

**IN THE HIGH COURT OF ZAMBIA
FAMILY AND CHILDREN'S COURT DIVISION
(Civil Jurisdiction)**

2022/HPF/160

BETWEEN:

IN THE MATTER OF: SECTION 5,7,9,10,15(3) AND 19 (1)(C)(I)(II) OF
THE INTESTATE SUCCESSION ACT CHAPTER 59
OF THE LAWS OF ZAMBIA.

IN THE MATTER OF : SECTION 6 OF THE ADMINISTRATOR GENERAL
ACT, CHAPTER 58 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ORDER 30 RULE 12 (G) OF THE HIGH COURT
RULES CHAPTER 27 OF THE LAWS OF ZAMBIA.

IN THE MATTER OF: THE ESTATE OF THE DECEASED BARCLAY
CHAPASUKA

**DONALD CHAPASUKA
MICAEL CHAPASUKA
PRECIOUS CHAPASUKA**

**1ST PLAINTIFF
2ND PLAINTIFF
3RD PLAINTIFF**

AND

GILLIAN CHAPASUKA

DEFENDANT

Before the Honourable Mrs. Justice M.M. Bah-Matandala

Dated this 29th August, 2025

For the Applicant: Mr. C. Sokoni – Messrs OMM Banda & Co.
For the Respondents: In- Person

J U D G M E N T

Legislation and Other Works Referred To:

- (i) The High Court Rules Chapter 27 of the Laws of Zambia
- (ii) The Intestate Succession Act, Chapter 59 of the Laws of Zambia
- (iii) The Intestate Succession Rules 2023
- (iv) The Administrator General Act Chapter 58 of the Laws of Zambia
- (v) The Wills and Administration of Testate Estate Act Chapter 60 of the Laws of Zambia
- (vi) The White Book 1999 Edition Rules of the Supreme Court of England
- (vii) The Companies Act Chapter 388 of the Laws of Zambia

Cases Referred To

- (i) *Miriam Mbolela vs. Adam Bota*, SCZ Judgment No. 26 of 2017
- (ii) *Boniface Kafula and Others vs Billings Choonga Mudenda* SCZ Appeal No. 202 of 2003

- (iii) *Reagan Blankfen Gates Company Law and Practice in Zambia 1st Edition 2017* at page 134
- (iv) *Gray Nachalwe Mudenda vs. Dorothy Chileshe Mudenda SCZ Judgment No. 12 of 2006*
- (v) *Borland's Trustees vs. Steel (1901) Ch 279*

Other References

- (i) *Reagan Blankfen Gates Company Law and Practice in Zambia 1st Edition 2017* at page 134.

1.0 INTRODUCTION

1.1 This Judgment is on an action which was commenced by the Plaintiffs by way of Originating Summons and supported by an affidavit filed into Court on even date of 11th April, 2022 but then which was subsequently ordered by deeming it to have been improperly commenced and converted into a Writ action due to the contentious nature of the issues raised, specifically regarding paternity, marriage and estate administration. The deeming was following an indication by the Plaintiffs, upon being served with the amended affidavit in opposition dated 21st November, 2023 and seeing the contents therein.

1.2 The parties will as such be referred to as Plaintiffs and Defendant respectively.

1.3 Following the said order deeming the matter as though commenced by a Writ, the Court issued the Orders for Directions and set the trial date.

1.4 The Plaintiffs are seeking against the Defendant the following reliefs;

- i) *An order to compel the Defendant to stop intermeddling with the estate of Barclay Chapasuka the deceased.*
- ii) *An order that the Defendant renders a full inventory of the estate of the late Barclay Chapasuka and further account for the estate in issue.*
- iii) *An order that the administrator General be appointed Administrator of the estate of the late Barclay Chapasuka.*
- iv) *An order that the estate be distributed according to the law.*
- v) *Costs*
- vi) *Further or any other reliefs that the Court may deem fit.*

1.5 A Scheduling Conference was held wherein the learned Counsel for the Plaintiffs submitted that the parties had not complied with the Orders Direction issued on 21st March, 2024 for the reasons that the Defendant always expressed ignorance of what was suggested to her by Counsel for the Plaintiffs; that is, to have the orders for direction varied by consent for failure to comply with the them. This was necessitated by reason of the Defendant failing to be available for Inspection of documents thus causing the parties to run out of time to file the agreed bundles of documents as per the orders for directions herein.

1.6 Following the aforesaid indication, the Court allowed Plaintiffs to file their supplementary bundles of documents and the matter was set for trial.

2.0 AFFIDAVIT IN SUPPORT OF THE APPLICATION

2.1 The Originating Summons was supported by an affidavit filed on 11 April, 2022 and deposed to by the 1st Plaintiff Donald Chapasuka, on his own behalf and for the 2nd and 3rd Plaintiffs, his siblings.

- 2.2 The gist of the Plaintiffs affidavit evidence was that Barclay Chapasuka now deceased was their biological father. He died in the year 1990 in Ndola on the Copperbelt Province, intestate.
- 2.3 It was averred that the deceased was married to two wives under Kaonde customary law namely, the 1st wife, Getrude Chapasuka and the 2nd wife, Mirriam Njobvu Chapasuka. The 2nd wife being the mother of the all the three Plaintiffs herein.
- 2.4 The 1st Wife had seven (7) children among them, the Defendant. Among the seven children, one namely Nicholas Chapasuka is said to be deceased.
- 2.5 The deponent averred that the 2nd marriage was contracted in 1984 as evidenced in the Affidavit of Marriage which was sworn by the deceased herein marked as 'DC1' the copy of the Affidavit of Marriage. The said wife and mother of the Plaintiffs died in the year 2001.
- 2.6 The Plaintiffs averred that the deceased died intestate and left several properties which included,

- i) *A house at plot NDO/30, Bupingulo Road, Kansenshi, Ndola,*
- ii) *Plot No. 34, Independence Avenue, Ndola,*
- iii) *Plot No. F/748/B1 and B2, Town Centre,*
- iv) *Plot No. F/748/B8A, Town Centre, President Avenue, Ndola and,*
- v) *B. Chapasuka and Sons Limited.*

2.7 The deponent averred further that it is unknown to them whether the Defendant was chosen by the family to become the Administratrix for the estate, nonetheless, the Defendant is said to have obtained Letters of Administration and became the Administratrix. The said Letters of Administration have since not been renewed.

