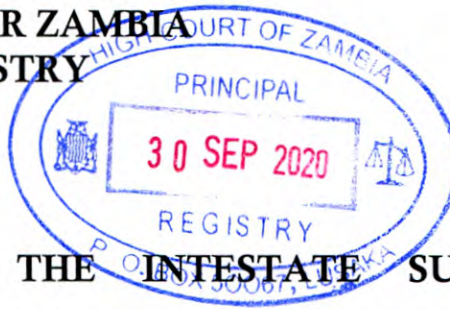


IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(Civil Jurisdiction)

2019/HPF/0408



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

AND

IN THE MATTER OF: **THE ESTATE OF THE LATE ALEX**  
**SAGONDA**

BETWEEN:

**CLARA BWEMBYA SAGONDA** (Suing in her capacity as **APPLICANT**  
surviving spouse and beneficiary of the Estate of the late Alex Sagonda)

AND

**CHRISPIN SAGONDA** (Sued in his capacity as administrator **RESPONDENT**  
of the estate of the late Alex Sagonda)

**Before the Honorable Lady Justice C. Lombe Phiri in Chambers**

*For the Applicant* : *Mrs B. Musukwa Mulenga*

*For the Respondent* : *N/A*

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**J U D G M E N T**

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## CASES REFERRED TO:

1. **Gray Nachandwe Mudenda v Dorothy Chileshe Mudenda (2006) Z.R. 57**

## LEGISLATION REFERRED TO:

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

This is an action commenced by way of Originating Summons pursuant to the Intestate Succession Act, Chapter 59 of the Laws of Zambia. The Applicant, **CLARA BWEMBYA SAGONDA** sued the Respondent, **CHRISPIN SAGONDA**, in his capacity as Administrator of the Estate of the late Alex Sagonda. She was suing in her capacity as surviving spouse and beneficiary of the estate of the Late Alex Sagonda. She claimed the following reliefs:

- 1) *An Order that the semi-detached flats and the two bedroomed house in Kabangwe be sold and distributed;*
- 2) *An Order that the Applicant contributed to the building of the flats in Kabangwe prior to the death of Alex Sagonda and also solely built the 2 bedroomed house in Kabangwe and is therefore entitle to more than 20% of the estate after the sale of the flats and house in Kabangwe;*
- 3) *Any other relief the Court may deem fit; and*
- 4) *Costs.*

The application is supported by an Affidavit deposed to by the Applicant herself. She stated in her affidavit that she is an auditor by profession. She also stated that she was married to Mr. Alex Sagonda on 27<sup>th</sup> October, 2011 in Lusaka at Chawama Catholic Parish. A copy of the marriage certificate was exhibited as exhibit "CBS1". She further deposed that her husband died on 2<sup>nd</sup> August, 2015 without leaving any instructions regarding the distribution of his estate upon his demise. A copy of the Burial Permit was exhibited as exhibit "CBS2". It was further deposed to that at the time of his death the deceased was survived by one child and his parents, Mr. Charles Sagonda and Mrs. Ireen Sagonda. Mr. Charles Sagonda passed on four months after the death of the deceased. It was further deposed to that the deceased was also survived by one dependent, Charity Sagonda and his wife, who is the applicant, herein.

It was stated in the Affidavit that upon the deceased death the Respondent and the Applicant were appointed as administrators of the Estate by the Matero Local Court in 2016 and the appointment was later renewed in January, 2017. It was averred that at the time of death the estate of the deceased comprised of one motor vehicle, a plot in Kasama, two incomplete semi-detached flats in Kabangwe, leave days and National Pensions Scheme Authority benefits. It was stated that prior to the deceased death the Applicant contributed to the building of the semi-detached flats by buying some of the building material. It was further averred that the estate was distributed as follows: the motor vehicle was given to the deceased's parents, the plot in Kasama was given to the Applicant while one of the incomplete semi-detached flats was given to the Applicant and the other to Ireen Chikwanda, the deceased's mother. It was averred that the vehicle was later given to the Applicant and the leave days and

NAPSA benefits were distributed to the beneficiaries in accordance with the law.

