

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY, LUSAKA**
(Family Jurisdiction)

2025/HPF/526

IN THE MATTER OF:

**ORDER 30 RULE 12(G) OF THE
HIGH COURT RULES, CAP 27
OF THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**SECTIONS 19(1)(C) (D)
AND 32 OF THE INTESTATE
SUCCESSION ACT, CAP 59 OF
THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**SECTIONS 2, 3, 38(1), 158(3)
AND 159(3) (4) OF THE
CHILDREN'S CODE ACT, NO.
12 OF 2022**

BETWEEN:

ANASTASIA CHEFU KAPASA

(suing in her capacity as Administrator of the estate of the Late Mwape Emilyimba)

1ST APPLICANT

NATASHA KARAMA

(suing in her capacity as Administrator of the estate of the Late Mwape Emilyimba)

2ND APPLICANT

AND

LIKONGE BANDA

RESPONDENT

Coram: Hon. Judge Mrs. M. M. Bah-Matandala
Dated 7th November, 2025.

For the Applicants: 1st Applicant In/Person & 2nd Applicant N/A

*For the Respondent: Ms L. Mulenga & Ms M. Ngosa, Messrs K. Mwale &
Company.*

JUDGMENT

Legislation referred to:

1. High Court Act, Cap 27
2. Intestate Succession Act, Cap 59
3. Children's Code Act, No. 12 of 2022.

Cases referred to:

1. Janet Phiri & Susan Chungwe Gossage v. Paul Musenge Nelson,
2019/HP/F0121 (High Court).

1.0 INTRODUCTION

- 1.1 This is a Judgment in an action commenced by Originating Summons dated 21st July 2025 in which the Applicants, as court-appointed administrators of the estate of the late Mwape Emily Zimba, seek orders concerning the protection and administration of the **minor beneficiary's estate.**
- 1.2 The matter was heard on **affidavit evidence** with **skeleton arguments**, by consent of the parties to proceed on the filed documents.
- 1.3 The Court's jurisdiction is properly invoked under **Order 30 Rule 12(g)** of the High Court Rules and **Sections 19 and 32 of the Intestate Succession Act** for directions and accountability in estate administration, and under **Sections 3, 158(3) and 159(3)-(4) of the Children's Code Act** for the appointment of a guardian **in respect of the estate of a child.**
- 1.4 This is the Family and Children's Division of the High Court; the Court therefore **has jurisdiction** to determine the application.

2.0 RECORD OF PROCEEDINGS

- 2.1 On 6th November 2025 the 1st Applicant appeared in person and advised she was ready to proceed for both Applicants; the 2nd Applicant was absent for reasons following childbirth.
- 2.2 The Respondent was absent but represented by Ms L. Mulenga with Ms M. Ngosa who indicated reliance on the Respondent's filed affidavit and arguments. Judgment was reserved to dated to be communicated to the parties.

3.0 BACKGROUND

- 3.1 The late **Mwape Emily Zimba** died **intestate** on **2nd November 2022** leaving one minor child, **Jeremiah Chiwala Banda** who was born on the 13th June 2014.
- 3.2 By Grant of Letters of Administration of 9th May 2023, this Court appointed the 1st Applicant (the deceased's mother) and the 2nd Applicant (the deceased's niece) as joint administrators as shown in (Exhibit Marked as ANK1).
- 3.3 Prior to her demise, the deceased had obtained a Decree Nisi and Judgment of Divorce against the Respondent

on 24th May 2022 as shown in (Exhibit Marked as ANK2).

3.4 The Applicants deposed that following death of the deceased herein, payments in the sum of ZMW 1,201,171.25 were received from the deceased's employer; ZMW 900,000 was placed in a bank account and invested in Treasury Bonds; and the Respondent has also received NAPSA benefits in the sum of ZMW 168,000 as shown in (Exhibit Marked as ANK4-ANK5).

3.5 A series of communications ensued between the Applicants, the Respondent and the Administrator-General convening a meeting on 4th April 2025 due to concerns about accountability as shown in (Exhibit marked ANK7).

3.6 Correspondence followed between the Applicants and the Respondent's advocates as shown in (Exhibit Marked ANK6 & ANK8).

4.0 AFFIDAVIT EVIDENCE IN SUPPORT OF APPLICATION

4.1 The Applicants' **Affidavit in Support** which was sworn on 11th July 2025 and **Skeleton Arguments** of even date state, in summary, state that:

- i) The deceased's estate generated funds and investments **for the minor's benefit**; a portion in the sum of (ZMW 900,000) was invested in Treasury Bonds, with semi-annual coupons accruing.
- ii) The Respondent has failed or refused to render meaningful accounts, notwithstanding repeated requests and the intervention of the Administrator-General as shown in (Exhibit Marked as ANK8).
- iii) WhatsApp exchanges shown in (Exhibit Marked ANK3) shows the deceased's intention that rental from her house and money be applied to Jeremiah's future, and the Respondent's acknowledgement that he would not object to the deceased's family's role.
- iv) The Applicants therefore seek;
 - a) an appointment of the 1st Applicant as guardian of the minor's estate pursuant to Section 159(3)-(4) of the Children's Code Act and Section 32 of Cap 59;

- b) orders compelling a full verified account of all estate monies accessed by the Respondent under Section 19(1)(d) of Cap 59; and
- c) protective directions restraining further unilateral handling of the funds and directing future management/investment.

