

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

2021/HPF/161

B E T W E E N:

IN THE MATTER OF: THE ESTATE OF THE LATE PATULANI PHIRI

**IN THE MATTER OF: SECTION 19 OF THE INTESTATE SUCCESSION
ACT CHAPTER 59 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: ORDER XXX RULE 12 OF THE HIGH COURT
ACT CHAPTER 27 OF THE LAWS OF ZAMBIA**

BWTWEEN:



MIKE PHIRI

(Suing in his capacity as Administrator of the late Patulani Phiri)

1ST APPLICANT

SOPHIA NKANDU

(Suing as Next Friend of Mercy Phiri the daughter of the late Patulani Phiri)

2ND APPLICANT

AND

MAUREEN CHILUNDA

(Sued in her capacity as Administrator of the Late Patulani Phiri)

1ST RESPONDENT

JOHN PHIRI

(Sued In his Capacity as Administrator in the Estate of the Late Patulani Phiri) **2ND RESPONDENT**

Before the Hon. Mrs. Justice M.M. Bah-Matandala

On the 7th day of May, 2024.

For the Applicants: Mr. C. N'goma Messrs.-Chris & Partners

For the 1st Respondent: In Person

For the 2nd Respondent: In person

J U D G M E N T

LEGISLATION REFERRED TO:

1. *The Intestate Succession Act Chapter 59 of the laws of Zambia.*
2. *The High Court Act Chapter 27 of the Laws of Zambia.*
3. *The Administrator General's Act Chapter 58 of the Laws of Zambia.*

CASES REFERRED TO:

1. *Jackson Mooya and Nchimunya Mweemba: Appeal No. 116/2018*
2. *Lindiwe Kate Chinyanta v Doreen Chiwele and Judith Tembo (2007) ZR 246*
3. *Pamela Mthunzi Zulu v Peter Zulu, Idah Chulu Zulu and Peter Zulu Appeal No. 218 of 2012*
4. *Jackson Mooya and Nchimunya Mweemba: Appeal No. 116/2018*

1.0 INTRODUCTION

1.1 By way of Originating Summons supported by an Affidavit dated 30th March, 2021 the Applicant sought the following:

- i) An order compelling the Administrators of the Estate of the late Patulani Phiri to render an account of administration;*
- ii) An order for the revocation of the orders of Appointment of the Administrators;*
- iii) An order compelling the Administrator General to be administrator of the estate of the late Patulani Phiri or in the alternative;*

- iv) An order appointing the Administrator General to administer the estate of the late Patulani Phiri;*
- v) Any further or other relief that the Court may deem fit and*
- vi) Costs of the action;*

2.0 AFFIDAVIT IN SUPPORT

2.1 In the Affidavit in Support dated 30th March, 2021 and deposed to by the 1st Applicant namely **Mike Phiri** in his capacity as the administrator for the estate of the late Tilipile Phiri who was a surviving parent and beneficiary in the Estate of Patulani Phiri and 2nd Applicant **Sophia Nkandu** as the Next Friend and the mother to Mercy Phiri who is Patulani's daughter (the deceased person herein), it was deposed that the deceased died intestate on the 20th day of November 2019 at the University Teaching Hospital in Lusaka.

2.2 Further it was deposed that at the time of his death the deceased was survived by a mother, a spouse and four children.

- 2.3 It has been alleged that the Respondents obtained letters of administration without informing some of the beneficiaries and undervalued the estate of the deceased stating that it was valued at about K167, 189.00 when the actual value was at approximately K4, 000.000.00.
- 2.4 It was further deposed that the other child of the family born between the 2nd Applicant and the Deceased only received K10,000.00 through monthly rentals of K2, 000.00 per month for 5 months, after which she was told by the 1st Respondent to stop collecting the said rentals causing the child of the family to stop attending school due to lack of funds.
- 2.5 Further that the mother to the deceased later died before the estate of the deceased was distributed and that her estate which had accrued the benefit which is yet to be distributed from the estate of the deceased her son.
- 2.6 It was further deposed that the 1st Respondent was trying to change ownership of one of the houses in Chalala into the names of one of the domestic workers alleging that the deceased had offered to give his garden boy a house.

2.7 Further that from the time the deceased died, the Respondents have not rendered an account of the estate to the beneficiaries.

3.0 **AFFIDAVIT IN OPPOSITION**

3.1 In the Affidavit in Opposition, deposed to by **Maureen Chilunda** and **John Phiri** the 1st and 2nd Respondents herein in their capacity as administrator, it was deposed that the deceased was survived by one wife the 1st Respondent herein and three children namely John Phiri the 2nd Respondent, Grace Phiri and Michael Phiri.

