

**IN THE HIGH COURT FOR ZAMBIA
FAMILY AND CHILDREN'S COURT DIVISION
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2023/HPF/410

IN THE MATTER OF:

**THE ESTATE OF THE LATE GAMARIELE
MWANZA**

IN THE MATTER OF:

**SECTION 9 OF THE INTESTATE
SUCCESSION ACT CAP 59 OF THE LAWS
OF ZAMBIA**

IN THE MATTER OF:

**ORDER 30 RULE 13 (D) OF THE HIGH
COURT AMENDED RULES OF 2020
CHAPTER 27 OF THE LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

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

BETWEEN:

CHRISTINE HAMABA

(Suing as the Administratrix of the estate of the late Gamariele Mwanza)

1ST APPLICANT

PAUL MWANZA

(Suing as the Administrator of the estate of the late Gamariele Mwanza)

2ND APPLICANT

AND

SOPHIA MUKONDA

RESPONDENT

***Before the Honourable Mrs. Justice M.M. Bah-Matandala
Dated this 29th May, 2024.***

For the Applicants:

In Person

For the Respondents:

In Person

J U D G M E N T

Legislation and Other Works Referred To:

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

CASES REFERRED TO

1. Fenian Mafemba vs. Ester Sitali (2007) Z.R 45

1.0 INTRODUCTION

1.1 This is a Judgment on an action commenced by the Applicants by way of Originating Summons supported by an affidavit and skeleton arguments filed into Court on even dates of 3rd August, 2023 in which the Applicant now seeks against the Respondent the following reliefs;

- i) *An order of the court that the estate of the late Gamariele Mwanza devolve upon the surviving spouse and children as the rightful beneficiaries of the estate of the deceased.*
- ii) *An order to restrain the Respondent from intermeddling with the estate of the late Gamariele Mwanza.*
- iii) *An order to compel the Respondent to account for the rentals she has been illegally obtaining and hand over the same to the rightful Administratrix and Administrator.*

- 2.4 The gist of the Applicant's affidavit evidence was that the Respondent who has two children with the deceased has intermeddled in the estate in issue by failing to vacate the property of the estate and has been collecting rentals when she is neither a surviving spouse and or beneficiary of the estate in issue.
- 2.5 It has also been averred that at the time when the deceased got his pension benefits he went missing from his family and the search for him everywhere by the family proved futile. The deceased is said to have only re-appeared when he got sick.
- 2.6 The Applicants averred that at the time of his return and whilst still sick, he disclosed that when he had disappeared from his family he was in the company of the Respondent in Chawama compound. He said the Respondent was living with him as his girlfriend and the bore a child.
- 2.7 The deceased also informed them that he had bought a house being plot number 60/05 Kalikiliki Compound for the Respondent whose documents he handed over to the

iv) An order to compel the Respondent to vacate the house and give vacant possession to the appointed Administrators of the estate.

v) Damages for inconvenience

vi) Any relief the court may deem fit.

2.0 AFFIDAVIT IN SUPPORT OF THE APPLICATION

- 2.1 The affidavit in support of the Application was deposed to by both Christine Hamaba and Paul Mwanza the Applicants herein, in their capacities as Administrators of the estate of the Gamariele Mwanza. The Administrators are also the surviving spouse and son to deceased person.
- 2.2 The 1st Applicant has exhibited a marriage certificate as proof of the marriage marked as "CHPM1" with the deceased.
- 2.3 The Applicants averred that the deceased died on 1st May, 2022 and that immediately after that they obtained letters of administration at the Local Court for estate of the deceased since he died intestate. Further it was deposed that the Administrators were granted letters of administration by the High Court on 11th July, 2023.

2nd Applicant have been exhibited and marked as "CHPM4" being a copy of the purchase agreement of the said house.

2.8 The Applicants also deposed that the deceased also indicated to the 2nd Applicant that he had also bought another house on plot number A225 in Mtendere Compound for the 1st Applicant although it was in the deceased's names using his retirement benefits as evidenced by the purchase agreement marked "CHPM5".

2.9 The deceased also disclosed to the Applicants that one of the tenants occupying the two rooms house at the plot A225 which he had bought for the 1st Applicant was not just a tenant but was actually the Respondent, as well as the woman he had disappeared to.

