

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2024/HP/0220

BETWEEN:

CLEOPAS SIKABULI MOONO

PLAINTIFF

AND

AMATHEON AGRI ZAMBIA LIMITED

DEFENDANT

(By Original Action)

AND

AMATHEON AGRI ZAMBIA LIMITED

PLAINTIFF

AND

**CLEOPAS SIKABULI MOONO
PATRA MOONO SIMUWANA**

(Sued as Administrator of the estate of the
late Deric Simuwana Mutakate Moono)

**1st DEFENDANT
2nd DEFENDANT**

ALICE MAMBUMUKA MOONO

(Sued as former Administrator of the estate of the
late Deric Simuwana Mutakate Moono)

3rd DEFENDANT

(By Counterclaim)

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 27th
DAY OF AUGUST, 2025**

For the Plaintiff : Mr C.M. Zulu, Messrs Linus and Partners

For the Defendant : Mr F.E. Mulenga Jr, Messrs Andrew Musukwa & Co

R U L I N G

CASES REFERRED TO:

1. *Re Simpson* 1936 P 40
2. *Ingall v Moran* 1944 KB 160
3. *Hayim v Citibank* 1987 AC 730
4. *Millburn-Snell v Evans* 2011 EWCA Civ 577

5. *Noel Chembe v DJR Investment Limited Appeal No 68/2017*
6. *Nsokolo Chilwana & others v Emma Chilwana 2017/HPF/005*
7. *Chrispin Malambo v Moses Malambo Appeal No 150 of 2021*

LEGISLATION REFERRED TO:

1. *The High Court Act Chapter 27 of the Laws of Zambia*
2. *The Rules of the Supreme Court of England, 1965, 1999 Edition*
3. *The Intestate Succession Act, Chapter 59 of the Laws of Zambia*

OTHER WORKS REFERRED TO:

1. *Halsbury's Laws of England Volume 17, 4th Edition*

1. INTRODUCTION

1.1 Summons to determine the matter on a point of law pursuant to **Order 14A Rules 1 and 2** and **Order 33 Rules 3 and 7 of the Rules of the Supreme Court of England 1965, 1999 Edition**, as read together with **Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia**, were filed on 15th May, 2025, by the Defendant, Amatheon Agri Zambia Limited.

1.2 By that application, determination is sought on the following questions:

- i. *Whether Cleopas Sikabuli Moono, the Plaintiff by original action and 1st Defendant on the counterclaim, not being a duly appointed Administrator or Executor or legal representative of the estate of the late Deric Simuwana Mutakate Moono at the commencement of this action, has locus standi to commence and maintain this action against the Defendant, Amatheon Agri Zambia Limited (by original action) and Plaintiff (by*

counterclaim) in respect of the property forming part of the deceased's estate.

ii. AND that if your ladyship finds the answer to the above question in the negative, then the Defendant, Amatheon Agri Zambia Limited (by original action) and Plaintiff (on the counterclaim) prays that Cleopas Sikabuli Moono the Plaintiff (by original action) and 1st Defendant, (by counterclaim)'s action be dismissed with costs to be paid by Cleopas Sikabuli Moono the Plaintiff (by original action) and 1st Defendant (by counterclaim) and be taxed in default of agreement.

1.3 The summons was supported by an affidavit and Skeleton Arguments.

2. BACKGROUND

2.1 Initially, Patra Moono Simuwana in the capacity of Administrator for the estate of the late Deric Simuwana Mutakate Moono commenced this action against Amatheon Agri Zambia Limited on 9th February, 2024, by Writ of Summons, which was accompanied by a statement of claim and the other documents.

2.2 The Writ of Summons and statement of claim was amended on 17th April, 2024, to substitute the Plaintiff, Patra Moono Simuwana with Cleopas Sikabuli Moono.