3.2 Further that it was after the funeral that the 1st Applicant introduced the 2nd Applicant to the 2nd Respondent as the mother of Mercy Phiri allegedly as the child of the deceased Patulani Phiri.

3.3 It was averred that the 1st Respondent and the 2nd Respondent having greater interest in the Estate applied for letters of administration and subsequently pegged the estate at an estimate value of K167,189.00 but later identified all the other properties and acquainted themselves with any debt owed by the deceased.

3.4 The Respondents itemized the items making up the estate of the deceased in the Affidavit. It was further deposed that the administrators are well aware that the deceased's mother was a beneficiary in the estate of the deceased.

3.5 It was further deposed that an account was rendered as far as the Respondents were concerned, and they were still willing to provide more information should the Court order the same.

4.0 **AFFIDAVIT IN REPLY**

4.1 In the Affidavit in reply deposed to by **Mike Phiri** and **Sophia Nkandu** the 1st and 2nd Applicants herein, it was deposed that the deceased's family knew about the existence of the child of 2nd Applicant and that the uncles to the deceased paid for damages to the 2nd Applicant's family. It was also averred that the 1st Respondent did not dispute the paternity when getting letters of administration.

4.2 The Applicants further listed other properties in addition to what the Respondent had listed in their Affidavit, as being part of the deceased's estate.

4.3 It was further deposed that it has been over one year since the deceased died and the Respondents have failed to administer the estate fully.

5.0 **SKELETON ARGUMENTS IN SUPPORT**

5.1 In the Skeleton Arguments in Support of Originating Summons, it was submitted pursuant to **Section 5 and 24 of the Intestate Succession Act Chapter 59** of the Laws of Zambia that the law allows the court on its own motion or upon application of an interested party to order any administrator of an estate to produce a full inventory of the estate being administered and to also render an account of the administration of the estate.

5.2 I was further referred to the case of **Jackson Mooya and Nchimunya Mweemba: Appeal No. 116/2018¹** on the duties of an administrator, the case states as follows;

“....it will be noted that under section 19 (1) (c) of the Act, the Administrator has no inherent duty to produce an inventory of the estate or to render an account unless the court so orders of

its own motion or on application by an interested party.”

5.3 Other cases referred to were that of ***Lindiwe Kate Chinyanta v Doreen Chiwele and Judith Tembo (2007) ZR 246²*** and the case of ***Pamela Mthunzi Zulu v Peter Zulu, Idah Chulu Zulu and Peter Zulu Appeal No. 218 of 2012³*** on duties of the administrator.

6.0 **SKELETON ARGUMENTS IN OPPOSITION**

6.1 There were no Skeleton Arguments in Opposition to the Originating Summons.

7.0 **HEARING**

7.1 At the hearing of the matter the Respondents did not appear and this Court upon being satisfied that the Respondents were served with the Notice of Hearing and yet decided to miss the hearing without any justifiable reason, allowed the Applicants to proceed with their application.

7.2 The Applicants at this point relied on the Affidavit in Support and the Skeleton Arguments already outlined above.

8.0 **CONSIDERATION AND DECISION**

8.1 I have considered the evidence on record and the submissions by counsel for the Applicants herein. From evidence on record it is common cause that:

- 1. The Respondents are the Administrators for the Estate of the late Patulani Phiri the deceased herein;*
- 2. The deceased left property and he died intestate;*
- 3. The deceased left a spouse and three children known to the 1st Respondent;*
- 4. Upon the death of the deceased it was brought to the attention of the Respondents that there was a fourth child born between the deceased and the 2nd Applicant and that paternity was not disputed;*

8.2 Further the record shows the following as the facts in dispute; the Applicants alleging that the Respondents undervalued the estate for the deceased but the Respondents argued that they had given an estimate of the value of the deceased's estate at the time of obtaining the

letters of administration and thereafter came across other properties which the deceased had.

8.3 It's further been alleged by the Applicants that the Respondents are trying to conceal some properties and that they have failed to distribute the estate since it has been over a year from the time the deceased died.

