

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(PROBATE JURISDICTION)

2021/HPF/547



IN THE MATTER OF: **THE ESTATE OF THE LATE JEFF KAYONDE**

IN THE MATTER OF: **AN APPLICATION FOR THE RESPONDENTS TO RENDER AN ACCOUNT OF THE ESTATE OF THE LATE JEFF KAYONDE**

IN THE MATTER OF: **AN APPLICATION BY JOAN MALAMA KAMBE MUSENDA FOR AN ORDER OF APPOINTMENT AS CO - ADMINISTRATOR OF THE ESTATE OF THE LATE JEFF KAYONDE**

IN THE MATTER OF: **SECTIONS 4,5,6,14,15,19,29 AND 44 OF THE INTESTATE SUCCESSION ACT, CAP 59 OF THE LAWS OF ZAMBIA AS READ WITH ORDER 6 RULE 2 OF THE HIGH COURT RULES, CAP 27 OF THE LAWS OF ZAMBIA**

BETWEEN:

JOAN MALAMA KAMBE MUSENDA

*(Suing as Next Friend for a minor **JEFF KAYONDE JUNIOR**)*

APPLICANT

AND

WILLIAM KAYONDE

*(Sued in his capacity as Administrator of the Estate of the Late **JEFF KAYONDE JUNIOR**)*

1ST RESPONDENT

ANITA KALOBWE KAYONDE

*(Sued in her capacity as Administrator of the Estate of the Late **JEFF KAYONDE JUNIOR**)*

2ND RESPONDENT

BEFORE THE HON MR. JUSTICE W.S. MWEEMBA AT LUSAKA

For the Applicant: Mrs. M. Mulanda-Banda – Messrs Legal Aid Board.

For the Respondents: Mr M. Moonga & Ms T. Zulu – Messrs Robson Malipenga & Co.

JUDGMENT

LEGISLATION & WORKS REFERRED TO:

1. *The High Court Act, Cap 27 of the laws of Zambia.*
2. *The Intestate Succession Act, Cap 59 of the Laws of Zambia.*

CASES REFERRED TO:

1. ***Monica Siakondo (suing in her capacity as administrator of the estate of the late Edith Siakondo v Fredrick Ndenga (2005) ZR 22.***
2. ***Lindiwe Chinyanta v Doreen Chiwele and Judith Tembo (2007) Z.R. 246.***

By Originating Summons taken out on 3rd December, 2021, the Applicant is claiming the following: -

- i. *That the Respondents produce a full inventory of the Estate of the Late Jeff Kayonde;*
- ii. *That the Respondents herein render an account before this Court to show how the estate has been administered so far.*
- iii. *That the Applicant be appointed as Co- administrator of the estate of the late Jeff Kayonde;*
- iv. *An injunction restraining the Respondents either by themselves, their agents, servants or whosoever from carrying out any construction works, or whatsoever developments, interfering, occupying, remaining in possession and trespassing;*
- v. *Any other relief that the Court may deem fit; and*
- vi. *Costs of and incidental to the proceedings.*

There is also an Affidavit filed in support of the application filed into Court on 3rd December, 2021 and it was sworn by **JOAN MALAMA KAMBE MUSENDA**, the Applicant and mother to the deceased's child Jeff Kayonde Junior.

Ms Musenda deposed that her son Jeff Kayonde Junior was born on 22nd January, 2005 and she produced a copy of the birth record which is marked as "**JMKM1.**"

She further deposed that the deceased died on 31st July, 2010 at Kitwe Central Hospital and she produced a copy of the death certificate which is marked as "**JMKM2.**"

That after the deceased's death, the Respondents were appointed Administrators by the Kitwe Local Court and she produced a copy of their Order of Appointment which is marked as "**JMKM3**."

That after his demise, the deceased is survived by a wife, the 2nd Respondent as well as 8 children, including the Deponent's son as beneficiaries.

