IN THE HIGH COURT OF ZAMBIA **2015/HP/0247**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: THE ESTATE OF DECIMUS LESAR (DECEASED)

AND

IN THE MATTER OF: SECTIONS 10 AND 26 OF THE ADMINISTRATION OF ESTATES ACT, 1925

BETWEEN:

FREDERICK BENJAMIN LESAR **1St PLAINTIFF**

FREDERICK EDWARD COATES **2nd PLAINTIFF**

RIANNA LEMMAR **3rd PLAINTIFF**
(as curator Bonis of the estate of Pearl Sybil Zenda Henning)

AND

RAJESH KUMAR **DEFENDANT**

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 2nd DAY OF AUGUST, 2017

For the 1st Plaintiff : Ms I.Nambule, Sharpe and Howard Legal Practitioners

For the 2nd Plaintiff : Mr B.J. Abwino, Simeza Sangwa and Associates

For the 3rd Plaintiff : No appearance

For the Defendant : Mr D.Bwalya, Messrs Llyod Jones and Collins

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JUDGMENT

CASES REFERRED TO:

1. ***Lindiwe Kate Chinyanta V Doreen Chiwele and Judith Tembo SCZ No 28 of 2007***

LEGISLATION AND OTHER WORKS REFERRED TO:

1. ***The Administration of Estates Act, 1925***
2. ***The Wills and Administration of Testate Estates Act, Chapter 60 of the Laws of Zambia***
3. ***Parry and Clark- The Law of Succession, 10th Edition, Sweet and Maxwell***
4. ***Black's Law Dictionary by Bryan A. Garner, 10th edition***

The Plaintiffs commenced this action on 25th February, 2015 by way of Originating Summons claiming:

1. *An order requiring the Defendant to render an account of the administration of the estate of the late Decimus Lesar;*
2. *An order revoking the grant of the letters of administration in the estate of Decimus Lesar issued to the Defendant on 21st January, 2015*
3. *An order of injunction restraining the Defendant from further administering the estate of the late Decimus Lesar;*
4. *An order appointing the 1st Plaintiff as administrator of the estate of the late Decimus Lesar*
5. *An order requiring the Defendant to yield up possession of all property of the deceased, in his possession, and all documentation relating to the deceased's estate*
6. *Further or other relief as the court may deem fit; and*
7. *costs*

The affidavit filed in support of the application on 14th March, 2017 states that the late Decimus Lesar a widow, and residing at subdivision 193 of Farm 441a Lusaka died on 1st January, 2015, leaving no children.

That the late Decimus Lesar was married to John Lesar, a brother to the 1st Plaintiff's father, who is also deceased, as shown on exhibit 'FBL2' on the affidavit. It is deposed in paragraph 5 of the affidavit that the 1st Plaintiff was a nephew of the late Decimus Lesar, and one of her closest surviving relatives.

The 1st Plaintiff also avers in the affidavit that he has a brother Douglas Lesar and a sister Clarisse Blanch, who are both resident in South Africa, and have an interest in the estate. Attached to the affidavits as exhibit 'FBL3(a) and (b)' are their birth certificates. It is further deposed in the affidavit that the deceased died leaving a sister Pearl Henning who also resides in South Africa, and that these people also have an interest in the estate of the late Decimus Lesar like himself, and are therefore entitled to grants of letters of administration.

That the Defendant was granted letters of administration of the estate as evidenced on exhibit 'FBL4', and on that basis proceeded to advertise the letters of administration in the Post newspaper on 23rd January, 2015, as shown on exhibit 'FBL5', and advising that he would proceed to distribute the estate after 24th February, 2015.

It is deposed that a search done at the Probate Registry of the High Court revealed that the basis of the grant of the letters of administration to the Defendant were police reports given by Samuel Sakala and Philimon Bwalya, employees of the deceased at the time. Exhibited as 'FBL6' is the said police report. It is the 1st Plaintiff's averment that the Defendant does not have an interest in the estate, and is thus not entitled to a grant of letters of administration. Further that the 1st Plaintiff and his relatives were not advised of the application that the Defendant made for the grant of letters of administration, and as such had no opportunity of objecting to the same.

