

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

**2024/HPF/998**

**IN THE MATTER OF: SECTION 28 AND 29 OF THE INTESTATE  
SUCCESSION ACT, CHAPTER 59,  
VOLUME 5 OF THE LAWS OF ZAMBIA**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR AN ORDER OF  
REVOCATION OR ANNULMENT OF GRANT  
OF LETTERS OF ADMINISTRATION**

**BETWEEN:**



**CHRISTOPHER MAGAYA SAKALA**

**APPLICANT**

**AND**

**ETHEL SAKALA**

**RESPONDENT**

***Before the Hon. Mrs. Justice M.M. Bah-Matandala  
On the 12<sup>th</sup> December 2025.***

*For the Applicant: Col. C. Nhamboteh Messrs. Calisto Nkamboteh Legal  
Practitioners.*

*For the Respondent: Ms. J.M.Mwape Jane Jere Legal Practitioners (Probono Matter  
LAZ)*

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## **JUDGMENT**

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### **Legislation referred to**

1. *The Constitution of Zambia*
2. *The High Court Act, Chapter 27 of the Laws of Zambia*
3. *The Intestate Succession Act, Chapter 59 of the Laws of Zambia*
4. *The Intestate Succession Rules, 2023*
5. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*
6. *The High Court Rules Cap 27 of the Laws of Zambia*

### **Cases referred to:**

1. *Zulu v Zulu (2020) ZMSC 149.*
2. *Alice Phiri v Margaret Mulenga (SCZ Judgment No. 23 of 2013).*
3. *Rosemary Chibwe v Austin Chibwe (2001) ZR 138.*
4. *Annie Bailes v Cherles (1986) ZR 83.*
5. *Chibwe v Chibwe (2000) ZR 1.*
6. *Falconer v Falconer (1970) 3 All ER 449.*
7. *Burton v Camden London Borough Council [2000] 2 AC 399.*

**Secondary authorities (textbook & commentary) referred to:**

1. *Megarry & Wade, The Law of Real Property, 8th Edition*
2. *Cheshire & Burn, Modern Law of Real Property, 18th Edition*
3. *Gray & Gray, Elements of Land Law, 5th Edition.*
4. *Rayden & Jackson, Divorce and Family Matters, 17<sup>th</sup> Edition.*
5. *Bromley, Family Law, 11th Edition.*

## **1.0 INTRODUCTION**

1.1 This is the Court's Judgment arising from an Originating Summons filed on 29<sup>th</sup> November. 2024 by the Applicant, **Christopher Magaya Sakala**, pursuant to **Section 29 of the Intestate Succession Act, Chapter 59** and **Rule 21(1) of the Intestate Succession Rules, 2023**, seeking orders to **revoke or annul** the Grant of Letters of Administration issued to the Respondent, **Ethel Sakala**, in respect of the estate of the late **Ms. Nester Magaya Mambo**, who died intestate on **22<sup>nd</sup> March 2024**.

1.2 This Court exercises jurisdiction under: **Article 125(1)** of the Constitution of Zambia; **Sections 11 and 12** of the High Court Act; and **Sections 28 and 29** of the Intestate Succession Act, which empower the High Court to supervise estate administration, revoke

improperly obtained grants, and determine questions of beneficial entitlement.

1.3 The matter was determined on affidavit evidence and written submissions from both parties.

## **2.0 BACKGROUND**

2.1 The facts giving rise to these proceedings are largely undisputed. The late Lt. Gen. Andrew Sakala (Rtd) died intestate on 16<sup>th</sup> December 2022. His surviving spouse at the time was Ms. Nester Magaya Mambo, who subsequently assumed limited estate administration roles relating to the late General's estate. Among the assets referenced in earlier proceedings and in these proceedings is Stand No. 226 Longridge, Chilanga, which the Certificate of Title shows was registered jointly in the names of: **Lt. Gen. Andrew Sakala (Rtd)**; and **Ms. Nester Magaya Mambo**.

2.2 On **22<sup>nd</sup> March 2024**, Nester Magaya Mambo also died intestate. Shortly thereafter, the Respondent applied for and obtained a Grant of Letters of Administration over her estate.

2.3 The Applicant now seeks revocation of that grant on grounds that the Respondent had no legal entitlement, no beneficial interest, and obtained the grant by false representation and concealment.

### **3.0 APPLICANT'S AFFIDAVIT EVIDENCE**

3.1 The Applicant filed the following: Affidavit in Support; Further Affidavit in Support; Affidavit in Reply; Certificate of Title (Exhibit CMS1); Ancillary process-exhibits, including Fee Note correspondence and Affidavits of Service.