5.0 AFFIDAVIT IN OPPOSITION

5.1 The **Respondent's Affidavit in Opposition** was sworn 14th day of October 2025 and averred that:

- i) He invested ZMW 900,000 into a 15-year Government Bond for the child's benefit and has received two coupons of ZMW 100,000 each dated October 2024 and April 2025, evidenced by bank statements marked as (Exhibit LB1).
- ii) He averred that he applied portions of the funds to the minor's needs including school fees, books, and household stability improvements (notably solar panels and inverter costing ZMW 20,269.64: shown as (Exhibit Marked LB2).
- iii) The Respondent confirmed receiving ZMW 168,000 from NAPSA in 2023, and applied to the child's

schooling and recreational expenses shown in (Exhibit Marked LB3) and produced school reports marked as (Exhibit LB5) showing marked academic improvement.

- iv) He relies on Sections 158(1)/158(3) of the Children's Code Act to argue that, as surviving parent, he is the guardian of the child and that guardianship should remain with him; he cites **Janet Phiri v. Paul Musenge Nelson (2019/HP/F0121)** for the principle that a fit biological parent's claim is generally superior to a non-parent.

6.0 AFFIDAVIT IN REPLY

- 6.1 In the Affidavit in reply dated 5th November, 2025, the Applicants have quantified the funds received or controlled by the Respondent at approximately ZMW 1,268,000 (ZMW 900,000 principal, ZMW 200,000 coupons, ZMW 168,000 NAPSA).
- 6.2 The Applicants have asserted that the documentary proof produced by the Respondent cover only a small fraction of this sum; that household capital items (solar system) indicate commingling of the minor's inheritance

with the Respondent's assets; and that requests for co-signatory oversight were rebuffed.

6.3 The Applicants have clarified that they do not seek to displace the Respondent's guardianship of the person; rather, they seek guardianship of the estate to ensure transparency and annual accounting to the Court.

7.0 ISSUES FOR DETERMINATION

7.1 Having considered the pleadings, affidavits, exhibits and skeleton arguments, the **central controversies** emerge from:

- i) the scope of this Court's jurisdiction and discretion where there is a surviving parent;
- ii) the adequacy of the Respondent's accounting for estate monies; and
- iii) the appropriate protective structure for future management of the minor's inheritance.

7.2 The Court therefore frames the Issues for Determination as follows:

- i) Whether, notwithstanding the presence of a surviving parent, this Court has power and

discretion to appoint a guardian in respect of the estate of a child.

- ii) Whether, on the evidence, there exists a material risk of loss, misuse or mismanagement of the minor's estate justifying the appointment of the 1st Applicant as guardian of the estate (and, if appropriate, the terms of any joint or trust arrangement).
- iii) Whether the Respondent should be compelled to render a full, verified account of all estate monies received and expended, and what directions ought to issue for future preservation and investment.

8.0 **THE LAW AND ANALYSIS**

8.1 The first issue is that of jurisdiction and power to appoint a Guardian of the Estate. Section 159(3) of the Children's Code Act provides that

"A guardian may be appointed in respect of the child or the estate of a child, or both."

8.2 And Section 159(4) further provides that a guardian appointed only in respect of the estate

“need not have custody of a child, but has the power and responsibility to administer the estate of the child... and to take all reasonable steps to safeguard the estate of the child from loss or damage.”

- 8.3 The Respondent is correct that Section 158(3) recognises the surviving parent as guardian of the person, subject to the Act and the best-interests principle in Section 3.
- 8.4 However, Sections 159(3)–(4) are explicit that a separate guardianship in respect of the estate may be ordered. The Court, exercising its *protective parens patriae jurisdiction*, therefore has both jurisdiction and discretion to appoint a guardian of the estate even where a parent survives, where circumstances warrant.
- 8.5 The Intestate Succession Act, Section 32, complements this principle by recognising protective arrangements for property devolving on minors, and Section 19(1)(c)–(d) imposes a duty to account on any person to whom any part of the estate is paid or entrusted.
- 8.6 And furthermore, Order 30 Rule 12(g) empowers this Court to give directions in the administration of estates.

