

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

2022/HPF/438

IN THE MATTER OF: SECTION 7(f) OF THE INTESTATE SUCCESSION
ACT CHAPTER 59 OF THE LAWS OF ZAMBIA

IN THE MATTER OF: ORDER 30 RULES 12(a) (c) (c) (g) and 13(b) (d)
OF THE HIGH COURT RULES CHAPTER 27 OF
THE LAWS OF ZAMBIA

IN THE MATTER OF: AN APPLICATION TO BE CONSIDERED AS A
BENEFICIARY IN THE ESTATE OF THE LATE
ARTEMIS VASSILIKI BENOS LEJA

IN THE MATTER OF: THE ESTATE OF THE LATE ARTMIS
VASSILIKI BENOS LEJA WHO DIED INTESTATE
ON 18TH APRIL 2022

AND

IN THE MATTER OF: PROPERTY NO. F/110a/165, VILLA
ELIZABETHA' LUSAKA, PROPERTY NO.
LUS/4714, LONGACRES, LUSAKA AND SUB 7
OF SUB 3 OF SUB 'A' OF FARM NO. 396a,
MAKENI, LUSAKA

BETWEEN:

MERCY MARIA BENOS (suing in her capacity as **APPLICANT**
Beneficiary in the Estate of the Late Artemis Vassiliki Benos Leja)

AND

MICHAL PIOTR FRANCISZEK LEJA (Sued in his capacity **RESPONDENT**
as Administrator in the Estate of the Late Artemis Vassiliki Benos Leja)

BEFORE THE HONOURABLE MR. JUSTICE KENNETH MULIFE

APPEARANCES:

For the Applicant: Mr. R. Musoni and Mr. J. Sichisambwe
Messrs. Abercon Chambers.

For the Respondent: Ms. Nalomba and Mr. M. Chisunka
Messrs Nkusuwila Nachalwe Advocates.

RULING

CASES REFERRED TO:

1. Base Properties Development Limited v Neggie Nachilima
Chileshe – SCZ/8/218/2015

STATUTES REFERRED TO:

1. High Rules, High Court Act, Chapter 27 of the Laws of
Zambia.
2. The Intestate Succession Act Chapter 59 of the Laws of
Zambia.
3. The Companies Act, No. 10 of 2017.

OTHER WORKS REFERRED TO:

1. Black's Law Dictionary, Eighth Edition.
2. Halsbury's Laws of England, 4th Edition.

1.0 INTRODUCTION

1.1 This is a Ruling on the Applicant's Originating Summons filed into Court on 8th September 2022. The Originating Summons seeks the reliefs reproduced below:

- i) An Order that Mercy Benos, as a near relative (Niece) of the late Artemis Vassiliki Benos Leja is a beneficiary in the Estate of the late Artemis Vassiliki Benos Leja and an Order that the Respondent has wrongfully deprived the Applicant from enjoying her share or interest in the said estate;
- ii) An Order that the Applicant as near relative (niece) is entitled to her interest in property No. F/110a/165, Villa Elizabetha, Lusaka, 33,500 shares in Michalangelo Investments Limited, Property No. LUS/4714, Longacres, Lusaka and Sub 7 of Sub 3 of Sub 'A' of Farm No. 396a, Makeni Lusaka forming part of the Estate of Artemis Vassiliki Benos Leja;
- iii) An Order that the Applicant as near relative (niece) is entitled to her interest in the majority 33,500 shares owned by the late Artemis Vassiliki Benos leja in the

Company, Michalangelo Investments Limited, which Company is the beneficial owner of Property No. LUS/4714, Longacres, Lusaka, forming part of the Estate of the Late Artemis Vassiliki Benos Leja;

- iv) An Order is made as to how property No. F110A/165, Villa Elizabetha, Lusaka, 33,500 shares in Michalangelo Investments limited, Property No. LUS/4714, Longacres, Lusaka and Sub 7 of Sub 3 of Sub 'A' of Farm No. 396A, Makeni, Lusaka forming part of the Estate of the Late Artemis Vassiliki Benos Leja will be distributed or in the alternative an Order that the said properties be sold and the proceeds thereof be distributed in accordance with section 7(f) of the Intestate Succession Act;
- v) An Ex-parte order of Interim Injunction restraining the Applicant, by himself, his agents, servants or representative from mismanaging and / or disposing of properties being Property No. F110A/165, villa Elizabetha, Lusaka, 33,500 shares in Michalangelo Investments Limited, Property No. LUS/4714, Longacres, Lusaka and Sub 7 of Sub 3 of Sub 'A' of

Farm No. 396a, Makeni, Lusaka forming part of the Estate of the Late Artemis Vassiliki Benos Leja until the determination of this matter by this honourable Court. Suffice to state that this aspect has already been dealt with. Therefore, it will not be subject of discussion in this Ruling.

