legal Aid Counsel,
Legal Aid Board

J U D G M E N T

Mchenga DJP, delivered the judgment of the court.

Legislation referred to:

1. The Intestate Succession Act, Chapter 59 of the Laws
of Zambia

Works referred to:

1. Halsbury's Laws of England, Third Edition, Volume 15,
London, Butterworth & Co, 1956.

This is an appeal against the High Court's judgment upholding a Subordinate Court's decision ordering the appellants to grant the respondent access to the farm, farm equipment, farm implements and cattle, that are part of the estate of Late Cecil Mutasa. Cecil Mutasa died intestate and the appellants are the administrators of his estate.

The history of the matter is that, the respondent took out a writ in the Subordinate Court seeking an order that she be granted access to the farm, farm equipment, farm implements and cattle, that are part of the estate of the late Cecil Mutasa. She led evidence indicating that she was married to Cecil Mutasa at the time of his death. Evidence proving that in addition to the farm, farm implements, farm equipment and cattle, Mr. Mutasa also owned a hotel in Kalomo, was also led during the hearing.

The trial magistrate accepted the evidence that the respondent was married to Mr. Mutasa and found that she was one of his widows at the time of his death. Having so

found, the trial magistrate ordered that she be granted access to the farm, cattle, equipment and implements on it. Dissatisfied with that decision, the appellants appealed to the High Court but were unsuccessful, hence this appeal.

When this appeal came up for hearing, we invited the parties to address us on whether the Subordinate Court had jurisdiction to entertain the respondent's claim, given the value of Cecil Mutasa's estate. Both Mr. Mweemba and Mrs. Kapapula-Miyoba, have conceded, and rightly so in our view, that the Subordinate Court did not have the jurisdiction to hear the respondent's application.

Since Cecil Mutasa died intestate, the management of his estate is subject to the provisions of the **Intestate Successions Act. Section 43 of the Intestate Succession Act** provides as follows:

"(1) The High Court shall have jurisdiction in matters relating to succession.

(2) A local court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty thousand kwacha.

(3) In matters relating to succession, a subordinate court of the first, second or third class shall, within the territorial limits of its jurisdiction, have jurisdiction to entertain any application if the value of the estate does not exceed one hundred thousand kwacha."

Though no evidence was led of the actual value of the hotel, the farm, the farm implements, farm equipment and animals, judicial notice can be taken of the fact that the combined value of these properties could not have been less than K100,000.00 (unrebased). The editors of **Halsbury's Laws of England, Third Edition, Volume 15**, at paragraph 615, have set out the circumstances when a court can take judicial notice of a fact. They have stated as follows:

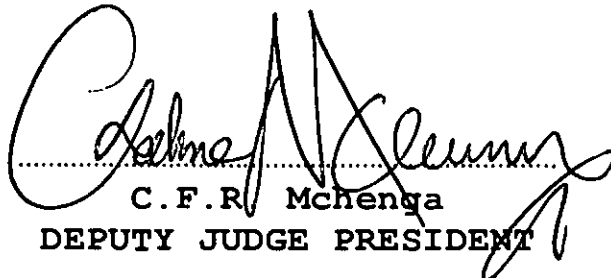
"Judicial notice is taken of various facts which are familiar to any judicial tribunal by their universal notoriety or regular recurrence in the ordinary course of nature or business."

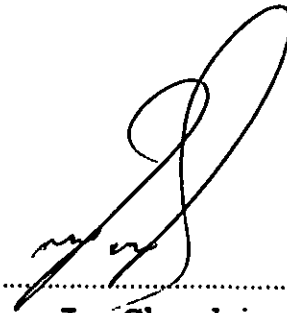
It is our firm view, that it is a notorious fact that the combined value of a hotel on the main road of Kalomo, a farm on title, and the equipment on the farm, is definitely above K100,000.00 (unrebased). This being the case, we find

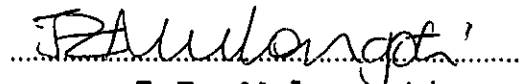
that the Subordinate Court had no jurisdiction to entertain the respondent's application.

Following the application, the trial magistrate should have invoked the provisions of **section 44 of the Intestate Succession Act**, and referred the case to the High Court, which had the jurisdiction to deal with estates whose value exceeded K100,000.00 (unrebased).

The appeal is allowed on account of the trial court having no jurisdiction to deal with the respondent's application. The judgments of both the Subordinate Court and High Court are set aside and the parties will bear their own costs.


C.F.R. Mchenqa
DEPUTY JUDGE PRESIDENT


J. Chashi
COURT OF APPEAL JUDGE


J.Z. Mulongoti
COURT OF APPEAL JUDGE