The contention by the 1st Plaintiff in the affidavit is that the property of the deceased which includes subdivision 193 of Farm No 441a Lusaka, which was her last place of residence, and access to which has not been granted by the Defendant, is in danger of being wasted, damaged or alienated by the Defendant, pending the determination of the matter.

In the affidavit in support of the application for revocation of the grant of letters of administration, and for an order for an account filed on 20th November, 2015, and sworn by the 2nd Plaintiff in this matter, it is deposed in paragraph 3 that the late Decimus Lesar passed away on 1st January, 2015, leaving no children or surviving spouse. It is stated in paragraph 4 that the only property that the late left was subdivision 192 and 193B of Farm No 411a Kasangula Road, Roma Township in Lusaka.

The 2nd Plaintiff in paragraphs 5 and 6 of the said affidavit deposes that the late Decimus Lesar had been ill for a lengthy period of time prior to her death, and he would visit her almost on a daily basis to check on her condition, and attend to her needs. It is averred in paragraph 7 that in or around September or October 2014, the deceased while seriously ill made an oral will in the presence of Samuel Phiri and Philimon Bwalya her employees then, bequeathing sub division 192, and 193B of Farm 411a Kasangula Road Roma Township to him.

That it therefore came to him with a sense of surprise that the Defendant obtained letters of administration from the Probate Registry of the High Court on 22nd January, 2015, and is at present the purported administrator of the estate, when the deceased left a will. The 2nd Plaintiff states in the affidavit that the declaration which the Defendant made when obtaining the letters of administration, which had been exhibited as 'FEC1' to the affidavit, shows that he had obtained the grant on the basis of being a family friend. That as the deceased left a will, the letters of administration should be revoked.

The Defendant in the affidavit in opposition to the Originating Summons filed on 13th April, 2017 deposes in paragraph 8 that the authority pursuant to which the application for interim injunction was made was not stated, and as such the order of interim injunction is not properly before the court. Further that the Administration of Estates Act, 1925 contains no provisions for the grant of injunctive relief against an administrator.

In paragraphs 11, 12, 13 and 14, the Defendant avers that while the 1st Plaintiff deposes that the estate is in danger of being wasted, damaged or alienated by the Defendant, this has not been demonstrated. It is the Defendant's contention in paragraph 14 that his conduct in this matter has been over board, as he advertised notice of the deceased's death to both the creditors and debtors of the estate informing them of his intention to distribute the estate of the deceased, which had been admitted by the 1st Plaintiff.

That he has been advised by his advocates that the correct way to stop him from handling the affairs of the estate is not by way of an injunction, and as he has sufficient interest in the estate, he is therefore entitled to administer it. In paragraph 18 of the said affidavit it is stated that contrary to the Plaintiff's assertions, the basis on which he made the application for the grant of letters of administration was that he has an interest in the estate, being a creditor. He has exhibited 'RK2', the contract of sale for unit number 193/441A between him and the deceased, as proof of his being a creditor, adding that he has not obtained a certificate of title to the property, as the deceased did not meet conditions 3 and 4 of the said contract of sale, or execute the deed of assignment assigning the property to him.

Paragraph 21 states that the Defendant paid K81, 400.00 for the purchase of the property, while the balance of K90, 000.00 was to be

paid by him to the surveyor as survey fees related to the contract of sale, and that exhibit 'RK3' is a copy of the documents evidencing payments made to the deceased. That on that basis he has shown that he has sufficient interest in the estate as a creditor, and he therefore properly obtained the letters of administration.

He contends in paragraph 23 of the affidavit that the Plaintiffs have not demonstrated that he acted irregularly or improperly. It is also contended that the 1st Plaintiff has not demonstrated sufficient interest in the estate, and that in fact the basis of his application is that he is a relative of the deceased. That the Administration of Estates Act, 1925 does not provide priority to relatives in the court's appointment of administrators. The Defendant avers that it is not in the interests of justice that the interim injunction was granted and neither is the claim to revoke the letters of the grant of administration issued to him, or that he yields vacant possession of the deceased's property, and all the documentation relating to the deceased's estate or that the 1st Plaintiff be appointed administrator of the estate.