- vi) An Order that the Applicant a near relative (niece) is entitled to her interest in the assets forming part of the Estate of the Late Artemis Vassiliki Benos Leja;
- vii) An Order that the Respondent render an account relating to the estimated ZMW 20,000,000.00 Estate of the Late Artemis Vassiliki Benos Leja from the time he assumed office as Administrator of the said Estate and that all the assets found to be forming part of the Estate of the Late Artemis Vassiliki Benos Leja be sold and the proceeds thereof be distributed in accordance with the Intestate Succession Act;
- viii) Further or other relief that the Court shall deem fit.

And,

- ix) Costs.

1.2 The Originating Summons is anchored on **Section 7(f) of the Intestate Succession Act, Chapter 59 of the Laws of Zambia** (hereinafter referred to as the 'Intestate Succession Act') and **Order XXX, Rule 12 (a), (c), (e) and (g) and 13 (b) and (d) of the High Court Rules, Chapter 27 of the Laws of Zambia** (hereinafter referred to as 'High Court Rules').

1.3 Section 7(f) of the Intestate Succession Act, stipulates as follows:

“Where an intestate leaves...a spouse but no children, parents or dependants, the portion of the estate which the children, parents and dependants would have inherited shall be distributed equally between the surviving spouse on the one hand and the near relatives on the other”.

1.4 The relevant parts of the cited portions of Order XXX of the High Court Rules state as follows:

“12. ... any person claiming to be interested ...in the relief sought as...heir-at-law of a deceased person...may take out an originating summons for such relief of the nature or kind

following, as may be specified in the summons and as the circumstances may require, that is to say, the determination...of any of the following questions or matters so far as the same arise in the course of the administration or performance of such estate or trust:

(a) any question affecting the rights or interests of the person claiming to be ... heir-at-law...

(b) the ascertainment of any class of ... next of kin, or others;

(c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts...

(e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(g) the determination of any question arising in the administration of the estate..."

following, as may be specified in the summons and as the circumstances may require, that is to say, the determination...of any of the following questions or matters so far as the same arise in the course of the administration or performance of such estate or trust:

(a) any question affecting the rights or interests of the person claiming to be ... heir-at-law...

(b) the ascertainment of any class of ... next of kin, or others;

(c) the furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts...

(e) directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;

(g) the determination of any question arising in the administration of the estate..."

2.2 The Applicant avers that the Respondent was granted letters of administration in the estate of the Deceased comprising real and movable property estimated to be in the value of ZMW 20, 000,000.00. That the Respondent's appointment as Administrator in the estate is confirmed by letters of administration exhibited as "MMB2"; that the stated value of ZMW 20,000,000.00 is supported by exhibit paragraph 9 of exhibit "MMB1." Exhibit "MMB1" is an Affidavit in Support of the application for letters of administration in the subject estate, by the Respondent.

2.3 That the real property comprises inter alia Property Number F/110a/165, Villa Elizabetha, Lusaka, Sub 7 of Sub 3 of Sub A of Farm 396a, Makeni, Lusaka. That the movable property consists of inter alia 33,500 ordinary shares in a company known as Michalangelo Investments Limited, which company, owns various assets including real property namely Property Number LUS/4714, Longacres, Lusaka and other properties unknown to the Applicant but known by the Respondent. The Applicant exhibited "MMB3-MMB6," being copies of Certificates of Titles and search printouts from the Ministry of Lands relating to Property Numbers F/110a/165,

Villa Elizabetha, Lusaka, Sub 7 of Sub 3 of Sub A of Farm 396a, Makeni, Lusaka, LUS/4714, Longacres, Lusaka and the Patents and Company Registration Agency (PACRA) print out relating to Michalangelo Investments Limited.

2.4 That the Deceased had four close relatives who are all deceased namely: her mother (Maria Benos)-the Applicant's paternal grandmother, her sister, Regina Harris Benos, her brother (Apostolos Theodore Dimitris)-the Applicant's biological father, and, her father, Panagiotis Elias Benos-the Applicant's paternal grandfather. The Applicant exhibited a photocopy of her National Registration Card ("MMB7") to demonstrate that she is a daughter to Apostolos Theodore Dimitris, the Deceased's stated brother.

