

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

(Civil Jurisdiction)



IN THE MATTER OF:

**AN APPLICATION FOR THE RENDERING OF
AN ACCOUNT OF AN ESTATE PURSUANT TO
SECTION 19 AND 29 OF THE INTESTATE
SUCCESSION ACT CHAPTER 39 OF THE
LAWS OF ZAMBIA**

IN THE MATTER OF:

**THE ESTATE OF THE LATE MARIA
MUCHIMBA**

B E T W E E N :

DAVID MAINZA MBOZI

1ST APPLICANT

MERCY NGWENYA

2ND APPLICANT

AND

ROGERS SIMUCHOBA

RESPONDENT

**Before Honourable Mrs Justice M. Mapani-Kawimbe in Chambers on the
12th day of April, 2017**

For the 1st Applicant : In Person

For the 2nd Applicant : In Person

*For the Respondent : Mr. J.B. Theu, Messrs Mwansa, Shilima &
Theu Legal Practitioners*

J U D G M E N T

Legislation Referred To:

1. *Intestate Succession Act, Chapter*
2. *High Court Act*

By Originating Summons, the Applicants seek the following reliefs:

- (i) *An Order that the Respondent produce on oath an inventory of the estate of the late Maria Muchimba.*
- (ii) *That the Court revokes the Respondent's administratorship*
- (iii) *An order for the cancellation of the contract of sale for property known as 356/4897 in Kamwala, Lusaka*
- (iv) *That any damages suffered as a result of the failure to account be borne by the Respondent.*
- (v) *An order that this Honourable Court should appoint an administrator to oversee the interest of the beneficiaries.*
- (vi) *Any other relief the Court may deem fit*
- (vii) *Costs of and incidental to these proceedings.*

The 1st Applicant **David Mainza Mbozi** deposed an Affidavit on behalf of the Applicants. He states that he is one of the beneficiaries of the estate of the late Maria Muchimba who died interstate in October, 2012. He also states that following the demise of Maria Muchimba, the Respondent was appointed Administrator of the estate. He further states that the late Maria Muchimba was the registered owner of House No. 356/4807 Kamwala, Lusaka.

The deponent avers that the Respondent effected change of ownership of the property into his names without the consent of the beneficiaries. Further, that the Respondent has largely taken unilateral decisions not favourable to the beneficiaries. He also avers that in the interest of preventing the unlawful disposal of House No. 356/4807 in Kamwala, Lusaka, he placed a caveat in February, 2015 at the Lusaka City Council as shown in the exhibit marked "**DMM/1**".

The deponent states that the Respondent sold the house in spite of the caveat and that following the sale of the property, the Respondent deposited K85,000.00 which is supposedly his share from the sale as shown in the exhibit marked "**DMM/2.**" He adds that the actions of the Respondent have tended to deprive the beneficiaries of the estate. The deponent states that the Respondent has since evicted the former tenant from the property following the purported sale of the property as shown in the exhibit marked "**DMM/3.**" He prayed to the Court to grant the Applicants the reliefs sought.

The Respondent **Rodgers Simuchoba** filed an Affidavit in Opposition. He admits that he is the Administrator of the estate of the late Maria Muchimba, who died in October, 2012. He states that he purchased House No. 356/4807, New Kamwala, Lusaka under the presidential directive for sitting tenants. That Maria Muchimba who was his aunt approached him to purchase the house on the understanding that her daughter, Faith Muchimba, who was working in Swaziland would refund him his money at a later date.

The deponent avers that Faith Muchimba who was living in Swaziland at the time, came back to Zambia sick and eventually died in 2002 without refunding his money. That although no refund was made, the deponent let his aunt, Maria Muchimba stay in the house for as long as she lived after the purchase.

The deponent states that at the time of Maria Muchimba's death the property was not on title. He also states that Maria Muchimba was survived by two children, Hilda Mbozi Muchimba

(daughter) and David Mainza Mbozi (1st Applicant). He also deposes that the 2nd Applicant, Mercy Ngwenya, her granddaughter was working in South Africa, from 2010 and only came back when Maria Muchimba died and was not dependant on her.

The deponent states that at some point, the property was placed in his name as Administrator by way of "Vesting Assent" as shown in the exhibits marked "**RMS1**" and "**RMS2.**" The deponent states that a dispute arose over the property and Rev. Franklin Meembe was called to mediate as shown in the exhibit marked "**RMS3.**" The deponent avers that the mediation agreement was not signed by the 1st Applicant who was misguided by the 2nd Applicant in order to deprive his sister, Hilda Mbozi Muchimba her share of benefits of her mother, Maria Muchimba's estate.