2.8 The Plaintiffs averred that the Defendant has not administered the estate in accordance with the law. And further that the Defendant and the other children born from the 1st marriage have continued depriving the Plaintiffs of the estate as beneficiaries.

2.9 The Plaintiffs averred that the Defendant is currently residing at Plot No. NDO/30, Bupingulo road, Kansenshi,

Ndola which forms part of the estate of the deceased. And also, the Defendant's other siblings are currently occupying and or deriving benefits from the property of the estate of the deceased and this has caused animosity between the children of the 1st and 2nd marriages.

2.10 The deponent averred that for 30 years, they have only been receiving rentals from a property known as Plot No. B8A President Avenue, Ndola which was and continues to be held in trust by B. Chapasuka and Sons Limited. The title deeds for the said property are alleged to be in the possession of the Defendant. However, the Plaintiffs have learnt through an advertisement, a request made for a duplicate title, relating to the said property.

2.11 The deponent thus, premised on the said revelation, wrote a letter to the Registrar of the Ministry of Lands and Natural Resources in the Department of the Commissioner of Lands, Ndola; objecting the re-issuing of a duplicate certificate of title. The said letter is marked as a 'DC2'.

2.12 Further, the Plaintiffs wrote a letter to the then lawyers of the Defendant, seeking a meeting to discuss matters

relating to the estate of the deceased and asked also if they could avail any documentation that authorized the Defendant to deal with the property of the estate. However, the meeting did not take place and no documentations have since been availed. The letter written herein has been exhibited and marked as 'DC3'.

2.13 Following the said findings, and there being no action by the Defendant, the Plaintiffs are now desirous that the Defendant be restrained from intermeddling with the estate of the deceased since she has no legal authority to do so.

2.14 And the deponent has also averred that it is in the interest of the beneficiaries that the Defendant ought to render an account of the estate of the deceased so as to show how the estate was and has been administered and or distributed.

2.15 Additionally, due to the animosity that has since arisen in the two families, they have not been able to choose another Administrator. Therefore, the Plaintiffs have urged this Court to exercise its discretion under the law and appoint

the Administrator-General to be the Administrator of the estate, for the smooth administration of the estate.

3.0 THE AMENDED AFFIDAVIT IN OPPOSITION TO THE APPLICATION

- 3.1 The amended affidavit in opposition was filed on 21st November, 2023. The deponent is the Defendant herein and averred that she is the first-born child of the deceased.
- 3.2 In responding to paragraph 3 of the affidavit in support, the Defendant averred that the deceased was only married to her mother, whom he later divorced. She has denied being aware of a marriage between the deceased and Mirriam Njobvu the mother to the Plaintiffs.
- 3.3 The Defendant has admitted the contents of paragraph 4, 6, 8, 15 of the affidavit in support.
- 3.4 The Defendant has denied the contents of paragraph 5, 7, 14 and 20 of the affidavit in support and averred that the averment is within the peculiar knowledge of the Plaintiffs.
- 3.5 The Defendant denied paragraph 9 of the affidavit in support and averred that the family of the deceased did not appoint any individual as an Administrator of the

estate and following the death of the deceased, the estate was administered by the late Mr. Edward Jack Shamwana, S.C. And the Defendant averred that it was unknown to her, if Mr. Shamwana was appointed as the administrator of the estate of the deceased, as well as whether the deceased died testate or intestate. This is evidenced in 'GC1' a copy of a letter from Shamwana to the Plaintiffs' mother.

3.6 The contents of the aforementioned letter are that, the estate of the deceased was administered by the late Mr. Edward Jack Shamwana and that none of beneficiaries has contested or challenged the decisions which he (Mr. Shamwana) made and the said decisions have continued to be followed to date.

3.7 The Defendant has admitted the contents of paragraph 10 to the extent that she resides at Plot No. NDO/30 Bupingulo Road, Kansenshi Ndola. The Defendant has averred that despite living at the stated house, the house was not bequeathed to her individually and continues to be in the names of the deceased.

- 3.8 Furthermore, the Defendant denies the contents of 10 and averred that, to the best of her knowledge, the Plaintiffs have been drawing a benefit from the estate of the deceased based on the distribution of benefits made by Mr. Edward Jack Shamwana.
- 3.9 The Defendant has admitted paragraph 11 of the affidavit in support to the extent that, the other children of the deceased are deriving a benefit from the property of the estate. Instead the Defendant averred that prior to this cause of action, the Plaintiffs were unknown to her and her siblings. And as such a request by the Defendant for a DNA test to prove the paternity of the Plaintiffs was sought by her. This resulted in the perceived animosity with the Plaintiffs.
- 3.10 The Defendant admitted paragraph 12 of the affidavit in support and stated that all the beneficiaries are deriving a benefit in accordance with what was advised by Mr. Edward Jack Shamwana and all the beneficiaries have not challenged the administration of the estate by the Mr.

Edward Jack Shamwana and even what had been suggested to the beneficiaries by him has been upheld.

3.11 The Defendant admitted paragraph 13 of the affidavit in support to the extent that the title deeds to property No. 13 Independence Avenue are in the Defendant's possession. She further stated that the application at the Ministry of Lands was for a duplicate title and not for purposes of change in name or ownership of the property.

3.12 The Defendant denied the contents of 17 of the affidavit in support and averred that she has not intermeddled with the estate of the deceased since she did not issue the initial instruction of how the estate was to be administered, neither has she varied this instruction. She has stated that as the eldest child of the deceased, she stepped onto the scene merely to manage that portion of the deceased's estate which was distributed to her and her siblings.