2.5 The Applicant avers that she had an estranged relationship with the Deceased and the Respondent emanating from the manner in which the estate of her late father, paternal grandparents and her late Aunty (Regina Harris Benos), was handled by the Deceased. That by virtue of the estranged relationship, the Applicant has been disregarded by the Respondent as a beneficiary in the subject estate.

2.6 It is averred that her paternal grandfather mentioned above had a fishing business in Siavonga and Chisamba. That in addition her stated paternal grandfather and her late father ran several businesses together in Pemba and Lusaka; that her paternal grandfather purchased three properties on Luanshya Road and Panani Road in or about 1970 for the benefit of the Deceased, the Deceased's siblings and grandmother but that some of the stated properties were converted to the sole benefit of the Deceased in unclear circumstances. In support of this averment, the Applicant exhibited "MMB3," a Provisional Certificate of Title appearing in the names of the Deceased in respect of Property Number 110a/165/6.

2.7 It is averred that the Deceased sold part of the properties except for Property Number F/110a/165, Villa Elizabetha, Lusaka which forms part of the Deceased's estate in respect of which the Respondent registered caveat. That the Respondent also placed a caveat on Sub 7 of Sub 3 of Sub A of Farm No. 396a, Makeni, Lusaka; that on 26th May 2022, the Respondent placed a caveat on Property Number F/110a/165, Villa Elizabetha, Lusaka, claiming an interest

as Administrator of the subject estate and subsequently advertised the said property as being for sale as evinced by exhibit "MMB8," a picture advertising the stated sale.

2.8 The Applicant deposes that since the Deceased is survived by a spouse but no children, parents or dependents, the Applicant, as the Deceased's niece, is her near relative and in that respect, is entitled to a portion of the Deceased's estate in accordance with the Intestate Succession Act.

2.9 The foregoing are the averments by the Applicant.

3.0. RESPONDENT'S AVERMENTS IN OPPOSITION

3.1. The Respondent is opposed to the Summons and in doing so, filed into Court on 21st September 2022, an Affidavit in Opposition to the Originating Summons in which he admits being the surviving spouse of the Deceased and that the Applicant is the Deceased's niece; that however, the Deceased and the Applicant had no relationship or communication with each other for the most part of the marriage.

3.2. The Respondent admitted that the Deceased had no children, dependent and parents; that the estimate value

of the estate is ZMW20,000,000.00 and that it comprises the movable and immovable properties listed by the Applicant in her Affidavit in Support of Originating Summons. The Respondent also admitted that the Applicant's biological father, her paternal grandfather and Aunty predeceased the Deceased; that at the time of the demise of the Applicant's paternal grandfather, the Deceased was the only surviving child of her parents; that he had no relationship with the Applicant as he did not know her personally.

- 3.3. The Respondent disputed the Applicant's Allegation that he jointly with the Deceased mismanaged the estates of the Applicant's father, paternal Aunt and grandfather and this is because he married the Deceased long after the demise of the Applicant's father, paternal grandfather and paternal aunty; that the Applicant's Paternal grandfather and not the Respondent was solely responsible for the estate of his wife and late children; that in any event, all properties belonged to the Applicant's paternal grandfather and his wife and child could only benefit after his death but that both the Applicant's father and her

paternal aunt predeceased the Applicant's paternal grandfather.

3.4. The Respondent avers that that as surviving spouse, he has done everything within his purview with regard to managing the affairs of the Deceased's estate which includes obtaining letters of administration, placing caveats on two of the Deceased's properties and the properties owned by Michalangelo Investments Limited which was co-owned by the Deceased and the Respondent to protect it from wastage and frivolous claims. That the Respondent has been defending actions against the estate of claimants claiming that the Deceased owed them huge sums of money. To support this averment, the Respondent exhibited 'MPFL3', a Default Writ of Summons in the sum of K91, 188.00 in which he is a Defendant.

3.5. The Respondent avers that as the Deceased's surviving spouse, he believes that he is the sole beneficiary in her estate because she did not leave behind children, parents or dependents; that the Applicant and her young brother are not beneficiaries in the subject estate because they are neither the Deceased's relatives; that fishing business in

Siavonga for the Applicant's paternal grandfather and the several business operated by the Applicant's father and paternal grandfather which the Applicant mentioned in her Affidavit in Support of the Originating Summons are within the peculiar; that further, the Applicant had the opportunity to challenge the transfer of the three properties situated on Luanshya Road and Panganani Road in or about 1970 she alleges to have been purchased by her paternal grandfather for the benefit of the benefit of the Deceased, her siblings and the Applicant's grandmother but some of which the Applicant alleges to have been converted to the Deceased's benefit in unclear circumstances; that similarly, the Applicant had an opportunity to interrogate the Deceased's mother (the Applicant's grandmother) during her lifetime, as to the reason why her late paternal grandfather gifted the Deceased's with properties to the exclusion of everyone else; that however, the Applicant did not use such opportunities; that it is unreasonable and unfair for the Applicant to query the Respondent about the dispositions

because he was not part of the transactions between the Deceased and the Applicant's paternal grandfather.