I have considered the matter. This action has been brought pursuant to Sections 10 and 26 of the Administration of Estates Act, 1925. I will start with the claim for revocation of the letters of administration. Section 10 of the Administration of Estates Act, 1925 provides that;

> ***"in granting letters of administration the court shall have regard to the rights of all persons interested in the real and personal estate of the deceased person, or the proceeds of the sale thereof, and in particular administration with the will annexed, may be granted to a devisee or legatee; and in regard to land settled previously to the death of the deceased, and not by his will, administration may be granted to the***

trustees of the settlement, and any such administration may be limited in any way the court thinks fit:

Provided that where the deceased died wholly intestate as to his real and personal estate, administration shall:

a) Unless by reason of the insolvency of the estate or other special circumstances the court thinks it expedient to grant administration to some other persons interested under this Act in the residuary estate of the deceased, if an application is made for the purpose;

b) In regard to land settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement, if willing to act".

As can be seen from the documents on record the contention by the 1st Plaintiff is that the Defendant has not demonstrated any interest in the estate for him to be granted letters of administration. The 2nd Plaintiff on the other hand contends that the late Decimus Lesar left an oral will bequeathing her estate to him, and as such letters of administration were not properly obtained, as they are only granted where the deceased dies intestate, or where there is partial intestacy.

The Defendant on the other hand states in the affidavit in opposition that he has an interest in the estate, as he is a creditor, having purchased the property, being 193/441A Lusaka from the late Decimus Lesar.

I will start with the argument that the deceased left a will. The 2nd Plaintiff in paragraph 4 of the affidavit in support of the application for revocation of grant of letters of administration, and for an order to account states that the only property comprising the late Decimus Lesar's estate is subdivision 192 and 193B of Farm No 411a Kasangula Road in Roma Township in Lusaka. In paragraph 7 of the said affidavit

he deposes that in or around September or October, 2014, the late Decimus Lesar whilst seriously ill, made an oral will in the presence of Samuel Phiri and Philimon Bwalya her employees then, bequeathing the said subdivision 192 and 193B of Farm No 411a Kasangula Road to him.

In the submissions filed, the 2nd Plaintiff relies on Section 6 (4) (c) (c) of the Wills and Administration of Testate Estates Act, Chapter 60 of the Laws of Zambia to prove that there is a valid will that the deceased left. Section 6 of said Act stipulates the requirements that need to be met in order for a will to be said to be valid. It states that;

> ***"6. (1) A will shall be valid if it is in writing and-***
>
> ***(a) is signed at the foot or end, by the testator or by some other person in the testator's presence and by his direction; and***
>
> ***(b) the signature referred to in paragraph (a) is made or acknowledged by the testator in the presence of two witnesses present at the same time who have also signed at the foot or end of the will".***

The Section goes further to make provisions for the validity of certain wills, and of interest is the provision relied on by the 2nd Plaintiff which states that;

> ***"(4) Notwithstanding any other provisions of this Act-***
>
> ***(c) any person who is ill or is physically injured, and who has a settled or hopeless expectation of death, and who has abandoned all hope of recovery, and who eventually dies due to that illness or physical injury, may make a will in any of the following forms:***
>
> ***(c) orally before two witnesses".***

The 2nd Plaintiff also relies on the learned authors Parry & Clark- The Law of Succession, 10th edition, 1996 Sweet and Maxwell which at page 89 states; "***that a testator can make a will without any formalities whatever. It may be written, whether signed or witnessed or not, or it may be nuncupative, ie oral. The testator must however intend deliberately to give expressions to his wishes in the event of his death, although he need not know that he is making a will: in this respect there is no difference between an informal and formal will".***

A perusal of the said book reveals that this provision falls under the category "***privileged wills"*** on page 87. The said chapter refers to Roman Law having given privilege to legionaries by exempting them from the ordinary formality rules applicable to the execution of wills. Under that category three classes of privileged testators are identified, the first being soldiers in actual military service, the second being mariners/ seamen at sea, and lastly any members of her majesty's naval or marine forces so circumstanced that if they were soldiers they would be in actual military service.

