

IN THE COURT OF APPEAL OF ZAMBIA APPEAL NO. 330 OF 2024
HOLDEN AT NDOLA

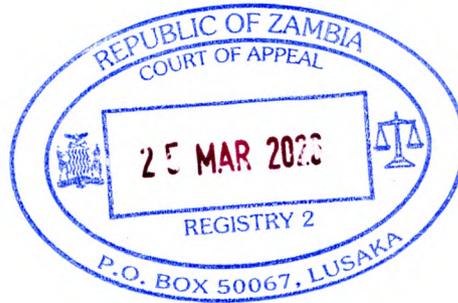
(Civil Jurisdiction)

B E T W E E N:

GIFORD KABUNDA

AND

ENALA MULAMBO



APPELLANT

RESPONDENT

CORAM: Chashi, Ngulube and Banda-Bobo, JJA

ON: 18th and 25th March 2026

For the Appellant: N. Ng'andu, Messrs Shamwana and Company

For the Respondent: G. Hakainsi, Messrs L.M Chambers

J U D G M E N T

CHASHI JA, delivered the Judgment of the Court.

Cases referred to:

- 1. Ingall v Moran (1944) All ER, 97***
- 2. Noel Chembe v DJR Investments Limited – CAZ Appeal No. 68 of 2017***
- 3. Col. Paul Chikuswe Chilanga v Lt. General I.S.A Chisuzi (Rtd) – CAZ Appeal No. 53/2017***
- 4. Kuta Chambers (Sued as a firm) v Simbulo (Suing as Administratrix of the Estate of the late Francis Simbulo) 2015, ZMSC, 75***
- 5. William David Carlisle Wise v EF Hervey Limited (1985) ZR, 179***

6. *YB and F Transport Limited v Supersonic Motors Limited (2000) ZR, 22*

Legislation referred to:

- 1. *The Intestate Succession Act, Chapter 59 of the Laws of Zambia***
- 2. *The Wills and Administration of Testate Estates Act, Chapter 60 of The Laws of Zambia***

Rules referred to:

- 1. *The Supreme Court Practice (White Book) 1999***

1.0 INTRODUCTION

1.1 This is an appeal against the Ruling of Honourable Mr. Justice I. Kamwendo, delivered by Honourable Mr. Justice E. Chulu on 16th July 2024.

1.2 In the said Ruling, the learned Judge opined that the Respondent who was the plaintiff in the court below, had *locus standi*, to sue in her own right as a beneficiary of the estate.

2.0 BACKGROUND

2.1 The Respondent on 13th June 2022, commenced an action by way of writ of summons, claiming the following reliefs:

- (i) A declaration that Property No. L/CHIKUPILI/29, (the property) was owned by the late Edward Kabunda at the time of his death and therefore forms part of his estate.**
- (ii) An Order that the plaintiff being one of the surviving spouses of the late Edward Kabunda and beneficiary of the estate hereof has the interest in the property which shall determine upon the plaintiff's remarriage.**
- (iii) An Order that the plaintiff is entitled to own and or inherit the property, which she occupied together with the late Edward Kabunda as husband and wife for over a period of 25 years.**

2.2 According to the attendant statement of claim, the Appellant herein is the son of the late Edward Kabunda, (deceased) who was married to the Respondent under customary law from 1987 until his death in March 2021. According to the Respondent, the deceased during his time, had acquired three (3) farms and each wife under the polygamous marriage had independently occupied a farm each, with the Respondent occupying the property.

- 2.3 It was averred that the Respondent has been in occupation since 1996 to date. That after the death of the deceased, the Appellant made substantial claims that he was the rightful owner of the property and demanded for vacant possession.
- 2.4 It was further averred that the Respondent and the deceased had lived as husband and wife on the said property for more than 25 years, which property was registered under the deceased as the registered legal owner.
- 2.5 The Appellant settled his defence on 20th June 2022, and averred that, he acquired the property from Julius Mwenge in about 1995, but that the certificate of title was issued in the name of his late father, the deceased. That the deceased had requested him to allow the Respondent to temporarily settle on the property, whilst the deceased searched for a permanent residence for her.
- 2.6 According to the Appellant, there was a constructive trust created over the property. It was averred that the

Respondent had no *locus standi* to commence proceedings on behalf of the estate of the deceased.