3.6. The Respondent avers that in the year 1994, when the Deceased was the only surviving child of her parents, her late father gifted her three properties, namely Plot numbers 30, 31 and 52 situated in Pemba District in the Southern Province of Zambia. In support of this, the Respondent exhibited a photocopy of the Deed of Gift marked '**MPFL4**'; that however in the year 2004, the Deceased donated all the properties in Pemba to the Greek Orthodox Church, who have been the owners since. In support of this, the Respondent exhibited '**MPFL 10**', a photocopy of a letter written by the Greek Orthodox Church confirming that they owned the properties since 2004.

3.7. That further, through another Deed of Gift, the Deceased's late father simultaneously gifted her with Subdivision No. 165 of Farm No. 110a, Villa Elizabetha, situated in the City and Province of Lusaka to hold the same to herself exclusively. In support of this, the Respondent a photocopy of a Deed of Gift marked '**MPFL 5**'; that State

Consent was duly obtained and the Deed of Gift registered in the Deceased's names. In support of this, the Respondent exhibited '**MPFL 6**' and '**MPFL 7**', a State Consent to Assign and Land Register, respectively.

3.8. The Respondent averred that it was not unusual for the Deceased's late father to help the Deceased, as for example, in July, 1995, after disposing of some farms in Chisamba he gave the Deceased a sum of US \$50, 000 from his share of the proceeds to enable her seek medical attention in South Africa. In support of this, the Respondent exhibited '**MPFL 8**', a photocopy of a letter written by the Deceased's late father requesting for funds for the Deceased.

3.9. That shortly thereafter Deceased's father made a Declaration that he had disposed of all his real property in Zambia and revoked all testamentary dispositions made by him pertaining to property in Zambia and wished to die intestate. The Declaration was exhibited marked '**MPFL 9**'.

3.10. The Respondent averred that Plot No. 4714, Lusaka, belongs to a company - Michalangelo Investments Limited

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3.10. The Respondent averred that Plot No. 4714, Lusaka, belongs to a company - Michalangelo Investments Limited

Deceased's estate, is only an estimation he made at the time he was applying to obtain leave for Letters of Administration and not that the money was in a bank account. That in any event, he can only render an account after the lapse of the Administrator's year which is after April 2023.

3.14. The Respondent avers that the Applicant's claims over Subdivision 7 of Subdivision 'A' of Farm No. 396a, Makeni, Lusaka is misconceived because the property is a matrimonial house and his residence for which as a surviving spouse of the Deceased, he is the sole beneficiary.

3.15. The Respondent also avers that the property on Luanshya Road will be preserved for the time being.

3.16. These are the Respondent's averments.

4.0. APPLICANT'S AFFIDAVIT IN REPLY

4.1. The Applicant filed into Court an Affidavit in Reply to that filed by the Respondent, on 28th October 2022. The Applicant restated her earlier averments save to add the following: that indeed at the time her paternal grandfather

passed away in 2002, the Deceased was the only surviving child of the Applicant's paternal grandfather; that Property No. 4714 Long acres is registered in the names of Michalangelo Investments Limited in which the Deceased owned the majority of the shares; that the said shares are the Deceased's personal property and form part of her estate; that currently the shares vest in the Respondent as Administrator of the estate until the transfer of the shares to the beneficiaries; that since the company only had two shareholders being the Respondent and Deceased, the Respondent remains the sole shareholder and Director since he is under the mistaken belief that he is the sole beneficiary of the estate; that it is therefore in the interest of justice that Plot No. 4714 Long acres remains the subject of this matter as the Respondent may dispose it as he pleases.

- 4.2. The Applicant avers that she has frequented the property known as Subdivision No. 165 of Farm No. 11a Villa Elizabetha, Lusaka, and that by implication, the Respondent placed the advert to sell the property after the

Deceased's death as this was evidenced by the Respondent placing his contact numbers on the said advert.