8.4 The questions for determination consequently are as follows:

- i) *in what circumstances is an administrator supposed to render an account;*
- ii) *whether or not the administrators can be compelled to distribute the estate of the deceased;*
- iii) *in what circumstance can an Administrator's letters of administration be revoked and Administrator General granted letters of administration.*

8.5 This Application hinges on **Section 19 of the Intestate Succession Act Chapter 27 of the Laws of Zambia (ISA)** which states as follows: Section 19 of the Intestate

Succession Act (herein after referred to as ISA) outlines the duties of the Administrator 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; 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.*

8.6 Furthermore, Section 5 of the ISA provides as follows:

5. *(1) Subject to sections eight, nine, ten and eleven the estate of an intestate shall be distributed as follows:*

(a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;

(c) twenty per cent of the estate shall devolve upon the parents of the deceased;

(d) ten per cent of the estate shall devolve upon the

dependents, in equal shares:

8.7 From the provision above, it is clear that, distribution of the estate in accordance with the rights of person(s) interested in the estate is one of the duties of an administrator.

8.8 As regards mode of commencement of proceedings under intestacy, **Order XXX Rule 12 of the High Court Act Chapter 27 of the Laws of Zambia** provides as follows;

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:

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust;*
- (b) the ascertainment of any class of creditors, legatees, devisees, next of kin, or others;*
- (c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;*
- (d) the payment into Court of any money in the hands of the executors or administrators or trustees;*
- (e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;*

(f) *the approval of any sale, purchase, compromise, or other transaction; Originating summons to deal with matters arising out of trusts*

8.9 Section 10 of the ISA further provides as follows:

“Notwithstanding section five where the intestate is survived by more than one widow or a child from any of them, then, each widow or her child or both of them shall be entitled-

(a) absolutely to the homestead property of the intestate; and

(b) in equal shares to the common property of the intestate. Devolution of homestead and common property in polygamous marriage.

8.10 Further Section 14 of the ISA further provides that:

Any person who-

(a) unlawfully deprives any person of the use of-

(i) any part of the property of the deceased to which that person is entitled under this Act; or

- (ii) *any property shared with the deceased to which this Act applies; or*
- (b) *otherwise unlawfully interferes with the use by any person of any property referred to in paragraph (a); shall be guilty of an offence and liable on conviction to a fine not exceeding seven hundred and fifty penalty units or imprisonment not exceeding two years, or*

8.11 Having perused the record herein, and going by the above outlined legal provisions, the attached letters of administration shows that the Respondents herein were appointed administrators of the estate of the late Patulani Phiri.

8.12 As regards the question whether or not the Administrators herein can be compelled to give an account of their administration; section 19 (1) (c) provides that the duties of an administrator shall include:

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.*

8.13 I have found comfort in the case of **Jackson Mooya and Nchimunya Mweemba: Appeal No. 116/2018⁴** cited by the Applicants above where the court gave guidance on the application of the above provision as follows;

“the Administrator has no inherent duty to produce an inventory of the estate or to render an account unless the court so orders of its own motion or on application by an interested party.”

8.14 In the instant case, the Applicants asserts that the Respondents have not so far given any account of the administration. In line with the authorities cited above, it is my considered view that the Respondents cannot be found liable for not having rendered an account because the Administrator has no inherent duty to produce an inventory of the estate or to render an account unless the court so orders him to do so.

8.15 My further question for consideration in this regard is whether this is a proper case where the court can order the Administrators to render an account. The Applicants are seeking for the Respondents to render account of the estate due to the failure by the Respondents to distribute the property and the alleged undervaluing of the deceased's estate. I have also noted from the Affidavit evidence that there is a dispute between the Applicants and the Respondents on the inventory of the estate.

8.16 It is therefore my considered view that this is a proper case where the court can exercise its discretion to order the Administrators to give a full inventory of the estate being administered and to also render an account of the administration of the estate in order to understand the true extent of the estate in the interest of the beneficiaries.

8.17 Let me turn to the question whether or not the administrators can be compelled to distribute the estate of the deceased; section 19 also provides as part of the Administrator's duties, to effect distribution of the estate in accordance with the rights of the persons interested in

the estate under the ISA. It is trite that when a person dies intestate, the duty of the Administrator is to distribute the estate in accordance with the rights of the persons interested.

8.18 Furthermore, section 8 of the ISA provides as follows:

“Notwithstanding section five where the intestate in the case of a monogamous marriage is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled equally and absolutely to the personal chattels of the intestate.”

