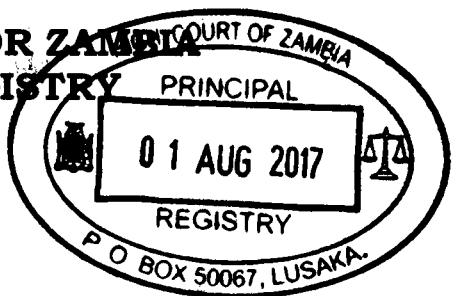


I.T

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

2016/HP/0182



**IN THE MATTER OF: S/D 10 OF S/D B OF FARM NO. 196 A,
LUSAKA WEST, LUSAKA**

AND

**IN THE MATTER OF: SECTION 76, 81 AND 82 OF THE
LANDS AND DEEDS REGISTRY ACT,
CAP 185 OF THE LAWS OF ZAMBIA**

AND

**IN THE MATTER OF: AN APPLICATION FOR REMOVAL OF
THE CAVEAT LODGED UPON THE
ABOVE MENTIONED PROPERTY BY
THE RESPONDENT**

BETWEEN:

MORGAN SAKALA

APPLICANT

AND

KATE SAKALA

RESPONDENT

Before the Hon. Mr. Justice M. L. Zulu on the 1st August, 2017

For the Applicant: Dr. O. M. M. Banda Of Banda And Company

**For the Respondent: Messrs Mulenga, Mundashi Kasonde
Legal Practitioners**

J U D G M E N T

Legislation referred to:

- 1. Valentine Webster Chansa Kayope v. Attorney General judgment no. 18 of 2011.**
- 2. Peter Militis and Wilson Kafuko Chiwama (2009) ZLR 34.**
- 3. Admark Limited v. Zambia Revenue Authority (2006) ZR 43.**
- 4. Gray Nachandwe Mudenda v. Dorothy Chileshe Mudenda (2006) ZR.**
- 5. Sobek Lodges Limited v Zambia Wildlife Authority.**
- 6. Lenton Holding Limited v. Airforce Moyo.**
- 7. Krige Christian Council of Zambia (1975) Z.R. 152.**
- 8. Commonwealth Development Corporation v. Central African Power corporation.**
- 9. Mwanatete v Lushato & Anr (2014/HP/1043).**

The Applicant by way of Originating Summons filed on 29th January, 2016, commenced this action claiming the following reliefs-

1. An Order to compel the Respondent to remove the Caveat placed on S/D 10 of S/D B of farm no. 196a, Lusaka West, Lusaka immediately at her expense or in the alternative the Commissioner of Lands be ordered to remove the said Caveat
2. Payment for mesne profits in the sum of K 3, 500.00 per month from 31st October, 2009 when the Respondent occupied the house S/D 10 of S/D B of farm no. 196a, Lusaka West, Lusaka to date of vacation.

3. An order to compel the Respondent to immediately vacate the house on S/D 10 of S/D B of farm no. 196a, Lusaka West, Lusaka or in the alternative an order granting leave to repossess the house on S/D 10 of S/D B of farm no. 196a Lusaka West, Lusaka.

The Application was supported by an Affidavit in Support sworn by Morgan Sakala, the Applicant and Administrator of the Estate of the late James Severiano Sakala.

The Applicant deposed that the late Sakala died intestate leaving properties, namely stand no. 14886, Kamwala South, Lusaka and S/D 10 of SD B of 196a, Lusaka West, Lusaka, with the beneficiaries being Emmanuel Andrew Sakala, Arundel Sakala, Alick Sakala, the Respondent and himself.

He also deposed that he was appointed Administrator on 28th February, 1996, after the death of James Severiano Sakala on 12th February, 1996 by the Local Court.

The Applicant stated in his affidavit that on 9th April, 2002, the Respondent sued him over the property left by the late Sakala under cause no. 2002/HP/6368 later on, the Respondent proposed to settle the matter excuria and proposed to have S/D 1 of farm 196a, Lusaka West and stand 14886, Kamwala South valued so that she could be paid her share of the estate to terminate her interest in it.