- 4.3. The Applicant denied the Respondent's assertion that this matter is prematurely before the Court because the Respondent denied the Applicants attempt to settle this matter amicably and advised that the Applicant's claims can only be sought from the Court; that the Administrator's year does not operate as a bar to any claims against the estate or directing the Administrator to render an account.
- 4.4. The Applicant avers that the purpose of the injunction is not to restrain the Respondent from administering the estate but to prevent him from disposing of the property forming part of the estate; that the administration of the estate is not exclusively constituted by selling of the properties of the estate.
- 4.5. That Applicant is aware that the estimate value of the estate does not entail that there is cash money in the bank account; that the need for the Respondent to render an account of the administration is necessitated by the fact that there is reason to believe that there are more assets

Deceased's death as this was evidenced by the Respondent placing his contact numbers on the said advert.

- 4.3. The Applicant denied the Respondent's assertion that this matter is prematurely before the Court because the Respondent denied the Applicants attempt to settle this matter amicably and advised that the Applicant's claims can only be sought from the Court; that the Administrator's year does not operate as a bar to any claims against the estate or directing the Administrator to render an account.
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- 4.5. That Applicant is aware that the estimate value of the estate does not entail that there is cash money in the bank account; that the need for the Respondent to render an account of the administration is necessitated by the fact that there is reason to believe that there are more assets

of the estate he did not contribute to; that this would be unjust enrichment on the part of the Respondent.

4.8. These are the Applicant's averments in reply.

5.0. SUBMISSIONS BY THE APPLICANT

5.1. The Applicant filed a List of Authorities and Skeleton Arguments in support of the Originating Summons, on 8th September 2022. In a nutshell, it was submitted as follows: that pursuant to Order XXX, Rule 12(a), (c), (e), (g) and Rule 13(b) and (d) of the High Court Rules, this Court has jurisdiction to entertain this matter; that the Applicant being the Deceased's niece is the Deceased's near relative within the meaning of Section 3 of the Intestate Succession Act and considering that the Deceased left no child, parent and dependent but only a surviving spouse, the Applicant is entitled to a share of the Deceased's estate pursuant to Section 7(f) of the Intestate Succession Act.

5.2. Section 3 defines the phrase 'near relative' as ***"issue, brother, sister, grandparent and other remoter descendants of the deceased."*** In further support of the foregoing, I was referred to paragraph 611 of the

Halsbury's Laws of England 4th Edition which states as follows:

“where the Intestate leaves a surviving spouse and neither issue nor parent but leaves a brother or sister of the whole blood or issue of a brother or sister of the whole blood, half the residuary estate...is held on the statutory trusts for the brother or sisters of the whole blood.”

- 5.3. It was submitted that the estate in issue does not devolve solely on the Respondent as it was not jointly owned by the Respondent and the Deceased. Rather, it was owned solely by the Deceased. Save, according to paragraph 2.22 of the List of Authorities and Skeleton Arguments in Support of the Affidavit in Reply, that the 33,500 shares in Michealangelo were jointly owned by the Respondent and the Deceased although the Deceased was the majority shareholder. That by Section 3 of the Intestate Succession Act relating to the definition of ‘estate’ the real and movable property which are subject of the present action form part of the Deceased’s estate, and this includes the shares in Michalangelo Investments Limited. Relating to

the shares in Michealangelo Investments Limited, Counsel referred to Section 141(1) of the Companies Act No. 10 of 2017 to posit that a share in a company is personal property. Counsel also cited Section 190 of the same Companies Act to state that shares in a company may pass by operation of law and that in the case of the death of a shareholder of a company the shares may devolve on to the survivors where the Deceased was a joint holder or to a personal representative of the Deceased where the Deceased was the sole holder or last survivor of joint holders. That based on the foregoing, the Respondent as the Deceased's personal representative is holding the Deceased's estate for the ultimate benefit of the beneficiaries who include the Applicant.

- 5.4. On 28th October 2022, the Applicant further filed a List of Authorities and Skeleton Arguments in support of her Affidavit in Reply which are a recital of the foregoing arguments save to add as follows: that pursuant to Section 19(1)(c) of the Intestate Succession Act read with Section 43(1) of the same Act, this Court has power to order the Respondent to provide a full inventory of the Deceased's

estate and to render an account of his administration thereof. That this directive is necessitated by the decisions and steps thus far taken by the Respondent in administering the estate, premised on the belief that he is the only beneficiary in the estate. Section 19(1)(c) of the Intestate Succession Act imposes on an Administrator, a duty, when required to do so by the Court either on the application of interested party or on its own motion, to produce on oath in Court the full inventory of the estate of the deceased and to render to the Court, an account of the administration of the estate. Section 43(1) of the Intestate Succession Act bestows jurisdiction on the high Court in matters relating to succession.

