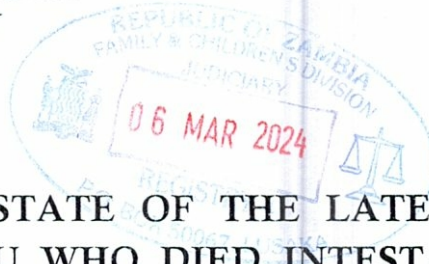


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*

2020/HPF/378



**IN THE MATTER OF: THE ESTATE OF THE LATE JONATHAN  
NJOBVU WHO DIED INTESTATE ON 15<sup>TH</sup>  
MAY, 2019**

**IN THE MATTER OF: THE INTESTATE SUCCESSION ACT,  
CHAPTER 59 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: AN APPLICATION UNDER ORDER 30 RULE  
11(f), 12(g) & 13 (b) OF THE HIGH COURT  
RULES CHAPTER 27 OF THE LAWS OF  
ZAMBIA**

**IN THE MATTER OF: AN APPLICATION BY THE  
ADMINISTRATOR GENERAL FOR AN  
ORDER OF RELEASE OF TITLE DEED NO.  
48909 IN RESPECT OF STAND NO. 32A  
BEING SUBDIVISION 16 OF SUBDIVISION 2  
OF SUBDIVISION E MEANWOOD OBAMA,  
LUSAKA**

**IN THE MATTER OF: SECTION 19(b) AND 42(c) OF THE  
INTESTATE SUCCESSION ACT, CHAPTER  
59 OF THE LAWS OF ZAMBIA**

**B E T W E E N:**

**ADMINISTRATOR GENERAL**  
*(Suing as Personal Representative of the estate  
of the late Jonathan Njobvu)*

**APPLICANT**

**AND**

**JENNIFER TEMBO NJOBVU**  
*(Sued as surviving spouse and Beneficiary)*

**RESPONDENT**

*Before the Hon. Mrs. Justice C. Chinyanwa Zulu in Chambers*

*For the Applicant: Ms Sharon Kasoman Nguni – Administrator General*

*For the Respondent: Mr. Patrick Chulu – Kalokoni & Company*

---

## **JUDGMENT**

---

### **CASES AND OTHER LEGISLATION REFERRED TO:**

- 1. Mirriam Mbolela v Adam Bota Appeal No. 146/2014;**
- 2. The Interstate Succession Act Chapter 59 of the Laws of Zambia;**
- 3. The High Court Rules Chapter 27 of the Laws of Zambia;**
- 4. The Lands & Deeds Registry Act Chapter 185 of the Laws of Zambia.**

### **1.0 INTRODUCTION**

1.1 The Applicant commenced this action by way of an Amended Originating Summons supported by an Affidavit and Further Affidavit dated 24<sup>th</sup> September 2020 and 25<sup>th</sup> July 2022 respectively. The Applicant is seeking the following reliefs:-

- 1. A Declaratory Order that the property No 32a/E/2/L6/4 Meanwood Obama Township Lusaka in the Lusaka Province of the Republic of Zambia forms part of the Estate of the late Jonathan Njobvu;*
- 2. An Order that the said property No. 32a/E/2/L6/4 be distributed amongst the beneficiaries in accordance with the provisions of the law;*
- 3. An Order that the Respondent should surrender the title deeds for property No. 32a/E/2/L6/4 Meanwood Obama Township Lusaka in the Lusaka Province of the Republic of Zambia to the Applicant herein;*
- 4. An Order that all other properties forming part of the estate of the late Jonathan Njobvu be sold and distributed amongst all the beneficiaries in accordance with the law;*
- 5. An Order for Letters of Administration to be registered with the Lands and Deeds Registry out of time;*
- 6. Any other reliefs that the Court may deem fit; and*
- 7. Costs.*