2.10 The Applicants also indicated that the Respondent only indicated at the funeral that she had two children with the deceased instead of one as mentioned by the deceased and admitted that it was true that she was not married to the deceased as he had indicated to the 2nd Applicant she was only cohabiting with him.

2.11 It was also mentioned that the Respondent admitted that there was a house which was purchased for her by the deceased as he indicated to the 2nd Applicant but that the purchase was reversed and the purchase price was being refunded to the Respondent in instalments as evidenced on the exhibit marked "CHPM6" a copy of an agreement titled "chipangano". The said exhibit showed that Respondent was being paid back the purchase money as mentioned by the Respondent.

2.12 The Applicants averred that it was agreed that the Respondent moves out of the 2 rooms house which she was occupying and was told to be collect rentals for her children from the same plot No. A225 in Mtendere Compound as evidenced in the document marked "CHPM7" the notice to vacate the house addressed to the Respondent. It was further agreed that the Respondent was to collect rentals from the said plot for a period of three (3) months effective from the months of May, June and July of 2022 to help her settle in her new life.

- 2.13 The Applicants claim that rentals to be collected from the house were to a tune of K2,600.00 in total and the Respondent collected rentals from a tenant paying who was paying an amount of K600.00 per month in a one roomed house and that she was illegally occupying another two (2) rooms house wherein the Administrators were to collect rentals amounting to K700.00 per month.
- 2.14 It Respondent has been reported to refused to vacate the house to date and wherein she has continued to collect rentals illegally wherein she is neither a surviving spouse or an administrator.
- 2.15 The Applicants averred that the Respondent has caused a lot of pain and inconvenience to the family of the deceased by reporting the them to different institutions which have turned her down and asked her to provide documentary evidence for her claims.

3.0 AFFIDAVIT IN OPPOSITION

- 3.1 The affidavit in opposition was deposed to by Sophia Mukonda the Respondent herein.

- 3.2 The Respondent disputes the averments by the Applicants that the deceased was survived by one wife being the 1st Applicant and avers that the deceased had two wives. She deposed that the marriages among them were customary marriages and that the marriages occurred after the deceased's first wife died who was the mother to the 2nd Applicant.
- 3.3 The Respondent avers that she was the 2nd wife to the deceased whilst the 1st Applicant was the first wife. Further the Respondent stated that none of them as wives had a marriage certificate from the council under form 5 or 6 since the marriages were customary marriages.
- 3.4 It was further stated the both the wives were traditionally cleansed (cleared) by the family members of the deceased as his wives after the burial as per the tradition.
- 3.5 The Respondent averred that the deceased was survived by four (4) children being the 2nd Applicant born between the deceased and his first wife and from the 1st Applicant was born one child called Gamariele Mwanza Jr whilst the

Respondent has two children namely Gamariele Mwanza Jr. and Moses Mwanza.

- 3.6 The Respondent admits paragraphs 6 and 7 of the filed affidavit in support save to say that she was not informed of the program for obtaining the letters of administration by the Applicants from the High Court.
- 3.7 The Respondent denies paragraphs 8, 9 and 10 of the affidavit in support and avers that the 1st Applicant was aware that the deceased used to alternate between the homes of the wives every fortnight. She further stated that at the time when the deceased got ill, he was staying at the 1st Applicant's house.
- 3.8 The Respondent denies paragraph 11 of the affidavit in support and avers that deceased had discussed with the family members of the Respondent over their marriage and that even during the time the deceased was taken ill, both herself and the 1st Applicant were by his bedside.
- 3.9 The Respondent admits paragraph 12 of the affidavit in support and further avers that the deceased bought a plot No. A225 Mtendere for the Respondent which has 13

rooms. And she averred that of the 13 rooms the deceased gave 2 rooms to the 2nd Applicant and 2 rooms to the child of the 1st Applicant.

3.10 Further the Respondent averred that contrary to the averment that the 1st Applicant lives in Chawama she lives at the house bought for her by the deceased with 13 rooms which is plot No. 297/1 Mtendere east.

3.11 The Respondent avers that she lived with the deceased for a period of 22 years and further stated that due to the period they lived together their relationship was automatically recognized as a marriage contrary to paragraphs 14,15 and 16 of the affidavit in support.