The deponent avers that Hilda Mbozi Muchimba gave consent for the sale of the house in writing as shown in the exhibit marked "**RMS4.**" He states that the caveat lodged by the 1st Applicant on 1st March, 2016, was never registered due to queries raised on it as shown in the exhibit marked "**RMS5.**" That, the

property was sold and title changed to the new owner. Further, that a copy of the contract of sale was eventually given to the 1st and 2nd Applicants on 27th April, 2016 as shown in the exhibit marked "**RMS6.**"

The deponent further states that the 1st and 2nd Applicants had the Respondent summoned to Zambia Police Head Quarters Victim Support Unit (VSU) for questioning for alleged deprivation of proceeds from the sale of the property, on 27th April, 2016. That after his explanation, the police were satisfied that there was no crime committed and advised that the surviving children be given a breakdown of the transactions including the contract of sale. Further, that, although after the sale of the property on plot 356/4807, a provision was made to give the 2nd Applicant a percentage of the proceeds as a "dependant", she did not qualify to be considered.

The deponent avers that he deposited the 1st Applicant's share of proceeds of sale in his account at Investrust Bank Limited, amounting to K85,500. That he gave Hilda Mbozi Muchimba her

share as shown in the exhibit marked "**RMS8.**" He avers that there was no maladministration as all the moneys were distributed to the beneficiaries, including a provision for whoever is declared a "dependant". The deponent also avers that he consulted the office of the Administrator General who had no objection with the way the benefits of the estate were disbursed or distributed except that no provision was to be made for a "dependant" as the 2nd Applicant did not qualify.

I have seriously considered the affidavit evidence adduced by the parties. There is no dispute that House No. 356/4807 Kamwala, Lusaka was sold under the presidential directive for sitting tenants. It has not been gainsaid by the Applicants that the Respondent advanced the late Maria Muchimba as sitting tenant money to purchase the property which she did not refund. Further, that the Respondent purchased the property and allowed Maria Muchimba to live on it until her demise in October, 2012.

On that score, I find that the issues that fall for determination are:

- (i) Whether the contract of sale on the property is liable to cancellation.
- (ii) Whether the Respondent is liable to produce an inventory of the estate.
- (iii) Whether his appointment as administrator is liable to revocation.

It is trite that Section 19 of the Intestate Succession Act and Order 30, Rule 12 of the High Court Rules inter alia confer this Court the general power to determine any question arising in the administration of the estate of a deceased person. These provisions also confer specific powers upon the Court to order an administrator or an executor to render to the Court an account of the administration of the estate, as well as to produce on oath in Court a full inventory of the estate of a deceased person.

In casu, the Respondent asserts that he advanced the late Maria Muchimba money to purchase House No. 356/4807, New Kamwala, Lusaka under the presidential directive for sitting tenants. The Applicants averred that the property was registered

in the name of the deceased, Maria Muchimba and they are entitled to a greater benefit than what was given by the Administrator.

From the Applicants' affidavit evidence, I find that there was no evidence adduced to prove that Maria Muchimba was the registered owner of the property. On the other hand, the Respondent produced a certificate of title issued in his name by the Lusaka City Council dated 13th October, 2013. Under section 33 of the Lands and Deeds Registry Act and applied in casu by extension, a certificate of title is conclusive proof of ownership. Hence a title holder acquires a legal right in property which is good against the whole world.

Let me emphasize that the legal rights acquired by a registered owner cannot be challenged in Court unless there is proof of impropriety in the registered owner's acquisition of property. In this case, I find no impropriety in the Respondent's acquisition of title. I have no reason to disbelieve the Respondent's

assertion that he purchased the property in dispute and that the late Maria Muchimba only lived on the property with his consent.

In fact the Respondent's interest in the property is the first to be registered as shown in the first owner in the recital on the certificate of title showing 30th October, 2013 against a grant dated 19th April, 1965. In the circumstances, the Respondent was free to dispose of his property in the manner that he deemed fit and I see no need to cancel the contract of sale of property. Thus, I see no fault with the portion of the estate that was awarded to the 1st Applicant.

It was contended by the Applicants that the Respondent must produce an inventory of the estate. They also allege that the Respondent has taken unilateral decisions that are not favourable to the beneficiaries. From the Respondent's Affidavit in Opposition and in particular the exhibit marked "**RMS7**", there is what I would loosely refer to as a statement of account on the distribution of the late Maria Muchimba's estate. I have no quarrel with the document except that it has not been rendered on oath. However,

since the Respondent is the administrator of the late Maria Muchimba's estate, he must for the sake of closure of his duties render an account on oath.

I wish to quickly point out that this decision by no means implies dissatisfaction in the manner that the estate was distributed. The Applicants did not lead evidence to prove that the Respondent mal-administered the estate, the claim accordingly fails. Having so determined, I find that the Applicants have not proved their claim for damages and the need to appoint a new administrator.

Before I conclude, I wish to state that the Respondent's assertion that the 2nd Applicant is an adult who was not dependent on Maria Muchimba at the time of her death was not gainsaid. Thus, no provision should be made for her in the context of the Intestate Succession Act.

It was difficult to experience the estranged relationship of the parties. Going forward, I hope that the parties will be able to

move on and to try to rebuild their broken bonds.

All in all, the Applicants have failed to prove their case, and I accordingly dismiss it. I award the Respondent costs to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 12th day of April, 2017.

M. Mapani
M. Mapani-Kawimbe
HIGH COURT JUDGE