This exemption of certain categories of people from the formalities that need to be met for a will to be valid in Parry & Clark are on the similar lines as the exceptions provided in the Wills and Administration of Estates Act, Chapter 60 of the laws of Zambia. It is therefore not correct to say that a will can be made without any formalities whatever. There are formalities that must be satisfied in order for a will to be valid, but the law provides exceptions, as already seen.

Having said so, the question that needs to be answered is whether the late Decimus Lesar did in fact make a will in line with the provisions of Section 6 (4) (c) (c) of the Wills and Administration of Testate Estates Act? The affidavit sworn by the 2nd Plaintiff states that the late made the said

will orally before Philimon Bwalya and Samuel Phiri her employees then, whilst seriously ill in or around September or October, 2014. Section 6 (4) (c) makes reference to a person who is ill, and who has a settled or hopeless expectation of death, and who has abandoned all hope of recovery, and who eventually dies due to that illness.

The 1st Plaintiff in the submissions argues that the basis of the 2nd Plaintiff's claim that the deceased made a will, are the police statements given by Samuel Phiri and Philimon Bwalya, and that the same are mere statements, without concrete information regarding the making of the oral will by the late, bequeathing the property to the 2nd Plaintiff. That the 2nd Plaintiff has merely made assertions that the late was sick for a very long time, without any evidence to that effect. The Defendant in the submissions states that the 2nd Plaintiff has not substantiated his claims.

The police statements made by Samuel Phiri and Philimon Bwalya, which are exhibited as 'FEC1' and 'FEC2' on the affidavit sworn by the 2nd Plaintiff in the application for joinder dated 7th August, 2015, state that Decimus Lesar was their employer, and she was too old, and that before she died she had said that she was old and not feeling well, and that if anything happened to her, or if she died, they should inform Rajesh Kumar for help. There is nothing in two statements to the effect the late Decimus Lesar made an oral will, bequeathing any property. What the two statements reveal is that the deceased was old and feeling unwell, and that she had told them to see Rajesh Kumar, in the event of her death, or something happening to her.

The two statements evidence the fact that the deceased was old and unwell, and that she had an expectation of death, but do not state for how long she had been unwell. It is therefore clear that no evidence has been tendered to prove that the late Decimus Lesar made an oral will

which is valid within the provisions of Section 6 (4) (c) (c) of the Wills and Testate Estates Act, Chapter 60 of the Laws of Zambia. The 2nd Plaintiffs claim for revocation of the letters of administration will fail on that basis, as the deceased did not leave a will, but died intestate.

The next issue for determination is whether the letters of administration granted to the Defendant should be revoked on the basis of the 1st Plaintiff's claim? The 1st Plaintiff in the submissions makes reference to Section 10 of the Administration of Estates Act, 1925.

It is argued by the 1st Plaintiff that going by the provisions of Section 10 of the Act, the rights of all interested persons in the real and personal estate of the deceased should be considered, when granting letters of administration. That the Defendant in the oath taken when being granted the letters of administration, which is exhibited as 'FEC1' on the affidavit in support of the application for revocation of the grant of the letters of administration, and for an order for an account filed on 20th November, 2015, and sworn by the 2nd Plaintiff, states that he was a family friend of the deceased.

However in the affidavit in opposition to the Originating Summons dated 13th April, 2017, he deposes that he is a creditor of the estate having purchased unit no 193/441a, being approximately 1267 square metres in size. The 1st Plaintiff in the submissions states that the Defendant alleges that he paid K81, 400.00 for the said piece of land, and that the balance of K90, 000.00 was to be paid to the surveyor, as surveyors fees. Exhibited as 'RK2', and 'RK3' on his affidavit are the contract of sale, and payments respectively.