3.0 PRELIMINARY ISSUE

3.1 On 7th July 2022, the Appellant filed into court a Notice of Motion for disposal of the case on points of law, pursuant to **Order 14A** as read with **Order 33/7 of the Rules of the Supreme Court¹ (RSC)**. The questions sought for determination were as follows:

(i) Whether a beneficiary has locus standi to commence legal proceedings for and on behalf of an intestate estate; and

(ii) Whether an action commenced by a beneficiary for and on behalf of an intestate estate is a nullity; and

(iii) Whether the plaintiff had disclosed a cause of action against the defendant.

3.2 According to the Appellant, the deceased died without leaving a will. That the Respondent in the court below is claiming ownership of the land, but has failed to disclose

that the property in question is a farm and is registered in the name of the deceased.

- 3.3 The Appellant referred to Sections 15(1) and 24(1) of **The Intestate Succession Act**¹, and submitted that only the administrator of the estate as the legally appointed personal representative of the estate is conferred with certain duties to protect and safeguard the interests of the estate. That the duty extends to initiating law suits on behalf of the estate.
- 3.4 According to the Appellant, the administrator is the only person who can initiate or defend an action on behalf of an intestate estate. Reliance in that respect was placed on the case of **Ingall v Moran**¹.
- 3.5 It was submitted that the Respondent had moved the court in no other capacity than her own, claiming to act on behalf of the estate. In support, the Appellant drew the court's attention to the case of **Noel Chembe v DJR Investments Limited**² where it was held as follows:

“By virtue of Section 24 of the Intestate Succession Act, following her appointment as administrator of the estate, Theresa Hope Lwembe Mambo, assumed

the proprietary interests of the appellant's father, in Lot 2725/M Central province. Consequently, we find that the trial judge rightly found that the appellant had no locus standi to commence these proceedings."

- 3.6 Based on the aforesaid, the Appellant submitted that the Respondent had no *locus standi* and that the court action was therefore a nullity. Further that the Respondent had not disclosed a cause of action against the Appellant.
- 3.7 The motion was opposed by the Respondent, who submitted that the Respondent neither sued for or on behalf of the estate nor as a personal representative of the estate of the deceased, but as a widow of the deceased.
- 3.8 According to the Respondent, Orders 14A and 33/7 **RSC** only invites the courts for determination of matters that are capable of being disposed of without full trial of an action and that such determination will greatly determine the entire cause or matter or any claim or issue therein.
- 3.9 It was further submitted that the Respondent had disclosed a cause of action which cannot be determined by invocation of Orders 14A and 33/7 **RSC**.

3.10 According to the Respondent, the case of **Noel Chembe vs DJR Investment Limited²** is fundamentally and materially distinguishable from the case herein, in that the Respondent is neither suing on behalf of the estate nor on behalf of other beneficiaries, but rather as a widow and beneficiary of the estate of the deceased in order to protect her interest conferred on her by law.

4.0 DECISION OF THE COURT BELOW

4.1 After considering the Motion and the arguments by the parties, the learned Judge formulated the following question for determination:

“Whether a beneficiary has locus standi to commence legal proceedings for and on behalf of an intestate estate.”

4.2 The learned Judge opined that the Respondent was not suing on behalf of the deceased estate. That she clearly had *locus standi* to sue in her own right as a beneficiary of the estate. That she was suing to protect her rights as a widow to the deceased, which the court will have to determine. That having found as above, the second and

third questions fell away. On that basis the Motion was dismissed with costs.

5.0 THE APPEAL

5.1 Dissatisfied with the Ruling, the Appellant appealed to this Court, fronting the following three (3) grounds:

- (i) *The Court below erred in law and fact when it held that the Respondent has locus standi to institute legal proceedings against the Appellant.***
- (ii) *The Court below erred in law and fact when it failed to find that the Respondent had no cause of action against the Appellant.***
- (iii) *The Court below erred in law and fact when it awarded costs to the plaintiff.***

6.0 ARGUMENTS IN SUPPORT

6.1 At the hearing, Mr Ng'andu, Counsel for the Appellant relied entirely on the Appellant's heads of argument, in which he confirmed that there was no known administrator of the estate of the deceased. Counsel also

withdrew the Appellants heads of argument in reply which were filed into Court on 1st July 2025.