### **2.0 AFFIDAVIT EVIDENCE**

- 2.1 The Affidavit filed on 24<sup>th</sup> September 2020 was sworn by **Sylvester Suswani Sakwiba Mubita** an Examiner and Estates Officer in the employ of the Applicant. His evidence was, inter alia, that the late Jonathan Njobvu (hereinafter referred to as “the Deceased”) died intestate on 15<sup>th</sup> May 2019 and was survived by a spouse and eight (8) children. The Applicant was appointed as Administrator of the Deceased’s estate on 20<sup>th</sup> November 2019. A copy of the letters of Administration was exhibited marked “**SSSM 1**”. The Deceased’s estate comprises Farm Number 32a/E/2/L6/4 Meanwood Obama Township situated in Lusaka whereon there are four (04) houses and six (6) motor vehicles. A copy of the Certificate of Title for the Farm property was exhibited marked “**SSM 2**”.
- 2.2 The deponent deposed that the Respondent is the Deceased’s widow and that she lives on the Farm property. It was his evidence that the Respondent has continued to refuse to surrender the title deed to the Farm property to the Applicant with impunity. Further, that she refuses to recognize the first two daughters of the Deceased, namely **Janet Njobvu** and **Esnare Njobvu**, as also being beneficiaries of the Farm Property.
- 2.3 The deponent went on to aver that during the inventory of the estate carried out on the Farm property, estate examiners were locked in on the property by the Respondent. That the Respondent has on many occasions been called for consultative meetings but refuses to cooperate. Further, that on 21<sup>st</sup> June 2020 while the Respondent was conducting a requisite inventory/valuation of the Farm Property for purposes of administering the Deceased’s estate, of which the Respondent and her three children were given prior notice, the Respondent called the police to arrest him for trespass.

- 2.4 He averred that on 27<sup>th</sup> January 2020 the Respondent's lawyers wrote to the Applicant. Therein, Counsel for Respondent referred the Applicant to the provisions of Section 9 of the Intestate Succession Act, Chapter 59 of the Laws of Zambia stating that the subject Farm Property is its client's matrimonial home. According to the deponent, this position does not take into consideration that there is no cordial relationship between their client and the other two children of the Deceased who are equally beneficiaries and that it is highly improbable that they can live together in the matrimonial home. The said letter was exhibited marked "**SSSM 3**".
- 2.5 He went on to aver that Janet Njobvu and Esnare Njobvu are also entitled to derive a benefit from the matrimonial property in question. That as such, it was decided that in order for each beneficiary to derive a benefit from the matrimonial property, it would be prudent to subdivide the Farm and distribute it in accordance with the law. Moreover, that the subject Farm is a 5 Acre property with more than one house and as such, the Respondent has the option to determine which of the houses shall devolve upon them and the remainder to form part of the estate.
- 2.6 He averred that on 6<sup>th</sup> February 2020, the Applicant responded to Counsel for the Respondent's letter dated 27<sup>th</sup> January 2020. That in its response the Applicant explained its role as duly appointed Administrator of the Deceased's estate and brought out its duties and powers. The Applicant also clarified both factual and salient legal issues and the reason for the decision to inspect, value and possibly subdivide and distribute due to the absence of a cordial relationship among the beneficiaries. According to the deponent, what the beneficiaries will do with their individual portions of the property after the distribution is entirely up to them. The said letter was exhibited marked "**SSSM 4**".

