

GUMBO v LAND AND AGRICULTURAL BANK OF ZAMBIA (1968) ZR 50 (HC)

HIGH COURT

BLAGDEN C J

15th JULY 1968

Flynote and Headnote

[1] Succession - Pension fund - Beneficiaries - Application of customary law.

Under rule 6 of Land and Agricultural Bank of Zambia Pension Fund, deceased member's beneficiaries are his widow and children, ⁴⁰ and customary law does not operate to give deceased's brother any claim to benefits.

[2] Conflict of laws - Pension fund - Beneficiaries - Application of customary law.

See [1] above.

[3] Family law - Divorce - Divorce of deceased spouse.

A local court has no jurisdiction to grant a decree of divorce when one of the parties to the marriage is dead.

[4] Courts - Local court - Jurisdiction - Divorce of deceased spouse.

See [3] above.

Rule construed:

Land and Agricultural Bank of Zambia Pensions Fund Rules, rule 6 (see Land Bank Ordinance, 1953, Cap. 249, s.13, repealed; Credit Organisation of Zambia Act, 1967 (No. 54 of 1967), s.88.

Shamwana, for the applicant.

Mwisiya, for the respondent.

Judgment

Blagden CJ: In this matter the applicant, by originating summons, asks for two declarations in respect of the disposal of capital and other moneys payable under the terms of the Land and Agricultural Bank of Zambia Pensions Fund, consequent upon the death of one Burnett Yafeti Gumbo (hereinafter referred to as "the deceased"), who was a member contributing to the Fund. The total moneys involved amount to £3,463 8s. 0d. The applicant also asks for an order as to costs " . . . and that, if necessary, the personal estate of the said Burnett Yafeti Gumbo may be administered or such other order may be made as the court may think fit."

The applicant, Gordon Gumbo, is the deceased's brother, and in fact his sole surviving brother. The deceased was an employee of the respondent bank and a member of the bank's pension fund scheme. There is no contest as to the amount payable under the scheme in respect of his death, the contest arises in regard to whom it is payable.

The pension fund has been in operation since before Independence. It was established originally under the provisions of section 13 of the Land Bank Ordinance (Cap. 249 of the Laws). That Ordinance was repealed and replaced by the Credit Organisation of Zambia Act, 1967, but by virtue of certain provisions, notably in section 88 of that Act, the Credit Organisation of Zambia (hereinafter referred to as "the Organisation") was put into the shoes of the Land and Agricultural Bank of Zambia, assuming its assets, liabilities and obligations, which included the continued administration of the pension fund.

The relevant part of rule 6 of the Rules of the Pension Fund reads as follows:

"6. LIFE ASSURANCE BENEFIT:

If a member dies before his normal retiring date, the sum assured, or such modified sum as may be payable in accordance with Rule 8, 'Evidence of Health', will be paid by the Assurance Company to the employer. The benefits will be payable to the member's beneficiaries who are defined as wife, widow, children (including legally adopted children) and only if there is no wife, ⁵ widow or children (including legally adopted children) shall payment be made by the employer to the estate of the member."

This rule covers the situation here. The deceased, who was a member, has died before his normal retiring date. The benefits are payable accordingly to his beneficiaries as defined. They are his widow, Lantia Mwale, and his son, Yaphet Gumbo, aged between two and three years. There are no other beneficiaries and in accordance with the provisions of the rule there is no question of any benefit accruing to the deceased's estate.

The applicant is a stranger to the contract between the deceased and the respondent in pursuance of which these benefits have become payable. He cannot and does not make any claim under that contract. His claim to an interest in the benefits is founded upon customary law relating to inheritance, and I have had no hesitation in accepting the submission of Mr Mwisiya, who appeared for the respondent, that customary law is of no application here. Neither is any question of inheritance relevant. All that is involved is the interpretation and implementation of the contract between the deceased and the respondent. And that, as I have already explained, is clear beyond peradventure.

It is not necessary, therefore, for me to deal with the propositions put forward by Mr Shamwana. His client has no *locus standi* in this matter. I should perhaps observe that the decree of divorce which was purportedly made by the Lusaka Local Court, Division III, in Case No.165 of 3rd March, 1967, can hardly be other than void. It did not and could not alter the status of Lantia Mwale as being the wife and subsequently the widow of the deceased. There is no jurisdiction in this country to grant a decree of divorce when one of the parties to the marriage is no longer living.

This application accordingly fails and is dismissed with costs to be taxed in default of agreement.

My order in regard to the moneys amounting to £3,463 8s. 0d. now in court is that £1,731 14s. 0d. thereof be paid out to the widow, Lantia Mwale; and that the remaining £1,731 14s. 0d. be invested, applied or otherwise dealt with for the benefit of Yaphet Gumbo in such manner as the court in its discretion thinks fit, and that on the said Yaphet Gumbo attaining the age of twenty - one years, the funds so resulting (including any accrued interest in respect thereof) be paid over to the said Yaphet Gumbo for his sole use and benefit absolutely.

Application dismissed.