- 6.2 In support of the first ground, it was submitted that the finding of the Court does not have the backing of the law. That in as far as an estate is concerned, the legal representative is the personal representative. That the net effect of Sections 24(1) of **The Intestate Succession Act**¹ and Section 44(1) of **The Wills and Administration of Testate Estates Act**², is that a personal representative is conferred with certain duties meant to protect and safeguard the interests of the estate. That, that duty extends to initiation of law suits on behalf of the estate.
- 6.3 According to the Appellant, the only person that has *locus standi* is the personal representative. That therefore, the Respondent not being an executor or being appointed as administrator of the estate, had no right to sue the Appellant over the ownership of the disputed property. That by commencing legal proceedings against the Appellant, the Respondent was in effect seeking to take on the role of personal representative.

6.4 As regards the second ground, it was contended that the Respondent had no cause of action. Our attention was drawn to the case of **Col. Paul Chikuswe Chilanga v Lt. General I.S.A Chisuzi (Rtd)**³ where we observed as follows:

“Locus standi is intertwined with the issue of disclosing a reasonable cause of action. Therefore, for one to bring an action before court, he must demonstrate that he has a reasonable cause of action. Before this Court is asked to decide any question which is in controversy between litigants, it is in all cases desirable and necessary that the matter submitted to the Court is clearly ascertained in order to enable the parties know what it is they are exactly contending about.”

6.5 That for the reasons canvassed under the first ground, the Respondent not being a personal representative of the deceased estate, had no *locus standi* and as such, no cause of action against the Appellant.

6.6 In arguing the third ground, it was submitted that the Respondent did not have *locus standi* nor a cause of action. That it was therefore wrong at law to condemn the Appellant with costs. According to the Appellant, the court did not exercise its discretion judiciously by awarding costs to the Respondent.

7.0 ARGUMENTS IN RESPONSE

7.1 At the hearing, Mr Hakainsi, Counsel for the Respondent relied on the heads of argument filed into Court on 23rd January 2025. In responding to the first and second grounds, it was submitted that the Respondent was neither suing for nor on behalf of the estate nor as personal representative of the estate of the deceased.

7.2 It was submitted that section 9 of **The Intestate Succession Act¹**, is instructive on the interest of the surviving spouse in the matrimonial property. That the Respondent being the surviving spouse had *locus standi* to commence proceedings in order to protect her interest as a widow. It was further submitted that the Respondent

was personally adversely affected by the wrong of the Appellant.

7.3 In response to the third ground, it was submitted that, it is trite law that costs follow the event. That the Appellant raised the preliminary issue in the court below, which failed. That therefore, the award of costs to the Respondent was in line with the settled principle. Reliance in that respect was placed on the case of **Kuta Chambers** (*Sued as a firm*) v **Simbulo** (*Suing as Administratrix of the Estate of the late Francis Simbulo*)⁴, where the Supreme Court affirmed the principle.

8.0 ANALYSIS AND DECISION

8.1 We have carefully considered the Ruling being impugned and the arguments by the parties. As we observed in the case of **Col. Paul Chikuswe Chilanga**,³ which has been cited by the Appellant, *locus standi* is intertwined with the issue of disclosing a reasonable cause of action. We will therefore determine the first and second grounds of appeal concurrently as they are intertwined.

8.2 In the said **Col. Paul Chikuswe Chilanga**³ case, we extensively dealt with both issues of disclosing a reasonable cause of action and *locus standi*. We in that matter made reference to the case of **William David Carlisle Wise v EF Hervey Limited**⁵ where the Supreme Court held *inter alia* that:

“A cause of action is disclosed only when a factual situation is alleged which contains facts upon which a party can attach liability to the other or upon which he can establish a right to entitlement of a Judgment in his favour against the other.”

