

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

2025/HPF/845

**IN THE MATTER OF:**

**ORDER 3 RULE 2 OF THE HIGH  
COURT RULES CAP 27 OF THE LAWS  
OF ZAMBIA**

**AND IN THE MATTER OF:**

**AN APPLICATION FOR AN ORDER  
GRANTING LEAVE TO SWEAR DEATH**

**AND IN THE MATTER OF:**

**THE ESTATE OF ELIAS MBINGA  
(DECEASED PRESUMED)**

**BETWEEN:**

**NATIONAL HOUSING AUTHORITY**  
*(suing as Title Holders)*

**APPLICANT**

**AND**

**ELIAS MBINGA**

**RESPONDENT**

***Before the Hon. Mrs. Justice M. M. Bah-Matandala  
On the 13<sup>th</sup> day of November, 2025.***

*For the Applicant: National Housing Authority*

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## **JUDGMENT**

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**Legislation referred to:**

1. *The High Court Act, Cap 27 of the Laws of Zambia*
2. *The High Court Rules, Cap 27 of the Laws of Zambia*

**Cases referred to:**

1. *Chard v. Chard (1956) P 259*
2. *Bowden v. Henderson (2 SM & G 360)*
3. *Re Phene's Trusts (1890) LR 5 Ch App 139*
4. *Nepean v. Doe (1837) 2 M & W 894*
5. *Re Pyare Al Sahota (2014/HP/0048)*

## **1.0 INTRODUCTION**

- 1.1 This is an ex parte application by the National Housing Authority (hereinafter referred to as “the Applicant”) made ***Pursuant to Order 3 Rule 2 of the High Court Rules, Cap 27 of the Laws of Zambia***, seeking leave to swear death and for a declaration of presumption of death in respect of one Elias Mbinga (hereinafter referred to as “the Respondent”).
- 1.2 The application was filed on 30<sup>th</sup> October, 2025 by Originating Summons and is supported by an affidavit of even date sworn by Mr. Arnold Chisenga, the Real Estates Coordinator of the Applicant, together with a list of authorities and skeleton arguments filed in support thereof.
- 1.3 The application is premised on the grounds that the said Elias Mbinga was allocated **Stand No. 7843, Woodlands, Lusaka** by the Applicant in 1979, fully paid the purchase price through a Building Society mortgage

in 1980, but thereafter disappeared and has not been seen or heard from for over twenty-four (24) years.

## **2.0 AFFIDAVIT EVIDENCE**

- 2.1 The Applicant's evidence is that the Respondent, **Elias Mbinga**, a Zimbabwean national, was offered property known as **Stand No. 7843, Woodlands, Lusaka** by the National Housing Authority in **1979**, as per **Exhibit "AC1."**
- 2.2 He paid the full purchase price of K25,000.00 through a mortgage with the Zambia National Building Society, evidenced by Exhibit "AC2."
- 2.3 Despite completion of payment, the Certificate of Title No. 40800 for Stand 7843 remains in the Applicant's custody and was never transferred, as shown in Exhibit "AC3."
- 2.4 The Respondent subsequently leased the property to the Zambia Tourism Board, but later ceased contact and was believed to have relocated to Zimbabwe in the early 1980s.
- 2.5 The Applicant made diligent efforts to locate him through a Times of Zambia advertisement dated 1<sup>st</sup>

September, 1997 (Exhibit “AC4”), and a more recent Zambia Daily Mail notice of 6<sup>th</sup>, 8<sup>th</sup> and 13<sup>th</sup> October, 2025 (Exhibit “AC5”), but no response was received.

2.6 The Administrator-General’s Office advised that the Applicant applies to this Court for an order of presumption of death to enable it to administer the property under the doctrine of *Bona Vacantia*.

2.7 The deponent further stated that the Applicant has been advised by its legal counsel that, given the lapse of more than twenty-four years without trace or communication, this is a proper case for the Court to presume the Respondent is deceased.

### **3.0 CONSIDERATION AND DECISION**

3.1 I have considered the affidavit evidence and the skeleton arguments filed in support of this application. This is an application for **presumption of death** and **leave to swear death** of a missing person, there being no direct evidence of death.

3.2 The Applicant relies on **Order 3 Rule 2 of the High Court Rules Cap 27**, which empowers the Court to

make such interlocutory orders as may be necessary for doing justice.

