

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

2024/HPF/1002



**BETWEEN:**

**FLORENCE DAKA**

*(Suing as next friend of Chistine and Dailess Kachingwe, minors)*

**AND**

**APPLICANT**

**DANIEL KACHINGWE JUNIOR**

*(Administrator of the estate of the Late Daniel Kachingwe)*

**1<sup>ST</sup> ALLEGED CONTEMNOR**

**PAULINE KACHINGWE**

*(Administratrix of the estate of the Late Daniel Kachingwe)*

**2<sup>ND</sup> ALLEGED CONTEMNOR**

***Before the Hon. Mrs. Justice M. M. Bah-Matandala  
on the 26<sup>th</sup> November, 2025.***

*For the Applicant:* Mrs. A. H. Mwanza Messrs. Kalifungwa & Associates

*For the Respondents:* Mrs. R. B. Sitali & Mrs. B. Chungu Messrs. Legal Aid Board.

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## **RULING**

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**Cases referred to:**

1. *Balogh v The Crown Court at St Albans* (1974) 3 All E.R. 283
2. *Deborah Building Equipment v Scoffco* (1980) *The Times*, November 5
3. *Fairclough v Manchester Ship Canal Co.* (1897) W.N. 7
4. *Farmers Ltd v National Milling Co.* (2004) Z.R. 191
5. *Alexander Zimba v Geraldine Namwaka Lukonga & Karen Lukonga*, CAZ Judgment No. 157/2021
6. *Lindiwe Kate Chinyanta v Doreen Chiwele & Judith Tembo*, SCZ Judgment No. 29 of 2020

**Legislation & other references:**

1. *The Intestate Succession Act, Cap 59*
2. *The High Court Act, Cap 27*
3. *The High Court Rules, Cap 27*
4. *The Supreme Court Practice (White Book)*, 1999 Edition
5. *Black's Law Dictionary*

## 1.0 INTRODUCTION

- 1.1 This ruling concerns an application by **Florence Daka**, suing as next friend of the minor beneficiaries, seeking **committal for contempt of court** of the 1<sup>st</sup> and 2<sup>nd</sup> alleged contemnors, who are administrators of the estate of the late Daniel Kachingwe.
- 1.2 The matter calls upon this Court to enforce its own authority where its clear and unambiguous orders have been disregarded.
- 1.3 The Applicant's position is that the administration of an intestate estate, particularly for the benefit of minors, depends heavily on transparency and accountability, and that the Respondents' persistent refusal to render an account undermines the statutory protections enshrined in the Intestate Succession Act, the supervisory jurisdiction of this Court, and the welfare of the children.
- 1.4 The Court is therefore invited to determine whether the Respondents' conduct amounts to **wilful and contumacious disobedience**, warranting the invocation of the Court's coercive contempt powers.

## **2.0 THE APPLICATION**

2.1 The application is brought primarily under **Order 52 Rule 2 of the Supreme Court Practice (White Book)**, which remains applicable in Zambia by virtue of the **High Court (Amendment) Act No. 7 of 2011**. This is because the High Court Rules do not contain a complete procedural framework for dealing with contempt. As such, the White Book provides the procedure necessary to fill the procedural gap, ensuring consistency and fairness.

2.2 The Applicant filed a supporting affidavit and a certificate of urgency setting out that the Respondents have failed to comply with the:

- a) Court's Judgment of 30<sup>th</sup> April 2025, and
- b) extension order of 15<sup>th</sup> September 2025.

2.3 The Applicant contends that the Respondents' failure is not a mere oversight but rather a continuing pattern of disregard for the authority of the Court and the legal rights of the minors.

### 3.0 BACKGROUND

3.1 The late Daniel Kachingwe died intestate on 17<sup>th</sup> April 2024. Under the Intestate Succession Act, this Court has supervisory powers to ensure proper administration.

3.2 On 30<sup>th</sup> April 2025, after hearing the matter on its merits, this Court directed the Respondents to:

- i. Produce on oath a full inventory of all assets and liabilities of the estate; and*
- ii. Render an account of their administration, within thirty (30) days.*

3.3 This was necessary because an administrator's duties under Section 19 Cap 59 require full transparency to beneficiaries and this Court.

3.4 The Respondents failed to comply. They applied for leave to file out of time, citing difficulties with legal representation. This Court, in the interest of justice, granted them a further 14 days on 15<sup>th</sup> September 2025.

3.5 A registry search dated 1<sup>st</sup> October 2025 revealed no filings. Further indulgence was given informally, but even then, no attempt at compliance followed.

3.6 As at the date of hearing this application, the Respondents had not taken any steps towards compliance, nor given any further explanation, despite being aware of the gravity of the matter.

