

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Family And Children's Division)

2025/HPF/624

IN THE MATTER OF:

**THE ESTATE OF THE LATE
BENEDICT JACKSON MWEEMBA**

AND IN THE MATTER OF:

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

AND IN THE MATTER OF:

**PROPERTY KNOWN AS
F/396A/B/6/D, MAKENI, LUSAKA
PROVINCE**

BETWEEN:

CHARLOTTE MWEEMBA

BEN MWEEMBA

NCHIMUNYA MWEEMBA

MUTINTA MWEEMBA

LUYANDO FAITH MWEEMBA



1ST APPLICANT

2ND APPLICANT

3RD APPLICANT

4TH APPLICANT

5TH APPLICANT

(Suing as beneficiaries in the estate of the late Benedict Jackson Mweemba)

AND

DOREEN MWEEMBA

(Sued as a beneficiary in the estate of the late Benedict Jackson Mweemba)

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

Before: Hon. Mrs. Justice M. M. Bah-Matnadala

Dated this 2nd December, 2025.

For the Applicants:

*Ms S. Simachela – Messrs Charlotte Chuuma
Advocates, Lusaka*

For the 1st Respondent:

*Mr S. Lungu S.C – Messrs Shamwana & Company,
Lusaka*

For the 2nd Respondent: N/A

RULING

Legislation referred to:

1. *High Court Rules, Cap 27*
2. *Rules of the Supreme Court (White Book, 1999 Edition)*
3. *Limitation Act, 1939*
4. *Intestate Succession Act, Cap 59 (as amended)*

Cases referred to:

1. *American Cyanamid Co v Ethicon Ltd [1975] AC 396*
2. *Shell & BP (Zambia) Ltd v Conidaris & Others (1975) ZR 174*
3. *Holding Xing Xing Building Co Ltd v ZamCapital Enterprises Ltd (2010) Vol 1 ZR 30-31*
4. *Savenda Management Services Ltd v Stanbic Bank Zambia Ltd (2018)*
5. *Finsbury Investments Ltd v Antonio Ventriglia & Manuel Ventriglia (2016)*
6. *Mpongwe Farms Ltd v Dar Farms Ltd (2015)*

1.0 INTRODUCTION

1.1 This Ruling concerns an application for an interim injunction brought under **Order 30 Rule 12(a)** by the Applicants, who are beneficiaries in the estate of the deceased **Benedict Jackson Mweemba**.

1.2 The Applicants seek to restrain the 1st Respondent from selling, advertising, transferring, subdividing, charging, leasing, or otherwise dealing with **F/396A/B/6/D, Makeni**, on the ground that the property forms part of their late father's estate and that the 1st Respondent holds title only in a representative or trustee capacity.

1.3 An ex parte injunction was granted on **2nd September 2025**. The matter was heard **inter partes on 30th**

September 2025, after which this Court **reserved its ruling**.

1.4 On **28th October 2025**, the 1st Respondent filed a document titled "*Notice to Raise Preliminary Issues.*" The Court must consider whether such issues can be entertained after the matter was heard and a ruling reserved.

2.0 BACKGROUND

2.1 The deceased died on **8th April 2008**. During his lifetime, he purchased the Makeni property using proceeds from an earlier property, **F/397A/57**, which he sold to the Seventh Day Adventist Association for **USD 35,000**.

2.2 The deceased commenced construction of a family home on the Makeni property. He paid survey fees, ZESCO connection fees, and handled title formalities before his passing.

2.3 After his death, the family resolved that the 1st Respondent, as widow, complete the land transaction **on behalf of all beneficiaries**. The 1st Respondent

eventually obtained a Certificate of Title in her name in 2013, five years after the deceased's death.

2.4 In 2016, part of the land was subdivided and sold by family consensus. The 1st Respondent issued an email (CM8) directing proceeds to be shared among all children which is a clear acknowledgment of collective beneficial ownership.

2.5 In 2025, the Applicants discovered that the 1st Respondent had engaged an agent and entertained prospective foreign buyers. This prompted the present injunction.

3.0 APPLICANTS' EVIDENCE

3.1 The Applicants filed affidavits and exhibits marked as CM1 to CM8 showing:

- i) The deceased personally purchased the property (CM2);*
- ii) Survey receipts and ZESCO records in his name (CM3, CM4);*
- iii) Family resolution appointing 1st Respondent to complete the deceased's transaction;*
- iv) Beneficiaries have built permanent homes on the property (CM5);*

- v) *A vulnerable adult, **Teddy Mweemba**, relies on the property for his daily existence;*
- vi) *The 1st Respondent attempted to sell or facilitate viewing of the land;*
- vii) *The 2016 sale proceeds were shared equally on her direct instruction (CM8).*

4.0 RESPONDENT'S EVIDENCE

4.1 The 1st Respondent claims on the other hand that;

- a) *She is the sole owner because the title is in her name;*
- b) *She did not intend to sell the property;*
- c) *The Applicants have no proof of imminent sale;*
- d) *The property is her matrimonial home.*

4.2 She provided **no documentary proof** that she purchased the property. And she did not challenge the authenticity of CM2, CM3, CM4, or CM8.