- 2.7 He went on to state that in a follow-up letter dated 14<sup>th</sup> February 2020, the Applicant invited the Respondent and her counsel to a consultative meeting scheduled for 20<sup>th</sup> February 2020 at 10:00hrs but they did not attend. The said follow-up letter was exhibited marked “**SSS 5**”. The Applicant then wrote to the Respondent’s lawyers on 16<sup>th</sup> June 2020 requesting them to advise their client to surrender the title deeds for the Farm Property to its office. The letter was exhibited marked “**SSSM 6**”. In their response dated 2<sup>nd</sup> July 2020, the Respondent’s lawyers informed the Applicant that the Respondent would not surrender the title deeds to the Farm Property on the premise that it is a family house. The response letter was exhibited marked “**SSM 7**”. He averred that the Respondent’s act of withholding the Certificate of Title for the Farm Property has hindered the Applicant’s duty to register probate at the Lands and Deeds Registry, a process that requires the original Certificate of Title.
- 2.8 The deponent averred that the Applicant has made every effort to employ alternative dispute resolution mechanisms between the two negatively affected beneficiaries on the one hand and the Respondent on the other to amicably share the Deceased’s real property equally. However, that these efforts have been resisted by the Respondent hence the commencement of the present legal proceedings.
- 2.9 The Further Affidavit in support of the Amended Originating Summons was deposed by **Prudence Ng’andwe Mungule**. She equally deposed to the Affidavit in her capacity as an Examiner and Estates Officer in the employ of the Applicant.
- 2.6 The gist of her evidence is that the first two (2) of the Deceased’s eight (8) children are from his first wife while the remaining six (6) are from the surviving spouse, the Respondent herein. That there have been

misunderstandings in the Deceased's family such that the children from the first wife have been segregated and unfairly treated. That the Farmhouse is being occupied by the surviving spouse and her children only, while the other two children are not allowed to even visit the Farm as they are treated as intruders. That under the current circumstances, the children of the first wife have not been deriving any benefit from the Farm.

- 2.7 It was her evidence that she is advised by counsel and believes the same to be true that the surviving spouse and all the children hold the said house as tenants in common. Furthermore, that considering that the house sits on a 2 hectares plot, it would be fair that a distribution of the Farm is done to all the beneficiaries in equal portions while leaving the portion with the house to the surviving spouse.
- 2.8 Further, that the Deceased's estate also comprises vehicles which fall under personal chattels and those that were being used for business which are at the said farm and in other places. Equally, that these properties ought to be distributed amongst the beneficiaries in accordance with the law.
- 2.9 She went on to state that she is advised by Counsel and believes the same to be true that all property forming part of an estate is under the management of an administrator. That it is the responsibility of the administrator to ensure that, amongst others, the estate of a deceased person is distributed in accordance with the law. It is her evidence that by reason of the Respondent's refusal to release the Certificate of Title for the Farm, the Applicant has been unable to register the title thereby falling out of time prescribed by the law. Further, that the conduct of the Respondent and her children has caused delay and led to its inability to properly discharge its duties. That should the Court not grant the reliefs sought, the

other two beneficiaries will continue to be deprived of their entitlement and continue to suffer grave injustice.

### **3.0 AFFIDAVIT IN OPPOSITION**

- 3.1 The Respondent filed her Affidavit in Opposition on 25<sup>th</sup> July 2022. Therein she deposes that the estate of the Deceased comprises six (06) motor vehicles and the Farm property. That the three (3) houses referred to by the Applicant in its Affidavit do not form part of the estate as the Deceased had already transferred their ownership before his demise to his three children Sara Njobvu, Catherine Njobvu and Leah Njobvu.
- 3.2 It was her evidence that the Applicant requested her to submit the original Certificate of Title for the Farm property for the purpose of selling the property. That she is advised by her counsel and believes the same to be true that she has a life interest in the Farm property which is protected by law and as such the said property cannot be sold. That following this, she advised the Applicant to communicate directly with her lawyers concerning the matter going forward. That the Applicant wrote to her lawyers requesting that she releases the original Certificate of Title for the Farm to which their response was that she was under no legal obligation to submit it as the property does not form part of the estate to be administered by the Applicant. She exhibited the exchanged correspondence marked “**JTN1**” and “**JTN2**” respectively.
- 3.3 She averred that notwithstanding being aware that she had engaged lawyers, the Applicant’s officers started harassing and threatening her in an attempt to make her release the Farm’s Certificate of Title. In this regard, she exhibited a letter written by her lawyers complaining over her harassment by the Applicant. It was her evidence that Sylvester S.S.