That at the time of his death and as part of his estate, the deceased left behind 50% shares in Jeff Alexander International Limited and a Mine in Mufumbwe, in North - Western Province.

She further deposed that in October, 2014 she was approached by the 1st Respondent who informed her that he and the 2nd Respondent were in the process of selling the flats situated at Plot No. AJ28 in Chalala, Lusaka and that during a meeting held on 29th October, 2014 to distribute the proceeds of the sale of flats, it was agreed that her son was to be given the sum of **K344, 000.00**. The deponent produced a copy of the said agreement which is marked as "**JMKM4**."

However, that to date the said money had not been given to her son nor had she been informed how the money had been spent or invested despite several follow - ups with the Respondents.

That on 5th April, 2021, she got to know that in fact, the deceased left a Mine in Mufumbwe, North Western Province which he owned with his partner Alexander Musolo Mwila.

That she further discovered that a portion of the said mine namely; 46% shareholding was sold at a total cost of **USD 3,000,000.00** which was shared equally between the estate of the deceased and Alexander Musolo Mwila.

That despite the estate of the deceased realizing **USD 1, 500, 000.00** her son had not been considered in the distribution of the said money and

the Respondents had disregarded the welfare of her son in the exercise of their duties despite the fact that the deceased provided for his welfare while he was alive including but not limited to school fees, clothing, shelter and food.

That on 18th June, 2021 a meeting was held at the Administrator General's Office where the Respondents stated that the child was entitled to receive **USD 76, 000.00** from the sale of a portion of the mine. She produced a copy of the distribution list which is marked as exhibit "**JMKM5.**"

That on 21st June, 2021, she wrote to the Respondents through her lawyers then Messrs. Japhet Zulu Advocates, inquiring on the status of the estate and demanded 2.5% shareholding in Jeff Alexander International Limited but to date nor response or provision of shares had been provided. She produced a copy of the letter of demand which is marked as "**JMKM6.**"

She averred that the Respondents had distributed the estate of the deceased in full disregard of her son's interests, thus it was only in the interest of justice that the Respondents were being asked to render an account of how the deceased's estate had been distributed to date.

That as a mother to one of the beneficiaries herein, she had sufficient interest in the estate of the deceased. Thus, there was a need that she be appointed as Co – Administrator of the estate of the deceased to safeguard the interests of the child seeing that he had not been considered by the Respondents for more than 10 years now despite several follow – ups.

That granting this application would not be prejudicial to the Respondents or any person. Conversely the interests of justice would be served as the estate of the deceased would be administered and distributed among all the beneficiaries in accordance with the law.

That she had been advised and believed that this was a proper case for this Court to hear, determine and grant the reliefs sought.

There is also an Affidavit filed to oppose the application which was filed into Court on 10th August, 2022. It was deposed by **ANITA KALOBWE KAYONDE** the 2nd Respondent herein and Administratrix of the deceased's estate.

She admitted the contents of the Affidavit in Support regarding the date of the deceased's death and the fact that he had been survived by a wife and 8 children.

However, she averred that out of the 8 children, only 7 with the exception of Jeff Kayonde Junior were known to the Administrators. Moreover, that the deceased only left 50% shares in a company known as Jeff Alexander International Limited.

That shortly after their appointment as Co - Administrators of the estate in issue, the 50% shares in the company were transferred to her in her capacity as Administratrix of the estate.

That following the said transfer, a total of 25% shares which formed part of the estate were sold and the proceeds distributed among the beneficiaries who were herself as the surviving spouse and 6 children, except Micheal Kayonde and Jeff Kayonde Junior.

That a property in Chalala, Plot No. AJ28 was bought by the Administrators using Michael Kayonde's share of the estate and a block of flats built for him.

However, in 2014, Micheal Kayonde dragged the Administrators to the Police Victim Support Unit on allegations that he had not benefited from the estate of the deceased despite the aforementioned being in his name.

