

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

2024/HP/1718



IN THE MATTER OF:

**ORDER 30 RULE 14 OF THE
HIGH COURT RULES CHAPTER
27 OF THE LAWS OF ZAMBIA**

IN THE MATTER OF:

**AN ORDER FOR REMOVAL OF
THE CAVEAT PLACED ON LOT
NO. 344/M MUFULIRA,
COPPERBELT PROVINCE**

BETWEEN:

KALULU SHULA SICHULA

APPLICANT

*(suing in his capacity as Administrator of the
Estate of the late Shula Pulwila Mpuku)*

BEFORE THE HONOURABLE MRS JUSTICE M. C. KOMBE

For the Applicant:

*Mr. P. Chileshe – Chileshe Sikazwe Legal
Practitioners*

For the Respondent:

No Appearance

J U D G M E N T

Cases to referred to:

- 1. Brenda Muzyamba v. Martha Muzyamba Sinnabbomba and others (SCZ/8/70/2016).**
- 2. Charity Oparaocha v. Winfridah Murambiwa (2004) Z.R. 141.**
- 3. Modest Hamalabi v. Cannan Simaambo Mweetwa (sued in his capacity as Administrator of the estate of the late Jameson Hamaaya) (Appeal No. 268 of 2023).**

**4. James Onwuka v. Joyce Siandwazi Reid and others
(Appeal No. 29 of 2015).**

Legislation referred to:

**1. The Intestate Succession Act, Chapter 59 of the Laws of
Zambia.**

1. INTRODUCTION

1.1 The Plaintiff herein commenced this action on 26th November, 2024 by way of Originating Summons seeking the following reliefs:

(i) An order for removal of the caveat placed on Lot No.

344/M Mufulira

(ii) Damages for inconvenience

(iii) Any further relief that this Court may deem fit; and

(iv) Costs of and incidental to these proceedings.

2. THE APPLICANT'S EVIDENCE

2.1 The application is supported by an affidavit deposed to by **KALULU SHULA SICHULA**.

2.2 He deposed that he was the Administrator of the estate of the late **SHULA PULWILA MPUKU** who died in 2001. A copy of the Applicant's National Registration Card

(NRC) and Letter of Appointment as Administrator were exhibited and marked **"KSS1 and KSS2"** respectively.

2.3 That his late father was and is still the registered holder of Lot No. 344/M Mufulira. A copy of the Title Deed was exhibited and marked **"KSS3"**.

2.4 The Applicant also disclosed that sometime in the 1980's, his late Father rented out the family farm to the Respondent for cultivation purposes. That the Respondent decided to place a caveat on Lot No. 344/M Mufulira on 25th August, 1982 without disclosing his interest for doing so and without the knowledge of his late father. A copy of the Land Register showing the said caveat registered on the subject property was exhibited and marked **"KSS4"**.

2.5 That the said caveat had remained in place to date and his father died in 2001 without knowledge of its existence. He personally came to learn about the caveat on the subject property in 2022 when he approached the Ministry of Lands in search of a duplicate title and in his quest to extend the lease tenure from fourteen (14) years to ninety-nine (99) years.

2.6 He was told that the procurement of a duplicate title deed and extension of lease tenure could only take place once he had removed the caveat.

2.7 That all diligent search had been done in Mufulira to trace the Respondent but to no avail.

3. THE RESPONDENT'S AFFIDAVIT IN OPPOSITION

3.1 The Respondent did not file an affidavit in opposition to the application although there was proof of service of the originating process by way of substituted service.

4. HEARING

4.1 At the hearing of the application on 20th August, 2025, learned counsel for the Applicant Mr. P. Chileshe was in attendance while the Respondent was not.

4.2 I allowed counsel for the Applicant to proceed in the absence of the Respondent having satisfied myself that the Respondent had been duly served and therefore, he had deliberately not attended Court.

4.3 Mr. Chileshe relied on the affidavit in support. He submitted that the Applicant had moved this Court pursuant to section 81 and 82 of the Lands and Deeds Registry Act for the removal of a caveat placed by the

Respondent in 1982 on Lot 344/M without disclosing the reason for the said caveat.

5. DECISION OF THE COURT

5.1 The Applicant has commenced this action for an order for removal of caveat on Lot No. 344/M Mufurila in his capacity as administrator of the estate of the late **Shula Pulwila Mpuku** (herein after referred to as the deceased).