The 1st Plaintiff contends in the submissions that while the Defendant states in the affidavit that he paid the amount of K81, 400.00 for the land, the contract of sale states that the land was sold for K90, 000.00, and that special condition 5 of the sale agreement states that K90,

000.00 was paid upon execution of the contract. Further that when the deposit slips exhibited as 'RK3' are totaled, they come to K76, 400.00.

It is also submitted that even though the said deposit slips reveal that amounts of money were deposited into a bank account allegedly owned by the late Decimus Lesar, the person so depositing is not indicated, and neither is the purpose for the said deposits. That these deposits were made prior to the contract of sale dated 14th September, 2013, as well as after that date. The claim that the Defendant further paid K90, 000.00 as surveyors fees is also disputed on the basis that the document showing payment of the said fees, describes the property as *"all that piece of leasehold land shown and edged red on the plan (hereinafter attached) known as unit no 193/441A comprising approximately 1267 square metres, situate in Lusaka.*

It is the Plaintiffs contention that there is no reference to a subdivision or proposed subdivision, thereby raising doubt as to what the K90, 000.00 was paid for, and there is no evidence that in fact the said money was paid to a surveyor. Thus it has not been shown that the Defendant has a real interest in the deceased's estate. The submission is that the 1st Plaintiff has established in his affidavit that he, the 3rd Plaintiff and his brother and sister have close blood and legal ties with the deceased, and therefore the Defendant ought not to have been granted the letters of administration in the first place, and they should accordingly be revoked. That the 1st and 3rd Plaintiffs having sufficient interest as relatives of the deceased, should be granted the letters of administration.

It is true that in the oath taken by the Defendant when the letters of administration were granted he did depose that he was a family friend of the deceased, and that this was the basis of the application. It is also true that in the affidavit in opposition to the Originating Summons he avers that he is a creditor of the estate having purchased property from

the deceased. He has exhibited the contract of sale, and deposits of money, which he claims were for the purchase of the property.

As rightly observed by the 1st Plaintiff, the purpose of the deposits of the money is not stated, and neither are the depositors. The deposit slips show that money was being deposited into Decimus Lesar's account at the Standard Chartered Bank at Manda Hill Branch from the period between 4th December 2012 and 22nd April, 2014.

This evidence on its own is insufficient to establish that in fact the contract of sale executed between the deceased and Defendant was fully performed, as it has not been established that it was in fact the Defendant who paid the deceased those monies, and for that purpose.

Even apart from that there is an issue of who has priority to be granted letters of administration. The Defendant in the submissions refers to the case of ***LINDIWE KATE CHINYANTA V DOREEN CHIWELE AND JUDITH TEMBO SCZ No 28 of 2007*** where it was stated that ***"we wish to make it clear that courts will intervene in matters of deceased's estates where there is sufficient evidence of breach of provisions of the law. Family differences are not sufficient".***

In that case the surviving spouse of the deceased being the Appellant, commenced proceedings to be appointed administrator of his estate, arguing that she had priority to the appointment as opposed to the two administrators, who were her late husband's younger sisters.

The Supreme Court in that matter with regard to the eligibility for appointment as administrator for a deceased's estate, stated that Section 15 of the Intestate Succession Act, Chapter 59 of the Laws of Zambia is clear. It stated that;

"The relevant parts are that:

"(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;

(3) Where no person applies for letters of administration, letters of administration may be granted to the Administrator-General or to a creditor of the deceased;"

The court in that case noted that;

"In practice, siblings, parents or next of kin to the deceased are normally appointed. While in some cases the widow or widower may be appointed as Administrator. The term "sufficient interest" is a relative term, it may be near kin, spouse or indeed a stranger altogether, who may not be kith and kin but who may have interest in the estate such as a creditor. Besides, administration of an estate may be limited to certain aspects of the estate by a court order. There is nothing in the Act to suggest that a surviving spouse has priority eligibility for the office of an Administrator, even though normally, a widow or widower is a beneficiary and may even be a priority beneficiary in the estate. It is also not obligatory under the law to consult the surviving spouse, although in civilized families, information might be given and consultation may be made but this is not a requirement in law. Where a surviving spouse has objections during the

proceedings for appointment of the Administrator, such objections may be raised, where there is sufficient reason as per provisions of the law for objection against any candidate for appointment, courts would intervene where sufficient reasons exist and would remove an Administrator, nullify or revoke a grant under the Intestate Succession Act".