Mubita, the deponent of the Applicant's Affidavit in Support of the Originating Summons, threatened her that he would do everything in his power to ensure that she lost the matrimonial property. Further, that he also reported her to the police for not releasing the original Certificate of Title when he knew that the matter was in Court and that she was following the counsel of her lawyers. She stated that the manner in which the Applicant's officers are handling the matter, especially the aforesaid officer, is as though they have their own personal interests to serve. That the Applicant is supposed to be objective and not biased towards certain individuals when administering the estate. However, that despite the matter being in Court, the aforementioned officer has been sending people to the matrimonial home to survey the land and take inventory of it.

3.4 In conclusion, that she is reliably informed by her advocates that the Applicant's application lacks merit.

#### **4.0 AFFIDAVIT IN REPLY**

4.1 The Applicant filed an Affidavit in Reply on 26<sup>th</sup> September 2022. It was sworn by **Prudence Ng'andwe Mungule** in the same capacity as that in the Further Affidavit in support of the Originating Summons. Much of the evidence tendered therein is a reiteration of the two Affidavits filed in support of the application.

4.2 The gist of her evidence being that she is advised by counsel that even though the Respondent has a life interest in the Farm property, the same ought to be held by the Respondent and all the eight children as tenants in common. And that the 5 Acres Farm property can be distributed among all the beneficiaries without interfering with the Respondent's life interest. Further, that contrary to the Respondent's assertion that the Applicant

wants the original Certificate of Title to sell the Farm property, the sale of any property by the Applicant cannot be carried out without the Court sanctioning it. Lastly, that contrary to the Respondent's assertion, she is advised by counsel that the law does not proscribe the institution of criminal proceedings for intermeddling while a civil matter is ongoing.

## **5.0 SKELETON ARGUMENTS**

### **5.1 APPLICANT'S SKELETON ARGUMENTS**

5.1.1 The Applicant filed its List of Authorities and Skeleton Arguments in support of the application on 23<sup>rd</sup> September 2020. The Court was referred to Order 30 Rule 11(f), 12(g) and 13(b) of the HCR being the provisions of the law pursuant to which the application for the release of the Certificate of Title for the farm property is made. The said provisions of the HCR are couched as follows:

**11 The business to be disposed of in chambers shall consist of the following matters, in addition to the matters which under any other rule or by statute or by the law and practice for the time being observed in England and applicable to Zambia may be disposed of in chambers:**

**(f) Applications connected with the management of property**

**12 The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them, and any person claiming to be interested under the trust of any deed or instrument in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person or as cestui que trust or as claiming by assignment or otherwise under any such creditor or other person as aforesaid may take out an originating summons for such relief of the nature or kind following, as may be specified in the summons and as the circumstances may require, that is to say, the determination, without an administration by the Court of the**

estate or trust, of any of the following questions or matters so far as the same arise in the course of the administration or performance of such estate or trust:

(g) the determination of any question arising in the administration of the estate or trust.

13 Any of the persons named in the last preceding rule may in like manner apply for and obtain an order for-

(b) the administration of the real estate of the deceased

5.1.2 The Court was also referred to Section 4(1), 5(3) and 6 of the Lands and Deeds Registry Act Chapter 185 of the Laws of Zambia. The foregoing provisions of the law provide as follows:

4(1) Every document purporting to grant, convey or transfer land or any interest in land, or to be a lease or agreement for lease or permit of occupation of land for a longer term than one year, or to create any charge upon land, whether by way of mortgage or otherwise, or which evidences the satisfaction of any mortgage or charge, and all bills of sale of personal property whereof the grantor remains in apparent possession, unless already registered pursuant to the provisions of "The North-Eastern Rhodesia Lands and Deeds Registration Regulations, 1905" or "The North-Western Rhodesia Lands and Deeds Registry Proclamation, 1910", must be registered within the times hereinafter specified in the Registry or in a District Registry if eligible for registration in such District Registry...

5(3) Probate of a will affecting land or any interest in land shall be registered within twelve months of the grant thereof or the sealing thereof under the provisions of the Probates (Resealing) Act, as the case may be.