It was averred that using her share of the Estate the Applicant completed the flat she was given and also constructed another flat which she rented out and earned an income of K1000 per month. She stated that the other beneficiaries also completed the second flat and moved into it. It was further averred that sometime in October 2017 her flat was broken into and her motor vehicle gutted by a fire. As a result, she moved out of the flat she had occupied and put it on rent. That she now had a rental income of K2000 per month. She stated that sometime in April 2017, when her flat was vacant, one of the deceased's brothers, David Sagonda, moved into the flat without her consent or prior knowledge and is still living in the flat to date. She stated that the Respondent and other beneficiaries of the estate have since refused to comply with the distribution of the estate and any attempts to engage them and resolve the matter amicably have proved futile. It was stated that this was a proper case for this Court to order that the Estate be properly distributed and the Applicant be given back the house she constructed on the property.

In the affidavit in opposition deposed to by the Respondent Chrispine Sagonda the particulars relating to the demise of the deceased and the appointment of the Respondent as administrator were confirmed. However, it was denied that the Applicant contributed to the building of the semidetached flats on account that she was just a house wife. It was stated that the deceased during his life used to give the Applicant money to buy building materials hence the receipts being in her name. It was also deposed to that the Applicant received more

than the 20% she was entitled to as the deceased spouse. It was further deposed to that in spite of this the Applicant was still not satisfied with what she received and even sued the Respondent in the Local Court. As a result of those proceedings the Applicant was given a Toyota Camry, motor vehicle and a 2 bed roomed flat in Kabangwe. It was also ordered that the plot in Kasama be sold and the proceeds be shared accordingly. Also, that the leave day pay and NAPSA benefits be shared as per law provided.

It was deposed to that as the correct course of action by the Applicant should have been to appeal the decision of the Local Court than to bring a fresh action before the High Court. It was averred that the order of the Local Court was carried out except the NAPSA benefits which were collected only by the Applicant.

It was admitted that the Applicant constructed a 2 bed – roomed house on the property which was allocated to her.

It was also deposed regarding the occupancy of the Flat that the Respondent decided to allow David Sagonda to live in the flat and that he was paying K1000 rental per month. That this action resulted from a report from the neighbours that some strangers were sleeping in the flat. It was averred that the money from the rentals was used to construct a wall fence around the property.

It was averred by the Respondent that on several attempts he had tried to find an amicable solution to the differences with the Applicant but that the same had proved futile.

In his averments the Respondent stated that the Applicant was only entitled to 20% share of the deceased's estate and nothing more because she did not materially or financially contribute to the building of the semi-detached flats. That she was entirely dependent on the deceased.

The Applicant filed into Court and affidavit in Reply wherein she disputed the averment that she was merely a housewife who did not financially contribute to the construction of the semi detached flats in Kabangwe. The Applicant averred that she was working as an Assistant Accountant at Migra Enterprised with a monthly income of K2,295.00. She also stated that she had been running her own business and sold chickens at their matrimonial home in Kasama.

The Applicant also stated in her Reply that she had not sued the Respondent in the Local Court to challenge the distribution of the Estate but that instead she had sued him for revocation of his appointment as Administrator. It was averred that the Local Court in fact revoked his appointment as Administrator and ordered that the family appointment new Administrators.

Regarding the NAPSA benefits the Applicant admitted that she did collect the benefits and did not share them with other beneficiaries as she was advised that because the deceased's child was not registered at NAPSA then they were not entitled to receive a share of the pension benefits. She stated that the money received from NAPSA was used to connect electricity.

She further stated that she had never been informed about strangers sleeping in her flat nor had the Respondent obtained her consent to have David Sagonda

occupy the flat that had been allocated to her. She stated that the Respondent needed to account for rentals he had been receiving for the property since April, 2019.

At the hearing of the Application Counsel for the Applicant stated that reliance would be placed on what had been filed into Court. She briefly submitted that the Applicant felt she was entitled to more than the 20% statutory allocation under the Intestate Succession Act as she had contributed to the construction of the flats which she now had been deprived occupancy and rental income.

The Respondent did not appear at the hearing but sought to file into Court written submissions. The gist of the submissions were to demonstrate that the Applicant had received more than the 20% she was entitled to under the Intestate Succession Act thereby substantially depriving the other beneficiaries being the son and mother of the deceased. Very specifically relating to the deceased's son it was submitted that he was entitled to a share of the pension benefits from NAPSA.