The Supreme Court went further to observe that;

"We wish to make it clear that courts will intervene in matters of administration of deceased's estates where there is sufficient evidence of breach of provisions of the law".

In my understanding, this statement means that the court will intervene in the administration of the law when the personal representative breaches the law. It did not state that being a relative of a deceased was not ground for being appointed administrator of the estate, as suggested by the Defendant in the submissions.

The above case was decided based on the provisions of the Intestate Succession Act, Chapter 59 of the Laws of Zambia, which applies to persons who die intestate, and to whom customary law would have applied. The Administration of Estates Act, 1925, which applies to the late Decimus Lesar states that rules of court may be made for the proper carry into effect of the Act. Section 55 of the Act makes reference to the Probate Rules which are defined as ***"rules and orders made by the Probate Judge for regulating the procedure and practice of the High Court in regard to non-contentious or common form probate business".***

Parry and Clark- The Law of Succession, 10th edition refers to the Non-Contentious Probate Rules 1987, regulating classes of persons entitled to grants of letters of administration in particular circumstances, and the order of priority between them, at page 306. At page 309 the learned

authors provide for the order of priority where the deceased died wholly intestate, as stated in Rule 22 of the Non-Contentious Probate Rules 1987. This provision which applies to the grant of administration where the deceased died wholly intestate after 1925 states that;

"(1) the person or persons having a beneficial interest in the estate in the following order of priority:

a) The surviving husband or wife.

b) The children of the deceased and the issue of any deceased child, who died before the deceased.

c) The father and mother of the deceased.

d) Brothers and sisters of the whole blood, and the issue of any deceased brother or sister of the whole blood who died before the deceased.

e) Brothers and sisters of the half blood and the issue of any deceased brother or sister of the half blood who died before the deceased.

f) Grandparents

g) Uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased.

h) ***Uncles and aunts of the half blood and the issue of any***

i) ***deceased uncle and aunt of the half blood who died before the deceased.***

The late Decimus Lesar was not survived by a spouse or children. Going by the hierarchy of priority to the grant of letters of administration cited above, the 3rd Plaintiff who was a full blood sister of the late, has priority to be granted the letters of administration. I say so because 1st Plaintiff

was the son of Colin Lesar who was a brother to John Lesar, the deceased's husband. The 1st Plaintiff was not related to the late through blood so to speak. The 2nd Plaintiff on the other hand joined these proceedings on the basis that he alleged that he was a devisee in the last will of Decimus Lesar. He did not state that he was related to the deceased in any way.

Page 310 of Parry and Clark states that in order for one to be granted letters of administration, they must have a beneficial interest in the estate in the order of priority listed above. It goes on to further state that where no one with a beneficial interest in the estate applies for letters of administrator, the Treasury Solicitor may do so, if they claim bona vacantia on behalf of the State, and that if all the above persons are cleared off, a creditor of the deceased or the administrator of such a creditor, or any other person who may have an interest in the event of an accretion to the estate may do so.

Accretion is defined in Black's Law Dictionary as ***the rights of hiers or legatees to unite their shares of the estate with a portion of any coheirs or legatees who do not accept their portion, fail to comply with a condition, or die before the testator or a beneficiary's gain through the failure of a coheir or colegatee to take his or share".***

The situation defined above cannot be said to present as the 3rd Plaintiff who is a blood sister of the deceased has joined as a Plaintiff in these proceedings, and is in fact a beneficiary of the deceased's estate. Section 46 (1) of the Administration of Estates Act, 1925 states the beneficiaries of an estate, hierarches as the surviving spouse, children, parents of the deceased, brothers and sister of the whole blood of the intestate on the statutory trusts, then brothers and sisters of the half blood of the intestate on statutory trusts, grandparents, uncles and aunts of the

whole blood on the statutory trusts and aunts and uncles of the whole blood on the statutory trusts.