6 Any document required to be registered as aforesaid and not registered within the time specified in the last preceding section shall be null and void:

Provided that-

- (i) **the Court may extend the time within which such document must be registered, or authorise its registration after the expiration of such period on such terms as to costs and otherwise as it shall think fit, if satisfied that the failure to register was unavoidable, or that there are any special circumstances which afford ground for giving relief from the results of such failure, and that no injustice will be caused by allowing registration;**
- (ii) **the probate of a will required to be registered as aforesaid, and not registered within the time specified in the last preceding section, shall be null and void so far only as such will affect land or any interest in land.**

5.1.3 It was Counsel's submission that the import of the foregoing provisions is that any document purporting to grant, convey or transfer land or an interest in land should be registered. In this regard, that the probate in this case is one such document which purports to grant interest in the land in question and the original title deed is required for the registration. Hence, that the Applicant ought to have registered probate within 12 months from 20<sup>th</sup> November 2019 when it was granted. The consequence of non-compliance being that such probate will be null and void in accordance with Section 6 of the Lands and Deeds Registry Act.

5.1.4 It was argued that the law imposes fiduciary responsibilities on an administrator duly appointed in accordance with the law. Hence, the administration of an estate is to be conducted solely in the interest of the beneficiaries and that in this regard, Section 19(2) of the Intestate Succession Act was enacted to prevent the misapplication of an estate by administrators. Thus, that the Applicant cannot take advantage of being in custody of the original Certificate of Title of the Farm Property or act contrary to the interest of the beneficiaries. Reliance was placed on the

case **Mirriam Mbolela v Adam Bota Appeal No. 146/2014** wherein the Supreme Court held as follows:

**“In the mind of the legislature, this statutory provision was intended to prevent administrators of estates of deceased persons from abusing their fiduciary responsibilities by selling property forming part of such estates, without due regard to the interest of the beneficiaries.”**

5.1.5 It was argued that the Applicant is a neutral party with no immediate ties to the beneficiaries. Therefore, it will not have the emotional stress and strain that a family member or friend is subject to when serving. Further, that the Applicant is not biased toward any beneficiary but will simply administer the estate in accordance with the explicit provisions of the law. Furthermore, that the Applicant safely keeps many original title deeds, has a transparent process, and employs the spirit of utmost security for the benefit of any given estate by keeping titles under lock and key.

5.1.6 In conclusion, that the release of the Certificate of Title and subsequent inspection, subdivision and distribution, and possible sale is necessary for the purposes of effectively administering the estate in the best interest of the beneficiaries who have consented to the same. It was prayed that this Court grant the order as prayed.

## **5.2 RESPONDENT’S SKELETON ARGUMENTS**

5.2.1 The Respondent filed Skeleton Arguments in opposition to the application on 25<sup>th</sup> July 2022. It was counsel’s submission that the main issue for consideration is whether or not the Respondent should surrender the Certificate of Title to Farm No. 32a/E/2/L6/4 Meanwood Obama Township Lusaka to the Applicant so that the property can be distributed.

5.2.2 The Court was referred to Section 3 and 9(1) and (2) of the Intestate Succession Act. The provisions provide as follows:

**“3 "estate" means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death and for the purposes of administration of the estate under Part III includes personal chattels”**

**9 (1) Notwithstanding section five where the estate includes a house the surviving spouse or child or both, shall be entitled to that house:**

**Provided that-**

**(a) where there is more than one surviving spouse or child or both they shall hold the house as tenants in common; and**

**(b) the surviving spouse shall have a life interest in that house which shall determine upon that spouse's remarriage.**

**(2) Where the estate includes more than one house the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate.**

5.2.3 Counsel argued that the foregoing provisions give the Respondent a life interest in the subject Farm Property and that Parliament in its wisdom made sure that a house is reserved for the surviving spouse and the children. Therefore, that the said house cannot be administered by the Applicant and by necessary implication the Respondent has no obligation to submit the Certificate of Title.