That following these allegations, the Applicant approached the 1st Respondent and informed him of the existence of Jeff Kayonde and it was

decided by the Administrators that the Chalala flats be sold and the proceeds be shared between Michael and Jeff Kayonde as beneficiaries to the estate of the deceased. She produced a copy of the said agreement which was marked as "**AKK 3.**"

That following the execution of the said agreement, the Applicant was informed of its contents and was expected to ensure that she coordinated with Michael Kayonde in the selling of the flats to ensure that her son benefitted from the proceeds of the said sale more so that the property was already in the name of Michael Kayonde.

However, that the Applicant deliberately did not get involved in the sale of the flats and Michael Kayonde retained the entire purchase price of the flats.

That the Applicant's son did not benefit from the sale of the flats due to the Applicants failure to do as she was advised and due to this, she was now suing the Administrators.

This notwithstanding, she believed that Jeff Kayonde Junior being a biological child of the deceased, was still entitled to benefit from the deceased's estate.

That only 25% of the shares in the company were remaining and Jeff Kayonde Junior was entitled to a share of the same, given that there were 8 beneficiaries.

That the Applicant's prayer to be appointed as co-Administrator lacked merit on account of the fact that the Administrators had not mismanaged the estate as could be discerned from the foregoing paragraphs.

That quite apart from the account of the distribution of the estate rendered herein, the Administrators were ready and willing to render an account of the distribution of the estate. The Respondents further averred

that their responsibility ended at executing the agreement bequeathing the said property to the two beneficiaries.

She averred that the deceased owned 50% of the mine in Mufumbwe and that Jeff Kayonde junior was not considered in the distribution of the monies realized from the sale of 25% shares from the estate on account of the fact that he was not known to the Administrators at the time of the said distribution.

She went on to depose that as Administrators, they had not disregarded the Applicant's son's welfare in the exercise of their duties.

That the **USD 76,000.00** that Jeff Kayonde Junior was entitled to was equivalent to the sum of **K344,000** the Administrators had secured for him through the agreement to sell the flats.

There is also an Affidavit filed in Reply that was sworn by **JOAN MALAMA KAMBE MUSENDA** aforesaid and filed into Court on 26th August, 2022.

Ms Musenda deposed that Jeff Kayonde junior was known to the family through a family meeting with her parents that was held immediately it was discovered that she was expecting a child. That the two Respondents could not have reasonably been expected to be present at that meeting given that such matters were handled by parents.

That in another meeting held a year prior to the matter being forwarded to this Court, the 1st Respondent, his father and uncle were present as well as the aunt to the 2nd Respondent. The Deceased's uncle mentioned that the deceased had expressed intentions to start living with Jeff Chama Kayonde junior prior to his death in order to unify the children.

That while the 1st Respondent who had been a dependent of the deceased was regularly sent to take financial and material requirements to her whenever the deceased was busy with work.

That although the 2nd Respondent was angry when she discovered the existence of her son, she later took shoes for her son to her parents' place. Moreover, that the 1st Respondent had prior knowledge of the child and due to this he was prompted to travel to Lusaka to avail her the agreement, a copy of which she exhibited as "**JMKM1**."

That the two Respondents had full knowledge of Jeff Kayonde Junior at the time of the deceased's death and were denying this fact in order to protect themselves from how they failed to execute their legal duties as administrators.

That the other children of the Deceased were Micheal Kayonde, Jeff Kayonde Junior and Beloved Kayonde who was in Swaziland.

Moreover, the deponent refuted the allegation by the 2nd Respondent, that she approached the 1st Respondent regarding Jeff Kayonde Junior as this was a fabrication meant to frustrate the tenets of justice. The 1st Respondent resided in Kitwe, whilst she lived and worked in Lusaka at the time and he travelled to Lusaka to give her the agreement.

After receiving the agreement, she kept contacting the 1st Respondent through phone calls and the only response he would give her was that the sale had not yet occurred.

As a mother to Jeff, she was never engaged by the Administrators regarding the matter where Micheal Kayonde had reported them to the police or any other decision that was made thereafter and since she was not a party to the Agreement, she could only rely on feedback from the two Administrators.