The law relating to distribution of the Estate of a person who dies without leaving a will is governed by the Intestate Succession Act. The Act clearly provides for who should benefit from such an estate. The Act also provides for the duties of a person who is appointed as an Administrator. Part III of the Intestate Succession Act provides for issues of succession by clearly setting out the different scenarios that may arise and how in each instance the estate ought to be distributed. Section 5 of the Act provides that:

*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. Cap. 60*

*(2) In respect of a minor, the mother, father or guardian shall hold his share of the estate in trust until he ceases to be a minor.*



Part III of the same Act provides for the modalities of appointing an Administrator and the duties of the Administrator. Specifically, Section 19 of the Act provides for the duties and powers of an Administrator. These are stated as follows:

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

- (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.*

Regarding jurisdiction the Act limits jurisdiction of the Local Court in the grant of letters of Administration. Section 43 of the Act provides 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 thousand 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.

In the case of **Gray Nachandwe Mudenda v Dorothy Chileshe Mudenda (2006) Z.R. 57<sup>(1)</sup>** it was held *inter alia* that:

*2. The duty of an administrator is not to enhance the estate, but to collect the deceased's estate, distribute it to the beneficiaries and render an account.*

The facts of this case reveal that there is no dispute regarding the death of the deceased intestate. Further, there is no dispute regarding the extent of the Estate of the deceased and who the beneficiaries of his Estate are. The dispute seems to be in relation to the manner the distribution of the Estate has been done and what has happened to some of the property.

Before attempting to delve into the dispute as presented in the facts of the case I wish to address an issue that has not been raised by any of the parties. This

relates to the validity of the appointment of the Respondent as Administrator by the Local Court. Evidence shows that on 17<sup>th</sup> January, 2017 the Local Court granted the Applicant and the Respondent joint administratorship of the Estate of the late Alex Sagonda. Further, evidence on the record shows that the Estate of the deceased comprised of two unfinished flats, a plot of land in Kasama, pension benefits from NAPSA, leave day payment from the employers, a motor vehicle and a plot of land in Kasama. Prima facie the extent of this Estate exceeds the amount of K50,000. Section 43 (2) of the Intestate is very clear in limiting the jurisdiction of the Local Court in Intestate matters. It is clear from the facts of this case that the Local Court acted in excess of its jurisdiction. The effect of this is that the Appointment of the two as administrators was void abinitio. In a situation like this only the High Court would have jurisdiction. As a result the appointment of the two as administrators of the estate of the late Alex Sagonda is revoked pursuant to Section 29 (1)(a) of the Intestate Succession Act.

Having revoked the appointment of the two as Administrators I need to now consider the effect of the actions of the two while they were Administrators. It is clear that to a large extent the distribution of the Estate was already carried out by the two parties. I have carefully looked at how the Estate of the has been distributed. I find that no prejudice will be occasioned by this Court ordering that the Estate should remain as distributed among the respective beneficiaries.

Now regarding the submissions in relation to the two flats I find that the Respondent has moved under a very misguided presumption that as an

Administrator he has the power to also manage properties that have already been distributed. See the case of **Gray Nachandwe Mudenda v Dorothy Chileshe Mudenda** cited above. Once property devolves to a beneficiary it becomes the property of that person and ceases to be under the control of the Administrator. The Administrator therefore had no business interfering in how a beneficiary deals with their share of the benefits. In this regard if the Applicant decides that she wishes to sell the property which devolved to her she may do so. The Respondent is forthwith ordered to desist from interfering with how the Applicant deals in the properties that devolved to her.

In view of the foregoing I find that the Application by the Applicant succeeds to the extent stated above. It is ordered that one of the semi-detached flats and the house which the Applicant built on her half of the demised property belongs to the Applicant as her share of the Estate of the deceased, Alex Sagonda. The Applicant's and Respondent's appointment as joint administrators by the Local Court is hereby revoked.

Costs for the Applicant.

Leave to Appeal is granted.

**Delivered at Lusaka this 30<sup>th</sup> day of September, 2020.**



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**C. LOMBE PHIRI**  
**JUDGE**