5.2.4 It was prayed that the present application be dismissed with costs for lacking merit.

## **6.0 HEARING OF THE APPLICATION**

6.1 At the hearing of the Application, Counsel for both parties relied on the documents filed before Court which they briefly augmented with oral

submissions. I will not restate the same here as the oral arguments advanced constitute a reiteration of what is already on record.

## 7.0 **DECISION OF THIS COURT**

7.1 I have seriously considered the application together with the Affidavit evidence and Skeleton Arguments filed. I am of the considered view that the main issue for determination is whether the Farm Property forms part of the estate of the Deceased to be administered by the Applicant.

7.2 It is not in dispute that the Applicant is the Administrator of the Deceased's estate and that the Deceased left assets including Farm No. 32a/E/2/L6/4 Meanwood Obama Township Lusaka whereon there are 4 houses and 6 motor vehicles. It is also not in dispute that the Deceased is survived by a spouse, the Respondent herein, and eight (8) children. It is further not in dispute that the Respondent resides on the subject Farm Property. The contentious issue between the parties is the Applicant's proposed distribution of the Farm Property among all the beneficiaries.

7.3 The Applicant's case is that the Respondent has refused to surrender the Certificate of Title to the Deceased's Farm Property to it. That the Respondent's action of withholding the title deed of the subject property has hindered the Applicant's duty to register probate at the Lands and Deeds Registry, a process that requires the original certificate of title and that must be done within a year of obtaining probate. As a result, the Applicant has since fallen outside the timeframe prescribed by law. Correspondence between the Applicant and the Respondent's lawyers has been exhibited to illustrate this. Further, the Applicant has cited incidences in its Affidavit evidence of the Respondent interfering with the execution of its duties thereby causing both delay and its inability to properly

discharge its duties. The incidences cited include the locking of state examiners on the subject Farm Property, the Respondent's non-cooperation to attending the several consultative meetings called by the Applicant and her conduct of calling the police to arrest the deponent of the Applicant's Affidavit in Support of the application, for trespass. Consequently, that the Deceased's first two children who are also beneficiaries and equally entitled to the Farm Property are being deprived of their entitlement and will continue to suffer grave injustice should the reliefs sought not be granted.

7.4 On the other hand, the Applicant's case is that she has a life interest in the Farm Property that is protected by law as it is matrimonial property. Thus, she has no obligation to release the Certificate of Title to the subject property to the Applicant as it does not form part of the estate to be administered by it. Her refusal to submit the title deed is also premised on her apprehension of the Applicant requiring it for purposes of selling the property and its officers' impartiality and vested interest in the property. Further, that the three houses on the Farm Property referred to by the Applicant in its Affidavit evidence do not form part of the Deceased's estate as the Deceased transferred their ownership to his three children namely, Sara Njobvu, Catherine Njobvu and Leah Njovu prior to his demise.

7.5 The Intestate Succession Act under Section 3 defines an Administrator as "*a person to whom a grant of letters of administration has been made and includes the Administrator-General*". The duties and powers of an Administrator are outlined in Section 19 of the Intestate Succession Act. It provides as follows:-

19 (1) **The duties and powers of an administrator shall be-**

- (a) to pay the debts and funeral expenses of the deceased and pay estate duty if estate duty is payable;
  - (b) to effect distribution of the estate in accordance with the rights of the persons interested in the estate under this Act;
  - (c) when required to do so by the court, either on the application of an interested party or on its own motion-
    - (i) to produce on oath in court the full inventory of the estate of the deceased; and
    - (ii) to render to the court an account of the administration of the estate.
- (2) Where an administrator considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.