3.13 The Defendant denied paragraph 17 of the affidavit in support and averred that she is unable to render an account of how the estate was administered since she did not administer the estate. The Defendant is, on the other

hand, able to provide information on what she and her siblings benefitted from.

3.14 The Defendant made no comment to paragraph 18 as well as 19 and 21. And she added that for paragraph 19, the contents of paragraph 21 of the affidavit in opposition are reiterated.

4.0 SKELETON ARGUMENTS IN SUPPORT OF THE APPLICATION

4.1 The Plaintiffs begin with is relying Order 30 rule 12(g) of the High Court Rules Cap 27 of the Laws of Zambia which provides as follows;

"12. The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested under the trust of any deed or instrument in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person or as cestui que trust or as claiming by assignment or otherwise

under any such creditor or other person as aforesaid may take out an originating summons for such relief of the nature or kind following, as may be specified in the summons and as the circumstances may require, that is to say, determination, without an administration by the Court of the estate or trust, of any of the following questions or matter so far as the same arise in the course of the administration or performance of such estate or trust.”

- 4.2 It has been submitted in a nutshell that the Plaintiffs are the beneficiaries and the interested parties in the estate of the deceased by virtue of the deceased being their biological father.
- 4.3 The Plaintiffs are seeking the Courts indulgence to compel the Defendant to stop intermeddling with the estate of the deceased and render a full inventory and account of the estate. And also, to order the appointment of Administrator General as administrator. And finally, the

Plaintiffs pray for an order the distribution of the estate according to the law, plus an order for costs.

- 4.4 The Plaintiffs are seeking the aforementioned order to render account of the estate pursuant to **section 19(1) (c) (ii) of the Intestate Succession Act** which states:

“19(1) The duties and powers of an administrator shall be...

(c) when required to do so by the court, either on the application of an interested party or on its own motion.

(ii) to render to the court an account of the administration of the estate.”

- 4.5 The Plaintiffs submitted that it is not in dispute that the deceased died intestate in the year 1990. And soon after, the Defendant has alleged that she was appointed as the Administratrix of the estate. Plaintiffs further submitted that due to passage of time, the Administratrix ought to have renewed the probate letters of Administration.

- 4.6 Furthermore, the Plaintiffs have drawn the attention of the Court to Sections 7, 9 and 10 of the Intestate Succession

Act. It was stated that the provisions set out, are clear and unambiguous provisions on what happens to an estate wherein the deceased has died intestate and who ought to be the beneficiaries of the said estate.

4.7 The Plaintiffs have stated that the deceased had two wives and left properties among which is a house which is Plot No. B8A President Avenue Ndola from which they only derive benefit.

4.8 Furthermore, it has been submitted that it is not in dispute that the 2nd wife is also deceased, as such the estate is survived by the children from the 1st and 2nd wives of the deceased. And that there are no parents and or dependents.

4.9 In light of the foregoing, it was submitted that the law is clear on how the deceased's estate ought to be distributed or administered by an Administrator.

4.10 Furthermore, the Plaintiffs submitted that it is not in dispute that the Defendant has failed to produce any documents allowing or permitting her to deal with the

estate of the deceased. Reference has been made to section 6 (1) of the Administrator General Act which provides;

“6(1) when a person dies, whether within or without Zambia, leaving property within Zambia, any person, without being duly authorized by law, or without the authority of the Administrator General or a District Secretary, takes possession of, causes to be moved or otherwise intermeddles with any such property, save in so far as may be urgently necessary for the preservation thereof, shall be guilty of an offence; and any person taking any action in regard to any such property for the preservation thereof shall forthwith report particulars of the property and of the steps taken to the Administrator-General; and if he fails

so to report he shall be guilty of an offence.”

4.11 The Plaintiffs have submitted that the Defendant in the within matter, has continued to occupy the house of the deceased and she is also in possession of the title deeds for various properties which form part of the estate for the deceased.

4.12 And since the Defendant has failed to produce any documentation, allowing or permitting her to deal with the estate of the deceased, the Plaintiffs are humbly praying that the Administrator General be appointed as Administrator of the estate pursuant to ***section 15 (3) of the Intestate Succession Act*** which provides that;

“15(3) where no person applies for letters of administration, letters of administration may be granted to the Administrator General or to a creditor of the deceased.

5.0 HEARING

- 5.1 At the trial, Counsel for Plaintiffs informed the Court that only one (1) witness would be called being PW1, namely Donald Chapasuka who is the 1st Plaintiff.
- 5.2 Pw1 testified on oath and relied on his witness statement filed into Court on 26th July, 2024 as well as the bundles of documents and a supplementary bundle of documents herein.
- 5.3 Pw1 testified that he was the son of Mirriam Njobvu Chapasuka and the deceased as evidenced by his National Registration Card (NRC). And as per exhibit on page 3 of the Bundle of Documents, being the Affidavit of Marriage, the said Mirriam Njobvu Chapasuka was married to the deceased Barclay Chapasuka the deceased herein.
- 5.4 According to the Pw1, the deceased left a number of properties within Zambia; namely, No. 34, Independence Avenue Road in Ndola; Plot No. NDO/30, Bupingulo Road, Kansenshi which property is currently being used as a business place for the B. Chapasuka and Sons Limited.

This is a company in which the deceased had a majority shareholding.

5.5 In relation to property No. NDO/30, Bupingulo Road, Kansensh, it has been assigned to Madhaubhai Tarunkumar in unclear circumstances although the Defendant herein still continues to derive benefits from the said premises since she still lives there.

5.6 PW1 also averred that Plot No. F/748/B1 and B2 Town Centre, as shown in exhibit in the bundle of documents, being the Lands Record Printout for the said property forms part of the estate.

5.7 Additionally, the estate of the deceased is said to also comprise of various shares in companies as shown from the PACRA printouts for B. Chapasuka and Sons Limited and as shown in the Plaintiffs' bundle of documents on page 6. He said the shares have been assigned to various members of the Chapasuka family save for the Plaintiffs.