8.19 Under section 3 of ISA Personal Chattel is defined as follows;

"personal chattel" means clothing, articles of personal use or adornment, furniture and furnishing, appliances, utensils and all other articles of household use or decoration, simple agricultural equipment, hunting equipment, books, motor vehicles and consumable stores

but does not include chattels used for business purposes, money or securities for money;”

8.20 It is clear from the above provision that notwithstanding the distribution of the estate under intestate succession as outlined under section 5 of ISA, personal chattels belong to the surviving spouse and children only.

8.21 It is my considered view, in line with the above provision, that since the spouse and children are entitled equally and absolutely to the personal chattels, they may as well consider using them in common for as long as they are able without distribution.

8.22 Furthermore, businesses run by the deceased if there are people who are capable of running them, they are not subject for distribution. The beneficiaries can only be entitled to profits. Therefore, the said businesses are ordered to continue running and profits shared among the beneficiaries.

8.23 As regards the question whether the letters of administration for the Respondents should be revoked and

the Administrator General appointed section 29 (1) of the ISA provides as follows;

“Letters of administration may be revoked or annulled for any of the following reasons-

- (a) that the proceedings to obtain them were defective in substance;*
- (b) that the grant was obtained fraudulently;*
- (c) that the grant was obtained by means of an untrue statement of a fact essential in point of law to justify the grant, though that statement was made in ignorance or inadvertently;”*

8.24 In the instant case, the Applicants allege that the Respondents obtained letters of Administration using people who are not members of the family as witnesses. However, in as much as the witnesses may not be members of the family or interested parties in the estate of the deceased; and not to justify that the Respondents themselves did show that, they are interested parties and have higher priority interest in the Estate of the deceased.

8.25 Section 15 of the ISA provides as follows:

15.(1) *Where the deceased has died intestate the court may, on the application of any interested person, grant letters of administration of the estate to that interested person.*

(2) *Subject to section sixteen where more than one person applies for letters of administration, the court may make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.*

8.26 My understanding from the reading of the above provision is that where the deceased has died intestate; the court may, on the application of any interested person, grant letters of administration of the estate to that interested person and if more than one person apply for letters of administration the court shall take great and immediate priority interest in the estate of the deceased in exercising its discretion.

8.27 In the instant case it's not in dispute that the Respondents are son and widow to the deceased and therefore they both do have greater and immediate interest in the estate.

8.28 With the above analysis it is my considered view that the Applicants have not demonstrated that the Respondents herein obtained the letters of administration fraudulently and are not priority or interested persons in the estate.

8.29 The court may only consider revocation in the instant case; if it is established, after Administrators give a full inventory of the estate being administered and have rendered an account of the administration of the estate, that there was mismanagement and that there is no any other order to remedy it.

8.30 As regards appointment of the Administrator general to administer the estate, **Section 7 of the Administrator General's Act Chapter 58 of the Laws of Zambia** provides as follows;

7. When a person dies leaving property in Zambia, the Administrator-General may apply to the Court for probate or letters of

administration (as the case requires) in the following cases:

- (a) where the deceased has left a will, but has failed to appoint an executor;*
- (b) where the deceased has left a will, and the executor therein named has pre-deceased the testator or renounced probate or signified his intention of not applying for probate;*
- (c) where the deceased has left a will appointing the Administrator-General his executor;*
- (d) where the deceased has died intestate as to his property in Zambia; and if no person to whom the Court would have jurisdiction to grant probate or letters of administration has, in the opinion of the Administrator-General, taken or is taking action with reasonable expedition to obtain probate or letters of administration, the Administrator-General shall, within a reasonable time after he has had notice of the death of any such person or the death has come*

to his knowledge, apply to the Court for probate or letters of administration (as the case requires).

8.31 As already analysed earlier, in the instant case the Respondents were duly appointed administrators. The circumstances herein as at now do not call for the grant of letters of administration to the Administrator General.

8.32 In sum, the claim succeeds only to the extent that the Respondents should provide a full inventory of the estate being administered and to also render an account of the administration of the estate. It is therefore ordered as follows;

(1) That the 1st and 2nd Respondents provide a full inventory of the estate being administered and to also render an account of the administration of the estate within three months from the date of the delivery of this judgment before the Deputy Director.

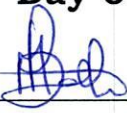
(2) If the Deputy Director shall find that there has been failure to render account or intermeddling in

the estate, then the matter shall be brought back for this court to consider whether or not to revoke letters of administration or make an appropriate order.

(3)I make no order as to Costs.

9.0 Leave to appeal is granted.

Dated at Lusaka, this 7th Day of May, 2024.


M.M. BAH-MATANDALA
HIGH COURT JUDGE