7.6 It is clear from the foregoing provision that the Applicant as Administrator of the Deceased's estate has a duty, as he administers the estate, to distribute the Deceased's estate and to do so in accordance with the provisions of the Act. This begs the question, what constitutes an estate of a Deceased person? Section 3 of the Intestate Succession Act defines an estate as follows:

**“estate” means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death and for the purposes of administration of the estate under Part III includes personal chattels;”**

It is not in dispute that Farm Property No. 32a/E/2/L6/4 was the Deceased's property at the time of his demise. As such, upon his death, it formed part of the assets he left behind in addition to the 6 motor vehicles. This is not in dispute between the parties. Therefore, the Farm property forms part of the Deceased's estate.

7.7 It is also clear from Section 19 (2) of the Intestate Succession Act that the Applicant has the power to sell any property forming part of the Deceased's estate where it deems it necessary or desirable in the execution of its duties. However, such a sale requires prior authorization of the High Court. Put differently, it must be sanctioned by this Court. By this action, the Applicant seeks to obtain this authorization among other reliefs sought. I now turn to consider the reasons advanced by the Respondent against the Applicant being granted an Order to sell the property.

7.8 The first is that the Farm Property is matrimonial property and as such she has a life interest protected by Section 9 of the Intestate Succession Act. Therefore, that the Farm Property does not form part of the estate to be administered by the Applicant and by necessary implication she does not have to submit its Certificate of Title. On the other hand, it is the Applicant's submission that the Respondent's life interest is held together with all the 8 children as tenants in common. That however, the Respondent refuses to recognize the Deceased's first two children as equally being beneficiaries of the Farm Property. Rather, that the Deceased's first two children are treated as intruders and do not derive any benefit from the Farm property. Further, that the Respondent's position on the matter does not take into account the non-existence of a cordial relationship between her and her children on the one hand and the Deceased's first two children on the other which makes it improbable for

the parties to live together in the matrimonial home. That it is the absence of a cordial relationship between the parties that informed its decision to inspect, value and possibly subdivide and distribute the property.

7.10 Section 9 of the Intestate Succession Act provides as follows: -

9.(1) **Notwithstanding section five where the estate includes a house the surviving spouse or child or both, shall be entitled to that house:**

**Provided that-**

(a) **where there is more than one surviving spouse or child or both they shall hold the house as tenants in common; and**

(b) **the surviving spouse shall have a life interest in that house which shall determine upon that spouse's remarriage.**

(2) **Where the estate includes more than one house the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate.**

7.11 The import of Section 9 as rightly submitted by the Applicant is that where an estate includes a house, the surviving spouse and the children are entitled to the house and hold the same as tenants in common. In addition, as rightly submitted by the Respondent, a surviving spouse has a life interest in such a house. In the present case, while there is an identified matrimonial house wherein the Respondent resides, the evidence led by the Applicant is that there exists no cordial relationship between the Respondent and the Deceased's first two children. I find no rebuttal led by the Respondent to refute this position. I also note that there are 3 additional houses on the Farm Property. This brings me to the second reason advanced by the Respondent against the Applicant being granted an Order to sell the Farm Property.

- 7.12 It is the Applicant's contention that in addition to the matrimonial house, the Deceased had 3 more houses on the Farm Property which form part of the estate to be administered by it. On the other hand, it is the Respondent's position that the three other houses equally do not form part of the estate amenable to be administered by the Applicant. It is her evidence that the Deceased gave the said houses to three of his children prior to his demise namely Sara Njobvu, Catherine Njobvu and Leah Njovu.
- 7.13 I find that no evidence has been led by the Respondent to substantiate her claim that the Deceased gave the 3 other houses on the Farm Property to the three children mentioned above. Therefore, it is the finding of this Court that in addition to the matrimonial house the Deceased left 3 houses on the Farm Property. Section 9 of the Intestate Succession Act is instructive that where there is more than one house, the spouse or the children or all of them should choose the house that they will hold as tenants in common and the remaining house(s) form part of the estate to be administered by an Administrator.
- 7.14 The Applicant's overarching argument is that the entire Farm Property is matrimonial property and that she has a life interest protected by law. I find that a reading of Section 9 shows that this was not the intention of the Legislature when it enacted that a surviving spouse and the children shall be entitled to a house, in which house, the surviving spouse shall have a life interest which determines only upon death or remarriage whichever comes earlier. I say so because Section 9(2) states that where an estate comprises of more than one house, the surviving spouse and children have to pick one house only which they are to hold as tenants in common and that it is, in this house that the surviving spouse has a life interest. Section 9(2) is clear that the remaining house(s) form part of the estate of the