5.8 Pw1 submitted that on 18th September 2021, he come across a Times of Zambia advert advertising an intention for the issuance of a duplicate certificate of title for Plot 34

Ndola. This property is held under the name of B. Chapasuka and Sons Limited. In that respect on 21st September, 2021, the Plaintiffs wrote a letter to the Registrar of Lands objecting the issuance of the duplicate certificate of title as shown on page 1 of the Plaintiffs' bundles of documents.

5.9 The Plaintiffs herein have made several attempts to engage the Defendant on issues surrounding the administration of the estate of the deceased. On 20th January, 2022, the deponent had engaged the Law Firm, herein representing them. And this said Law firm had in turn written a letter engaging the Defendant and requesting for a meeting wherein issues relating to the administration of the deceased's estate would be held. However, there was no fruitful response to the letter. The letter referred to is on page 16 of the Plaintiffs' bundle of documents.

5.10 In cross examination, the Defendant asked Pw1, of his understanding of the word intermeddling. Pw1 said he did not know what it meant. However, he said he had sued the

Defendant in his capacity as the son of the deceased herein.

5.11 When asked as to why Pw1 was not introduced to the Defendant as a family member, Pw1 said that they (the Plaintiffs) had been introduced at the time when they were very young.

5.12 Pw1 said that at the time the deceased had died, he was aged five (5) years, the 2nd Plaintiff was aged three (3) years and the 3rd Plaintiff was about a year and some months old.

5.13 Further Pw1 said it was the Defendant's mother and the deceased that were not in good terms. And this was when the deceased took Pw1 to his house, where he lived with the Defendant. Pw1 said that whenever he visited at the 1st wife's house he did not find her there. Pw1 was informed by his mother that the deceased and the 1st wife were not together any more.

5.14 Pw1 informed the Court that evidence of his mother's marriage to the Defendant's father was shown in the

Affidavit of Marriage sworn by the deceased and exhibited as 'D.C1'.

5.15 The Pw1 when asked if he knew of property Plot No. 34 President Avenue was an entity, he answered in the negative. And said that he was not aware that the said property was an entity.

5.16 Pw1 confirmed having meet with the Defendant before the deceased died. This was at her mother's house and at the bar.

5.17 Pw1 said he used to live with his mother and siblings on property B3 which was given to them from the estate of B. Chapasuka and Sons Limited.

5.18 Pw1 testified that she had thought of the Defendant to be the Administratrix since she seemed to have controlled everything in the estate of the deceased. And said that he does not know why the Defendant was appointed as the Administrator if Pw1's mother, being the wife was still alive at the time.

5.19 The Defendant testified on oath and did not call any other witness. Dw1 testified that she had filed a witness

statement on 4th April, 2024 and relied on it in examination in chief together with the bundle of documents filed in support of the affidavit in opposition.

5.20 Dw1 stated that she is the first-born daughter of the deceased who died on 24th September, 1990. And she immediately after the deceased's death got to be appointed as the administratrix of the estate of the deceased wherein she has been working as such for a period of 30 years beginning from 16th March, 1993 as shown in the attached letter of administration marked as 'G.C.1'.

5.21 The Defendant testified that at the time of the death of the deceased, he was already divorced from the Defendant's mother and or the 1st wife, whilst the Defendant was one of the children living with the deceased at the time he died.

5.22 And at the time the deceased became sick, the Defendant stated that she had to nurse him with the help of the deceased's relatives until he died. During the said time, no woman came forth claiming to be married to the deceased or appeared after the burial or even bringing the children

(Plaintiffs) to visit him (the deceased) either in hospital or at home as his children.

5.23 The Defendant testified that the deceased never at any point mentioned to her or to any of his relatives or his other children, about there being a step mother and half siblings.

5.24 Further and prior to the death of the deceased, the Defendant testified that the deceased, applied at PACRA requesting the said institution to add the Defendant, her siblings as shareholders in B. Chapasuka and Sons Limited. The Defendant stated that she was certain that if at all, the deceased had a wife, he would have included the said wife as a shareholder in the mentioned company and or the Plaintiffs as his children. A copy of the shareholding certificate is attached marked as 'G.C.2' and does not include her or the Plaintiffs as shareholders.

5.25 The Defendant has testified that on a date she cannot remember but in the year 2022, she was surprised that the Plaintiffs herein sued her claiming to be beneficiaries of the estate of the deceased and claimed that the

Defendant was and has been intermeddling with the estate of the deceased; however, to the contrary, the Defendant testified that it is the Defendant who has in fact been appointed as an Administratrix.

5.26 The Defendant has also testified that the Plaintiffs herein are not her half brothers and sister, as such, they are not beneficiaries of the estate of the deceased. The Defendant testified that when the deceased died, he was survived by eight (8) children wherein the Defendant is the eldest child and it excludes the Plaintiffs.

5.27 The woman alleged to be the mother of the Plaintiffs was known to the Defendant as a shopkeeper working for B. Chapasuka and Sons Limited. And she was at one time the girlfriend of Defendant's brother, namely Michael Chapasuka who is now deceased also.

5.28 The Defendant stated that she is more than willing to render a full inventory of the deceased's estate, however, the question of whether or not the Plaintiffs herein are her half brothers and sister should be settled first.

5.29 The Defendant has said that she had asked the Plaintiffs to provide evidence of their birth certificates which they have failed to do. Furthermore, a DNA was suggested to which the Plaintiffs are not agreed to.

5.30 The Defendant testified further that the Co-Administrators and herself, have not failed to administer the estate and as such, there is no need for the Court to order the appointment of the Administrator General to administer the estate.

5.31 Under cross examination, the Defendant said that she has been an administratrix for over 30 years although the Letters of Administration are not before the Court.

5.32 And when referred to the amended affidavit in opposition filed on 21st November, 2023, Dw1 denied that Mr. Edward Jack Shamwana was the Administrator of the estate.