3.12 Further, the Respondent avers that the decision to evict her from the house No. A225 Mtendere was contrary to the wishes of the deceased who had bought two houses; wherein one was for her and the other for the 1st Applicant. She stated that this treatment is what caused her to report the issue to the organization which looks at the plight of widows and thereafter she was told to report at Emmasdale police.

3.13 The Respondent admits that she was collecting rentals from the property and adds that it was surprising that the Applicants were only speaking about that house being plot No. A225 Mrendere when the 1st Applicant also has a house where she lives.

3.14 The Respondent denies paragraph 21 of the affidavit in support and reiterated that she was legally married to the deceased under customary way. Further that the deceased had in fact bought the house in contention being plot No. A225 in Mtendere as her house with her children and that the 1st Applicant also had another house for her and her child as well as for the 2nd Applicant on plot No. 297/1 in Mtendere East of Lusaka.

4.0 REPLY

4.1 The Applicants filed into court a reply to the affidavit in opposition on 26th April 2024.

4.2 The Applicants stated that at no point did the deceased marry two wives but that he only has one wife whom he married after the death of the first wife and mother to the 2nd Applicant in 1977. The marriage was said to be a

customary marriage and later the same marriage was blessed in a catholic church in 1991 as per exhibit herein.

- 4.3 The deponent deposed that Respondent has not provided any information to support her purported marriage to the deceased. It has been stated that there is no account of what was the dowry, who was present at the marriage discussions from the deceased's family and the Respondent's family. The Applicants allege that the deceased and the Respondent were merely cohabiting when deceased had disappeared from the matrimonial home after he got his retirement benefits in 2012.
- 4.4 The Applicants averred that the marriage of the 1st Applicant was blessed at the church in the year 1991 at a catholic church and not at the council. The Applicant therefore denies that the deceased ever contracted another marriage with the Respondent.
- 4.5 Further the Applicants alleged that the Respondent was also Cleansed with the 1st Applicant on the basis of traditional beliefs after the burial of the deceased because she was said to have been cohabiting with the deceased as

such she needed to be cleansed as well or she would go mad.

4.6 The deponents averred that the Respondent was not involved in the process of obtaining the letters of administration from the High Court because she is not a beneficiary and that the interest of her children had been taken care of, by having them registered at NAPSA. Further that the Respondent was already informed of the way forward as regards her children's benefit in the estate.

4.7 It has been deposed in response to paragraph 12 that the deceased when he had re-appeared, had informed the Applicants where he had been; he mentioned that he was with the Respondent whom he denied having married but that the two just cohabited.

4.8 Further it was averred by the Applicants that the Respondent had in fact admitted as well when asked whilst the deceased was still alive that she was not married to the deceased. The deponent averred that being the case, the 1st Applicant did not know about the existence of the

Respondent in the deceased's life not until the deceased mentioned her to the Applicants.

4.9 The deponents averred that the house on plot No. A225 Mtendere was bought for the 1st Applicant as a gift for saying sorry to her by the deceased for having disappeared and for having educated him and his son, the 2nd Applicant during their marriage. The 1st Applicant was said to have been shown the said house even before the deceased re-appeared at their home at the time when the deceased went to tell her about the house and wherein he had even handed over the keys to the 1st Applicant. It has thus been denied that the aforesaid house was bought for the Respondent and her children.

4.10 The Applicants averred that had that house been bought for the Respondent, the deceased would have indicated in the same way he did over the house which was bought for the Respondent in Kalikiliki; wherein the said purchase had been reversed and Respondent was now receiving the refund in instalments. It was said more so that the deceased was even at the time living with the Respondent.

4.11 The Applicants averred that the house No. 297/1 Mtendere East was not bought with structures it has now but that it was bare land in 1981 as shown by the documents herein exhibited. It was further averred that at the time the plot was bought it was only the 1st Applicant who had income and the couple at the time managed to build a one roomed house. And that when the 1st Applicant received her partial benefits from Zambia Airports, the couple then agreed to build the 12 rooms making a total of 13 rooms on the said plot. This property has been the matrimonial house ever since.