3.3 The Court notes that there are no statutory provisions in Zambia specifically governing the presumption of death of missing persons, and that in such cases, the applicable law remains the **common law presumption of death**.

3.4 In **Chard v. Chard (1956) P 259**<sup>1</sup>, Sachs J explained the principle in these terms:

*“If a person has not been heard of for seven years by those who would be likely to hear from them, and proper inquiries have been made and there is no evidence to the contrary, the person is to be presumed dead.”*

3.5 Similarly, in **Bowden v. Henderson (2 SM & G 360)**<sup>2</sup>, the Court stated that:

*“The principle on which the Court presumes the death of a person from whom no tidings have been received for a long time is that if he were living, he would probably have communicated with some of his friends or relatives.”*

- 3.6 This position was applied in Zambia in ***Re Pyare Al Sahota (2014/HP/0048)***<sup>3</sup>, where the Court granted presumption of death following prolonged absence and fruitless inquiries.
- 3.7 The rationale for this presumption is that the Court draws an inference from the probabilities of the case that continued and unexplained silence from a person who would ordinarily have been in touch with their associates is incompatible with life.
- 3.8 It is established from the evidence that the Respondent has not been seen or heard from for over **two decades**. The Applicant has placed before this Court credible evidence of repeated and wide-ranging efforts to trace him, all to no avail.
- 3.9 The Court is therefore satisfied that Elias Mbinga has been absent for well over seven years and those who would naturally have heard from him have not heard from him; and proper and reasonable inquiries have been made by the Applicant.
- 3.10 I am fortified by the decision in ***Nepean v. Doe (1837) 2 M & W 894***<sup>4</sup>, which affirmed that once the absence

and lack of communication for a period exceeding seven years is established, the burden shifts to anyone opposing the presumption to show that the person is alive and no such evidence has been produced here.

3.11 I further note that the property in question, **Stand No. 7843, Woodlands**, remains legally registered in the name of the National Housing Authority. The Respondent's disappearance, coupled with absence of heirs or dependants, means no private interest will be prejudiced. Under the **doctrine of Bona Vacantia**, unclaimed property without a legal owner properly reverts to the State or its statutory custodian and in this case, the Applicant Authority.

3.12 Consequently, I am satisfied that this is a proper case for the Court to exercise its jurisdiction and declare that **Elias Mbinga** be presumed dead, and that the Applicant be granted leave to swear death.

#### **4.0 FINDINGS**

4.1 Upon full consideration of the evidence and law, I find as a fact that:

- i. The Respondent, **Elias Mbinga**, was last seen and heard from in or about the early 1980s;
- ii. The Applicant has made diligent inquiries through public notices and official channels, all without success;
- iii. Over **twenty-four (24) years** have elapsed without any trace of him;
- iv. Those who would likely have heard from him, including the Applicant and the public at large have not done so; and
- v. There is no evidence before this Court to rebut the presumption that he is dead.

4.2 Accordingly, I am satisfied that the Respondent is presumed to have died by operation of the **common law rule of presumption of death**.

## **5.0 DETERMINATION AND ORDERS**

5.1 Under the circumstances, and pursuant to the common law presumption of death, this Court hereby orders as follows:

- i. That **Elias Mbinga**, a male adult, formerly of Lusaka and holder of Stand No. 7843, Woodlands,

who has not been seen or heard from for over twenty-four (24) years, be and is hereby **presumed to be dead.**

ii. That leave be and is hereby granted to the National Housing Authority to swear death in respect of the said Elias Mbinga.

iii. That the property known as Stand No. 7843, Woodlands, Lusaka, shall, upon completion of administrative formalities, revert to the National Housing Authority under the doctrine of Bona Vacantia.

iv. There shall be no order as to costs, this being an ex parte application brought in the interest of justice and proper administration of property.

## **6.0 CONCLUSION**

6.1 In conclusion, I find that the Applicant has satisfied this Court that Elias Mbinga has been missing and unheard of for a period far exceeding seven years, that all reasonable inquiries have been made, and that there is no evidence to suggest that he is alive.

6.2 I accordingly declare that Elias Mbinga is presumed dead, and I grant leave to the Applicant to swear death in his respect.

**Dated at Lusaka this 13<sup>th</sup> day of November, 2025**



M. M. BAH-MATANDALA  
**HIGH COURT JUDGE**

