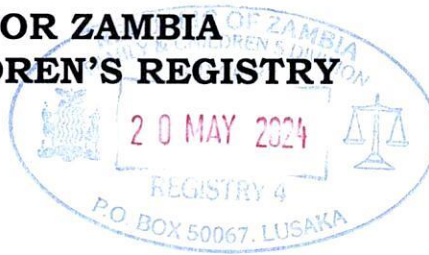


**IN THE HIGH COURT FOR ZAMBIA
AT FAMILY AND CHILDREN'S REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2023/HPF/314



B E T W E E N:

**IN THE MATTER OF: THE INTESTATE SUCCESSION ACT CAP 59 OF
THE LAWS OF ZAMBIA**

**IN THE MATTER OF: SECTION 19 (1) (B) (C) (I) (II) OF THE
INTESTATE SUCCESSION ACT CHAPTER 59 OF
THE LAWS OF ZAMBIA**

**IN THE MATTER OF: ORDER XXX RULE 12 OF THE HIGH COURT
ACT CHAPTER 27 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: THE ESTATE OF THE LATE FRANCIS MUMBI
WHO DIED ON 27TH APRIL, 2019**

BETWEEN:

ANETA MULENGA

APPLICANT

AND

BRENDA MUMBI MWALE

1ST RESPONDENT

(Sued in her capacity as Administrator of the Late Francis Mumbi)

KELVIN MUMBI

2ND RESPONDENT

(Sued in his capacity as Administrator of the Late Francis Mumbi)

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

On the 20th day of May, 2024.

For the Applicant: In Person

For the 1st Respondent: N/A

For the 2nd Respondent: N/A

J U D G E M E N T

LEGISLATION REFERRED TO:

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

3. *The Administrator General's Act Chapter 58 of the Laws of Zambia.*

CASES REFERRED TO:

1. *Jackson Mooya and Nchimunya Mweemba: Appeal No. 116/2018*

1.0 INTRODUCTION

1.1 By way of Originating Summons supported by an Affidavit dated 15th June, 2023 the Applicant sought the following:

- i) *An order compelling the Administrators of the Estate of the late Francis Mumbi to render a full inventory of the estate;*
- ii) *An order compelling the Respondents to pay 20% shares to the Applicant as her entitlement in the estate of the late Francis Mumbi.*

2.0 AFFIDAVIT IN SUPPORT

2.1 In the Affidavit in Support dated 15th June, 2023 and deposed to by the Applicant namely **Aneta Mulenga** in her capacity as a beneficiary of the estate of the late Francis

Mumbi the Applicant alleged that she is a surviving parent and beneficiary in the Estate of the late Francis Mumbi.

- 2.2 Further she averred that the 1st Respondent is a widow to the deceased and the 2nd Respondent is the son to the deceased from his first deceased wife and they are both administrators in the estate herein.
- 2.3 The Applicant has alleged that from the time the deceased died, the Respondents have failed to render a just and true account of the estate of the deceased.
- 2.4 The Applicant stated that the Respondents have since collected all the emoluments of the deceased from his former work place being at ZESCO and at NAPSA. Further she stated that the Respondents have not given her 20% shares as her entitlement for being the surviving biological mother to the deceased.
- 2.5 The Respondents are said to have failed to account for the estate despite several reminders to do so by the Applicant.
- 2.6 The Applicant now requests that the Court orders the Respondents herein to produce on oath the full inventory

of the estate of the deceased and give an account of the administration of the estate. The Applicant also seeks an order to compel the Respondents to pay her the 20% shares out of the deceased's estate as a surviving mother to the deceased.

3.0 AFFIDAVIT IN OPPOSITION

- 3.1 In the Affidavit in Opposition, deposed to by **Brenda Mwale Mumbi** and **Kelvin Mumbi** the 1st and 2nd Respondents herein.
- 3.2 The Respondents have deposed that they were appointed personal representatives for the estate of Francis Mumbi by the Local Court at Chilenje in Lusaka.
- 3.3 They have further said that notwithstanding the appointment from the Local Court, the Respondents have proceeded to apply for the grant of letters of administration to the High Court. The application for the letters of administration has been necessitated by the realization that the Local Court at Chilenje did not have jurisdiction to grant an order of representation in respect of the estate

in issue on account of its value which exceeds the threshold for the Local Court

- 3.4 It has been submitted that the Local Court orders of representation remain in force until revoked by grant of new order of representation by the High Court.
- 3.5 Further the Respondents averred that contrary to the deposition by the Applicant that she is the biological mother to the deceased, the Applicant is said to be an auntie to the deceased.
- 3.6 It has been submitted that the biological mother to the deceased was known a Theresa Chanda Mukuka who was already deceased at the time the deceased herein had died. Therefore, the Respondents allege that Applicants claims in this premise can be said to be a deliberate attempt at misleading the Court.
- 3.7 The Respondents have indicated that since the Applicant is not the deceased's biological mother she is not a priority beneficiary of the estate in issue. It is thus their contention that the Applicant lacks sufficient interest in the estate to demand for an account of the administration thereof.