She finally averred that it was expected that the two Administrators would ensure the correct distribution of the assets and she was shocked that the Respondents were claiming that she had failed to ensure that her son benefitted from the sale of the flats.

The Applicants Counsel filed Skeleton Arguments into Court on 3rd December, 2021. He began by stating that the Applicant had commenced this application pursuant to **Order 30 Rule 12 of the High Court Act, Cap 27 of the Laws of Zambia** which provides as follows:

"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, 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..."

He also set out the definition of the word "intestate" in accordance with **Section 3 of the Intestate Succession Act, Cap 59 of the laws of Zambia** which was defined as follows:-

"Intestate means a person who dies without having made a Will and includes a person who leaves a Will but dies intestate as to some beneficial interest in his movable or immovable property."

Based on this Section, Counsel stated that a person died intestate if they did not leave a valid will, or if it was incomplete in some material respects. It was submitted that the law provided a way in which administrators could be ascertained in such instances and **Section 15(1)** provided as follows:

"Where the deceased has died intestate, the Court may, on the application of any interested Person, grant letters of administration of the estate to that interested person,"

Counsel contended that the issue did not pertain to the appointment of Administrators since these had already been appointed in this case but the dispute was with regard to the sharing of the properties amongst the beneficiaries.

He went on to submit that when an Administrator had been appointed by the Court after being ascertained by the law, he or she had an overriding duty to ensure that all the liabilities of the deceased were paid off and that the surplus was distributed to all those who were entitled in accordance with section 19(1) of the Intestate Succession Act which provided for the following inter alia:

***"(1) The duties and powers of an administrator shall be to –
(a) to pay the debts and funeral expenses of the deceased and pay estate duty if estate duty is payable.
(b) to effect distribution of the estate in accordance with the rights of the persons interested in the estate under this act."***

Counsel went on to submit that since the law ascertained a Person who could be an Administrator and the Court appointed them, then such a Person was answerable to the control and supervision of the Court and the Court as the appointing authority had the power to call this Administrator to render an account on how he has going to administer the estate of the deceased when called upon by the Court to do so. If, however, the Court was unsatisfied with his explanation, it had the power to remove him from acting as such administrator or suspend him.

It was argued that in this case, the rightly appointed Administrators had failed to carry out their duties and instead advantaged the 2nd Respondent leaving other beneficiaries to suffer and to fend for themselves.

The Deceased left shares in a mine and after a portion of the mine was sold, the proceeds were supposed to benefit the younger beneficiaries such as the Applicant's son by paying for his education, among other things. However, the Administrators who also happened to be the brother and wife to the deceased respectively sold his properties and deprived the Applicant's son of his entitlement.

Section 19 (1)(c) provides that;

"(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-
(i) To produce on oath in Court the full inventory of the estate of the deceased; and (ii) to render to the Court an account of the administration of the estate."

It was contended that the Respondents had been enriching themselves from the estate without sharing the proceeds of their dealings with the Applicant's son.

It was argued that this Court had the power to order the Respondents to render an account of administration and in the event that they failed to produce a satisfactory inventory, this Court could either direct that they be suspended or removed from office and other administrators appointed accordingly.

On the strength of the foregoing authorities, and in view of the circumstances of the case and the evidence on record, it was submitted that this was a proper case for this Court to exercise its discretion to order the Respondents to render an account of the administration and/or remove them from acting as such administrators.

The Respondent also filed in skeleton arguments in response on 10th August, 2022. Counsel began by stating that the deceased died intestate and that his estate was therefore to be distributed according to the

provisions of the *Intestate Succession Act, Cap. 59 of the Laws of Zambia (hereinafter referred to as the Act)*.

