

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

**2021/HP/1518**



**BETWEEN:**

**DINAH PHIRI MWANALEZA** (*Suing as administratrix of the Estate of the late Eddie Mwanaleza*)

**PLAINTIFF**

**AND**

**NICHOLAS TEMBO**

**1<sup>ST</sup> DEFENDANT**

**ALICE MWAPE MWANGELWA**

**2<sup>ND</sup> DEFENDANT**

**BEFORE HON. JUSTICE E. P. MWIKISA**

*FOR THE PLAINTIFF: MR. L. MUMBA OF MESSRS KAFUE CHAMBERS  
FOR THE 1<sup>ST</sup> DEFENDANT: MR. F. ZULU OF MESSRS MPM LEGAL PRACTITIONERS  
FOR THE 2<sup>ND</sup> DEFENDANT: MS. C. SHIMALUBA- NATIONAL LEGAL AID CLINIC FOR WOMEN*

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# **RULING**

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**Cases Referred To:**

1. *Kalyoto Muhalayo Paluku v Granny's Bakery Limited & Others SCZ 29 of 2006*
2. *JCN Holdings v Development Bank of Zambia [2013] ZMSC 22*

3. *Zambia National Holdings Limited & Another v The Attorney-General* (1994) S.J.22 (S.C)
4. *James Onwuka v Joyce Siandwazi Reid* Appeal No. 49/2015
5. *Charity Oparaocha v Winfridah Murambiwa* (2004) Z.R. 141 (S.C.)
6. *Modest Hamalabbi v Canaan Simaambo Mweetwa* Appeal No. 268 of 2023
7. *Antonio Ventriglia & Another v Finsbury Investment Limited* Appeal No. 02/2019
8. *City Bank Zambia Limited v Suhayl Dudhia* Appeal No. 6 of 2022

**Legislation Referred To:**

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

**Other Works Referred To:**

1. *Zambia Civil Procedure, Commentary and Cases, Volume 1*

This is the 1<sup>st</sup> defendant's application to raise a preliminary issue pursuant to Order 14A Rule 1 and Order 33 Rule 3 of the Rules of the Supreme Court of England 1965, 1999 Edition (White Book) as well as Section 43 of the Intestate Succession Act Chapter 59 of the Laws of Zambia. The application is dated 8<sup>th</sup> October, 2024, and it raises the following issue for the Court's determination:

***“Whether or not the cause of action is null and void for lack of locus standi by the Plaintiff whose Order of Appointment as an Administratrix was obtained from the Local Court.”***

The application was supported by an affidavit and skeleton arguments of even date. The affidavit was deposed to by one Albert Tembo, by virtue of a Power of Attorney, dated 16<sup>th</sup> July, 2022, on

behalf of the 1<sup>st</sup> defendant herein. It was deposed therein that the Plaintiff herein commenced these proceedings on 6<sup>th</sup> December, 2021, in her capacity as Administratrix of the estate of the late Mr. Eddie Mwanaleza. That the Local Court exercises jurisdiction in matters relating to succession where the value of the estate does not exceed K50,000.00 un-rebased. It was deposed that the court record will show that the estate herein is valued at more than K50,000.00 (un-rebased). That the Order of appointment of Administrator in this case was obtained from the Lusaka Local Court and it names three Administrators of the said estate. That the named Administrators ought to have obtained their letters of administration from the High Court and that all or majority of the administrators ought to have commenced these proceedings together. It was deposed that the Plaintiff cannot commence these proceedings without the right Order of Appointment.

There is no affidavit in opposition to the application on the record.