8.3 Furthermore, Order 18/19 (10) **RSC**, defines reasonable cause as:

“...a cause of action with some chances of success, when only the allegation in the pleadings are considered.”

8.4 A careful perusal of the statement of claim shows that the Respondent has an issue with the Appellant over the property. The Respondent is alleging that the property is

registered in the name of the deceased and she therefore as the widow has an interest in the property as a beneficiary. On the other hand, the Appellant is alleging that there exists a constructive trust over the property.

8.5 In our view, the Respondent has disclosed and demonstrated a reasonable cause of action, which the Appellant has responded to by claiming a constructive trust over the property. Therefore, it is clear to the parties what they are contending and the court below was also clear as to what it was being asked to decide. There is therefore a question which has been raised fit for the court to decide on.

8.6 On the issue of *locus standi*, we did in the same **Col. Paul Chikuswe Chilanga**³ case opine a page J11 as follows:

“It follows from the aforestated that if a party is able in the statement of claim to disclose a reasonable cause of action with some chances of success, he has locus standi.”

8.7 Having opined that the Respondent has a reasonable cause of action, it follows therefore that she has *locus*

standi; as she had demonstrated that she has a lawful interest in the property.

- 8.8 Reverting to the issue which was before the learned Judge in the Court below as to “*whether a beneficiary has locus standi to commence legal proceedings for and on behalf of an intestate estate*”, we agree with the learned Judge that the Respondent was not suing as a legal or personal representative of the estate, nor was she suing for and on behalf of the estate.
- 8.9 However, since there is an allegation by the Respondent that the property was owned by the deceased at the time of his death and therefore forms part of his estate, that brings into play the provisions of **The Intestate Succession Act**¹. It would in our view to a large extent assist in the resolution of the dispute if the Administrator, as personal representative of the estate, can be joined as a party to the proceedings. That would also help in avoiding potential challenges later, regarding the validity of the Judgment, as the absence of the Administrator can be a ground for appeal.

8.10 The case of **Noel Chembe²**, is distinguishable from this case on the facts and circumstances of that case. In that case, there was a known appointed Administrator of the estate and the issue of removal of a caveat could easily be done through her. In this case none of the parties have disclosed the existence of an Administrator. The parties herein also confirmed that there was no known Administrator of the estate of the deceased.

8.11 In respect to the third ground on the issue of costs, as was held by the Supreme Court in the case of **YB and F Transport Limited v Supersonic Motors Limited⁶** *“the general principle is that costs follow the event; in other words a successful party should normally not be deprived of costs, unless the successful party did something wrong in the action or in the conduct of it.”*

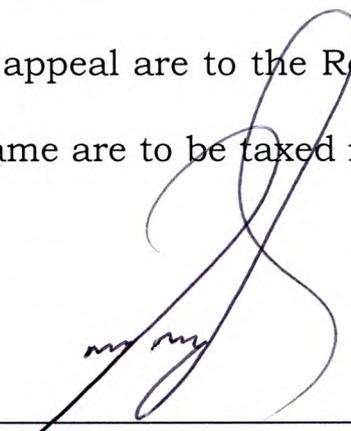
8.12 It also therefore follows that in awarding costs, apart from the court exercising its discretion judiciously, it has to consider the particular circumstances of the case. *In casu*, the motion by the Appellant failed and there was no improper conduct which can be attributed to the

Respondent in respect of the conduct of the matter in the Court below. We therefore find no basis on which to fault the learned Judge.

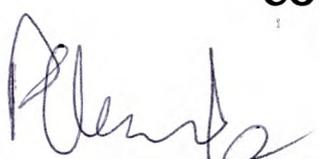
9.0 CONCLUSION

9.1 All the three grounds of appeal are dismissed for lack of merit. However, the Ruling of the Court below is varied to the extent that the Administrator of the estate of the late Edward Kabunda (deceased) is joined to the proceedings in the Court below.

9.2 Costs of the appeal are to the Respondent and to be paid forthwith. Same are to be taxed in default of agreement.



J. CHASHI
COURT OF APPEAL JUDGE



P.C.M. NGULUBE
COURT OF APPEAL JUDGE



A.M. BANDA-BOBO
COURT OF APPEAL JUDGE