

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

2014/HP/A057

BETWEEN:

TRACY HAMWEEMBA

APPLICANT

AND

**PRECIOUS MWIINGA CHUULA
PETRONELLA MWIINGA CHUULA**

**1ST RESPONDENT
2ND RESPONDENT**

*Before Hon. Mr. Justice Mathew L. Zulu, at Lusaka the ^{2nd} day
of May, 2020*

For the Applicant:

*Mrs. B.M. Mulenga, National Legal Aid Clinic
for Women*

For the Respondents:

N/A

RULING

Legislation referred to:

1. *Intestate Succession Act, Chapter 59 of the Laws of Zambia.*

This ruling relates to the Applicant's application for an order to sale
House No. S85/12 Shikoswe, Kafue.

The application is brought pursuant to **Order 3 rule 2 of the High Court Rules** and **section 38** and **section 42 (d) of the Intestate Succession Act, Chapter 59 of the Laws of Zambia**. The application is supported by an affidavit deposed by Tracy Hamweemba, the applicant dated 17th October, 2017. The applicant avers that in the Ruling of this court dated 13th February, 2017, this court ordered that House No. S85/12 Shikoswe, Kafue be put on rent during the minority of Chipego Mwiinga and that the rentals were to be shared according to the law on intestacy. She swears that this court also adjudged that the house be sold upon the said Chipengo attaining the age of 18 and upon an application being made in the prescribed manner by an interested person. The deponents avers that Chipengo has attained the age of 18 as shown by the Record of Birth produced and marked **"TH1"**.

The deponent asserts that she has not received her share of the rentals from the date of the ruling and any attempt to recover the rentals has been met with hostility from the Respondents. She avers that in the circumstances, she believes that the only way the matter can be resolved is by selling the house.

The application was not oppose by the Respondents. There being several affidavits of service showing that the Respondents had refused service of the court process, I therefore, proceeded to hear the applicant's application.

At the hearing of the application, counsel for the applicant relied on the affidavit in support and she also briefly advanced oral arguments, the crux of which is that this court is by **section 38 of the Intestate Succession Act** empowered to order the sale of an asset forming part of an estate on the application of an interested person. Counsel advanced that the applicant has shown interest in the matrimonial home and that the only way the respondent will enjoy her interest in the property is if it is sold and she be given her share.

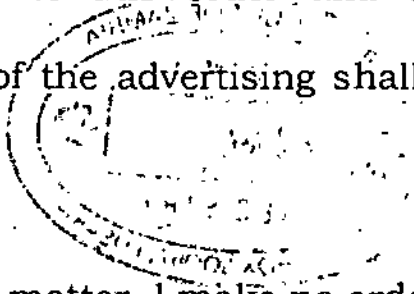
I have considered the ruling of this court dated 13th February, 2017, the affidavit in support and the arguments of counsel for the applicant. The issue is whether the house in issue should be sold and proceeds shared among those entitled. This court undoubtedly has the power to order the sale of the whole or part of the property

forming part of the estate. **Section 38 of the Intestate Succession Act** provides the following in this regard:

A court may, on application by a receiver of property appointed under section thirty-seven or any person interested in the estate, order the sale of the whole or any part of the property, if it appears to the court that the sale will be beneficial to the estate.

Based on the ruling of this court, it is not in dispute that the applicant as the surviving spouse and the Respondents and their other siblings are entitled to the house left by the deceased as tenants in common and that the applicant has a life interest in the house. In the ruling, this court observed that from the evidence, the applicant and the respondents were not leaving in harmony. However, this court found that it was not in the best interest of the minor child to order the sale of the house but instead ordered for the house to be leased and the proceeds shared in the percentages provided under the **Intestate Succession Act** until the minor reached the age of 18.

Having read the affidavit in support and on a perusal of the Birth Record of Chipengo Mwiinga exhibit marked "TH1," I am satisfied that the said child having reached the age of 18 and there being evidence that the relationship of the parties has not improved, I am of the considered view that it will be just and in the interest of all the parties if the house is sold and the proceeds shared among the applicant and the respondents and three other their siblings according to **section 5 of the Intestate Succession Act**. I therefore, order that the house be advertised and sold, Four (4) months from the date of this order and the proceeds shared accordingly. The costs of the advertising shall be borne out of the estate.



Due to the nature of the matter, I make no order for costs.

Leave to appeal is granted.

Delivered at Lusaka the ^{22nd} day of May 2020.

MATHEW. L. ZULU
HIGH COURT JUDGE