It was deposed that the beneficiaries agreed with the Respondent's proposal and the valuation of both properties and determination of her share were done by the Respondent as per attached exhibits **MS, 5, 6, 7, 8 and 9.**

The parties agreed that the Respondent be paid K 39,500,000 (K 39,500,000) in instalments as her share of the Estate, and the Respondent received a total sum of K 16,600.00 towards the agreed sum of K 39,500.00 leaving a balance of K 22,900.00 as per exhibit **"MS13".**

However, the Respondent through a letter from ex Advocates rejected the 6th instalment and promised to refund the K 7,600.00 to the Applicant when she received K 16,600.00.

Mr. Sakala in his affidavit further deposed that on 4th June, 2015, the Respondent started making fresh claims and alleged that he imposed on her the proposal to pay her off her share in the estate of their late father when she is the one that initiated the ex curia settlement.

That on 19th August, 2015, he obtained the land register which revealed that the Respondent registered a Caveat on S/D 10 of S/D B of farm no. 196a Lusaka West.

It was also his deposition that on 31st October, 2009, the Respondent occupied house S/D 10 of S/D B of farm no. 196 a, Lusaka West and is not paying rentals.

It was the Applicant's deposition that the rest of the beneficiaries agreed to lease out the said S/D 10 of S/D B of farm 196 a, Lusaka West at K 3, 500.00 per month but because of the Respondent's occupancy, the estate was losing out mesne profits.

The Applicant believed that the Respondent's share having been agreed upon under cause no. 2002/HP/0368 and the Respondent having sold her shares in the estate of their late father and Respondent having received part payment of her share, the Respondent has no interest in the estate of the late James Severioano Sakala, but in the balance of her share.

There was also an Affidavit in Opposition sworn by Kate Sakala, the Respondent filed on 22nd July, 2016. The Respondent deposed that she is the only daughter of the late James Severiano Sakala and upon his death the Applicant was appointed Administrator of his Estate and from that time, he had not distributed the estate in accordance with the law, but had instead been running the estate as a business. The Respondent added that the estate included chickens on the property sub division 10 of S/D B of farm 196 a in Lusaka West; a house located on stand 14886; and a motor vehicle Fiat which was sold by the Applicant and proceeds appropriated to himself.

The Respondent also deposed that from the time the Applicant was appointed Administrator of their late father, he had never given account of how the estate had been handled and had never availed her as a beneficiary, any bank statements in relation to the bank accounts that were maintained by her late father. Further that the

The Applicant in his reply admitted that the motor vehicle Fiat 127, did form part of the estate and was sold but that he did not misappropriate the proceeds. He added that the business he was conducting at the farm did not form part of the estate but was using the premises with the consent of all the beneficiaries, therefore was not liable to account for his personal business to the beneficiaries of the estate.

Further, he deposed that he never negotiated or entered into any agreement with the Respondent, but that the Respondent through her former Advocates initiated the excuria settlement, and that it was the Respondent who engaged the Surveyor to value the estate and demanded for payment of K 39, 500.00 as her share of the estate and was paid K 16, 600 in instalments and that it was the Respondent who breached the agreement to settle her share, and now wants to benefit from her own fault.

He averred that the Respondent was and is not entitled to demand for distribution of the estate as she lost interest and rights to the same after the parties agreed on terms and conditions of her share in the sum of K 39, 500.00 of which she received K 16, 600.00 instalments as agreed and now she has turned around and wants to use the law to benefit twice.

Further, that the Respondent was not entitled to reside at the farm but to recover her balance of her share as she was not a beneficiary of the estate in issue and the estate only owned her the balance of her share and was not entitled to place a Caveat on the property as she no longer has an interest in the estate, and the discharge of her caveat would not cause injustice, prejudice and irreparable damage to the Respondent as there were other avenues open to the Respondent on how to recover the balance of her share.