When the matter came up for hearing on 21<sup>st</sup> January, 2025, Counsel for the 1<sup>st</sup> defendant, Mr Zulu, stated that the matter was coming up for the 1<sup>st</sup> defendant's application to raise a preliminary issue which

application was filed on 8<sup>th</sup> October, 2024, with a supporting affidavit and skeleton arguments. Counsel referred the Court to the case of **Kalyoto Muhalayo Paluku v Granny's Bakery Limited & Others SCZ 29 of 2006<sup>1</sup>** and submitted that it is well settled, in law, that a preliminary issue can be raised at any stage of the proceedings, even at the outset of the case and that this Court has jurisdiction to hear the 1<sup>st</sup> defendant's application herein. Counsel submitted that the first issue raised is whether or not the 1<sup>st</sup> respondent has locus standii in which she was appointed as administratrix in a matter pertaining to land. That an estate above the value of K50,000 must be dealt with by the High Court in line with the Intestate Succession Act. Counsel submitted that following the appointment of the Plaintiff using the Local Court, the fruits arising therefrom are a nullity as the Plaintiff has no power to deal with the estate. Further, that the record shows that there are three administrators to the estate in issue but that it is clear that the other two administrators are not party to these proceedings. That there is no document on record to show that the said two administrators have appointed or given authority to the Plaintiff to administer the estate of the late Eddie Mwanaleza.

Counsel submitted that the Plaintiff therefore has no locus standii to continue with these proceedings. Counsel prayed that the Court dismisses the proceedings herein.

Counsel for the 2<sup>nd</sup> defendant did not oppose the 1<sup>st</sup> defendant's application.

In opposing the application, Counsel for the Plaintiff, Mr Mumba, told the Court that the High Court has jurisdiction to administer both law and equity pursuant to Section 13 of the High Court Act. In relation to the appointment of the Plaintiff as Administratrix by the Local Court, it was Counsel's prayer that the Court dismisses the 1<sup>st</sup> defendant's application as it will be a travesty of justice. Counsel also contended that the Court also has power to allow the joining of the other two administrators to the proceedings.

In response, Counsel for the 1<sup>st</sup> defendant submitted that Section 20 of the Intestate Succession Act deals with the question of appointment of administrators and that two of the three administrators should have been plaintiffs in this matter. That the Plaintiff herein is in the minority and cannot be seen to be exercising the powers of the administrator. Counsel re-iterated his earlier

arguments and urged the Court to dismiss the application as this Court has not been clothed with the jurisdiction to deal with the case.

I have taken note of the skeleton arguments on the record.

I have carefully considered the affidavit evidence as well as the skeleton arguments on the record. It is trite law that if a matter is not properly before a court, that court has no jurisdiction to make orders or grant remedies and consequently any judgments or rulings delivered, if any, are null and void. In the case of **JCN Holdings v Development Bank of Zambia [2013] ZMSC 22<sup>2</sup>** the Supreme Court stated that:

***“It is clear from the Chikuta and New Plast Industries cases that if a court has no jurisdiction to hear and determine a matter, it cannot make any lawful orders or grant remedies sought by a party to that matter.”***

In this case, it is not in dispute that the Plaintiff obtained their letters of administration from the Local Court. In fact, the Plaintiff did not file an affidavit in opposition to this application although Counsel for the Plaintiff, at the hearing of the application, submitted that the High Court has jurisdiction to administer both law and equity as per Section 13 of the High Court Act, Chapter 27 of the Laws of Zambia.

Counsel went on to argue that dismissing this action because the Plaintiff obtained its letters of administration from the Local Court would be a travesty of justice.

I wish to remind Counsel for the Plaintiff at this point that the jurisdiction of the High Court though unlimited is not limitless since the Court must exercise the said jurisdiction in accordance with the law. I am fortified by the case of **Zambia National Holdings Limited & Another v The Attorney-General (1994) S.J.22 (S.C)**<sup>3</sup> Supra.

Section 43(2) of the Intestate Succession Act, Chapter 59 of the Laws of Zambia provides that:

***“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.”***

The Supreme Court in the case of **James Onwuka v Joyce Siandwazi Reid Appeal No. 49/2015**<sup>4</sup> stated that Section 43(2) may seem archaic given the fact that there is hardly any estate in Zambia worth K50,000.00 but that it is nevertheless the law for the time being in force.