deceased and are amenable to distribution by the Administrator of such estate. I find the fact that all the houses in this instance sit on the same property and are subject to the same Title Deed does not create an exception or peculiar situation nor does it create any injustice against the Respondent. I say so because the examination conducted by the Applicant's officers shows that the matrimonial house sits on a piece of land measuring 2 hectares together with the other three (3) houses. In addition, there is no evidence to support the assertion that the three other houses were given to three of the Deceased's children prior to his demise. The intention of the Legislature was to ensure that a surviving spouse and the children of a deceased person have a home that they can either live in or use to generate income to support them following the demise of a spouse and/or parent. In this regard, I find the proposal of the Applicant that, only the portion of the 2 hectares upon which the matrimonial house sits be considered as the matrimonial house, to be reasonable.

7.15 Therefore, given the unsubstantiated claim that the Deceased transferred ownership of the additional three houses on the Farm Property to three of his children with the Respondent, the non-existence of a cordial relationship among the beneficiaries and, the undisputed evidence that the Deceased's first 2 children have not been deriving a benefit from the Farm Property, I find that justice in the present case will be served by the remainder of the Farm Property being distributed among all the beneficiaries in accordance with Section 7 of the Intestate Succession Act. For the avoidance of doubt, the remainder of the Farm Property comprises the entire Farm Property less the portion upon which the matrimonial house sits on.

7.16 I cannot ignore the deteriorated nature of the relationship between the parties. In this regard, the Applicant has raised concerns regarding the treatment of its officers by the Respondent. Equally, the Respondent raised concerns regarding the conduct of the Applicant's officers, alleging impartiality and the appearance of vested interests in the Farm Property. I am, however, comforted by Section 19(2) of the Intestate Succession Act which provides a safeguard that ensures the due administration of an estate in circumstances that render the sale of a property by an Administrator necessary. It provides as follows: -

**9.(2) Where an administrator considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.(underlining for emphasis only)**

Therefore, the Applicant, is bound by law to ensure that it secures the best price for the subject property. It is even more comforting to take into consideration the fact that in the case at hand, the administrator is not an individual but a government office whose actions are further subject to audit by other government offices.

7.17 In summation, the following are the Orders of this Court:

- i. I hereby declare that Farm Property No. 32a/E/2/L6/4 Meanwood Obama Township, Lusaka forms part of the estate of the late Jonathan Njobvu subject to distribution in accordance with the rights of the persons interested in the estate under the Intestate Succession;**

- ii. The house which was chosen by the Respondent to be the matrimonial house, shall devolve unto the Respondent and all the Deceased's 8 children to be held as tenants in common and it is over this portion that the Respondent shall exercise her right of a life interest;
- iii. I hereby authorise the Applicant to register Letters of Administration on Farm Property No. 32a/E/2/L6/4 Meanwood Obama Township, Lusaka pursuant to Section 6(i) of the Lands and Deeds Registry Act;
- iv. I hereby Order the Respondent to surrender the Certificate of Title for Farm Property No. 32a/E/2/L6/4 Meanwood Obama Township, Lusaka to the Applicant to enable the Applicant effect distribution of the said property to the rightful beneficiaries;
- v. I hereby authorize the Applicant to sell the properties forming part of the estate of the late Jonathan Njobvu that it may deem necessary to do so in line with section 9 (2) of the Intestate Succession Act; and
- vi. Considering all the circumstances of this matter, I make no order as to costs.

7.18 Leave to appeal is granted.

Delivered at Lusaka this 6<sup>th</sup> day of March, 2024



---

C. Chinyanwa Zulu  
JUDGE