5.2 The Applicant has therefore produced an Order of Appointment of Administrator which is marked as **“KSS2”**.

5.3 I should mention from the outset that it is trite law that when a deceased dies intestate, their estate is managed by an administrator/administratrix by virtue of section 24 of the **Intestate Succession Act Chapter 59 of the Laws of Zambia**. It provides as follows:

“24. (1) Subject to any limitations and exceptions contained in a grant of letters of administration the grant entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death except that letters of administration shall not render

valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

(2) Subject to subsection (1), letters of administration shall have effect over the whole of the estate of the deceased throughout Zambia and shall-

(a) be conclusive against all debtors of the deceased and all persons holding any property of the deceased."

- 5.4 The import of this provision as interpreted by the Supreme Court in the case of **Brenda Muzyamba v. Martha Muzyamba Sinnabbomba and others**⁽¹⁾ is that an administrator derives his authority from the letters of administration which must be reckoned from the moment of the death of the deceased.
- 5.5 Having said that, I have mentioned that the Applicant in this case was issued with an Order of Appointment as Administrator by the Local Court and not letters of administration by the High Court.
- 5.6 **Section 43 of the Intestate Succession Act** provides the jurisdiction of the courts in matters relating to succession and it states as follows:

“43(1) The High Court shall have jurisdiction in matters relating to succession.

(2) A local court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty kwacha.

(3) In matters relating to succession, a subordinate court of the first, second or third class shall within the territorial limits of its jurisdiction have jurisdiction to entertain any application if the value of the estate does not exceed one hundred thousand kwacha.”

5.7 The Superior Courts have made pronouncements on the import of this provision. The Supreme Court in the case of **Charity Oparaocha v. Winfridah Murambiwa**⁽²⁾, stated that:

“Section 43(2) of the Intestate Succession Act limits the jurisdiction of Local Courts in matters of succession to estates whose value do not exceed K50,000. The deceased’s estate had property within and outside Zambia whose value went beyond the jurisdiction of the Local Court.”

5.8 In this regard, the Supreme Court agreed with the lower court that probate should have been obtained from the High Court and so it refused to fault the finding that the appointment of the appellant by the Local Court was null and void.

5.9 The Court of Appeal in the case of **Modest Hamalabi v. Cannan Simaambo Mweetwa (sued in his capacity as Administrator of the estate of the late Jameson Hamaaya)**⁽³⁾ relied on the above stated case and stated that:

“In the present case, given that the estate exceeds the value, it is evident that the administrator could not validly use the Order of Appointment from the Local Court to represent the deceased’s interests in any proceedings dealing with property or assets.”

5.10 In the present case, there is no evidence of the value of the estate of the deceased. That notwithstanding, since the property Lot 344/M Mufulira forms part of his estate, the Court of Appeal in the above cited case stated that it can safely be argued that there is no estate in the

Republic which will fall below the threshold of Fifty Kwacha.

5.11 The Supreme Court further in the case of **James Onwuka v. Joyce Siandwazi Reid and others**⁽⁴⁾ also stated that section 43 (2) may seem archaic given the fact that there is hardly any estate in Zambia worth K50.00 but it is nevertheless the law for the time being in force.

5.12 I am ably guided by the above case authorities and I find that the estate of the deceased which comprises of Lot No. 344/M Mufulira exceeds the value of Fifty Kwacha as there is no estate in Zambia worth K50.00.

5.13 It follows therefore that the Applicant cannot validly use the Order of Appointment from the Local Court to represent the deceased's interests in these proceedings dealing with property of the deceased as the Local Court had no jurisdiction to issue the Applicant with the Order of Appointment of Administrator.

5.14 In short, I find that since the Applicant has no order of appointment duly issued by the High Court, he does not have the *locus standi* to commence this action in the

High Court. This is an incurable defect as it goes to the jurisdiction of this Court.

6. CONCLUSION

6.1 On the whole, I find that this Court has no jurisdiction to hear and determine this matter commenced by the Applicant who has no *locus standi* in the matter.

6.2 It is accordingly dismissed but I make no order as to costs.

DELIVERED AT LUSAKA THIS 30TH DAY OF SEPTEMBER, 2025


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M.C. KOMBE
JUDGE