8.7 I accordingly hold that the first issue is answered in the affirmative.

8.8 The second issue is whether there is a material risk in warranting guardianship of the estate? There are several features of the record which are decisive: such as;

i) Quantum and control. The Respondent acknowledges receiving or controlling approximately ZMW 1,268,000, comprising bond principal, bond coupons and NAPSA benefits.

ii) Accounting gap. While school fees, books and a study trip are evidenced (by the sum of ZMW 25,000–40,000 overall), and household solar equipment (being the sum of ZMW 20,269.64) is proven, the bank statements (LB1) reflect high-frequency, mixed retail and household spending with no systematic ledger tracing how the estate's coupons and NAPSA funds were applied exclusively to the minor.

iii) Commingling and unilateral control. The bond was placed and coupons received in the Respondent's

sole name; expenditures were made through his personal account, and requests for co-signatory oversight were declined.

iv) Best interests are two-dimensional. The school reports do show commendable academic progress under the Respondent's day-to-day care. But Section 3 of the Children's Code Act makes the child's welfare, including financial security of the inheritance of the paramount consideration.

8.9 On this record, the Court is not confronted with an unfit parent as custodian of the person. It is confronted with fragile fiduciary safeguards over a significant minor's estate. The pattern of commingling and partial accounting presents a real risk of dissipation contrary to **Sections 19(1)(d) Cap 59** and **159(4) Children's Code Act**.

8.10 I therefore find that **protective orders are required** and that a **guardian of the estate** should be appointed.

8.11 The Respondent relied on **Janet Phiri & Susan Chungwe Gossage v. Paul Musenge Nelson (2019/HP/F0121)** to emphasise the primacy of a fit

biological parent. I accept that principle as regards guardianship of the person; but it does not displace the statutory mechanism for separate guardianship of the estate. Properly understood, that decision co-exists with Sections 159(3)–(4): the Court may respect the parental role and secure the estate through independent oversight.

8.12 In the circumstances, proportionality counsels a structure that protects the estate while preserving the Respondent’s parental role. The Court will therefore appoint the 1st Applicant as guardian of the estate, with specific investment and accounting directions, and constitute a trust arrangement under which the Respondent and the 1st Applicant act as co-trustees, with dual control and annual reporting to the Court.

8.13 The third issue is: Compulsion to account and future directions. Section 19(1)(d) Cap 59 is unambiguous: *“Every person to whom any part of the estate is paid or entrusted shall be accountable to the administrators.”*

8.14 The Respondent’s explanations and scattered receipts do not amount to a full, verifiable account of the ZMW

1,268,000 handled. The Court will therefore order a comprehensive, verified account supported by bank statements, investment notes, receipts and a schedule classifying each outlay as;

- i) direct child-specific,
- ii) household/indirect, or
- iii) investment, with vouchers.

8.15 A cut-off date and timeline shall be set.

8.16 For the future, and having regard to Section 159(4), the Court will direct that all coupons, maturities and benefits be paid into a designated minors' trust account operated jointly by the 1st Applicant and the Respondent, with withdrawals only for court-approved heads of expenditure and with annual accounts lodged with the Registrar (Family & Children's Division).

9.0 DECISION AND ORDERS

9.1 For the reasons set out above, the Court allows the application in part and makes the following Orders:

- i) Anastasia Chefu Kapasa the 1st Applicant is hereby appointed Guardian of the Estate of Jeremiah Chiwala Banda pursuant to Section

159(3)-(4) of the Children's Code Act and Section 32 of the Intestate Succession Act. This appointment is limited to the estate and does not affect custody of the person of the child.

- ii) A Minors' Trust Account shall be opened within 20 days at a reputable commercial bank or with the Bank of Zambia investment window for government securities. The 1st Applicant and the Respondent shall be co-trustees and or co-signatories.
- iii) All future coupons, maturities and benefits payable from the ZMW 900,000 bond and any other estate investments or statutory pay-outs concerning the deceased shall be paid into the said Trust Account.
- iv) Withdrawals shall be limited to child-specific needs such as tuition, school materials, medical, documented welfare and reasonable extracurricular activities and court-approved investments, and shall be supported by receipts.

- v) No sale, pledge, or encumbrance of estate assets or investments shall be undertaken without leave of the Court.
- vi) The Respondent shall, within 30 days, render to the Applicants and file with the Court a full and verified account of all estate monies received and expended to date, including but not limited to:
 - a) *the ZMW 900,000 bond principal (with investment particulars),*
 - b) *coupon receipts to date, and*
 - c) *NAPSA funds and any employer benefits; together with bank statements, BOZ notes, and vouchers/receipts, arranged in a reconciliation schedule.*
- vii) Thereafter, the co-trustees shall file an annual account every 12 months on the anniversary of this order, or at such other times as the Court may direct.
- viii) The Respondent is restrained from unilaterally accessing, transferring or expending any estate-

related funds outside the Trust structure and directions herein.

- ix) In the interests of the minor's welfare, there shall be no order as to costs.

10.0 CONCLUSION

10.1 The law demands that the best interests of the child be paramount. In this case, those interests are served by respecting the Respondent's parental role while ensuring that the child's inheritance is safeguarded through independent guardianship of the estate, joint control, and transparent accounting to the Court. The orders above secure that balance.

Delivered at Lusaka this 7th day of November, 2025.



M. M. Bah-Matandala
HIGH COURT JUDGE