3.8 The Applicant consequently is said not to be entitled to the 20% of the estate because she is not a priority beneficiary to whom such a right accrues. The deponents indicate that the said portion being the 20% of the estate due to the surviving parent was given to the rightful beneficiary under the estate being Moffat Mumbi, the biological father to the deceased as evidenced in the exhibit marked "BMMKM3" a copy of the National Registration Card for Moffat Mumbi.

3.9 Finally, it was deposed that on the premises aforesaid, the Applicant does not come within the meaning of priority beneficiaries who can seek an order for apportionment of her entitlement. The list of priority beneficiaries and recognized by the deceased's former employers is as exhibited in exhibit marked as "BMMKM4" the beneficiaries according to the deceased person.

4.0 SKELETON ARGUMENTS IN SUPPORT

4.1 In the Skeleton Arguments in Support of Originating Summons, the Applicant in support of the application

referred to section 19(1)(b)(c)(i)(ii) of the Intestate Succession Act Chapter 59 of the Laws of Zambia.

4.2 The Respondent prayed that the Respondents should render account of the estate and distribute it thereon.

4.3 She also indicated that she is the surviving mother to the deceased and thus entitled to 20% of the estate hence the application.

5.0 SKELETON ARGUMENTS IN OPPOSITION

5.1 The Respondents contend that the instant application is misconceived for several reasons. Firstly, on issue of entitlement to the estate, they have placed reliance on section 5 of the Intestate Succession Act which provides who is entitled to benefit from an estate of one who has died intestate.

5.2 It has been contended that the estate in issue has been administered in strict adherence with section 5 aforesaid, the distribution has been in consonance with the portions prescribed for each beneficiary category as provided in the law cited.

5.3 Further the Applicant herein is said not come within the contemplation of priority beneficiaries specified in the section cited for the reason that she is not a parent of the deceased in the manner stated under the law herein.

5.4 The Respondents pray that the application be dismissed with costs.

6.0 HEARING

6.1 At the hearing of the matter the Respondents did not appear and this Court upon being satisfied that the Respondents where served with the Notice of Hearing and yet decided to miss the hearing without any justifiable reason, allowed the Applicant to proceed with her application.

6.2 The Applicants at this point relied on the Affidavit in Support and the Skeleton Arguments already outlined above. In augmenting the Applicant basically reiterated her averments in the filed documents.

7.0 CONSIDERATION AND DECISION

7.1 I have considered the evidence on record and the submissions by counsel for the Applicant herein. From evidence on record it is common cause that:

1. *The Respondents are the surviving spouse and son to the deceased*
2. *The Respondents were initially appointed as administrators in the estate not until it was discovered that the estate in issue was beyond the jurisdiction of the Local Court that had granted the said letters of administration.*
3. *The Respondents started the distribution of the estate before the letters of administration are issued to them by this Court which has jurisdiction to issue probate in such an estate herein.*
4. *The deceased left property and he died intestate;*
5. *The deceased left a spouse, children and a surviving parent;*

- 7.2 Further the record shows the following as the facts in dispute; that fact of the Applicant alleging that she is the surviving mother of the deceased who is entitled to 20% of the estate of the deceased is contrary the Respondents argument that the deceased mother was deceased at the time when the deceased herein had died and that the only surviving parent is the biological father who has since been given his 20% from the estate as a surviving parent.
- 7.3 Further it has been noted that the Respondents have been sued as administrators but yet the evidence shows that an administrator(s) are yet to be appointed.
- 7.4 It's further been alleged by the Respondents that the Applicant is only but an auntie to the deceased and as such has no interest in the estate to request for the Respondents to render account of the estate and the Respondents have argued on that premise that the Applicant's claims should be dismissed
- 7.5 The questions for determination consequently are as follows:

- i) *whether the Respondents are the administrators of the estate upon being appointed as such by the Local Court when the estate was beyond the Jurisdiction of that court.*
- ii) *is the Applicant a beneficiary in the issue in issue to request the Respondents to render an account of the estate in issue;*
- iii) *whether this Court can appoint an administrator to manage the estate herein where no one has been appointed yet.*
- iv) *whether or not the administrators can be compelled to distribute the estate of the deceased;*

7.6 This Application hinges on section 43 (1)(2) of the Intestate Succession Act Chapter 59 of the Laws of Zambia which provides for the jurisdiction of the High Court as follows;

“shall have jurisdiction in matters relating to succession.

7.7 And as regards the Local Court the Act provides as follows;

(2) 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.