5.0 PRELIMINARY ISSUE RAISED LATE

5.1 The Court heard the inter-parte application on 30th September 2025 and reserved its ruling.

5.2 The Notice to Raise Preliminary Issues was filed one month later, on 28th October 2025. However, under

Order 2 Rule 2 of the Supreme Court Rules provides as follows:

“An objection based on irregularity shall not be allowed unless made within a reasonable time and before the party applying has taken any fresh step.”

5.3 The Respondent as far as the record shows filed affidavits, appeared at the inter-parte hearing, made oral submissions, and allowed the matter to be reserved for ruling.

5.4 The Applicant therefore waived any procedural objections and is estopped from raising new issues after the close of hearing.

5.5 This late filing is contrary to the principles in **Savenda**, **Finsbury**, and **Mpongwe Farms**, which condemn procedural ambushes and emphasise court-driven efficiency.

5.6 The Notice is **incompetent, irregular, and disregarded.**

6.0 ISSUES FOR DETERMINATION

6.1 Consequently, the issues for consideration are as followings;

- ii. *Whether a serious question exists;*
- iii. *Whether irreparable injury is likely;*
- iv. *Where the balance of convenience lies.*

7.0 ANALYSIS AND APPLICATION OF LAW

- 7.1 The first issue for determination is whether there is a serious question to be tried. The documentary and affidavit evidence establish a consistent and undisputed chain of beneficial ownership beginning with the deceased's 2003 purchase evidenced in exhibit marked as (CM2), his financing of surveys and utilities marked as (CM3, CM4), and the family's posthumous finalisation of title.
- 7.2 The 1st Respondent provided no competing contract, no proof of purchase, and no evidence of financial contribution. Her own email exhibited and marked as (CM8) acknowledging equal distribution of sale proceeds reveals an established trust arrangement.
- 7.3 The Court therefore finds serious and weighty questions relating to: Trust law; Estate property administration, Beneficial ownership; Whether the 1st Respondent is a

constructive or resulting trustee; Whether her unilateral actions amount to breach of fiduciary duty.

- 7.4 This satisfies the first limb of *American Cyanamid*.
- 7.5 The second issue for determination is whether there will be irreparable injury. The Makeni property is the long-standing homestead. Several beneficiaries have erected permanent structures as shown in exhibit marked as (CM5). The loss of such a property cannot be compensated in money.
- 7.6 Furthermore, Teddy Mweemba, a severely autistic adult, depends on the familiar environment for his functioning and safety. Evicting him or relocating him would cause extreme trauma and irreversible harm.
- 7.7 The 1st Respondent's past involvement in fraudulent or risky business ventures heightens the danger that sale proceeds may be lost and irrecoverable. And under *Shell & BP v Conidaris*, loss of land or homestead constitutes irreparable injury.
- 7.8 Therefore, the second limb is therefore satisfied.
- 7.9 The third issue for determination is where the balance of convenience lies. If the injunction is denied, the

property may be sold, and the action rendered nugatory. Beneficiaries including a vulnerable adult risk displacement. And if granted, the 1st Respondent suffers no material prejudice beyond temporary restraint. She retains residence and enjoyment of the home.

7.10 The duty of the Court is to preserve the property so that justice may be done after trial and on this point reference is has to the case of *Xing Xing v ZamCapital*.

7.11 The balance of convenience thus favors the Applicants.

7.12 On the issue of equitable and fiduciary considerations this Court, sitting in Family and Probate jurisdiction, is bound by equity. Equity prohibits a fiduciary from using trust property to the detriment of beneficiaries. The 1st Respondent, having completed a transaction initiated by the deceased, and having shared proceeds equally in 2016, cannot now assert exclusive beneficial ownership. Her conduct raises credible concerns of breach of trust requiring the Court's intervention.

7.13 On the late preliminary issues, the Notice, filed one month after the hearing, contravenes Order 2 Rule 2. It is barred by waiver, estoppel, and procedural finality.

Courts must complete business already reserved for ruling. To reopen such matters would undermine judicial integrity.

7.14 I accordingly dismiss the Notice.

8.0 DETERMINATION

8.1 The Applicants have satisfied all three limbs of *American Cyanamid*. Irreparable injury is established. And the balance of convenience favours preservation.

8.2 The Respondent's late Notice is dismissed as irregular.

9.0 FINAL ORDERS

9.1 Accordingly, the final orders are that;

- i) *The interim injunction granted on 2nd September 2025 is hereby confirmed.*
- ii) *The 1st Respondent is restrained from selling, transferring, advertising, charging, subdividing, leasing, or otherwise dealing with **F/396A/B/6/D, Makeni**, until final determination of the main matter or further order of this Court.*
- iii) *The 1st Respondent's Notice to Raise Preliminary Issues filed on 28th October 2025 is **set aside and disregarded.***

iv) *Costs shall be in the cause.*

Delivered at Lusaka, this 2nd December, 2025.



M. M. Bah-Matandala
HIGH COURT JUDGE

