

IN THE SUBORDINATE COURT OF
THE 1ST CLASS FOR THE LUSAKA
DISTRICT, HOLDEN AT LUSAKA
(Civil Jurisdiction)

CAUSE NO 2017/CRMP/0117



BETWEEN:

WIZI SAKALA

PLAINTIFF

AND

MARY SAKALA

DEFENDANT

J U D G M E N T

This is a civil matter in which Plaintiff sued the Defendants in which Plaintiff was claiming;

1. Settlement of property of the late Wizzy Pole Sakala
2. An order to compel Defendant account for the estate of the late Wizzy Pole Sakala
3. Costs of and incidental to these proceedings
4. Any other relief the court may deem fit

In Civil matters the onus to prove a case on a balance of probabilities lies on the plaintiff.

According to the Plaintiff his late Father Wizzy Pole Sakala had a house in George Compound and a house in Lilanda. He also had a fridge, 2x stereos, 1 x carpet, and Cylinder bottles for gas. His father had three wives and three of the wives used to stay in the Lilanda house. The oldest of the children was 42 years and the

last one was 24 years. His father died in 1999 and the Defendant was chosen administrator. The defendant was his Aunt. The defendant occupied the house in George Compound. She was chosen Administrator in 2012. Since 1999 to 2012 there was no Administrator. Defendant had been getting rentals from the Lilanda House. Defendant also got a fridge, a 4 x 4 plates cooker, 1 x carpet, 2x radios and 1 x Nokia phone. His prayer was for her to give them the houses and the rentals that she had been getting. He did not know the amount of rentals.

In XXN he told the Court that it was true that she got his father's property. He was not chosen Administrator. He denied to have sold his father's property before he went to prison. At the time he was going to prison his mothers asked to leave the place. The houses in George Compound and Lilanda were for his father. They were in his father's *names*.

S names. He did not have the documents. Defendant was the Administrator to plaintiff's father's estate and not to her mother.

PW2 was JONATHAN SAKALA. The Defendant was the administrator to his late father WIZZY POZE SAKALA who died in 1999. In 2012 the Defendant was chosen Administrator. His father had two houses in George and Lilanda Compounds. The Lilanda one was Plot No 240/19. He did not know the plot No for the George Compound one. The Administrator was not sponsoring them. He wanted her to give them what was left by their father. He did not have any documents to show that his father died. He did not have documents to show that Defendant was the Administrator to his late father.

In XXN by Plaintiff he told the Court that when plaintiff was in prison, the Defendant did not give them anything. The Defendant stayed in his late father's house. The house in Lilanda was for his late father. His father was a panel beater. It was the

Defendant who got the rentals from the Lilanda house and the shop. Defendant used to sell fritters. His father had two shops. His father had six vehicles. He did not know where the tools for panel beating, the stove, fridge and radios were.

In XXN by the Defendant he told the Court that the Lilanda house was for his father because he was born from there. He did not know where his father and mother were when they got married. He was not there. He was before court to tell the court that the house was for his father. His mother did tell him that Defendant did take her to Victim support Unit in 2003. He was told that Defendant won the case. He had brought def. to Court now because Plaintiff was now out of prison and knew better about the houses. Def. was before court because she was the Administrator of his late father. She was the Administrator for the two houses. The document showed that def. was the administrator since 2012. The houses in Lilanda and George were for his late father. The George house bore names for his father and the Lilanda one she changed the names. Def. was the elder sister to his late father. He did not have documents for his late father but knew that he left the houses.

According to Def., in 1979 she bought a house in Lilanda. She had documents to that effect. She bought the house from Humphrey Mutondo. The house had been in her names since 1987. She identified the document marked DDP1. Her brother the late Wizzy Sakala asked if he could occupy the house because he was a welder and the house had electricity. She allowed him to occupy it and they used to get along well. At that house she built a shop. His late brother was a womanizer and used to marry different women. He died in 1999. At the time of his death he had another wife

because he had divorced the mother to plaintiff. After the death of her brother, the plaintiff went to her in a violent manner and demanded for the documents of the house. Plaintiff did not know that the house belonged to Defendant. When the mother to plaintiff was divorced, Plaintiff WAS very young and knew nothing. The house in George Compound was bought by her late mother who died in 2009. She was staying with her late mother. After her death she was appointed administrator. In 2016 when plaintiff came he brought confusion. She was not the administrator for the plaintiff's father. The documents for the George house were stolen by plaintiff though it was registered at the Council. It was No 209/25 and was in the names of Wizzy Poze Sakala the names of her late father. The father to plaintiff bore the same names. The house was put in the names of plaintiff's father. To her knowledge the house belonged to her mother. She was the administrator to plaintiff's father. She identified the order of appointment of administrator marked DDP2. The plaintiff took her to Victim Support Unit where he was referred to Court. Plaintiff applied for Administratorship and she sued him to Court for revocation. She was given both houses. She had the judgments to that effect which she identified marked DDP3. Later plaintiff sued her to this Court. She had documents to the Lilanda Hse. She had been staying in the George house since 1987. In 1998 plaintiff's father wrote a document because Plaintiff was troubling him. She identified the document marked DDP4.