Counsel for the Applicant filed skeleton arguments in support and argues that the Respondent herein agreed to have stand no. 14886 Kamwala South, and S/D 10 of S/D B of farm no. 196 a, Lusaka West valued, and the Respondent paid in the sum of K 39, 500.00, as her share of the estate of the late James Severiano Sakala of which K 16, 600- had been paid.

It was argued that in view of the above, the Respondent relinquished her interest in the estate and her interest is in her share of the estate, therefore, she could not hide in **section 76 of the Lands and Deeds Registry Act**, as the same favours a person with legal interest in the property.

It was submitted that the Applicant having shown and proved that the Respondent had no interest whatsoever in the estate, this Court had jurisdiction under **section 81 of the Lands and Deeds Registry Act** to order the removal of the Caveat that the Respondent placed on S/D 10 S/D B, of 196a, Lusaka West.

Further that the Respondent registered the Caveat without any jurisdiction and the Applicant had suffered damages in the terms of mesne profits by the Respondents occupying the property S/D of S/D B of farm no. 196 a, Lusaka West.

It was argued that the Respondent had kept the Applicant out of the property S/D of S/D B of farm 196 a, Lusaka West, which she was occupying when she had no right to occupy the property in dispute and that is the only condition which entitled the Applicant to be granted mesne profits, in the absence of tenancy agreement between the parties.

Citing the case of **Valentine Webster Chansa Kayope v. Attorney General⁽¹⁾** where the Supreme Court held that:

“We accept the foregoing as the correct law on mesne profits and on the evidence on record, we uphold the learned trial Judge’s finding of fact that the period 1st January, 2002, to 30th November, 2004, the appellant had no legal right to occupy the Respondent’s house. We would add that he kept the Respondent out of the house, without lawful justification. In the premises, the law governing mesne profits states that he must pay the mesne profits to the respondent for his continued occupation of the house, after the expiry of his legal right to occupy it.”

He also cited the case of **Peter Militis and Wilson Kafuko Chiwama⁽²⁾**, Where the Applicant purchased stand 2088, Lusaka from the Respondent and there was no tenancy agreement between the parties but the Respondent continued to occupy the property after selling it to the Appellant, the Court on mesne profits held that:

5. "A landlord may recover in an action for mesne profits damages which he has suffered through being out of possession of the land.

6. Mesne profits damages for trespass, can only be claimed from the date when a Defendant ceased to hold the premises of a tenant and became a trespasser."

According to counsel for the Applicant, it was not in dispute that the Respondent was occupying the Applicant's property illegally and unlawfully and in view of the authority above in the **Peter Militis** case quoted above, the Appellant was entitled to Mesne profits from the date the Respondent occupied the property to the date of vacation.

It was further argued that the Respondent was now trespassing on the disputed property and the Applicant was entitled to damages for trespass, and therefore, was entitled to the reliefs he was seeking.

In response, Counsel for the Respondent filed written submissions to oppose the application of the Applicant, and raised a point of law in relation to the further Affidavit in Support without leave of this court citing the case of **Admark Limited v. Zambia Revenue Authority⁽³⁾**

amongst others contending that a point of law could be raised at any time, including at submission stage.

Counsel further cited **Order 28/1A** of the White Book which provides as follows:

“1A – Affidavit evidence.....,

(6) No other affidavit shall be received in evidence without the leave of the Court”.

Counsel submitted that the Applicant ought to have obtained leave of Court before filing the further Affidavit in support as **Order 28/1A/6** was couched in mandatory terms, and therefore contended that the further Affidavit, that was filed by the Applicant on 23rd January, should be expunged from the Court record for having been filed without leave of Court.

The Respondent contends that this action had been commenced by the Applicant pursuant to the provisions of the **Lands and Deeds Registry Act**, which provides:

“81. (1) Such Registered Proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged to attend before the Lands Tribunal, Court or Judge thereof to show cause why such caveat should not be removed.”