2.3 The reliefs sought are:

i. An Order cancelling the contract of sale between Alice Moono and Amatheon Agri Zambia Limited as the same is illegal and unenforceable;

- ii. *An Order that Amatheon Agri Zambia Limited hands over the certificate of title for Farm No 9072 Mumbwa;*
- iii. *An Order that Amatheon Agri Zambia Limited removes the caveat which was placed on Farm No 9072 Mumbwa;*
- iv. *Costs; and*
- v. *Any other relief that the Court may deem fit.*

2.4 Amatheon Zambia Limited entered appearance and filed a defence and counterclaim, as well as the other documents on 3rd May, 2024.

2.5 On the counterclaim, Amatheon Agri Zambia Limited seeks:

- i. *An Order for specific performance of the contract dated 11th July, 2014 compelling Cleopas Sikabuli Moono, Patra Moono Simuwana and Alice Mambukuma Moono to complete the sale of Farm 9072 Mumbwa to Amatheon Agri Zambia Limited which order includes a provision for the Administrator of the deceased's estate to apply in the High Court for Zambia for an order to sell the deceased's property to Amatheon Agri Zambia Limited;*
- ii. *Costs.*

2.6 Orders for Directions were issued on 26th June, 2024, which were complied with, and a trial date was set for 29th May, 2025. However, the application which is the subject of this Ruling was filed.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR AMATHEON AGRIZAMBIA LIMITED

- 3.1 Counsel, in making the application, stated that they relied on the affidavit which was filed in support of the application, together with the Skeleton Arguments in support.

RESPONSE BY COUNSEL FOR CLEOPAS SIKABULI MOONO

- 3.2 In response, Counsel for Cleopas Sikabuli Moono stated that he would respond on a point of law, as they did not have time to file an affidavit in opposition to the application, as the client only went to the offices the previous day.
- 3.3 In that regard, his submission was that pursuant to **Section 24 of the Intestate Succession Act Chapter 59 of the Laws of Zambia**, Cleopas Sikabuli Moono had moved the Court as a beneficiary of the estate. He also stated that under **Section 19 (1) and (2) of the said Intestate Succession Act**, an Administrator of an estate is empowered to administer the estate.
- 3.4 It was further Counsel's submission, that this action is a challenge on an Administrator's distribution of an estate. He stated that a sale of property under an estate, had to be done with the authority of the Court.
- 3.5 Further submission was made, that under **Section 19 (2) of the Intestate Succession Act**, an Administrator of an estate is answerable to the Court.
- 3.6 In still submitting, Counsel stated that Cleopas Sikabuli Moono as a beneficiary of the estate, had a right to challenge the sale which was done without the authority of the Court.

3.7 Based on that, Counsel took the view that the application to dismiss the action which had been commenced by Cleopas Sikabuli Moono, which was anchored on **Section 24 of the Intestate Succession Act** was misconceived, and which had questioned the jurisdiction of the Court, should be dismissed with costs, as it was aimed at delaying the trial, in line with **Statutory Instrument No 58 of 2020**, as regards when a Court may hear and determine a matter.

REPLY BY COUNSEL FOR AMATHEON AGRI ZAMBIA LIMITED

3.8 The reply was that **Section 19 of the Intestate Succession Act** relates to powers of a personal representative, and it did not aid Cleopas Sikabuli Moono in any way. Counsel stated that the correct procedure, had Cleopas Sikabuli Moono been dissatisfied with the Court appointed Administrators, would have been to apply to have them removed.

3.9 Further reply was made, that there was misconception about the role of a beneficiary, with Counsel stating that they merely benefited from the estate. He went on to submit that the essence of a personal representative was to step into the shoes of the deceased, so as to prolong his or her life.

3.10 Therefore, that meant that this could be action that the deceased could have taken, such as sale of the property, leasing it or even suing.

3.11 It was stated that authorities from this jurisdiction and the United Kingdom had been cited in support of that position.

Counsel added that the proper party was the initial party who sued, being Patra Moono Simuwana.

