

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



2018/HPF/172

IN THE MATTER OF: The administration of the estate of the late Nambi Chilemo

IN THE MATTER OF: Section 19(2) of the Intestate Succession Act, Chapter 59 of the Laws of Zambia

AND

IN THE MATTER OF: An application for authority to sale property on Subdivision C Farm number 525 forming part of the estate of the late Nambi Chilemo

PAMELA NANJIMBI CHILEMO

Applicant

(Suing as Administratrix
of the estate of the late Nambi Chilemo)

Before the Hon. Mrs Justice N.A. Sharpe-Phiri on the 3rd December 2018

For the Applicant: Ms. Pamela Chilemo, in person

JUDGMENT

Authorities referred to:

Intestate Succession Act, Chapter 59 of the Laws of Zambia

This is a judgment on an action commenced on the 21st September 2018 by way of Originating Summons by Pamela Chilemo, (‘the Applicant herein’). By this action, the Applicant seeks an order for

sale of the property known as Subdivision C Farm number 525, Lusaka.

The summons was supported by an affidavit filed on even date and deposed to by the Applicant. The Applicant had also filed a further affidavit in support of the Originating Summons on the 27th November 2018. The gist of her affidavit evidence was that the late Nambi Chilemo (deceased) was her brother who died intestate on the 10th June 2011 and is survived by one child namely Nambi Chilemo and a wife namely Bridget Muzeya Chilemo. The affidavit states that following his demise, the Applicant was on 23rd July 2012 appointed by the High Court as personal representative of her brother's estate. The deceased estate is comprised of a property known as Subdivision C Farm number 525, Lusaka. The Applicant also deposed that it has become necessary and desirable to sell the property of the deceased. The beneficiaries of the estate have consented to the sale.

The matter came up for hearing on 13th November 2018. On this date, the Applicant was present. The Court observed that no evidence of ownership of the property was exhibited. The Applicant sought an adjournment to enable her file a further affidavit showing proof of ownership of the property by the deceased. The matter was adjourned.

The Applicant filed a further affidavit on the 27th November 2018 exhibiting proof of ownership of the property by the deceased.

The matter was heard on the 3rd December 2018. The Applicant was present. She relied on the affidavit in support of 21st September 2018 and a further affidavit of 27th November 2018 and urged the Court to grant her the application sought.

Having carefully considered the Applicant's claim, the issue to consider is whether or not to grant the relief being sought by the Applicant. Her prayer is that the Court authorize the sale of the property that comprises of the deceased estate. The application has been brought pursuant to **Section 19 (2) of the Intestate Succession Act**. The law provided under this section that:

'Where an administrator considers that a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.'

The import of the foregoing provisions is that where an administrator of an estate considers it necessary and desirable to

sell property forming part of the estate of a deceased, he may sell the property provided he obtains the authority of the Court to do so.

The Applicant had brought this application for sale of the property of the estate of the deceased on the basis of the provisions of the **Intestate Succession Act** which require an administrator of an estate to seek authority prior to disposal of an estate.

In considering whether to authorize the Applicant as Administratrix of the estate to dispose of the property known as Subdivision C Farm number 525, Lusaka, the starting point is to establish that the Applicant is the lawful Administratrix of the estate with valid Letters of Administration; that the deceased person is indeed the beneficial owner of a property and that the beneficiaries of the estate have consented to the sale of the property of the estate.

The evidence of the Applicant reveals that the deceased died intestate at Lusaka on the 10th June 2011 and that following his death, the Applicant was appointed as Administratrix of the estate and letters of Administration were issued to her by the High Court for Zambia on the 23rd July 2012. This is evidenced by a copy of the Probate issued out of the High Court for Zambia exhibited as 'PNC 1' in the affidavit in support of 21st September 2018.

The further affidavit evidence shows that the deceased was the beneficial owner of a property known as Subdivision C Farm

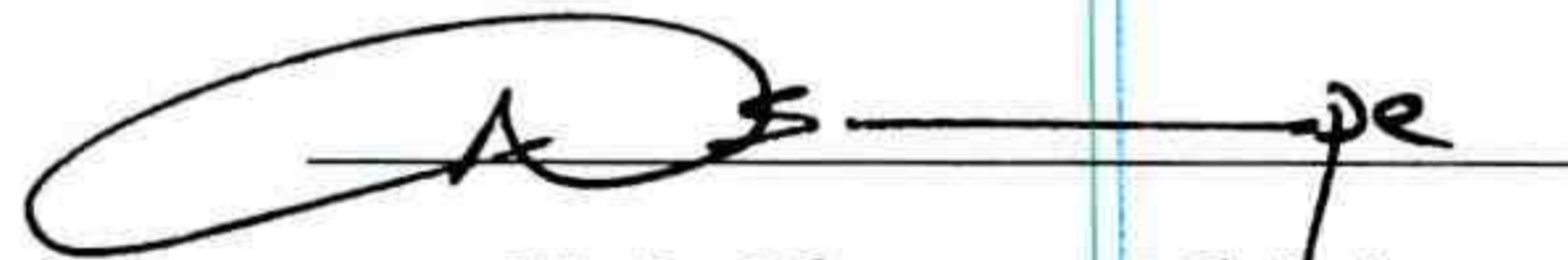
number 525, Lusaka and a certificate of title having been issued to him by the Ministry of Lands on 9th June 2016. A copy of the certificate of title was exhibited in the further affidavit in support of 27th November 2018 and marked as 'PNC 1'. The Applicant further deposed that the beneficiaries of the estate have consented to the sale of the deceased's estate and their consent is evidenced and exhibited as 'PNC 2' in the affidavit in support of 21st September 2018.

Section 19(1)(b) of the Intestate Succession Act is instructive on the duties of administrators of an estate, which includes amongst others, to collect the estate and effect distribution of the estate in accordance with the rights of persons interested in the estate under the Act. The affidavit evidence of the Applicant is that she finds it necessary to dispose of the said property forming part of the estate of the deceased in order to carry out her duties and distribute the estate to all the beneficiaries. I am satisfied that it is in the interest of the beneficiaries that the property comprised in the estate be sold.

I accordingly order that the Applicant Pamela Nanjimbi Chilemo, as administrator of the estate of the deceased be and is hereby granted authority to sell the property known as Subdivision C Farm number 525, Lusaka.

The Applicant shall endeavour to secure the best possible sale price on the open market and shall distribute the estate as prescribed by law. The Applicant shall render a full account to the beneficiaries of the estate on the administration of the estate within 30 days after completion thereof.

Delivered at Lusaka this 3rd day of December 2018

A handwritten signature in black ink, appearing to read 'N.A. Sharpe-Phiri', written over a horizontal line.

**N.A Sharpe-Phiri
HIGH COURT JUDGE**