- 5.5. Counsel further submitted that whereas Section 9 of the Intestate Succession Act entitles a surviving spouse to the matrimonial home, this right is not absolute as it is determinable upon death or remarriage. That the surviving spouse merely has a life interest in the matrimonial house. Further that the bare land upon which the matrimonial house is situated indivisible. Thereby the order of Injunction that was granted in this matter by this Court

should be made permanent to restrain the Respondent from selling any portion of the land upon which the matrimonial house is situated. Here, I was referred to the following holding of the Supreme Court of Zambia in the case of *Base Properties Development Limited v Neggie Nachilima Chileshe*:¹

"We now turn to ground 3, where the Appellant attacks the finding by the court below that the matrimonial house included the whole 20 acres. Firstly, the appellant's arguments that the words a 'matrimonial house' are not within the scope of section 9 of the Intestate Succession Act is petty. Although the section uses the word house, it is agreed that the farm was the matrimonial home.

Secondly, the argument that the common interpretation of a house, does not cover the 20 acres of land where the house sits is flawed. A house is a dwelling or residence but section 9 does not limit it to the actual quarters. It is part of the land on which it sits.

Black's Law Dictionary defines land at page 1008 as an immovable and undescribable three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface and everything growing on or permanently affixed to it. Therefore, land which formed part of the matrimonial home, cannot be separated from the house or termed as excess land as the appellant thinks. Ground 3 must equally fail."

5.6. These are the Applicant's Arguments.

6.0. SUBMISSIONS BY THE RESPONDENT

6.1. The Respondent filed Skeleton Arguments in opposition to the Originating Summons on 4th October 2022 in which it is argued as follows: that being the Administrator of the subject estate, he is, on the basis of **Section 24** of the Intestate Succession Act entitled to gather and distribute the Deceased's estate to the beneficiaries; that the Applicant is not a near relative of the Deceased within the meaning of **Section 3** of the Intestate Succession Act as nieces and nephews are not part of the definition of 'near

relative' according to this provision. That by Section 7 of the Intestate Succession Act she is not therefore a beneficiary in the Deceased's estate.

- 6.2. I was also urged to dismiss the Applicant's suggestion that the Deceased fraudulently took possession of and mismanaged the estate of the Applicant's paternal grandfather, paternal aunty and her biological father because these are legacy issues which she should have raised during the Deceased's lifetime. Counsel submitted that exhibits "MPFL4" and "MPFL5" (Deeds of Gift) in the Respondent's Affidavit in Opposition demonstrate that the Applicant's grandfather gifted the Deceased all his property as his only surviving child. Counsel also submitted that exhibit "MPFL 9" confirmed that the Applicant's grandfather made a declaration that he had disposed of all his properties and desired to die intestate. Counsel emphasized that the Applicant should have raised the questions she is now raising, concerning the dispositions of the property during the lifetimes of her paternal grandfather and the Deceased. That therefore the Applicant is claiming interest in estates that are non-

existent and that the Applicant has no locus standi to bring up this claim.

6.3. Counsel urged me to dismiss the action with costs.

6.4. These are the issues in toto.

7.0. HEARING

7.1. During the hearing, the parties Legal Advocates relied on and recited their respective Affidavits and written Arguments. For avoidance of repetition, I shall not recite the oral submissions.

7.2. These are the issues in toto.

8.0. CONSIDERATION AND DECISION

8.1. I have considered the parties' respective Affidavits and Arguments. Henceforth, I shall outline my determination. It is common ground that the Deceased died intestate. Therefore, by the preamble to the Intestate Succession Act read with Section 4(1) of the same Act, her estate stands to be administered in accordance with the provisions of the Intestate Succession Act. Quoting only relevant portions, the preamble to the Act prescribes as follows:

“An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a will...”

8.2. Section 4(1) of Intestate Succession Act provides that ***“a person dies intestate under this Act if at the time of his death he has not made a will disposing of his estate”***.

8.3. The following are also not in dispute: that the Respondent is the surviving spouse and Administrator of the Deceased's estate; that the Applicant's late biological father, Mr. Apostolos Theodore Dimitris and the Deceased, were siblings born of the same parents. Therefore, it is common ground that the Applicant was the Deceased's niece. It is further not in dispute that the Deceased left no child, parent and dependents.