Therefore, the Respondent has to show cause why the caveat should not be removed on the land in issue which formed part of the estate to be administered by the Applicant.

The Respondent submitted that she was the only daughter of the late James Severiono Sakala, and therefore, a beneficiary to the estate of her deceased father, who died intestate, which meant that his estate was supposed to be administered in line with the **Intestate Succession Act, Cap 59 of the Laws of Zambia**. Counsel on behalf of the Respondent stated that the Respondent in her Affidavit in Opposition had adduced cogent reasons why the caveat on the land in issue should not be discharged for being one of the children of the late James Severiano Sakala. According to counsel, the Respondent as one of the 5 children of the late, was a beneficiary in accordance with **section 5 ,of the Intestate Succession Act**.

Counsel, also submitted that the obligations, duties and powers of the Administrator are spelt out in **section 19 of the Intestate Succession Act**, which provides:

“19. (1) The duties and powers of an administrator shall be_

- 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 on account of the administration of the estate.”**

Therefore, it was contended that there is nowhere in the above section where it stated that the Administrator would make deals with the beneficiaries of the estate. Further, that the duty of the Administrator was to distribute the estate as opposed to enhance it or run it as a business which is what the Applicant had been doing.

Counsel, cited the case of **Gray Nachandwe Mudenda v. Dorothy Chileshe Mudenda**⁽⁴⁾, where the Supreme Court stated the position of the law as:

“The Respondents claims he has enhanced the estate, whatever that, may mean. But there is no evidence to that effect.

In any case, the duty of any administrator is not to enhance the estate, but to collect the deceased’s assets, distribute them to the beneficiaries and render an account.”

In this matter, it was contended by counsel that there was no evidence to show that the Applicant distributed that estate to any beneficiary and there was certainly no evidence of the Applicant

rendering an account as to the administration of the estate. Thus it was argued that the Applicant was acting in breach of his duties as an Administrator especially that he had been running the estate as a business.

In this regard it was submitted by counsel that since the estate of the late James Severiano Sakala had not been distributed from 1996 the Respondent was entitled in her capacity as a beneficiary, to maintain the said caveat on the property in issue.

Moreover, that the Applicant on his part had lamentably failed to show that the estate was distributed in line with the requirements of the law and that attempting to make deals with a beneficiary of the estate did not amount to distribution of the estate.

Thus the caveat lodged by the Respondent in her capacity as a beneficiary of the said estate was in line with **section 76 of the Lands and Deeds Registry Act** which provides that:

“Any person –

- (a) Claiming to be entitled to or to be beneficially interested in any land any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise however; or***
- (b) Transferring any estate or interest in land to any other person to be held in trust; or***
- (c) Being an intending purchaser or mortgagee of any land;***

May at any time lodge with the Registrar a caveat in Form 8 in the schedule.”

Counsel then stated that this Court in deciding whether or not to discharge the caveat was required to direct its mind to the provisions of **section 76 of the Lands and Deeds Registry Act.**

He also relied on the case of **Sobek Lodges Limited v Zambia Wildlife Authority**⁽⁵⁾ where this Court stated as follows:

“Although the originating proceedings in an application for the removal of a caveat is at the instance of an applicant, section 81 of the Lands and Deeds Registry places the burden of showing cause why a caveat should not be removed on the respondent(s). further, in deciding whether or not a caveat should be removed, a Court should in my opinion bear in mind, the provisions of section 76 of the Lands and Deeds Registry Act. That is to say, that in the first place, before a caveat is registered the Registrar must be satisfied that the person intending to register a caveat must be:

(a)entitled to land;

(b)beneficially interested in the land;

(c)in the process of transferring some interest in land to some other person; or

(d)is an intending purchaser or mortgagee of the land in issue.