3.12 Therefore, in the absence of a Court Order removing Patra Moono Simuwana as Administrator, a beneficiary had no locus standi, and they were incompetently before the Court.

3.13 Premised on that submission, Counsel prayed that Cleopas Sikabuli Moono's claim be struck out with costs to Amatheon Agri Zambia Limited, to be taxed in default of agreement.

4. DECISION OF THIS COURT

4.1 I have considered the application.

4.2 ***Order 14A Rules 1 and 2 of the Rules of the Supreme Court of England 1965, 1999 Edition*** provide that:

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.”

4.3 **Order 33 Rules 3 and 7 of the said Rules of the Supreme Court of England** state the following:

“3. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

.....

7. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just.”

4.4 On the other hand, **Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia** provides that:

“13. In every civil cause or matter which shall come in dependence in the Court, law and equity shall be administered concurrently, and the Court, in the exercise of the jurisdiction vested in it, shall have the power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies or

reliefs whatsoever, interlocutory or final, to which any of the parties thereto may appear to be entitled in respect of any and every legal or equitable claim or defence properly brought forward by them respectively or which shall appear in such cause or matter, so that, as far as possible, all matters in controversy between the said parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided; and in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.”

- 4.5 Moonga Hanjili, the head Human Resources, Lands and Co-Relations at Amatheon Agri Zambia Limited, deposed that Cleopas Sikabuli Moono had brought this action in relation to the estate of his late father, Deric Simuwana Mutakate Moono. However, he had not exhibited any proof that he is the Administrator of the estate of his late father, an Executor or indeed a personal representative of the deceased.
- 4.6 The averment was that Moonga Hanjili, had been advised by his advocates, which advise, he verily believed to be true, that Cleopas Sikabuli Moono being only a beneficiary of the estate, at the time that he commenced the action, he lacked legal capacity to sue third parties on behalf of the estate.

- 4.7 In the Skeleton Arguments, which were filed in support of the application, argument was made that **Section 24 of the Intestate Succession Act Chapter 24 (1) of the Laws of Zambia** grants an Administrator of an estate, all rights that belonged to the deceased, as if the administration had been granted at the moment of the death of the deceased.
- 4.8 Reliance was placed on the case of **Chrispin Malambo v Moses Malambo** ⁽⁷⁾ as having held that the provision effectively transfers all legal rights of the deceased to the personal representative, from the time of death, including the capacity to bring an action on behalf of the estate.
- 4.9 It was argued that this position was adopted in the case of **Noel Chembe v DJR Investment Limited** ⁽⁵⁾.
- 4.10 Further authority was sought from the case of **Nsokolo Chilwana & others v Emma Chilwana** ⁽⁶⁾ where the Court held that the Applicants' reliefs against the Respondent, could only be effected by an Administrator and therefore it was prudent that an Administrator be appointed.
- 4.11 Other authorities that were relied on, were **Ingall v Moron**⁽²⁾, stating that in that matter, a father sued before obtaining letters of Administration, and the action was held to be void ab intio.
- 4.12 It was also argued that in the case of **Millburn-Snell v Evans** ⁽⁴⁾, a beneficiary had sued a third party before probate, and the claim was struck out on the basis that only the Executors could sue third parties.

- 4.13 Thus, a beneficiary of an estate lacks locus standing to bring an action on behalf of the estate, unless they are a personal representative.
- 4.14 Further reliance was placed on the case of *Hayim v Citibank* ⁽³⁾, with argument being made, that in that case, a beneficiary sued the Bank directly, and the claim failed because the beneficiaries could only sue Executors and not third parties.
- 4.15 The argument was further that in the case of *Re Simpson* ⁽¹⁾, a beneficiary attempted to deal with estate assets. However, the Court held that only a personal representative had authority to litigate or deal with assets of the estate.