In XXN she told the Court that the house was put in the names of her brother the late Wizzy Poze Sakala. The George house was bought in 1974. It was in 1978 when Plaintiff's father left Kanyama. In 1978 plaintiff's father was doing piece works at Guras. The only paper that she had to show that the house was for her mother was the document that Plaintiff's father wrote.

Plaintiff was the one that stole the documents for the house. The papers that got burnt were those for ZESCO application. It was in 2012 that she put power in the George house. She did not know where her mother and the father to plaintiff bought the house from. She did not know as to who witnessed the document that plaintiff's father wrote.

DW2 was ELIZABETH TEMBO. According to her the house where Defendant stayed was for her grandmother. It was bought by Defendant and Defendant's mother. However, it was registered in the names of Plaintiff's father for the reason that he was to take care of his mother. Defendant bought a house in Lilanda. Defendant used to stay with her mother and her brother the father to Plaintiff who later asked if he could stay in the Lilanda house. In 1998 ^{he} got ill and plaintiff demanded for the Lilanda house documents.

In XN by Plaintiff she told the Court that it was her grandmother who bought the house on George. It was in 1974 when she came to Lusaka. It was in 1978 when she bought the house. The house was in the names of WIZZY POZE SAKALA. She did not know the names of the seller. Plaintiff's father wrote a document to show that the house was for Defendant. Plaintiff's father knew how to write. She heard it from plaintiff that his father did not know how to write.

DW3 was TAMARA ZULU. According to her the Def. was the daughter to her sister. When her sister died the Def. was chose~~d~~ Administrator. The house in George Compound was for her late sister.

In XN by plaintiff she told the court that plaintiff was her grandson. Plaintiff was the second born in his family. Defendant was the administrator to her mother's house. She knew it was her

sister's house because she bought it. The house in George was in plaintiff's father's names. Plaintiff's father was being kept by her sister. The money was for her sister.

This is what I received. It is not in dispute that there are two houses one in George Compound and another in Lilanda Compound. It is also not in dispute that the house in Gorge is in the names of Wizzy Poze Sakala and the house in Lilanda is in the names of the Defendant. Further it is not in dispute that the since time immemorial the George house had been occupied by the Defendant. It is not in dispute that Wizzy Poze Sakala did occupy the house in Lilanda.

This is what I have to say. The house in Lilanda is in the names of the Defendant and it is clear from the evidence that Wizzy Poze Sakala did ask from the Defendant who is the elder sister to stay in that house since it had electricity and he was a welder to use the said electricity. He was allowed. He stayed there till death. Therefore there is no dispute as to who the owner of the house is. DDP1 shows that the house is for the Defendant.

For the house in Gorge Compound evidence shows that the Defendant, her late mother and her late brother Wizzy Poze Sakala stayed in that house together at one time. Wizzy Sakala came from that house to go to the other house in Lilanda which house was for his elder sister the Defendant. I wonder as to how he could leave his house and stay in the house which was not his. Further I wonder as to how Defendant could decide to occupy her brother's house when she had her house. History here shows that the house was bought by Defendant and Wizzy Sakala's mother in the names of Wizzy Sakala which I am inclined to believe for the sole purpose that Wizzy Sakala was to take care of his mother. It was not bought for him the reason he asked to stay in his sister's house afterwards. The

fact that the names are in Wizzy Sakala's names does not mean that it was his house. There is an explanation behind it and that explanation can only be done by those who witnessed it. In this case the witness being the Defendant. The George house is what Defendant knows to be her house and has stayed there for all these years even when Wizzy Sakala was still alive. Plaintiff failed to avail witnesses to support his claim who knew very well about the house. His father had several wives. Atleast one could have come to state something but he decided not to bring them. He relied on the names being in his father's names. Therefore the inference being that the George Compound house being the property for the Defendant.

In light of the forgoing I find that Wizzy Sakala did not leave any estate worthy talking about and the claim for property settlement fails. Further there is no need to order Defendant to account for the estate of Wizzy Sakala as there is no such estate. The claims in total fails.

Each party to bear own costs. IRA. Security for costs on appeal K3, 000-00.

DELIVERED IN OPEN COURT THIS ^{12TH}.....DAY OF ^{MAY}.....2017



HON A.N WALUSIKU