5.33 Dw1 when referred to 'GC1 in the affidavit in opposition refused the document being hers. She said that she was not the one who filed the amended affidavit in opposition although she admitted that she was the one who signed the amended affidavit in opposition even though she did

not recognize the content in the same document being referred to.

5.34 Furthermore, Dw1 admitted that the witness statement filed into Court was her statement.

5.35 When asked if Dw1 was aware that the Plaintiffs lived in a property that formed part of the estate for the deceased, she responded by saying that the Plaintiffs were trespassing on the said property.

5.36 In relation to the PACRA printout on page 6 of the Plaintiffs' bundle of documents, relating to who were the shareholders of B. Chapasuka and Sons Limited, Dw1 said it was, John Chapasuka, Grace Banda, Peter, Getrude and Judith.

5.37 When asked how many properties formed part of the deceased's estate, Dw1 said there are; Commercial properties which are 4 in number, residential properties, a block building and a house in Kansenshi.

5.38 Dw1 admitted that she has been in charge of the estate for a period of 30 years. The witness admitted that she has not administered the estate to the beneficiaries.

6.0 SUMMARY OF THE SUBMISSIONS FOR THE PLAINTIFFS

- 6.1 In augmenting, it was submitted that the deceased was married to Mirriam Njobvu Chapasuka sometime before 1988 and exhibited in that respect is an Affidavit of Marriage in the affidavit in support filed on 22nd April 2022.
- 6.2 This evidence is further said to be confirmed by the letter dated 19th April, 1994 which was written by Mr. Edward Jack Shamwana SC exhibited as 'GC1' in the Respondents' amended affidavit in opposition wherein he acknowledged Mirriam Njobvu Chapasuka as the wife of the deceased his uncle and her children to be his cousins.
- 6.3 It was submitted that the Defendant in her amended affidavit filed on 21st November, 2023, confirms under paragraph 14 that the Plaintiffs have partly drawn benefits from the estate when it was being managed by the late Mr. Edward Jack Shamwana SC, their uncle. Further, the late Shamwana could only partly share the estate to the Plaintiffs in their capacity as the children of the deceased.

6.4 The estate of the deceased is said to be comprised of properties being,

- i) *Property on plot No. 34, independence avenue road, Ndola,*
- ii) *One on plot No. NDO/30 Bupingulo road, Kansenshi Ndola, However, the said property has since been assigned to Madhaubhai Tarunkumar in unclear circumstances*
- iii) *Property known as plot no. F/748/b1 and B2 town Centre of Ndola*
- iv) *Property on Plot No. F/748/B8A, town Centre of Ndola*
- v) *Chapasuka and Sons Building in Ndola Town Centre*
- vi) *Shares as per PACRA printouts. These shares have been assigned to various members of the Chapasuka family with the exception of the Plaintiffs.*

*vii) All the Title Deeds of the said
properties have been in the
possession of the Defendant herein.*

- 6.5 The Plaintiffs have submitted under cross examination, that the Defendant admitted and listed properties which she has been managing from the time the deceased died.
- 6.6 It was further submitted by the Defendant that the deceased did not apply to PACRA to make changes in the shareholding structure, since the same was only done after the death of the deceased by the Defendant.
- 6.7 Furthermore, the Defendant is said to be administering the estate without Letters of Administration and by that reason thereof, she has been administering the estate without authority of the Court. Reference was made to section 6 of the Administrator General Act already cited in the Skeleton arguments herein in that respect. The Defendant therefore is said to have been unlawfully interfering with the property of the deceased without legal authority, such as the Letters of Administration or probate.

6.8 The Counsel for the Plaintiffs submits that the first issue to determine is whether the Defendant has engaged in acts amounting to intermeddling in the estate of the deceased. In support of this position reference was made to Order 30 rule 12 (c) of the High Court Rules which has clothed this Court with the authority to determine any questions arising out of the administration of an estate of the deceased. The provision empowers the Court to order the executors or administrators to render accounts of estates and to produce a full inventory on oath.

6.9 Consequently, the purported administration of the estate of the deceased is ineffectual, as it is not approved by the Court and that there is no consent by the beneficiaries to her appointment. The evidence on record is that the Defendant has sold some of the property without the consent of the Court as provided for under section 19(2). The section provides that;

***“where an administrator considers
that a sale of any of the property
forming part of the estate of a***

deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.”

6.10 Further reference was had to the case of **Mirriam Mbolela vs Adam Bota SCZ Judgment No. 26 of 2017¹** where it was opined that;

“the import of section 19(2) of the act is very clear. It proscribes the sale of property (including real property) forming part of estate of the deceased person without prior authority of the court. In the mind of the legislature, this statutory provision was intended to prevent administrators

6.10.1 Another case of **Boniface Kafula and Others vs Billings Choonga Mudenda SCZ Appeal No.**

202 of 2003² where the Supreme Court held *that even if the contract of sale in that case had been executed and completed by the administrator, the purchaser could not enforce it because the administrator had not obtained leave of Court prior to the sale.*

6.11 Conversely, the Defendant in the case at hand did not obtain consent from beneficiaries, and leave from Court before selling any property. In the circumstances, the Plaintiffs pray that the purported sales by the Defendant be declared a nullity.

6.12 Further, it has been submitted that Section 16 of the Companies Act Chapter 388 of the Laws of Zambia which enacts that, a company registered according to the Companies Act acquires a separate legal personality. And the consequence of incorporation includes the fact that, as provided for in Section 22 of the Companies Act, a company shall have perpetual succession and a common seal, capable of suing and being sued in its corporate name and shall, subject of the said Act, have power to do all such

acts and things as the corporate may by law, do or perform; and subject to the Act and to such limitations as are inherent in its corporate nature, capacity, rights, powers and privileges of an individual.