7.8 In the instant case what is common cause is that the deceased died intestate and the value of the estate is undisputedly over fifty thousand kwacha and the implication is that the Local Court at Chilenje that issued the probate letters of administration to the Respondents had no jurisdiction and consequently the letters issued are invalid for lack of jurisdiction as stated under section 45 (2) cited.

7.9 As such the estate has in effect no administrators and it follows that the Respondents have been wrongly cited as the administrators of the estate herein since they are not legally appointed as such. The estate has no administrators.

7.10 The next issue is whether this court can appoint administrators where no one has not been appointed yet in an estate where the deceased died in intestate.

Reference is being made to section 15(4) which provides as follows;

(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part of it other than the person who under subsection (1) in ordinary circumstances would be entitled to a grant of letters of administration, the court may, having regard to consanguinity, amount of interest, the security of the estate and the probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

7.11 Having perused through the record and bearing in mind the circumstances of the issues at hand, I find that the instant case fits the circumstance provided in the section cited. I find that appointing an administrator in the circumstances is necessary in the interest of beneficiaries

in order for them to execute the administration of the estate of the deceased.

7.12 Therefore, in exercise of the discretion in the cited provision, I hereby appoint the two Respondents as the Administrators of the estate of the deceased herein on the basis of them being priority interested parties and for being beneficiaries of the estate of Francis Mumbi the deceased person herein. The appointed Administrators herein shall exercise their powers pursuant to **Section 19 of the Intestate Succession Act Chapter 27 of the Laws of Zambia** which states as follows:

19. (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; 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.*

6.8 Furthermore, Section 5 of the ISA provides as follows:

5. (1)

- (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;*

6.9 From the provision above, it is clear that, the distribution of the estate ought to be in accordance with the rights of person(s) interested in the estate.

6.10 And as regards the question whether or not the Administrators herein can be compelled to give an account of the administration of the estate in issue; section 19 (1) (c) provides that the duties of an administrator shall include:

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.*

6.11 I have found comfort in the case of **Jackson Mooya and Nchimunya Mweemba: Appeal No. 116/2018¹** cited by the Applicants above where the court gave guidance on the application of the above provision as follows;

“the Administrator has no inherent duty to produce an inventory of the estate or to render

an account unless the court so orders of its own motion or on application by an interested party.”

6.12 In the instant case, the Applicant asserts that the Respondents have not so far given any account of the administration of the estate in issue. In line with the authorities cited above, it is my considered view that the Respondents cannot be found liable for not having rendered an account to the Applicant because they are not administrators of the estate but only beneficiaries and on the other hand the record has shown that the Applicant is only but an auntie to the deceased. It follows that the Applicant is not a beneficiary or priority interested party in the estate herein and as such she has no interest in the estate to request for the rendering of the account.

6.13 Further the Administrators have no inherent duty to produce an inventory of the estate or to render an account unless the court so orders them to do so by an interested party and or where the Court sees it necessary to do so. It is therefore my considered view that this is a proper case where the court cannot exercise its discretion to order the Administrators to give a full inventory of the estate being administered and or to render

an account of the administration of the estate because the Applicant as no interest in this estate.

6.14 Let me turn to the question whether or not the administrators can be compelled to distribute the estate of the deceased to the Applicant; section 19 also provides as part of the Administrator's duties, to effect distribution of the estate in accordance with the ***rights of the persons interested*** in the estate under the Intestate Succession Act. It has been established that the Applicant is not the mother to the deceased and this piece of evidence has not been discredited.

6.15 Therefore, on examination of the evidence or the record produced and marked as "BMMKM4" a copy of the list of priority beneficiaries that were recognized by the deceased 's employers given to them by the deceased of who his beneficiaries are. The Applicant was not listed on the list as a parent save for the father to the deceased. This evidence supports the assertion that the Applicant is not the biological mother of the deceased person since she was not even registered as such but the deceased had registered father as his beneficiary.

6.16 Having found as such the Applicant in this view has no interest in the estate to request the administrators to distribute the estate wherein she derives no benefit.

6.17 Furthermore, it has already been established that even before this application was made herein there was no administrator(s) appointed by this court to whom the order to distribute can be directed at. Therefore, the relief sought is dismissed.

6.18 It is therefore ordered as follows;

(1)The reliefs sought by the Applicant are dismissed.

(2)That the 1st and 2nd Respondents are herein appointed as the administrators in the estate of the deceased Francis Mumbi.

(3)The Respondents are ordered to distribute the estate in accordance with the Intestate Succession Act to the rightful beneficiaries but before that the Respondents ought to render account of the estate to the Deputy Registrar with particular emphasis the account relating to the estate that was already distributed prior to the grant of this probate.

(4) *The letters of administration granted by the Local Court at Chilenje are declared null and void.*

(5) *I make no order as to Costs.*

8.0 Leave to appeal is granted.

Dated at Lusaka, this 20th Day of May, 2024.



M.M. BAH-MATANDALA
HIGH COURT JUDGE