8.4. In dispute, is if the Applicant is a 'near relative' within the meaning of Section 7 (f) of the Intestate Succession Act, read with Section 3 of the same Act, for purposes of benefitting in the estate. The two provisions are relevant

“An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a will...”

8.2. Section 4(1) of Intestate Succession Act provides that ***“a person dies intestate under this Act if at the time of his death he has not made a will disposing of his estate”***.

8.3. The following are also not in dispute: that the Respondent is the surviving spouse and Administrator of the Deceased's estate; that the Applicant's late biological father, Mr. Apostolos Theodore Dimitris and the Deceased, were siblings born of the same parents. Therefore, it is common ground that the Applicant was the Deceased's niece. It is further not in dispute that the Deceased left no child, parent and dependents.

8.4. In dispute, is if the Applicant is a 'near relative' within the meaning of Section 7 (f) of the Intestate Succession Act, read with Section 3 of the same Act, for purposes of benefitting in the estate. The two provisions are relevant

term 'niece' is not expressly mentioned either in the definition of the phrase 'near relative' or the term 'issue'. Suffice to state that alongside 'brother', 'sister' and 'grandparent', the term 'issue,' is part of the definition of the phrase 'near relative'. However, it is interesting to note that the definition of both 'issue' and 'near relative' include 'remoter descendant'. Therefore, the answer to the question if a 'niece' is a 'near relative' within the meaning of Section 3 of the Intestate Succession Act, lies in construing the phrase 'remoter descendant.'

- 8.7. A 'remoter descendant' has not been defined in the Intestate Succession Act. However, the phrase is given context in other legal literature. The **Black's Law Dictionary, 8th Edition**, is particularly insightful here. It states as follows as regards the term 'descendant':

"One who follows in lineage, in direct (not collateral) descend from a person. Examples are children and grandchildren. Collateral descendant means loosely a blood relative who is not strictly a descendant like a niece or nephew. Lineal descendant a blood relative in

the direct line of descend. Children, grandchildren, great grandchildren are lineal descendants."

8.8. Reverting to the Intestate Succession Act, it is apparent that by adopting the phrase 'remoter descendant', the Legislature envisages a broad as opposed to a narrow classification of a deceased person's 'descendants'. Thus the Legislature envisages not only 'descendants' in the strict sense such as children, grandchildren and great grandchildren but also, to borrow from the above statement by Black's Law Dictionary, 'collateral descendants' such as nieces and nephews.

8.9. I am inclined to opine that the broad classification of descendants is as a result of the Legislature's recognition of the entrenched extended family ties in many Zambia communities. Further, I am of the view that adopting the narrow classification of a 'descendant', as suggested by the Respondent, would lead to an absurdity as it would imply that an estate would be rendered bona vacantia even where there are nephews and nieces provided there is no priority beneficiary or persons specifically mentioned in

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8.12. The Applicant has alleged that the Deceased's estate comprises movable and immovable assets. That the movable assets consist of 33,500 shares held jointly by the Deceased and the Respondent in Michalangelo Investments Limited. She did not specify the number of shares held by the Deceased save to allege that the Deceased was the majority shareholder. The Respondent has not disputed this assertion. Under the circumstances, I am inclined to believe the Applicant's story. And, shares being personal property according to Section 141(1) of the Companies Act, the shares belonging to the Deceased are her personal property and, by Section 190 (1)(2)(b) of the same Act, are amenable to distribution to the beneficiaries in this matter, in the portions highlighted under Section 7(f) of the Intestate Succession Act.

8.13. In default of agreement, the Respondent and the Deceased's respective portions in the stated 33, 500 shares, shall be assessed by the Learned Registrar.

8.14. Turning to the immovable assets, the Applicant has stated that it comprises the following:

- (i) Sub 7 of Sub 3 of Sub A of Farm No. 395a Makeni Lusaka;

- (ii) Property No. LUS/4714, Long acres, Lusaka. And,
- (iii) Property No. F/110a/165 Villa Elizabetha, Lusaka.

8.15. I shall discuss the properties in the order they have been listed.

8.16. The Respondent acknowledges the existence of the stated immovable properties but explains as follows in his Affidavit in Opposition: as regards Property No. Sub 7 of Sub 3 of Sub A of Farm No. 395a Makeni, Lusaka, that the Applicant's claim for a share in the property should be dismissed because the property is a matrimonial home and by virtue of being the Deceased's surviving spouse, he is a sole beneficiary therein.