4.12 It has been averred that the Respondent did not disclose the whereabouts of the vendor for the house in kalikiliki wherein she was receiving the refund which house had been bought by the deceased for her. Further it was stated that when the deceased died the Respondent started claiming ownership of A225 Mtendere.

4.13 The Applicants have averred that as opposed to what the Respondent stated that the deceased bought two houses being No A225 Mtendere and plot 297/1 it was averred

that it was rather Plot No. A225 Mtendere which was bought for the 1st Applicant and Plot No. 60/05 Kalikiliki for the Respondent and her children wherein she is now receiving refund for it.

4.14 Further that plot No. 297/1 was acquired as stated in the paragraph above as the matrimonial house using funds from the 1st Applicant thus the 1st Applicant avers that she holds no obligation to report to anyone how she is using house No. 297/1 Mtendere.

5.0 HEARING

5.1 At the hearing both parties appeared.

5.2 The 1st Applicant informed the Court that they were relying on the filed documents filed on 3rd August 2023 and that they had served the Respondent on the 11th August, 2023.

5.3 It was further stated that the Respondent did not file any Response to the filed documents.

5.4 The Applicants prayed that the court should;

- i) order the Respondent to vacate the deceased house plot No A225 Mtendere.

- ii) restrain the Respondent from intermeddling with the estate of the deceased.
- iii) restrain the Respondent from getting rentals and order her to account for rentals received since June 2022 to date.
- iv) declare that the Respondent is not a wife to the deceased since she was just a girlfriend wherein two children were born.

5.5 The Applicants stated that at the time of the death of the deceased, he was not survived by any parent but was survived by one wife and 4 children only.

5.6 The Applicants state further that there is only one house which is yet to be administered wherein the Respondent is living illegally.

5.7 The Respondent admitted that she was served the documents although she had not filed any opposition.

5.8 This Court exercised its discretion and allowed the Respondent in the interest of justice to file her opposition on or before the 17th of April, 2024 and the Applicants were

granted leave to file the Reply if any on or before the 26th April, 2024.

6.0 SKELETON ARGUMENTS IN SUPPORT

6.1 Both parties did not file any skeleton arguments.

7.0 ANALYSIS AND CONSIDERATION

7.1 Having considered the parties contentions, it is now for this Court to consider whether or not to grant the reliefs sought.

7.2 The beginning point is order 30 rule 8 of the High Court Rules Cap 27 of the laws of Zambia which provides as follows;

“In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or

consequential on the matter of such application as may be just; and such application may, if the Judge thinks fit, be adjourned from chambers into Court, or from Court into chambers.”

Order 30 Rule 12(g) and 13 of the High Court Act Chapter 27 of the Laws of Zambia further provides;

“Rule 12 he 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.

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

- (a) the administration of the personal estate of the deceased;
- (b) the administration of the real estate of the deceased;
- (c) the administration of the trust;
- (d) any act to be done or step to be taken which the Court could have ordered to be done or taken if any such administration order as aforesaid had previously been made."

7.3 The aforesaid provisions cited gives this Court jurisdiction to enquire into the issues raised herein.

7.4 The Applicants are seeking the following reliefs from the court;

- i) *A declaration that the Respondent is not a surviving spouse to the deceased;*
- ii) *An order vacating the Respondent from the house belonging to the estate in issue*
- iii) *An order for the Respondent to pay back the rentals received by her illegally for plot No. A225 Mtendere*
- iv) *An order to restrain the Respondent from intermeddling in the estate of the deceased person.*

7.5 The Applicants averred that they were rightly appointed as an Administratrix and administrators of the estate herein and they have the duty to administer the estate in accordance with the provision of the law under section 19 of the Intestate Succession Act which provides as follows,

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

(a) To pay debts and funeral expenses of the deceased and pay estate duty if estate 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.

7.8 The Applicants have also stated that the estate has the following properties being the matrimonial property plot No. 297/1 Mtendere and the other property as plot No. A225 Mtendere on rent and also occupied by the Respondent.