6.13 Bearing the aforesaid, the deceased is said to have owned a majority of the shares in the companies mentioned herein known as B. Chapasuka and Sons Limited and as the record shows, the Defendant conveyed the shares to herself and to her siblings after the death of the deceased. In this regard, the learned Author **Reagan Blankfen Gates Company Law and Practice in Zambia 1st Edition 2017 at page 134³** states that

“Shares are objects of property which can be bought, sold, bequeathed in a will, mortgaged and transferrable. They are personal estate. In this regard, shares are no different from real, tangible or moveable property. They are an intangible property right recognized and protected by law.”

6.14 From the foregoing, the value of the shares can only be measured by the assets of the company. It follows, therefore, that the deceased's stake in the company(s) is either the shares he owned or the asset value of those shares in the company. And the share being a property or asset, is what is distributed to the beneficiaries of his estate since, on record so far, he died intestate.

6.15 However, the said shares have been transferred illegally to the detriment of the Plaintiffs herein allegedly by the Defendant since the change reflected at PACRA was only done after his death.

6.16 The final issue for consideration is whether the Plaintiffs or other rightful beneficiaries have been prejudiced by such intermeddling. Counsel has submitted that the Defendant has deprived the Plaintiffs of the estate of their father, the deceased. And since the deceased died intestate, his estate should therefore be administered in accordance with the Intestate Succession Act.

6.17 Under the said circumstances, the Plaintiffs pray that the Defendant shall forthwith deliver up all the title deeds,

shares, and other documents relating to the estate of the deceased, render an account and produce an inventory of all personal properties including money which belonged to the deceased's estate.

6.18 And finally, the Plaintiffs also seek that the estate be ordered to be administered by the Administrator General.

6.19 In response, the Defendant has filed written submissions dated 17th February, 2025.

6.20 To begin with, the Defendant submitted that the Plaintiffs' biological mother was not a wife to the deceased but was one of the shopkeepers working for B. Chapasuka and Sons Limited at Plot 34 President Avenue, Town Centre Ndola. And she has submitted that the evidence given in support does not look genuine since it differs from the general format of affidavits of that time.

6.21 Further the Defendant has stated that the said Mirriam Njobvu was known to her as the girlfriend to her half-brother Michael Chapasuka, now deceased and as such she has known the Plaintiffs as her nephews and a niece.

6.22 The Defendant has further submitted that the Plaintiffs have not only failed to prove their claims, they have even rejected to go for DNA test to prove that they indeed are the biological children of the deceased.

6.23 The Defendant has claimed that if at all the mother to the Plaintiffs was a wife to the deceased, she would have been appointed as an Administratrix or one of the Administratrixes of the estate of the deceased after his death. Consequently, this, according to the Defendant shows that the deceased was not their father but instead it was Michael Kapasu Chapasuka who is their father.

6.24 In relation to the issue of intermeddling as alleged by the Plaintiffs, the Defendant has submitted that soon after the demise of the deceased, on 24th September, 1990, Mr. Edward Jack Shamwana, her uncle, Grace Banda and Getrude Chapasuka were intermeddling into the estate of the deceased when they had no authority to do so.

6.25 The Defendant submitted that it is unknown to her whether the deceased died testate or intestate however, the Defendant being the eldest child of the deceased at the

time he died, she was appointed as an Administratrix on 16th March, 1993 herein marked as "GC1".

6.26 And she stated that after administering the estate for 5 years, Mr. Chali, who was acting as the family lawyer, advised her to include her mother, Grace Banda and her step sister Getrude Chapasuka as Administratrixes.

6.27 After a successful application on 26th February, 1998 as per consent order of appointment of additional administratrixes were appointed as exhibited and marked in exhibit known as "GC2". The said appointment of the administratrixes signifies that the mother to the Plaintiffs was not married to the deceased and as such the Defendant was instead appointed as an administrator for the estate.

6.28 The Defendant has submitted that as per the Letters of Administration attached and marked as "GC2", the Defendant has been administering the said estate for 31 years in accordance with the law.

6.29 Therefore, the claims numbered (i) and (iv) in the originating summons in which the Plaintiffs are seeking an

order declaring the Defendant as an intermeddler and for an order that the Administrator General be appointed administrator in the estate of the deceased. The Defendant submitted that she is not intermeddling with the estate of the deceased but was rightfully appointed as administratrix as per exhibit marked as "GC1" which is further fortified by exhibit marked as "GC2" joining Grace Banda and Getrude Chapasuka as Co-Administratrixes of the estate of the deceased.

6.30 In the said circumstances, the Defendant submitted that there is no need for the Court to grant the Plaintiffs their claim of appointing the Administrator-General as Administrator of the deceased. In addition, the appointed Administratrixes have not failed to administer the estate of the deceased.

6.31 Furthermore, since B. Chapasuka and Sons Limited is an entity registered with Patents and Company Registration Agency (PACRA), it has shareholders as indicated in exhibit marked "GC2". This is contrary to the Plaintiffs'

assertion that the Defendant conveyed the shares of B. Chapasuka and Sons Limited to herself and her siblings.

6.32 Instead, the Defendant submitted that the deceased had one year prior to his demise applied to PACRA to alter the list of shareholders and he added his oldest daughters namely; Gillian Chapasuka, the Defendant, Judith Chapasuka, Patricia Chapasuka and the alleged biological father of the Plaintiffs, who is also brother of the Defendant called Michael Chapasuka.

6.33 The Defendant invited the Court to take judicial notice that neither the Plaintiffs nor their mother were included on the list of shareholders since they were not the biological children of the deceased and that their mother, Mirriam Njobvu was not the deceased's wife to the best of the Defendant's knowledge. The deceased was survived by eight (8) children wherein the Defendant is the eldest.

6.34 The Defendant in relation to the claim that she renders an inventory and render an account of the estate, she referred the Court to the case of **Gray Nachalwe Mudenda vs.**

Dorothy Mudenda⁴ in which the Supreme Court held that;

“the duty of the administrator is not to enhance the estate, but to collect the deceased’s estate, distribute it to beneficiaries and render account.