8.17. To the contrary, the Applicant contends that the Respondent's interest in the stated property is not absolute but determinable upon remarrying or passing. That when such occurs, the house reverts to the estate for distribution to the surviving beneficiaries. That therefore, she has an interest in the property and the Respondent must not be allowed to dispose it off.

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forming part of the deceased spouse's estate, is not absolute. Rather, it is subject to a life interest which is determinable upon the spouse remarrying. And, in the absence of other beneficiaries prescribed under this provision, when such a contingent occurs, the house reverts to the estate of the deceased and becomes amenable to distribution to beneficiaries in accordance with their legal entitlement.

8.20. With that said, I am of the view that much as the Applicant has no immediate interest in the house, she nonetheless has an indirect or future interest which would mature upon the termination of the Respondent's life interest in the property. For this reason, the Respondent cannot deal with the property in a manner he deems fit such as disposing it off as doing so would automatically terminate the Applicant's indirect or future interest in the property. I accordingly dismiss his claims here.

8.21. Regarding Property No. LUS/4714, Long acres, Lusaka, the Respondent clarified and the Applicant conceded under Paragraph 9 of her Affidavit in Support of the Originating Summons and in her Submissions that the

property is owned by the Company – Michalangelo Investment Limited. Noting that a company has separate legal personality from the shareholders and directors, it owns property in its name. Therefore, shareholders do not have a direct interest in their company's property. Rather, their interest is indirect and this is anchored on their ownership of shares in the company. Similarly, by virtue of her shares in Michalangelo Investments Limited, the Deceased had an indirect interest in Property No. LUS/4714 which devolved onto her heirs upon her demise. For this reason, the Respondent cannot deal with Property No. LUS/4714 in a manner he deems fit such as disposing it off as a sole Director of the company.

8.22. Turning to Property No. F/110a/165 Villa Elizabetha, Lusaka, the Respondent, only stated that it will be preserved for the time being. He did not offer an explanation for its preservation. There being no explanation, I am inclined to conclude that the property forms part of the deceased's estate and should therefore be distributed between the Respondent and the Applicant

in accordance with Section 7(f) of the Intestate Succession Act.

8.23. In terms of distribution, Property No. F/110a/165 Villa Elizabetha, Lusaka shall be valued. Similarly, the shares owned by the deceased in Michalangelo Investment Limited, shall be valued. The valuation shall be undertaken by a valuer jointly chosen by the Applicant and the Respondent. In default of agreement, the valuation shall be conducted by a government valuer.

8.24. Once valued, the two properties shall be sold and the proceeds thereof shared in accordance with the provisions of Section 7(f) of the Intestate Succession Act. However, a party with financial capacity shall be at liberty to buy-off the other's share.

8.25. I dismiss the Applicant's prayer for an order directing the Respondent to render an account for his administration of the estate because the deceased's estate is known to her. That is the reason she is able to itemise it in her Originating Summons thus: a portion of the 33, 500 shares in Michalangelo Investment Limited; Sub 7 of Sub 3 of Sub A of Farm No. 395a, Makeni, Lusaka; Property

No. LUS/4714, Long acres, Lusaka and Property No. F/110a/165, Villa Elizabetha, Lusaka.

8.26. To facilitate for the distribution of the properties in issue as outlined above, the Injunction that was granted in this matter shall be sustained in its entirety.

8.27. With the foregoing said, it suffices to state that the Originating Summons was properly before me pursuant to Order XXX, Rule 12 of the High Court Rules, because it was launched by a person who has an interest in the subject estate.

9.0. CONCLUSION

9.1. The Applicant is the deceased's near relative and therefore entitled to benefit from her estate in the proportions prescribed by Section 7(f) of the Intestate Succession Act. The deceased's estate in which the Applicant has an immediate and direct interest are her shares in Michalangelo Investment limited and Property No. F/110a/165, Villa Elizabetha, Lusaka. She has an indirect interest in Property No. LUS/4714 Long acres, Lusaka by virtue of the shares held by the Deceased in Michalangelo

Investment Limited, the company that owns the property. She also has an indirect and future interest in Property No. Sub 7 of Sub 3 of Sub A of Farm No. 395a Makeni, Lusaka. Her interest in Sub 7 of Sub 3 of Sub A of Farm No. 395a shall mature upon the Respondent's life interest in the property, terminating.

9.2. Parties shall bear their respective costs.

9.3. Leave to appeal is granted.

DELIVERED IN CHAMBERS THIS 7TH DAY OF DECEMBER, 2022.



KENNETH MULIFE
HIGH COURT JUDGE