- 7.9 The matrimonial house was said to have been bought and wherein they built a one roomed house in 1981 using funds from the 1st Applicant. Later the couple built 12 more rooms using the partial benefits from the 1st Applicant work National Airports.
- 7.10 Further in relation to plot No. A 225 Mtendere, on the one hand it has been contended by the Applicants that it was bought for the 1st Applicant as a gift for saying sorry by the deceased for having disappeared after he had received his benefits in 2012 and for the 1st Applicant having had helped the deceased and his son through their education.
- 7.11 Further the Applicants indicated that the deceased had bought a house also for the Respondent and her children on plot No. 60/05 Kalikiliki to which the Respondent was now receiving a refund.
- 7.12 On the other hand, the Respondent averred that there were two properties in the estate being that the plot No. A225 Mtendere which was bought for her and her children by the deceased for being his second wife and that the house on plot No. 297/1 Mtendere was bought for the 1st Applicant as his first wife.

Further, the Respondent admitted that plot No. 60/05 in Kilikiliki was also bought but the purchase had been reversed and she was now receiving a refund for it.

7.13 Further the Respondent did not dispute that she was occupying the plot No. A225 Mtendere and receiving rentals. She also said that the same house was bought for her and her children wherein the other house where the 1st Applicant lives was the one for her and the other two children.

7.14 I wish to begin by stating that the law provides that when one dies intestate, the administrators are appointed to administer the estate on behalf of the beneficiaries who are listed in section 5 of the Intestate Succession Act and there is an order or priority list of beneficiaries which is 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 dependants, in equal shares:

Provided that a priority dependant whose portion of the estate under this section is unreasonably small having regard to his degree of dependence on the deceased shall have the right to apply to a court for adjustment to be made to the portions inherited and in that case, Part III of the Wills and Administration of

Testate Estates Act shall apply, with the necessary changes, to the application.”

7.15 Therefore, the estate ought to be distributed as provided for by the cited provision but before distribution can be effected, it ought to be established whether the deceased was survived by two spouses or not.

7.16 The evidence on the record shows that the 1st Applicant contracted her marriage to the deceased under customary marriage in 1977 and that later the couple had their marriage blessed at a catholic church in 1991 wherein they were issued with the document exhibited and marked as “CHPM1” to certify that the Lusaka Archdiocese by certificate No 12633 according to the Register of Marriages kept at Mtendere Lib.Mat No. 91/45 wherein the deceased and the 1st Applicant were married at the church by Fr Casimir Syrek on the 7th of December 1991 in the presence of two witnesses and the document was issued to them on 17th October, 1992 by Father Philip N. Phiri.

7.17 It is noted that blessing of the marriage at the catholic church did take place and indeed I wish to agree with the Respondent that there is no evidence of a Marriage Certificate that was

issued and evidenced by the 1st Applicant to show that her marriage was converted into a Statutory Marriage according to the Marriage Act Chapter 50 of the Laws of Zambia. Therefore, I find that the marriage of the 1st Applicant and the deceased was a customary marriage which was also blessed by the catholic church. Therefore, having found as I have, the marriage of the 1st Applicant and the deceased being customary was potentially polygamous.

7.18 The next question for determination is whether the relationship between the deceased and the Respondent a customary marriage.

7.19 The evidence before me is that the Applicants got to know about the Respondent existence when the deceased returned to his home after having been missing since his receipt of his benefits in the year 2012 when the deceased told them about her. The Applicants averred that the deceased indicated that he had been cohabiting with the Respondent and that during that period a child was born. Further that when the Applicants followed up the said issue with the Respondent she admitted the position as stated by the deceased and later after the death of the

deceased she indicated that it was in fact two children she had with the deceased.

7.20 On the other hand, the Respondent indicated that the deceased did ask for her hand in marriage from her family and they got married. She alleged that the 1st Applicant knew of the existence of her marriage as the second wife to the deceased since the deceased would in fact alternate between houses of the two every fortnight and further that the rest of the family knew about her marriage to the deceased.

7.21 The Respondent further said that the family of the deceased even cleansed her after the burial in her capacity as wife but the Applicants contended that the said cleansing was done because the Respondent had been cohabiting with the deceased so the tradition expected her to be cleansed as well in order to avoid her getting mad.

7.22 Further, Applicants argued that it was not true that the Respondent was ever married to the deceased since she has not provided any supporting evidence of the marriage having been contracted traditionally with the deceased. It was stated that there is no evidence of when and where this marriage

discussions took place, who was present on both sides and what was paid as dowry for the marriage. Thus, it was said not to exist.