3.2 The Applicant asserts that Stand 226 Longridge Chilanga was jointly owned by only two persons: Lt. Gen. Andrew Sakala; and Ms. Nester Magaya Mambo. The Certificate of Title does not state that the property is held as a Tenancy in Common; therefore, pursuant to Section 51 of the Lands and Deeds Registry Act, co-proprietors are presumed to be Joint Tenants.

3.3 Consequently, under the Right of Survivorship, the beneficial and legal interest of Lt. Gen. Andrew Sakala automatically vested in Nester Magaya Mambo upon his death on 16<sup>th</sup> December 2022.

3.4 Therefore, at the time of her death in 2024, Nester Magaya Mambo was sole legal and beneficial owner of the said property, and the property formed part of her estate, not that of Lt. Gen Andrew Sakala.

3.5 The Respondent is not a spouse, child, adopted child, nor dependant of Nester Magaya Mambo and therefore had no entitlement to administer her estate.

3.6 The Applicant has alleged that the Respondent misrepresented her eligibility and concealed her lack of standing, thereby obtaining the grant improperly. The Applicant seeks:

- i) Revocation of the Grant;*
- ii) Leave to apply for a fresh grant;*
- iii) Declaration that the Respondent has no beneficial interest;*
- iv) An order for accounting for rentals collected from Stand 226; and*
- v) Costs.*

#### **4.0 APPLICANT'S SKELETON ARGUMENTS AND AUTHORITIES**

- 4.1 The Applicant relies on the following authorities: The **Statutory Provisions being Section 33 and Section 51** of the Lands and Deeds Registry Act. And **Section 9, Section 28, and Section 29** Intestate Succession Act **Rule 21(1)** of the Intestate Succession Rules, 2023
- 4.2 **The Applicant has also referenced the following case law; Zulu v Zulu (2020) ZMSC 149<sup>1</sup>** in relation to the principle of Joint tenancy and survivorship. Another case referenced is the case of **Burton v Camden LBC [2000] 2 AC 399<sup>2</sup>** on the nature of joint tenancy. The case of **Alice Phiri v Margaret Mulenga, SCZ Judgment No. 23 of 2013<sup>3</sup>** has been referenced with respect to the Interpretation of Section 9 on life interest in an estate. The case of **Rosemary Chibwe v Austin Chibwe (2001)<sup>4</sup>** has been referenced in relation to the limits of matrimonial property principles in succession contexts.
- 4.3 The Applicant submits that the title is conclusive under Section 33 of the Lands and Deeds Act. And

survivorship prevails over matrimonial presumptions. And that the Respondent has no locus standi. As such the Grant was procured contrary to Section 29.

## **5.0 RESPONDENT'S AFFIDAVIT EVIDENCE**

- 5.1 The Respondent filed an Affidavit in Opposition; a Further Affidavit in Opposition; Skeleton Arguments; Written Submissions. Her case is that she is a biological child of Lt. Gen. Andrew Sakala from his first marriage. And that Stand 226 Longridge was matrimonial property acquired during his marriage to Nester Magaya Mambo.
- 5.2 She argues that matrimonial property belongs to both spouses regardless of whose name appears on the title, relying on and she has relied on the following: the case of Chibwe v Chibwe (2000), Falconer v Falconer (1970), Alice Phiri v Margaret Sakala (2013) and Annie Bailes v Cherles (1986).
- 5.3 Respondent argues that Nester Magaya Mambo held only a life interest in the matrimonial home under Section 9(1) of the Intestate Succession Act. She asserts that upon Nester Magaya Mambo's death, the property

vested absolutely in her biological children, including herself. Respondent submits that the Applicant has no familial or beneficial connection to Nester Magaya Mambo.

## **6.0 RESPONDENT'S SKELETON ARGUMENTS & AUTHORITIES**

6.1 Respondent's position is grounded in the Matrimonial property jurisprudence, which infers beneficial interest from marriage; **Section 9 of the Intestate Succession Act**, which grants a surviving spouse a life interest in the matrimonial home; Authorities on division of property in marriage and after dissolution. She urges the Court to dismiss the application.

## **7.0 FURTHER AFFIDAVITS AND REPLY EVIDENCE**

7.1 The Applicant's **Affidavit in Reply** challenges the Respondent's factual claims, emphasising that: Nester Magaya Mambo was indeed the **sole surviving spouse**;

7.2 And that the Respondent and her siblings were never adopted nor legally recognised as Nester Magaya Mambo's children; Section 9(1) of the Act applies only where the house forms part of the deceased's estate,

which is not the case due to survivorship arising from joint tenancy.