A perusal of the copy of the order of appointment of administrator exhibited and marked "AT1" shows that the Plaintiff herein obtained her order of appointment of administrator from the Lusaka Local Court. In the skeleton arguments in support of the application herein, it was argued that although the Plaintiff herein has sufficient interest in the subject matter as she is the widow to the late Eddie Mwanaleza, the Plaintiff has come to court with a wrong instrument. The case of **Charity Oparaocha v Winfridah Murambiwa (2004) Z.R. 141 (S.C.)**<sup>5</sup> was cited as follows:

**"In consideration of this ground of appeal, we have had to ascertain the jurisdiction of the Local Court which appointed the Appellant to be the administrator in this case. Section 43(2) of the Act limits the jurisdiction of Local Court in matters of successions to estate whose value do not exceed Fifty Thousand Kwacha. It is clear to us that this provision was enacted at a time when the Kwacha had more value. We say so because going by the current trends very few, if any, would have an estate the value of fifty thousand kwacha and below. It is however on record in this case that the deceased's estate had property within and outside Zambia, which included real property. Clearly, the value of the 148 deceased's estate went beyond the jurisdiction of the Local Court. We agree with Mr. Zulu that probate, in this case, should have been obtained from the High Court. We cannot therefore fault the trial Judge for having found that the appointment of the Appellant by the Local Court as administrator of the estate of the deceased was null and void."**

A further perusal of the writ of summons and statement of claim herein shows that the Plaintiff herein is claiming an order of specific performance of a contract of sale ordering the defendants to convey subdivision W of Subdivision V of Farm No. 215a situate in Lusaka after the late Mr Eddie Mwanaleza and Mr Nicholas Tembo, the 1<sup>st</sup> defendant herein, entered into a contract of sale of the property for the sum of K130,000,000.00 (unrebased). It is evident from the foregoing that the value of the estate of the late Eddie Mwanaleza, therefore exceeds Fifty Thousand Kwacha.

The Court of Appeal in the case of **Modest Hamalabbi v Canaan Simaambo Mweetwa Appeal No. 268 of 2023**<sup>6</sup> stated as follows on the subject:

***“Based on the above authorities, we are of the considered view, that in the absence of an Order of appointment duly issued by the High Court, the administrator lacked the authority to have sold the property to begin with. We say so on the basis that the jurisdiction of the local court in succession matters is restricted to handling estates valued at no more than Fifty Kwacha. From the evidence before us, we have noted the purchase price of the land in question to the Appellant was K100,000 to be paid in 3 instalments, and was K120,000 to the 2<sup>nd</sup> Respondent. We can safely state that there can be no doubt that the value of the property was in excess of Fifty Kwacha.”***

In light of the above authorities, I find that the value of the estate of the late Mr Eddie Mwanaleza, exceeds Fifty Thousand Kwacha and that the Plaintiff herein, as administratrix appointed by the Local Court, cannot validly use the Order of Appointment from the Local Court to represent the deceased's interests in any proceedings dealing with the estate.

As shown above, where a matter is commenced using a wrong mode, the Court will have no jurisdiction to hear the matter. The Supreme Court in the case of **Antonio Ventriglia & Another v Finsbury Investment Limited Appeal No. 02/2019**<sup>7</sup> had this to say on jurisdiction at page R61-R62:

**“Therefore, not only do we agree with the Kenyan Court of Appeal’s observation in the case of Owners of the Motor Vessel Lilians that,**

**“Jurisdiction is everything [and that] without it, a court has no power to make one more step”,**

**We also totally share that court’s further observation in the same case that:**

**“where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing....”**

See also **City Bank Zambia Limited v Suhayl Dudhia Appeal No. 6 of 2022**<sup>8</sup> where the Supreme Court stated that when a court is

destitute of jurisdiction it has no legal capacity to deal with a matter beyond the determination that it has no jurisdiction.

Consequently, I am of the considered view that the Plaintiff's cause of action herein is null and void for want of jurisdiction. The 1<sup>st</sup> defendant's application thus succeeds for the reasons stated.

I award costs to the 1<sup>st</sup> defendant, to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka the .....<sup>th</sup> 11<sup>th</sup>..... day of .....*November*....., 2025

  
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**ELITA PHIRI MWIKISA**  
**JUDGE**