6.35 Further reference was made to section 5 of the Intestate Succession Act. And owing to the said provision, the Defendant submitted that no rightful beneficiary has been prejudiced in relation to the distribution of the estate of deceased.

6.36 The Defendant stated that the houses forming part of the estate are as follows;

- i) *House No. 16, along Bupingulo road, Ndola is occupied by Defendant and her daughter as well as Getrude Chapasuka, Thindwa with her husband, son and daughter as well Linda Chapasuka who is mentally challenged.*

- ii) *House No. 20, along Katutwas road occupied by the mother to the Defendant Getrude Chapasuka, with Peter Chapasuaka, Joan Chapasuka with her two children, Patoya Chapasuka with her daughter.*
- iii) *B8 Town Centre, along President Avenue, is occupied by the Plaintiffs and has a shop where they collect rentals for their upkeep in their capacity as children of Michael Chapasuka the son to the deceased*
- iv) *Lot No. F/2575/7373 is a block of flats with single rooms and is occupied by Workers for B. Chapasuka and Sons Limited.*
- v) *Plot CHIF/21 is occupied by Uncle William Chapasuka's wife which Grace Banda and Getrude Chapasuka allowed in 1990 before*

they were appointed as administratrixes of the estate of the deceased.

vi) Shops forming part of the estate of the deceased are as follows;

a) Plot 34 President Avenue Town Centre, which is an entity namely known as B. Chapasuka and Sons Limited. It has shops, a bar and warehouses and they are shared as follows;

- Peter Chapasuka has one bar and two warehouses*
- Getrude Chapasuka Thindwa has 16 shops*
- Gillian Chapasuka, the Defendant, has 11 shops*
- Patricia Chapasuka has one big shop*
- Joan Chapasuka has 4 shops with other shops in Chifubu*

b) Plot No. B1/B2 along Madala Road

Town Centre is also shared as follows;

- Gillian Chapasuka Defendant has two shops*
- Joan Chapasuka has two shops*
- Peter Chapasuka enjoys 5% of B1/B2 as his share*
- Grace Banda controls 75% of B1/B2 alone*

c) Chifuba commercial property which has a lot of bars and shops is controlled by Grace Banda, Peter Chapasuaka, Joan Chapasuka Patricia Chapasuka and Lotoya

d) Offices forming part of the estate, which is an entity namely B. Chapasuka and Sons Limited has offices which are shared as follows;

- Grace Chapasuka, beneficiary has 11 offices*
- Joan Chapasuka has 1 office.*

e) Kawama properties were disposed off by Grace Banda and Getrude Chapasuka.

6.37 The Defendant submitted that B. Chapasuka and Sons Limited is indeed an entity which sits on property No. 34 President Avenue, Town Centre and that it has title. However, the whereabouts of the title is not known hence the application made by the Defendant at the Ministry of Lands and published in the times of Zambia on 18th September, 2021 for a duplicate title against which the Plaintiffs objected on 21st September, 2021. The Defendant submitted that the said application was not meant to change ownership to the property, but simply so have a duplicate for the Administratrixes.

6.38 The Defendant's final claim is for the Court to dismiss the Plaintiffs' claims as they lack merit and instead allow the current Administratrixes to continue administering the estate of the deceased herein.

7.0 ANALYSIS AND CONSIDERATION

7.1 Having considered the Plaintiffs' contentions and it is now for this Court to consider whether or not to grant the reliefs sought.

7.2 The beginning point is **Order 30 Rule 12(g) and 13 of the High Court Act Chapter 27 of the Laws of Zambia** further provides;

'Rule 12 he executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested under the trust of any deed or instrument in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person or as cestui que trust or as claiming by assignment or otherwise under any such creditor or other person as aforesaid may take out an originating summons for such relief of the nature or kind following, as may be specified in the

summons and as the circumstances may require, that is to say, the determination, without an administration by the Court of the estate or trust, of any of the following questions or matters so far as the same arise in the course of the administration or performance of such estate or trust:

(g) ...the determination of any question arising in the administration of the estate or trust.

“Rule 13 Any of the persons named in the last preceding rule may in like manner apply for and obtain an order for-

- (a) the administration of the personal estate of the deceased;*
- (b) the administration of the real estate of the deceased;*
- (c) the administration of the trust;*
- (d) any act to be done or step to be taken which the Court could have ordered to be done or*

taken if any such administration order as aforesaid had previously been made.”

7.3 Reference has been made also to **Order 28 Rule 8 o the White Book 1999 Edition** which states;

“Rule 8 (1) where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter has been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

2. *where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a*

notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a case-management summons in the proceedings and that order were one of the orders to be made thereon.

3. this rule applies notwithstanding that the cause or matter in question could not have been begun by writ.”

7.4 Further reference is made to Order 25 of The Intestate Succession Rules 2023 which provides that;

“A personal representative shall when ordered by the court or on application by a party, render an account on the administration of an estate by filing an affidavit with supporting documents.”

7.5 The aforesaid provisions cited grants the Court jurisdiction to enquire into the issues raised herein.

7.6 Upon analysis of the pleadings and documents on record I find the issues for determination are as follows;

- i) *Whether the Plaintiffs are biological children of the deceased,*
- ii) *Whether the Defendant is lawfully administering the estate of the deceased or has intermeddled therein*
- iii) *Whether any transactions done by the Defendant, including the sale of transfer of property or shares, were lawful*
- iv) *What remedies, if any, the Plaintiffs are entitled to.*

7.7 The first issue that I shall deal with is the Plaintiffs' legitimacy as beneficiaries in the estate in issue. In order to do so, I have looked at what the Plaintiffs' have relied on; which is,

- i) *an Affidavit of Marriage sworn by the deceased in the year 1988.*

ii) *a letter dated 19th April, 1994 by one Mr. Edward Jack Shamwana, the deceased's nephew and legal advisor or lawyer.*

7.8 The Defendant has challenged this aforesaid evidence, alleging that the Plaintiffs' mother, Mirriam Njobvu, was never married to the deceased and was in fact involved with another relative, being the son and step brother to the deceased and Defendant respectively. The Defendant also challenges the credibility of the Affidavit of Marriage, suggesting it could have been fabricated.