DECISION

- 4.16 In raising the preliminary issue that Cleopas Sikabuli Moono lacks locus standi in this matter to bring an action against the estate of his late father, Deric Simuwana Mutakate Moono, as he is not the Administrator of the said estate, an Executor or a legal representative of the estate, Amatheon Agri Zambia Limited argued that **Section 24 of the Intestate Succession Act Chapter 59 of the Laws of Zambia** vests all rights and duties that the deceased had in the Administrator, as if the administration had been granted at the moment after his death.
- 4.17 Thus, only an Administrator has locus standi to sue over an estate.
- 4.18 The said **Section 24 of the Intestate Succession Act** provides as follows:

“24. (1) Subject to any limitations and exceptions contained in a grant of letters of administration the grant entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death except that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.”

4.19 That is the position of the law.

4.20 In this matter, Cleopas Sikabuli Moono seeks an Order of this Court for the cancellation of the contract of sale, which was made between Alice Moono and Amatheon Agri Zambia Limited, as it was illegal and unenforceable.

4.21 From the statement of claim as amended, the averment is that Cleopas Sikabuli Moono's mother, Alice Moono, sold the property known as Farm No 9072 Mumbwa to Amatheon Agri Zambia Limited, which formed part of the estate of the late Deric Simuwana Mutakate Moono his father. The assertion is that the sale was done without authority, as Alice Moono was not the owner of the property.

4.22 In the amended defence and counterclaim, Amatheon Agri Zambia Limited contends that Alice Moono had authority to sell the property, as she was Administratrix of the estate of the late Deric Simuwana Mutakate Moono.

4.23 The contention is that Cleopas Sikabuli Moono being only a beneficiary under the estate, and not an Administrator of the

estate, he has no capacity to sue, as the action can only be brought by the Administrator of the estate. Further, that if he was unhappy with the Administrators of the estate, he should have applied to have them removed.

- 4.24 In terms of suits by an Administrator of an estate, the law in **Section 24 of the Intestate Succession Act** is clear, that an Administrator steps into the shoes of a deceased person.
- 4.25 **Halsbury's Laws of England Volume 17, 4th edition in paragraph 1457 at page 754** states that administration proceedings may be commenced by either the personal representative, the creditors, or the beneficiaries.
- 4.26 Therefore, a beneficiary has locus standi to commence an action in relation to their benefit under an estate.
- 4.27 In this matter, a third party, Amatheon Agri Zambia Limited has been sued as the sole defendant in relation to property under an estate, which has been contended was sold by the Administrator of the estate at the time, being Alice Moono.
- 4.28 **Order 85 Rule 3 of the Rules of the Supreme Court, 1965, 1999 Edition** provides that;

“(1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.”

- 4.29 The authorities that were relied on by Amatheon Agri Zambia Limited to argue that Cleopas Sikabuli Moono lacks locus standi to commence the action can be seen as where a beneficiary of an estate claimed against third parties only and not against third parties who could be held liable together with a personal representative of an estate.
- 4.30 In view of the above, Cleopas Sikabuli Moono, while being a beneficiary who can sue in relation to their benefit under the estate, he cannot sue Amatheon Agri Zambia Limited independently of the Administrator of the estate. To that extent, his claim is irregular.

5. CONCLUSION

- 5.1 I have found that proceeding against only Amatheon Agri Zambia Limited without the duly appointed Administrator/s of the estate of the late Deric Simuwana Mutakate Moono, Cleopas Sikabuli Moono's claims as Plaintiff on the original action are irregular.
- 5.2 I accordingly direct that the claims be amended to also be against the Administrator/s of the estate of the late Deric Simuwana Mutakate Moono in addition to Amatheon Agri Zambia Limited on the original action.
- 5.3 This shall be done by 12th September, 2025, failure to which the original action shall be struck out for irregularity. Costs shall be in the cause.

R15

5.4 Leave to appeal is granted.

DATED AT LUSAKA THE 27th DAY OF AUGUST, 2025

Skaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