7.23 The Applicants further argued that the claim by Respondent that by virtue of the time that she and the deceased had lived together cohabitating had automatically transformed their relationship into a legally recognized customary marriage due the time.

7.24 From the aforesaid analysis of the facts and the law by the parties, I wish to state from the onset that in Zambia there are only two legally recognised and practiced marriages; Statutory marriage and Customary marriage as was observed in the case of **Fanias Mafemba vs Ester Sitali**¹ where it was held;

"1. In Zambia there are only two types of marriages that are recognised and practiced namely Statutory Marriage and Customary Marriage."

"2. No length of cohabiting can legalise a relationship into marriage."

7.9 Therefore, applying to the facts of the present case to the cited case herein and upon establishing that there is no supporting

evidence that there was a customary marriage contracted between the Respondent and he deceased, I find that the period the Respondent lived with the deceased and even bore the two children herein was mere cohabitation since no length of time can legalise a relationship into a marriage.

7.10 I find that there was no marriage between the deceased and the Respondent therefore she is not a surviving spouse to the deceased herein. Consequently, I further find that the Respondent is not a beneficiary in the estate of the deceased.

7.11 Having found as stated herein before, the estate of the deceased is survived only by the 1st Applicant as the surviving spouse who is entitled to benefit from the estate as such and she has a life interest on the matrimonial property being Plot 297/1 Mtendere.

7.12 In relation to the other beneficiaries the record is clear that there are four children of the deceased therefore they, are entitled to benefit from the estate of the deceased as provided for by the Intestate Succession Act under section 5.

7.13 The Applicants herein as administrators of the estate have the duty and responsibility to distribute the estate to the other

beneficiaries herein. The Applicants are therefore entitled to take charge of the properties of the estate including the plot wherein the Respondent is residing being plot No. A225 in Mtendere which is said to be in the name of the deceased person.

7.14 The Respondent therefore ought to vacate Plot No. A225 Mtendere in order for the administrators to distribute it to the beneficiaries of the estate.

7.15 Further, the Applicants have alleged that the Respondent ought to account for the rentals received since August 2022 amounting to K700.00 per month to date from Plot A225 Mtendere and that she ought to vacate the same property she has been occupying thereby she has been depriving the beneficiaries of the estate. It is my considered view that the Respondent's actions of collecting rentals from the property in issue and occupying the same since the August 2022 is against the provisions of the law since she not a beneficiary of the estate and I must hasten to state that her actions amount to intermeddling in an estate of the deceased. The Respondent does not have a greater priority interest to benefit from the

residue of the estate as compared to the 1st Applicant and the four (4) children.

7.16 Nevertheless, in relation to the rentals being claimed, I wish to state that the Applicants have failed to establish that indeed rentals were collected by the Respondent in respect of some rooms or all the rooms at plot No A225 save for the averment that some rooms were on rent and the Respondent was receiving rentals worth K700.00 without specifying from which rooms exactly, if the said rentals were in fact paid and further they have only stated that Respondent was also occupying another two rooms house at the rent of K600.00 per month without proof of such evidence that the said house fetched such rentals.

7.17 The Applicants further stated that the total rentals expected from the property was K2,600.00 without stating exactly from which rooms on the said property and if in fact such rentals were paid in the period being claimed. Consequently, I find that the request for rentals on Plot No. A225 Mtendere fails for lack of evidence and clarity.

7.18 Having found as such, I accordingly grant the reliefs sought by the Applicants being as followings;

- i) *A declaration that Respondent is not a surviving spouse because there was no customary marriage between her and deceased.*
- ii) *A declaration that the Respondent is not a beneficiary in the estate of the deceased.*
- iii) *An order restraining the Respondent in respect of property A225 Mtendere from receiving rentals.*
- iv) *An order to give vacant possession to the Administrators in respect of plot No. A225 for the benefit of all beneficiaries of the estate within 30 days with effect from the date of the judgment.*

8.0 I make no order as to costs in view of the fact that the Respondent is the mother of the two beneficiaries of the estate and are the sons of the deceased therefore family.

9.0 Leave to Appeal is granted

Delivered at Lusaka this 29th day of May, 2024.



M.M.BAH-MATANTALA
JUDGE HIGH COURT