7.9 However, in the absence of any contradictory official documentation, and considering the deceased himself is said to have sworn the Affidavit of Marriage declaring a marriage between himself (the deceased) and Mirriam Njobvu, this Court is satisfied on a balance of probabilities that such a customary marriage did exist.

7.10 It is also noteworthy that Mr. Edward Jack Shamwana S.C (as then was), acting in his official capacity at the time, recognized the Plaintiffs herein as beneficiaries of the

estate of the deceased as being the two sons and a daughter of the deceased.

7.11 Further, it is undisputed that the Plaintiffs have benefited in part from the estate during the period it was under Mr. Edward Jack Shamwana's administration, as per paragraph 14 of the Defendant's own Amended Affidavit. This is a tacit admission that the Plaintiffs were, at some point acknowledged as beneficiaries in their capacity as the children of the deceased and nothing else.

7.12 Accordingly, the Plaintiffs are herein found to be lawful beneficiaries of the deceased's estate for being his children born from Mirriam Njobvu as his second wife.

7.13 In considering the second issue, that is whether the defendant is a lawful administratrix, I have considered the following hereinafter.

7.14 The Defendant claims she was appointed Administratrix in the year 1993, later was joined by her mother and step sister as Co-Administrators in the year 1998. However, she failed to exhibit any Letters of Administration issued by the High Court under Intestate Succession Act or the Wills

and Administration of Testate Estates Act, Chapter 59 and 60 of the Laws of Zambia respectively. Reference is made to **Section 65 of Chapter 60 of the Laws of Zambia** which clearly states:

“No person shall, without lawful authority, intermeddle with the estate of any deceased person.”

7.15 Consequently, in the absence of the official proof of appointment by this Court, the Defendant’s actions in managing the estate, including, collecting rent, altering shareholding in a company whose shares are subject of the estate in issue, and selling properties, amount to intermeddling as defined under **Section 6 of the Administrator-General’s Act Chapter 58 of the Laws of Zambia**. Section 6 of the Chapter 58 states;

“(1) when a person dies-whether within or without Zambia-leaving property within Zambia, any person who, without being duly authorized by law, or without the authority of the Administrator -General or

District Secretary, takes possession of, causes to be moved, or otherwise intermeddles with any such property, save in so far as may be urgently necessary for the preservation thereof, shall be guilty of an offence; and any person taking any action in regard to any such property for the preservation thereof shall forthwith report particulars of the property and of the steps taken to the Administrator-General; and if he fails so to report, he shall be guilty of an offence.”

7.16 Furthermore, the assertion that the Court “need not appoint the Administrator-General is thus incorrect. The law is clear: no one may administer an estate without either a Grant of Probate or Letters of Administration. This finding is supported with case law, in the case of **Mirriam Mbolela vs Adam Bota, SCZ Judgment No. 26 of 2017**, where the Supreme Court held that *no individual may*

administer an estate or sell property therefrom without letters of administration.

- 7.17 In the case of ***Boniface Kafula and Others vs Billings Choonga Mudenda, SCZ Appeal No. 202 of 2003***, the Court emphasized the illegality of disposing estate property without authority or consent from beneficiaries.
- 7.18 Therefore, in consideration of the law provided, the Defendant's claim that she lawfully managed the estate is without merit. Her actions amount to unlawful intermeddling.
- 7.19 The third issue to consider now is in relation to unlawful transactions in relation to the sale of property and shares in the estate of the deceased.
- 7.20 The Plaintiffs allege that the Defendant altered the shareholding in B. Chapasuka and Sons Limited, excluding them and including herself and others.
- 7.21 According to Section 16 of the Companies Act Chapter 388 of the Laws of Zambia, a company is a separate entity and shares held therein are transferable assets. In the case of

Borland's Trustees vs Steel (1901) Ch 279, shares were capable of devolving by succession.

7.22 The shares herein formed part of the deceased's estate and should have been distributed according to the Intestate Succession Act, especially Section 4(1), which outlines the procedure of distribution.

7.23 The law provides that no administrator, let alone a person without proper authority, may sell or transfer assets of the estate without: Letters of Administration, consent of beneficiaries and the authority of the Court (as per Section 19(2) of the Intestate Succession Act). The Defendant's failure to secure such consent renders any such sale null and void.

7.24 In the circumstances so far found, I am now called upon to determine what remedies are due to the Plaintiffs if any.

7.25 In view of the findings above, the Court makes the following Orders:

- i) *The Plaintiffs are declared lawful beneficiaries of the deceased being*

Barclay Chapasuka as his sons and daughter respectively.

- ii) The Defendant is found to have intermeddled in the estate without lawful authority, in violation of Section 6 of the Administrator General's Act and Section 65 of the Wills and Administration of Testate Estates Act.*
- iii) Any sale, transfer or disposal of estate property by the Defendant, including alteration of shareholding in B. Chapasuka and Sons Limited, without the consent of the beneficiaries and without lawful authority, is declared null and void.*
- iv) The Administrator-General is hereby directed to take over the administration of the estate pursuant*

to Section 3(1) of the Administrator-General's Act.

v) The Defendant is ordered to deliver to the Administrator-General before the Hon Deputy Registrar within 90 days the following,

(a) All title deeds, share certificates and bank statements.

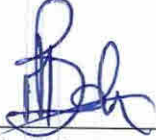
(b) A full inventory and account of all properties, monies collected (including rentals), and all transactions made involving the estate.

vi) The Defendant is restrained from further dealings with the estate unless properly appointed by this Court

vii) Costs are awarded to the Plaintiffs, to be taxed in default of agreements.

8.0 Leave to Appeal is granted

Delivered at Lusaka this 29th day of August, 2025.


M.M. Bah-Matandala
JUDGE HIGH COURT