#### **4.0 THE LAW CITED**

- 4.1 The main provision of the law is Section 19 of the Intestate Succession Act, Cap 59. This provision is cited because it defines the statutory duties of administrators, including the obligation to: pay debts; gather the estate property and to distribute the estate;
- 4.2 On administration of estates; the law requires that the Applicant ought to produce an inventory and account when required by the Court. The Respondents' duties derive directly from this statute, and failure to account not only violates court orders but also breaches statutory obligations.
- 4.3 Further, Section 34 of Cap 59 prohibits administrators from misapplying estate property. Therefore, rendering accounts is the primary safeguard against misapplication. The Court's insistence on compliance with its orders protects against potential dissipation.

- 4.4 Order 52 of the White Book (1999 Edition) is cited because it provides the *only* structured procedure for contempt, including the requirements for: leave, personal service or notice, proof of wilful disobedience and the standard of proof (beyond reasonable doubt). Without Order 52, contempt proceedings would lack procedural fairness.
- 4.5 Reference is had also to the case of *Balogh v Crown Court at St Albans* cited to emphasize that contempt is a serious jurisdiction, exercised with scrupulous care. It provides authority for the standard of proof: beyond reasonable doubt. Further the case of *Deborah Building Equipment v Scoffco* has been referenced to show that for committal to be sustained, breach must be shown to be wilful.
- 4.6 Another case of *Fairclough v Manchester Ship Canal* has been cited for the principle that casual or unintentional breaches should not attract contempt sanctions; thus, the Court must consider whether conduct was contumacious.

4.7 The case of *Farmers Ltd v National Milling* has also been referenced to guide the Court on evaluation of intent, capacity, and mitigating factors in contempt. The case of *Alexander Zimba and Lindiwe Kate Chinyanta* has been cited because it affirms the fiduciary nature of administrators' duties and the Court's supervisory role to compel accountability.

## **5.0 CONSIDERATIONS**

5.1 The first issue for consideration is whether the Court orders were clear subject of this ruling. The orders of 30<sup>th</sup> April 2025 and 15<sup>th</sup> September 2025 explicitly directed the filing of a full inventory and filling of a full account.

5.2 The clarity of these orders satisfies the first element required by Order 52. The Respondents acknowledged the first order by applying for extension of time. Their awareness is therefore undisputed.

5.3 The second issue for consideration is whether there was compliance. There has been complete non-compliance. The registry's endorsement and the absence of filings confirm this.

- 5.4 The third issue for consideration is whether non-compliance was willful (Contumacious). This Court carefully considered whether the non-compliance may be attributed to the lack of legal representation, illness, administrative difficulty and or inadvertence.
- 5.5 The Respondents did present such reasons for the initial delay, and the Court was sympathetic hence granting a fresh 14 days. However, after receiving the extension, the Respondents filed nothing, sought no further relief, gave no acceptable explanation, did not engage the Court and did not attempt partial compliance.
- 5.6 On the inference of willfulness; the Court may infer wilfulness where the alleged contemnor had clear orders, adequate time, no impediment and no effort to comply. As observed in *Deborah Building Equipment*, a party who passively ignores the Court's orders does so at their peril.
- 5.7 The failure to produce an inventory or account affects the ability to know the assets of the estate; the protection of the children's shares, detection of

misapplication and oversight by this Court as provided under Cap 59.

5.8 A rightly noted, this is not a technical matter; it impacts the best interests of children, which the Family and Children's Division must prioritise.

5.9 In conclusion on willfulness and taking the totality of circumstances into account, the Respondents' conduct is deliberate, defiant, persistent, unexplained and in breach of both Court order and statutory duty.

5.10 The Court is satisfied beyond reasonable doubt that the Respondents have acted contumaciously.

## **6.0 DECISION**

6.1 This Court finds that the Respondents wilfully disobeyed the Judgment of 30<sup>th</sup> April 2025 and the Order of 15<sup>th</sup> September 2025 by failing to render an account or produce an inventory. Their conduct constitutes contempt of court.

## **7.0 ORDERS**

7.1 Accordingly, the following are the orders of the Court;

- i) The Respondents, **Daniel Kachingwe Junior** and **Pauline Kachingwe**, are hereby declared to be **in contempt of this Court**.
- ii) The matter shall be set down for **sentencing on contempt**, on a date to be fixed **as a matter of priority**, in view of the involvement of minors.
- iii) The Respondents are hereby ordered to **purge their contempt within 14 days** by:
  - a) Filing a full estate inventory;
  - b) Filing a full account of administration;
  - c) Filing a detailed affidavit explaining their non-compliance;
  - d) Providing documentation supporting the account.
  - e) Failure to purge may result in **immediate committal**.
- iv) Should the Respondents fail to purge the contempt, the Applicant shall be at liberty to apply for:
  - i. Suspension or removal of the Respondents as administrators;
  - ii. Appointment of alternative administrators;
  - iii. Further coercive orders.

v) *Costs of this application shall be borne by the Respondents, to be taxed if not agreed.*

Delivered at Lusaka this 26<sup>th</sup> November, 2025.

  
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**M. M. Bah-Matandala**  
HIGH COURT JUDGE