It was submitted that **Section 4(1) of the Act** provides that “**a person dies intestate under the Act if he has not made a will disposing off his estate at the time of his death.**” Counsel also cited the case of **MONICA SIAKONDO (SUING IN HER CAPACITY AS ADMINISTRATOR OF THE ESTATE OF THE LATE EDITH SIAKONDO V FREDRICK NDENGA [1]** where the Court held that when the deceased died intestate, his estate was to be administered under the provisions of the *Intestate Succession Act, Chapter 59 of the Laws of Zambia*.

Counsel went on to submit that according to **Section 3 of the said Act**, an estate comprises all the assets and liabilities of the deceased person and includes his personal chattels for purposes of administration under the Act. Moreover, that the mode of distributing the estate of an intestate is specified in **Sections 5 to 11 of the Act**. It was also argued that, administrators could not be held personally liable for the distribution of the estate.

It was further stated that part II of the Act provided for succession relating to intestate estates and stipulated the mode of distribution of such estates. Whilst **Section 5 of the Act** provides for how the estate of an intestate should be distributed where there was a surviving spouse, children, parents and dependants of the intestate.

The said Section provides as follows:

“(1) Subject to sections eight, nine, ten and eleven, the estate of an intestate shall be distributed as follows:

(a) twenty percent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's

property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;

(c) twenty per cent of the estate shall devolve upon the parents of the deceased;

(d) ten per cent of the estate shall devolve upon the dependants, in equal shares:

Provided that a priority dependant whose portion of the estate under this section is unreasonably small having regard to his degree of dependence on the deceased shall have the right to apply to a court for adjustment to be made to the portions inherited and, in that case, Part III of the Wills and Administration of Testate Estates Act shall apply, with the necessary changes, to the application."

It was further argued that the full circumstances of the dispute were as outlined in the Affidavit in Support of the application and Affidavit in opposition herein deposed save to emphasize the fact that the gist of the applicant's application was for the applicant to be joined as an administratrix to the estate of the late.

According to Counsel, there had been no act in this matter to necessitate the addition of an administratrix as the estate was now insolvent save for the shares left in the mine which were soon to be distributed to all the beneficiaries.

It was finally contended that it had been over 11 years within which the Applicant should have made an effort to try and secure an inheritance for the minor as opposed to raising this application this late in the day.

On the date of hearing on 30th August, 2022, both Counsel for the Applicant and Counsel for the Respondents were before Court and they

each relied on their respective Affidavits and Skeleton Arguments which I have considered extensively.

This is an application by the Applicant for the Respondents to Render an Account on the deceased's estate. The gist of the application is that the Respondents who were appointed as Administrators of the deceased's estate should render an account regarding how they administered the estate thus far. The Applicant is also seeking an order that she be appointed as Co Administrator of the deceased's estate.

The Respondents have opposed the application and the gist of their opposition is that at the time of the deceased's death, the Administrators were not aware of the Applicants child. That they only knew that he had been survived by 7 children who did not include Jeff Kayonde Junior. That after his existence was brought to their attention, they had made an effort to secure an inheritance for him from the sale of flats that belonged to another child known as Michael Kayonde and that the Applicant was told to ensure that she got a share of the proceeds from the said sale. However, she did not do so and as a result, she commenced this matter. Nevertheless, the Administrators believed that the Applicants child who was a biological son of the deceased was still entitled to benefit from the deceased's estate. However, that there were only 25% of the shares in the company that were remaining and Jeff Junior was entitled to a share. Regarding the applicants, application to be appointed as co administrator, it was argued that this application lacked merit in light of the fact that the Administrators had not mismanaged the estate and they were willing to render an account when called upon to do so.