Thus, a person intending to register a caveat must disclose an enforceable interest in the property and if I may add, the enforceable interest must be lawfully claimed and justifiable as provided for in section 76 of the Lands and Deeds Registry Act.

Counsel went on to state that it was clear from this authority that this Court was enjoined to consider the fact that the Registrar of Lands and Deeds in allowing the registration of the caveat, was satisfied that the Respondent had fulfilled **section 76 of the Lands and Deeds Registry Act, Cap 185 of the Laws of Zambia.**

Counsel further stated that this position of the law was earlier set out by the Supreme Court of Zambia in the case of **Lenton Holdings Limited v Airforce Moyo**⁽⁶⁾ wherein the Supreme Court of Zambia held thus;

“To be effective, a caveat should disclose the interest claimed. Where a copy of the caveat is not produced in court to prove the interest claimed, its registration at the Lands and Deeds Registry will raise a presumption that it disclosed an interest in favour of the person lodging it.”

It was argued, that the presumption in favour of the Respondent with respect to the caveat had not been rebutted and this Court should not order its discharge. In addition, that the Respondent on her part had adduced cogent evidence to show that she is a beneficiary to the land on which she placed a caveat. That she had further shown that

the estate of her late father had not yet been distributed by the Applicant.

Counsel also asked this Court to note, that the Applicant was seeking the discharge of the caveat on the basis that he allegedly entered into an agreement to pay off the Respondent in respect of her entitlement in the estate of her late father.

However, the Applicant as Administrator has not told this Court what the total value of the estate was and neither is there any evidence of distribution of the estate. Further that the alleged agreement with the Respondent was not consummated and neither was there any consent judgment in relation to the alleged agreement.

In any case the record clearly shows that the Applicant and the Respondent entered into an agreement regarding the estate. What is of legal significance is whether it was part of the Applicant's duty, as an Administrator to enter or negotiate into agreements with beneficiaries of the estate. Counsel submitted that it was the Applicant's duty to distribute the estate and not purport to enter into agreements with beneficiaries.

Moreover, that even assuming that the Applicant had managed to enter into a firm agreement with the Respondent. The same would not constitute a ground for asserting that the Respondent is not a beneficiary of the estate of her late father. The attempt at paying off the Respondent is not good and tenable at law.

This is because an agreement that could have been reached between the parties herein cannot supersede the express provisions of the Intestate Succession Act and it was trite that a party could not raise estoppel against provisions of a statute.

He also cited the case of **Krige Christian Council of Zambia**⁽⁷⁾ where the Supreme Court of Zambia stated as follows:

“As to estoppel, the matter is in my view concluded against the plaintiff by the principle that one cannot set up an estoppel against a statute, and I entertain no doubt that the same rule applies whether the basis upon which a party is alleged to be precluded from relying on the particular state of affairs is estoppel properly so called or some analogous principle or “quasi-estoppel”.”

Lastly, it was contended by counsel for the Respondent that the Applicant cannot attempt to use his purported agreement with the Respondent to oust the express provisions of the Intestate Succession Act regarding his duties as Administrator.

Further, that the question to be asked in this matter was whether the Respondent had been given her lawful entitlement from the estate of her late father and that the answer to this question was in the negative since the Applicant had abrogated his duties as Administrator by failing to distribute the estate in line with the strict provisions of the law.

Counsel submitted that the Applicant should actually be ordered to distribute the estate in accordance with the requirements of the **Intestate Succession Act, Cap 59 of the Laws of Zambia.**

It was further submitted that the caveat that had been lodged by the Respondent should be maintained since the property on which it had been lodged formed part of the estate that was yet to be distributed to the rightful beneficiaries of which the Respondent was one of them.

I have considered the Affidavits and Skeleton Arguments filed into court by both counsel for the Applicant and the Respondent.

It is in dispute that the Applicant was appointed as the Administrator of the estate of the late James Severiano Sakala, the father to both parties.

It is also not in dispute that the Respondent is a beneficiary of the estate of her late father aforesaid.

