

**IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL No.147 OF 1999
HOLDEN AT NDOLA
(CIVIL JURISDICTION)**

B E T W E E N:

PRISCILLA ALICE GRAY KABWE

APPELLANT

AND

FELIX BWALYA KABWE

RESPONDENT

Coram: Chaila, Muzyamba and Chibesakunda, JJS

6th September and 5th December, 2000

For the Appellant: J.C. Kaumba (Mrs), Assistant Principal State Advocate

Seconded to Legal Aid

For the Respondent: N/A

J U D G M E N T

Muzyamba, J.S. delivered the judgment of the court.

This is an appeal against a refusal to revoke the appointment of the respondent as Administrator of the Estate of the late Brian Lenox Kabwe who died intestate and affirmation of the distribution of the estate.

The brief facts of this case as can be discerned from the affidavits are that the deceased was married to the appellant and had three children from the previous marriage. At the time of his death on 7th May 1994 the deceased owned a house in Ndeke Township and 2 flats in Luanshya. He also owned a car, vanette, 2 bicycles, a farm and a Honda, non runner.

Before he died the appellant had commenced divorce proceedings which abated upon his death. The respondent was then appointed Administrator of the deceased estate.

The appellant was not happy with his appointment and the way the respondent distributed the estate. She then issued summons in court for revocation of his appointment. The application was refused and hence this appeal.

The appellant filed 6 grounds of appeal and relied on her written heads of argument filed by her Counsel. As we see it the real issue is what is the law where there is a minority interest involved i.e. where there are surviving children under the age of maturity. In dealing with this issue the learned trial Judge said in his ruling as page R2:-

“I have noted that the deceased is survived by eight children out of whom three were born from the widow and the rest from the deceased’s previous marriages. There is also the aspect that there were divorce proceedings before the deceased died and that the widow had left the matrimonial home. In my considered view, the widow is not a fit person to stay together with all the surviving children. In consequence, the administrator properly directed himself to distribute the household items. With regard to the Ndeke house and in view of my findings that the widow is not a fit person to stay together with the surviving children of the deceased I find that the Administrator acted fairly and in the best interest of the children to treat the Ndeke house as

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subject to distribution to the children. Any interest that the widow might have in the Ndeke house has been overly compensated by the high cost Kamiranda plot given to her.”

The stand taken by the learned trial Judge reflects the law that where there is a minority interest justice demands that the widow and the children do remain in occupation of the matrimonial house. However, in this case the court found and rightly so that the appellant could not remain in the matrimonial home because she had permanently left the matrimonial home before her husband died to commence divorce proceedings and she took a plot at Kamiranda as her inheritance.

For the foregoing reason the appeal fails. It is dismissed. As the respondent never appeared we make no order for costs.

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M.S. CHAILA

SUPREME COURT JUDGE

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W.M. MUZYAMBA

SUPREME COURT JUDGE

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L.P. CHIBESAKUNDA

SUPREME COURT JUDGE