In my view, the relevant issues for this Court's determination are:

- 1. Whether or not the Respondents can be ordered to produce on oath, an inventory of the deceased's estate as well as to give an account of the manner in which the estate was administered.***

2. Whether or not the Applicant can be appointed as co administrator of the estate of the Deceased.

The Affidavit in Support of the Originating Summons herein shows that it is not in dispute that the Respondents were appointed as Administrators of the deceased's estate in 2010 following the demise of the deceased. It is also in evidence that the deceased left 50% shares in Jeff Alexander International Limited as well as a mine that he jointly owned with one Alex Musolo Mwila. It has also been deposed that in October, 2014 the 1st Respondent met the Applicant and informed her that he and the 2nd Respondent were in the process of selling flats situated at AJ28 in Chalala, Lusaka and it had been agreed that the proceeds of the sale in the sum of **K344,000.00** would be given to Jeff Kayonde Junior. However, to date this money nor a portion of the mine which was sold at a cost of **USD3,000,000.00** and shared equally within the estate of the deceased and the partner, Alex Musolo Mwila was not given or shared with the Applicant's son. I have further noted that the Applicant has also refuted the Respondents claims that they had no knowledge of the existence of her son given that the 1st Respondent used to take her financial and material support each time the Deceased was unavailable, whilst the 2nd Respondent had bought a pair of shoes for the Applicants son in the past.

Regarding the first issue of whether or not the Respondents can be ordered to render an account, **Section 19 (1)(c) of the Intestate Succession Act, Cap 59 of the Laws of Zambia** is instructive. It provides as follows.

“The duties and powers of an administrator shall when required to do so by the court, either on the application of an interested party or on its own motion -

(i) to produce on oath in court the full inventory of the estate of the deceased; and

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

In my view the Applicant who is the mother of Jeff Kayonde Junior, the deceased's biological child has sufficient interest in this matter. Thus, she has the right to bring this matter before Court for an order compelling the Respondents to produce on oath an inventory of the estate of the deceased as well as to render an account to this Court of how the deceased's estate was administered from the time of his demise to date.

I find that at the time that the Respondents distributed monies realized from the sale of 25% shares in the Mufumbwe Mine, the Respondents already knew about the existence of Jeff Kayonde Junior. This finding is based on the Applicants assertion that prior to his death the deceased used to send the 1st Respondent to take financial and other material assistance to the Applicant for the child's use. She also stated that the 2nd Respondent once took a pair of shoes to her parents' home for use by the child.. These assertions were not disputed by the Respondents.

It is common cause that the Respondents are the administrators of the estate of the deceased. In the case of **LINDIWE CHINYANTA V DOREEN CHIWELE AND JUDITH TEMBO [2]** the Court held that the duty of an administrator is to collect the deceased's estate and to distribute to the beneficiaries as well as render an account.

From the foregoing it is clear that the law imposes various duties upon an administrator of an estate including the duty to distribute the estate in accordance with the rights of the interested persons and to render an account on the administration of a deceased's estate. I find therefore that the Respondents being Administrators of the estate of the late Jeff Kayonde they are under an obligation to distribute the estate accordingly and thereafter render an account on the administration of the estate in accordance with the provisions of the Intestate Succession Act.

The Record shows at a meeting held at the Administrator Generals Office on 18th June, 2021 the Respondents stated that the child (Jeff Kayonde Junior) was entitled to receive **USD 76,000.00** from the sale of a portion of the Mine in Mufumbwe.

I direct that part of the remaining 25% shares in the Mufumbwe Mine be sold by the Respondents so that **USD 76,000.00** can be paid to the child within ninety days from the date hereof.

I further direct that the Respondents do thereby render a full written account to the Court on the administration of the said estate within one hundred twenty days from the date hereof.

I will now turn to the second issue of whether or not the Applicant can be appointed as Co - Administrator. Counsel for the Applicant relied on **Section 15 (1) of the Intestate Succession Act** which provides as follows:

“15. (1) Where the deceased has died intestate, the court may, on the application of any interested person, grant letters of administration of the estate to that interested person.”

Counsel further argued that once an Administrator was appointed by the Court, he or she had an overriding duty to ensure that he paid off all liabilities of the deceased as well as to distribute any surplus to all those who were entitled according to section 19 (1) of the Act which provides interalia as follows:

“(1) The duties and powers of an administrator shall be –
(a) to pay the debts and funeral expenses of the deceased and pay estate duty if estate duty is payable;
(b) to effect distribution of the estate in accordance with the rights of the persons interested in the estate under this Act;”

Based on this law, Counsel for the Applicant contended that where the Court was not satisfied with the explanation rendered, it had the power to remove or suspend the administrator. It was argued that the administrators had failed to carry out their duties and had deprived the Applicant's son of his entitlement.

