

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

2016/HP/1870



BETWEEN:

SAHIDI SAKALA (*Suing as the Administrator of
the Estate of the late Kabili Sakala*)

PLAINTIFF

AND

USMAN CONFECTIONERY INDUSTRY LIMITED

DEFENDANT

*Before Hon. Mr. Justice M. L. Zulu at Lusaka, the.....day
of....., 2018*

*For the Plaintiff: Mr. P. Tembo of Mwenye and Mwitwa
Advocates*

For the Defendant: Mrs. I. Nambula of Sharpe and Howard

RULING

Case referred to:

1. Lindiwe Kate Chinyama v Dorren Chiwele Judith Tembo

This is the Defendant's Application to raise Preliminary issues filed on 25th September, 2017, pursuant to Order 14A, Rule 1 of the Rules of the Supreme Court of England; **on whether or not the estate of the late Kabili Sakala (deceased) can be administered by less than one person in light of the provision of section 16 (1) of the Intestate Succession Act, Chapter 59 of the Laws of Zambia.**

In Support of the Application, the Defendant filed an Affidavit in Support deposed by Benson Peter Mvula, the Consultant for Human Resource and Finance at the Defendant Company, and Skeleton Arguments which the Defendant relied upon.

Equally the Plaintiff filed an Affidavit in Opposition to the Affidavit in Support of Notice of Intention to raise Preliminary Issue deposed by Precious Tembo, Counsel for the Plaintiff. The Plaintiff's Counsel also filed Skeleton Arguments in support.

The Defendant deposed that the estate of the late Kabali Sakala cannot be administered by less than two persons. The brief facts of this case as they are relevant to this application are that on 28th September, 2016, the Plaintiff filed a Writ of Summons and Statement of Claim in a representative capacity as Administrator of

the Estate of the late Kabali Sakala against the Defendant who is the deceased's employer claiming for damages and negligence, amongst other claims.

The Defendant contends that **section 15 of the Intestate Succession Act** instructive in terms of who may apply for appointment as an Administrator, and cites the law;

- 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 intested 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 it's discretion the Court shall take into account grater and immediate interests in the deceased's estate in priority to lesson or more remote interests."**

The Deponent deposed that the estate of the late Kabili Sakala is currently being administered by the Plaintiff who is brother of the late, who and was granted the Order of Appointment on 25th April, 2016, but that the late Kabali Sakala is survived by a spouse and two

children who are minors interested in the estate, as such a second Administrator ought to be appointed as per **section 16 (2) of the Intestate Succession Act** and that the Plaintiff ought not to be the sole Administrator and urged the Court to appoint the second Administrator with the greatest interest in the Estate of the late Kabali Sakala being the surviving spouse.

The Plaintiff in response submitted that **section 16 (2) of the Intestate Succession Act**, states that where an appointment of an Administrator has already been made by a Court and only one individual has been appointed as Administrator, regardless of whether there is a minority interests, it is discretionary and not mandatory for the Court to subsequently appoint a second Administrator.

The Plaintiff deposed that the Defendant had no interest making this application in which it is seeking the appointment of the deceased wife as the second Administrator.

I have considered the evidence on record and submissions of both parties to which I am grateful.

Section 16 of the Intestate Succession Act states;

1. Letters of administration shall not be granted to more than four persons in respect of the same estate and if there is a minority or life interest, letters of administrator shall be granted to the Administrator General, to a trust corporation solely or jointly with an individual or to not less than two individuals.

2. If there is only one Administrator (not being a trust corporation or the Administrator-General) then, during the minority of a beneficiary or the substance of a life interest, the Court may appoint one or more administrators in addition to the existing administrator.

Section 16 (1) of the Intestate Succession Act makes it clear that where the estate has a minority or life interest letters of administration shall be granted to not less than two individuals unless, an individual was granted jointly with the Administrator-General; or to a trust corporation.

However, **section 16 (2)**, also give the Court discretion to appoint one or more administrators in addition to the existing administrator

during the minority of a beneficiary on subsistence of the life interest as is the case in the present case.

My interpretation and opinion of **section 16 (1)** is that it was to ensure that the interests of the minors in the estate were protected. However, I agree with the Plaintiff's submission that there is no evidence before this Court that there is anything to suggest wrong doing on the part of the current Administrator on how the estate of the late Kabili Sakala is being administered.

I further agree that there exist provisions in the Intestate Succession Act which protect the beneficiaries of the Estate. See case of **Lindiwe Kate Chinyama v Dorren Chiwele Judith Tembo** cited by the Plaintiff.

However, section 16 (2) also grants the Court the discretion to appoint additional Administrators if it deems.

I find that this is a suitable case where the Court can invoke the provisions of the law and ensure that the interests of the minority of the beneficiaries are protected. This is so especially that the current Administrator is not the person, I would consider to have the greatest

interest in the estate, or priority beneficiary of the estate in terms of **Section 15 (2) of the Intestate Succession Act.**

Taking into account all matters and surrounding circumstances, I find that there is sufficient ground upon which I should invoke **section 16 (2) of the Intestate Succession Act** and Order that a second Administrator in addition to the existing be appointed as I do not see any prejudice that may be occasioned to the Plaintiff in this matter. Consequently, the Preliminary issue raised by the Defendant succeeds.

I accordingly order the beneficiaries and family to move to appoint an additional Administrator in accordance with **Section 15 (1) of the Intestate Succession Act** within two months from date of this Ruling.

Taking all issues into consideration, I order that each party bears their own costs relating to this application.

Delivered at Lusaka this.....^{5th}.....day of.....February.....2018.

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M. L. ZULU
HIGH COURT JUDGE