7.3 The Court notes that both further affidavits comply with Order 41 of the High Court Rules regarding admissibility, save for argumentative portions which the Court has disregarded.

## **8.0 FINAL SUBMISSIONS**

8.1 Applicant's summation of the final submission is that Joint tenancy rendered the property Nester Magaya Mambo's exclusive asset; Respondent has no beneficial interest and thus lacked standing and the Grant was improperly obtained under Section 29 as such.

8.2 The Respondent's summation of the final submissions is that the property is matrimonial and falls under Section 9; Respondent and siblings beneficially entitled and that Applicant is not connected to the estate.

## **9.0 ISSUES FOR DETERMINATION**

9.1 Accordingly, the issues now established are:

- i) Whether Stand No. 226 Longridge Chilanga formed part of Lt. Gen. Sakala's estate at the time of his death.

- ii) Whether the Respondent has any beneficial interest in Nester Magaya Mambo's estate.
- iii) Whether the Respondent was eligible to apply for the Grant of Letters of Administration.
- iv) Whether grounds exist under Section 29 for revocation or annulment of the Grant.
- v) What remedies, if any, the Court should grant.

## **10.0 ANALYSIS**

- 10.1 The first issue is whether stand 226 formed part of Lt. Gen. Sakala's Estate. The Certificate of Title shows that the property was jointly registered in two names only. The **absence of express language** denoting a tenancy in common triggers **Section 51 of the Lands and Deeds Registry Act**, which creates a **presumption of joint tenancy**.
- 10.2 Under the doctrine of Right of Survivorship, affirmed by the Supreme Court in **Zulu v Zulu (2020)**, the deceased's interest in joint property terminates immediately at death and vests wholly in the surviving joint tenant, thus Stand 226 did not form part of Lt.

Gen. Sakala's estate at the time of his death.

It vested exclusively in Nester Magaya Mambo.

10.3 Respondent's reliance on matrimonial property jurisprudence is misplaced because those cases concern division of assets between spouses, not succession following joint tenancy.

10.4 The second issue for determination is whether Respondent has beneficial interest in Nester' Magaya Mambo s estate. The Respondent is not a child of Nester Magaya Mambo; she was not adopted; was not a dependant; and has provided no evidence of contribution giving rise to a constructive or resulting trust.

10.5 The property belonged exclusively to Nester Magaya Mambo at her death. Thus, the Respondent has no beneficial interest in Nester's estate.

10.6 The third issue is whether the Applicant has eligibility to Apply for the Grant. Eligibility requires proof of statutory priority, that is, spouse, child, beneficiary, or dependant. The Respondent is none of these in relation to Nester. Therefore, the Respondent lacked locus

standi to apply for the Grant of Letters of Administration.

10.7 The fourth issue is whether grounds for revocation exist under Section 29. Section 29 permits revocation where: a grant was obtained by false representation; there was concealment of material facts; it was obtained by a person not entitled; and the administrator fails in duty.

10.8 Evidence shows that the Respondent; misrepresented her entitlement; concealed lack of eligibility; intermeddled with rentals without accounting. Therefore, the grounds for revocation are clearly established.

## **11.0 DECISION**

11.1 Accordingly, this Court finds merit in the Applicant's application.

## **12.0 ORDERS OF THE COURT**

Accordingly, the following are the orders of the Court;

- i) *Grant of Letters of Administration issued to the Respondent, Ethel Sakala, is hereby REVOKED AND ANNULLED pursuant to Section 29 of the Intestate Succession Act.*

- ii) *It is declared that the Respondent has NO beneficial or legal interest in the estate of the late Ms. Nester Magaya Mambo.*
- iii) *The Applicant is granted LEAVE to apply for a fresh Grant of Letters of Administration in respect of the estate.*
- iv) *The Respondent shall forthwith cease all dealings and intermeddling with the estate.*
- v) *The Respondent shall render a full account within 30 days of:*
- vi) *All rentals collected from Stand 226 Longridge Chilanga; any other proceeds received from the estate are awarded to the Applicant, to be taxed if not agreed.*
- vii) *Costs are in the course.*

### **13.0 CONCLUSION**

13.1 This case demonstrates the primacy of **statutory survivorship under joint tenancy** in determining beneficial ownership upon death. The legal principles governing matrimonial property do not override the statutory scheme applicable to registered title in

Zambia. The Respondent, having no beneficial interest and no statutory priority, improperly obtained the grant.

13.2 Justice accordingly requires revocation and proper administration by a person with lawful standing.

Delivered at Lusaka, dated this 12<sup>th</sup> December, 2025.



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