In response Counsel for the Respondents argued that the law had already outlined the mode of distribution for all intestate estates in **Sections 5 to 11 of the Act**. Therefore, Administrators could not be held personally liable for the distribution of the estate. It was further argued that there had been no act by the Administrators that would necessitate the addition of an administratrix as the estate was now insolvent save for the shares left in the mine which would be distributed to all the beneficiaries. Moreover, that this application had been raised late in the day given that it had been over 11 years from the time the deceased died and that the Applicant should have made an effort to secure an inheritance for her child as opposed to raising an application this late in the day

Section 29 of the Act provides for the revocation of grants and the removal of Administrators. It provides as follows:

- 29. (1) Letters of administration may be revoked or annulled for any of the following reasons-**
- (a) that the proceedings to obtain them were defective in substance;**
 - (b) that the grant was obtained fraudulently;**
 - (c) that the grant was obtained by means of an untrue statement of a fact essential in point of law to justify the grant, though that statement was made in ignorance or inadvertently;**
 - (d) that the grant has become of no use and inoperative;**
 - (e) that the person to whom the grant was made has, without reasonable cause failed, to furnish an account of his administration after having been lawfully called upon to do so, or has prepared an account which is untrue in a material particular.**

- (2) Where the court is satisfied that proper administration of the estate and the interests of the persons beneficially entitled to them so require, it may-**
- (a) suspend or remove an administrator;**
 - (b) provide for the succession of another person to the office of that administrator who shall cease to hold office; and**
 - (c) provide for the vesting in the successor of any property belonging to the estate.**

I do not consider that the Applicant has made a good case for the removal of the Respondents as Administrators. The proper administration of the estate do not require that the Respondents be removed as Administrators.

It is clear that a Court has discretion to appoint a person(s) to administer the estate having regard to consanguinity, amount of interest as well as security of the estate. The question is whether the Court should do so in the present case taking into account the greater interests of the estate. I find that the child Jeff Kayonde Junior is entitled to 6.25% of the value of the deceased's estate. From the evidence before me, it is clear that he has not been given his portion from the sale proceeds of 46% of the shareholding of the Mufumbwe Mine nor the sale proceeds of the flats on Plot AJ28 Chalala, Lusaka. There is no evidence before me to suggest that he has since received his share of the estate. As already directed the Respondent must distribute to the Applicant the child's portion of the estate without further delay.

On the question of whether the Applicant should be appointed to administer the said child's interest in the estate, it is clear that the Respondents have acknowledged that the child is entitled to receive **USD 76,000.00** from the sale of a portion of the mine and that he is also entitled to a share of the remaining 25% of the shares in the Mufumbwe Mine. It is however also clear that there is mistrust between the Applicant and the Respondents and that therefore granting an Order that the Applicant be appointed as a Co-Administrator of the estate of the

deceased may not be ideal or in the best interests of all the beneficiaries. In view of these circumstances and the fact that the Court has already directed that the Respondents distribute the estate as prescribed by law, I find that the appointment of the Applicant to administer the child's portion of the estate is unnecessary. This claim therefore fails.

From the foregoing, the Applicant having been successful with regard to her first claim, I order that the Respondents shall bear the Applicants costs of and incidental to this action.

I therefore order that the Respondent should produce on oath the full inventory of the estate of the deceased as well as render an account of the administration of the estate within one hundred twenty days from the date hereof.

Leave to appeal is granted.

DELIVERED IN CHAMBERS AT LUSAKA THIS 26TH DAY OF FEBRUARY, 2024.



**WILLIAM S. MWEEMBA
HIGH COURT JUDGE**