What is in dispute in my view is firstly, whether the further Affidavit in Support that had been filed by the Applicant without leave of Court was properly before Court and should not be expunged from the record.

Secondly, whether the agreement between the Applicant and the Respondent to buy out the Respondent from the estate of their father was valid at law.

Thirdly, whether or not the caveat that had been put in place by the Respondent should be discharged for lack of validity.

I will now deal with each issue in dispute separately.

The first issue was whether the further Affidavit in Support that had been filed by the Applicant without leave of Court was properly before Court and should not be expunged from the record.

This issue was raised as a point of law by counsel for the Respondent who argued that according to **Order 28 Rule 1A** of the Rules of the Supreme Court Whitebook (1999) Edition, any further affidavit was filed only with leave to the Court.

The record will show that the Applicant filed a further affidavit dated 23rd January, 2017, and the Respondent has asked this Court to expunge it from the record as no leave of court was obtained before it was filed.

In arriving at my decision, I have considered the following decisions. In the case of **Commonwealth Development Corporation v. Central African Power corporation**⁽⁸⁾ Magnus, J held that:

“Affidavits in excess of the number normally submitted under the High Court Rules and Practice may be admitted into evidence in the discretion of the Judge – especially when neither side objects to their inclusion.”

Moreover, in the case of **Mwanatete v Lushato & Anr**⁽⁹⁾ my learned brother **Justice Chali** commenting on the number of affidavit in an interlocutory injunction ruling had this to say:

“Indeed, the application before me, being an interlocutory injunction, was to be supported by at least one statutory affidavit. Further, and as of right, the Defendants were entitled to put in at least the one statutory affidavit they are entitled to. However, thereafter, a party had to apply for leave to file a further affidavit. The rationale for this is simply that a party putting in the first affidavit ought to frame it in such a way that it takes into account and covers all the facts relevant to his case. He ought not to anticipate being given a second opportunity to advance his case except possibly for arguments on the evidence before Court....

In the case before me, the Plaintiff filed the affidavit in reply without first having sought leave of the Court. And counsel for the Defendants had taken issue with the affidavit. In my view, I can only admit that affidavit on two grounds; one, that the facts or issues raised in the opposing affidavit could not have been reasonably anticipated by the Plaintiff at the time he settled his affidavit in support of his application; and two, that the issues and matters raised in the affidavit in reply are critical to a determination whether or not to grant the interlocutory injunction” (emphasis mine)

In applying the foregoing to this case, I find that the facts or issues raised in the further Affidavit in support of the Originating Summons

could have reasonably been anticipated by the Applicant at the time he settled his Affidavit in Support of the Originating Summons as he had been Administrator of the Estate of his late father Mr. James Severiano Sakala from 1996 during which time he could have known the important fact of the mortgage on the property.

On the second ground of whether or not the matters raised are critical to a determination of whether the caveat should be discharged is an issue I will deal with once I delve into the main matter.

I will deal with the second and third issue at the same time since they are related.

The second issue I have to determine is whether or not the agreement between the Applicant and the Respondent to buy the Respondent from the estate of their father was valid at law.

The Applicant herein was an Administrator of the estate of their late father who died intestate. In Zambia, the law that governs this area of intestacy is the **Intestate Succession Act, Cap 59 of the Laws of Zambia. Section 19** of the said act states that:

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

(a) To pay the debits 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

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(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.

(2) Where an administrator considers that a sale of any of the property forming part of the estate of the deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.”

Counsel for the Applicant stated that the Respondent was occupying the premises that formed part of the estate of her late father as a trespasser and should be made to pay mesne profits for doing so. That this was because she had relinquished her interest in the said estate when she agreed that she be paid the sum of K 39, 500.00 as her share of the estate of their late father. Further, that she registered the caveat without justification, so this Court should exercise its jurisdiction in section 81 of the Lands and Deeds Registry Act, Cap

185 of the Laws of Zambia to order the removal of the caveat, the Respondent placed on Stand No. S/D 10 of S/D B of 196a, Lusaka West, Lusaka.

