

**IN THE SUBORDINATE COURT OF THE FIRST
CLASS FOR THE LUSAKA DISTRICT**

HOLDEN AT LUSAKA

(Civil Jurisdiction)

2014/CRMP/LCA/416



BETWEEN:

**GEORGE SICHELA
AND**

PEGGY BANDA

KAYELA SICHELA

APPELLANT

FIRST RESPONDENT

SECOND RESPONDENT

**Before the Hon. Magistrate Mr. Humphrey Matuta Chitalu, in open court
at 09:00 hours this 8th day of June, 2017.**

For the Appellant: In Person

For the Respondents: In Person

JUDGMENT

LEGISLATION REFERRED TO:

- 1. Local Court Act, Cap 29 of the Laws of Zambia, ss. 56, 58**
- 2. Intestate Succession Act, Chapter 59 of the Laws of Zambia, s. 43**

CASES REFERRED TO:

- 1. Charity Oparaocha v. Winfrida Murambiwa (2004) Z.R. 141 (S.C.)**

This matter was commenced by way of an appeal from the local court. On the 22nd September, 2015 the appellant sued the respondents in the local court for revocation of letters of administration of the estate of his late father one George Mpanjilwa Sichela who died on 28th September, 1995.

I will maintain the parties in this matter as they appeared in the court below. The appellant and first and second respondents shall herein be referred to as plaintiff and first and second defendants respectively.

The local court on the 30th December, 2014 at the conclusion of the matter made the following pronouncements:-

1. Claim dismissed; and
2. Plaintiff did not give enough evidence to prove that the second defendant misused the money.

The plaintiff aggrieved by the decision of the lower court appeals to this court in accordance with section 56 of the Local Court Act, Chapter 29 of the Laws of Zambia. It would appear from the Record the grounds of appeal advanced by the plaintiff are as follows:

1. The court erred by not revoking the administratorship of the first defendant on the grounds that she did not misappropriate the funds when in fact the matter was on children namely (George, Niza and Wema Sichela) who feel that they are no longer minors but persons who have grown up into responsible persons able to handle and manage their late father's estate.
2. The court erred by not revoking the administratorship even when the second defendant agreed to the fact that she mentioned that she could not be taken anywhere and that the children would lose the case because she works for Judiciary .
3. The court erred by not taking into account of the details of the complaint which the first defendant acknowledged. She acknowledged the fact that ever since the demise of Mr. Sichela she has never visited the children and

does not know where they stay or what they eat. That first defendant had no children with the deceased. That the first defendant got all the benefits including repatriation money.

4. The court erred by not taking into consideration the welfare of the children of the late George Mpanjilwa Sichela.

This appeal from the local court was dealt with by way of rehearing the matter in accordance with section 58 of the Local Court Act, Chapter 29 of the Laws of Zambia.

In civil matters the plaintiff bears the burden of proving his claim on the balance of probabilities.

The plaintiff seeks this court to order removal of the first defendant as an Administrator of the estate of the late late George Mpanjilwa Sichela and that in her place the plaintiff be appointed. There is undisputed evidence on record that the estate of the late George Mpanjilwa Sichela is valued more than K160, 000. During the hearing of the matter I conducted a scene view of the matrimonial house forming part of the estate. The property is a three bedroomed house on the 30 by 20 metres land situate in Chelston Extension, Lusaka.

Having made a finding of facts, I now apply the law to the facts. **Section 43 of the Intestate Succession Act, Chapter 59 of the Laws of Zambia** provides for jurisdiction of courts in matters of succession and is couched in the following terms:

“S. 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.”

Section 43 was a subject of judicial interpretation by the Supreme Court in the case of **Charity Oparaocha v. Winfrida Murambiwa** (2004) Z.R. 141 (S.C.). Applying those principles espoused by the said case in consideration of this appeal, I have to determine my jurisdiction as well as that of the local court which appointed the first and second defendants to be the administrators in this case. It is clear that Section 43 of the Act limits the jurisdiction of the subordinate court and local court in matters of succession to estates whose value do not exceed one hundred thousand kwacha and fifty thousand kwacha respectively. It is very clear to me that the value of the deceased's estate is beyond the jurisdiction of the local court or this court. Letters of administration in this case, should have been obtained from the High Court. The appointment of the defendants in this matter by the local court as administrators of the estate of the deceased was null and void. Considering the value of the estate, this court has no power to remove or appoint any interested party as administrator of the estate of the deceased. As such the matter is dismissed for want of jurisdiction.

I do not order any costs.

Delivered in open court this 8th day of June, 2017.


HUMPHREY MATUTA CHITALU
RESIDENT MAGISTRATE