The evidence on record shows that the 3rd Plaintiff is non- compos mentis, and joined these proceedings through a curator bonis appointed to her estate. Apart from joining the proceedings, the 3rd Plaintiff has not taken any action in prosecuting this matter. The 1st Plaintiff on the other hand though not being a blood relative of the deceased was related to her through marriage. The Defendant can only be eligible to be granted letters of administration where the hierarchy seen above is written off, and he is not successful in that respect, as the 3rd Plaintiff is eligible according to the list.

That being the position, and in view of the fact that his reasons for obtaining the letters of administration, being that he is a creditor of the estate, which is has not been sufficiently established, and also taking into account that when he applied for letters of administration he stated that he was a family friend of the deceased, thereby contradicting himself in the subsequent affidavit, and raising issues of credibility in his respect, he is not suitable for the position. I accordingly order that the letters of administration granted to the Defendant Rajesh Kumar to administer the estate of the late Decimus Lesar are hereby revoked. He shall with immediate effect hand over the letters of administration issued to him to the court.

With regard to the claim that the 1st Plaintiff and the 3rd Plaintiff should be granted letters of administration for the deceased's estate, it has been seen that the 3rd Plaintiff is qualified to be so appointed. However she is resident in South Africa, and non-compos mentis, and is represented by a curator bonis, equally resident in South Africa. The claim in the Originating Summons was not amended to include the relief of the 3rd Plaintiff being granted letters of administration, and as such this claim

cannot be considered. In order that the deceased's estate shall be administered effectively taking the above factors into account, I grant letters of administration to the 1st Plaintiff, as he is resident in Zambia, and is related to the deceased through marriage, and has demonstrated the need to see that the administration of the estate is done properly.

As to the claim that the Defendant accounts for his administration of the estate, the 1st Plaintiff submits that this should be done if the letters of administration are revoked. It is not in dispute that the Defendant obtained letters of administration for the estate of the late Decimus Lesar on 21st January, 2015, from the Probate Registry of the High Court, as evidenced on exhibit 'FBL4', on the affidavit in support of the originating summons, dated 14th March, 2017, which is the grant of probate.

The 1st Plaintiff commenced this action on 23rd February, 2015, a month after the said grant of the letters of administration to the Defendant. The 1st Plaintiff obtained an ex-parte order of injunction restraining the Defendant from carrying out his duties as administrator on 26th January, 2015, which injunction has been in force since then. The evidence on record shows that the Defendant exercised his powers as administrator of the estate for a month before he was restrained, and on 23rd January, 2015, he issued a notice to the creditors and claimants in the estate as evidenced on exhibit 'FBL5', on the affidavit in support of the Originating Summons.

Seeing that he did in fact exercise his powers as administrator, the Defendant should account for the administration of the estate during the period. To this end, I order that the Defendant renders an account on oath of his administration of the estate, which account shall be filed into court within thirty days from today, failure to which the 1st Plaintiff shall be at liberty to commence contempt proceedings against him.

There is also a claim that the Defendant yields possession of all the properties of the late Decimus Lesar. It is stated that both the movable and immovable properties which came into the Defendant's possession should be handed over to the persons that this honourable court shall find suitable to be granted the letters of administration of the estate of the late Decimus Lesar.

The 1st Plaintiff relies on Section 28 of the Administration of Estates Act to this effect. Having granted the 1st Plaintiff the letters of administration, I accordingly direct that the Defendant yields possession of all the movable and immovable property belonging to the late Decimus Lesar with immediate effect to him, in default of which he shall be liable in contempt of court.

I grant costs of this matter to the 1st and 3rd Plaintiffs, as against the Defendant, to be taxed in default of agreement. Leave to appeal is granted.

DATED THIS 2nd DAY OF AUGUST, 2017.

Kaunda

S. KAUNDA NEWA
HIGH COURT JUDGE