I find and hold that the Respondent was the only daughter of the late Severiano James Sakala and therefore a beneficiary to the estate of her late father who died intestate and according to the Intestate Succession Act, she was entitled to her share of the 50% of the said estate.

Moreover, that the Applicant had duties to perform in administering the estate which did not include having the power to enter into agreements with any of the beneficiaries of the estate. Counsel also argued that his duties did not include enhancing the estate or running it as a business.

Counsel relied on the case of **Gray Nachandwe Mudenda v Dorothy Chileshe Mudenda** where the Supreme Court stated the position of the law as follows:

“The Respondent claims he has enhanced the estate, whatever that may mean. But there is no evidence to that effect. In any case, the duty of an administrator is not to enhance the estate, but to collect the deceased’s assets, distribute them to the beneficiaries and render an account.”

I agree with this legal position and for the above stated reasons I find that any agreement between beneficiaries cannot supersede the law of the distribution of the estate of one that dies intestate as shown in

the Intestate Succession Act, Cap 59 of the Laws of Zambia. I therefore, find that the agreement between the parties herein to pay out the share of the estate of the Respondent cannot hold in the face of the law.

Having found it as a fact that the agreement between the parties has no legal consequence a law, it follows that the Applicant is not entitled to any mesne profits, because the Respondent is staying at S/D 10 of S/D B of Farm 196 (a), Lusaka West, Lusaka as a beneficiary of the estate of the late James Saveriano Sakala.

Counsel for the Respondent also submitted that the obligations, duties and powers of an administrator are very clear in terms of section 19 of the Intestate Act outlined above.

He also stated that based on this section the main duties of the administrator were to collect the estate of the deceased, pay off liabilities and then distribute the estate to the beneficiaries.

Moreover, there is nowhere in the stated section where an Administrator was permitted to make deals with the beneficiaries of the estate. Further, that the duty of the Administrator as per the Act was to distribute the estate as opposed to enhance the estate or run it as a business, which is exactly what the Applicant had been doing.

The third issue was whether the caveat that had been put in place by the Respondent should be discharged for lack of validity. Counsel for the Applicant stated that the caveat should be discharged because the Respondent no longer had a share in the estate of their father

since she had agreed to be bought out of it and had even received part payment.

Part VI of the Lands and Deeds Registry Act, Cap 185 of the Laws of Zambia deals with caveats. Section 76 stipulates who is entitled to place or lodge a caveat, provides that:-

“Any person-

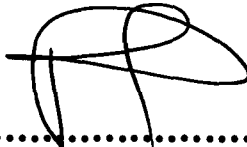
- (a) Claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise however; or***
- (b) Transferring any estate or interest in land to any other person to be held in trust; or***
- (c) Being an intending purchaser or mortgagee of any land; may at any time lodge with the Registrar a caveat in Form 8 in the Schedule.”***

The section is clear and requires no further elaboration on the qualifications of a caveator. I find that the Respondent herein had every right to place a caveat on the said property since she was a beneficiary of her late father's estate and also because from 1996 when the Applicant had been appointed Administrator of the said estate, he had not completed his duty, to collect the estate of the deceased, pay off liabilities and then distribute it to the beneficiaries.

Based on the foregoing, I hereby decline to grant the application of the Applicant to discharge the caveat that has been placed by the Respondent. Further, I order that the Applicant renders an account of the estate of the late James Severiano Sakala who died intestate on 12th February, 1996, before the Learned Registrar of the High Court, and distribute it accordingly.

Therefore, I find the Applicant's action to be without merit, and it is accordingly dismissed. I make no order to costs. Leave to appeal is granted.

Delivered in Chambers at Lusaka this ¹⁸.....day of August.....2017.



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M. L. ZULU
HIGH COURT JUDGE