IN THE COURT OF APPEAL OF ZAMBIA **APPEAL NO. 68/2017**
HOLDEN AT LUSAKA and NDOLA
(Civil Jurisdiction)

BETWEEN

NOEL CHEMBE **APPELLANT**

AND

DJR INVESTMENT LIMITED **RESPONDENT**

CORAM: Mchenga, DJP, Mulongoti and Sichinga, JJA

On 4th October 2017 and 24th August 2018

For the Appellant: F.S. Kachamba, EBM Chambers
For the Respondent: Messrs Eric Silwamba, Jalasi & Linyama

J U D G M E N T

Mchenga, DJP, delivered the judgment of the court.

Case referred to:

1. **City Express Service Limited v Southern Cross Motors Limited (Formally Marunouchi Motors Limited) SCZ APPEAL No. 198/2006**

Legislation referred to:

1. **The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia**

2. The Intestate Succession Act, Chapter 59 of the Laws of Zambia

This is an appeal against the High Court's decision declining to grant the appellant's application, for the respondent be ordered to remove a caveat they had placed on Lot 2725/M Central Province. The application was made pursuant to **section 81 of the Lands and Deeds Registry Act.**

The facts, in as far as they are necessary to refer to in this judgment, are as follows; In January 2014, the appellant decided to obtain a 99-year lease for Lot 2725/M, a property which his late father, Francis Bruno Chembe, held on a 14-year lease. When he approached the Commissioner for Lands for renewal of the lease, he discovered that the respondent had placed a caveat on the land. There was also evidence that following his father's demise, his sister, Theresa Hope Lwembe Mambo, was appointed administrator of the estate.

The respondent justified the placing of the caveat on the basis that they entered into an agreement to purchase the property from the appellant's father, in 2001. The purchase price was K50,000.00 and it was paid in two instalments, but they failed to complete the transaction due to his demise.

Pursuant to **section 81 of the Lands and Deeds Registry Act**, the appellant took out originating summons seeking an order that the respondent should show cause why the caveat they had placed, as intending purchaser, should not be received.

At the hearing of the application, counsel for the respondent, submitted, *inter alia*, that the appellant had no capacity to institute and maintain the proceedings, as he was not the personal representative of his deceased father's estate. The trial judge accepted the submission and dismissed the action on the ground that the appellant had no *locus standi*.

The three grounds that where advanced in support of this appeal can be narrowed into two issues. The first, being that, the trial judge erred when she dismissed the action on the ground that the appellant had no *locus standi*. The second, is that, the action should not have been dismissed without considering the merits of the appellant's claim.

We will first deal with the question of *locus standi*. It was submitted, that even though no power of attorney was executed, the appellant had a letter from the administrator of his father's estate, allowing him to obtain title to the property in his own name. Reference was made to **section 81 of the Lands and Deeds Registry Act** and it was submitted that since he was a beneficiary to his father's estate, he had sufficient interest to commence the action.

In response, it was submitted on behalf of the respondent that **section 15(1) of the Intestate Succession Act,**

provides that where a person dies intestate, only a person appointed as administrator of the estate, has the legal capacity to institute and maintain any legal proceedings on behalf of the estate. In this case, since the appellant was not appointed administrator, he had no capacity to institute these proceedings.

Counsel also referred to the case of **City Express Service Limited v Southern Cross Motors Limited (Formerly Marunouchi Motors Limited)**[1] and submitted that it was competent for the trial judge to consider the appellant's capacity to institute the proceedings, on her own motion. In any case, the appellant had raised the issue by making it known to the court, that he was not the administrator of his father's estate.

First of all, we find that the trial judge was entitled to deal with the appellant's *locus standi* because the respondent raised it in their submissions. To fully appreciate the import of **section 81 of the Lands and**

Our scrutiny of the two provisions indicates that the interest referred to in **section 81** is actually set out in **section 80**, it is that of the registered proprietor or other person entitled to deal with land. Where the interest claimed is not that of the registered proprietor, there is a requirement that it must be registered. To that end, **section 68 of the Lands and Deeds Registry Act** provides as follows:

> **"68. (1) Any executor, administrator, trustee in bankruptcy or committee of a lunatic claiming to be entitled to any estate or interest in land by virtue of any transmission may make application in writing to the Registrar to have such transmission registered.**
>
> **(2) Such application shall be accompanied by the probate, letters of administration, appointment or other authority under which the applicant makes his claim and shall accurately define the estate or interest claimed by such applicant, and state that he verily believes himself to be entitled to the estate or interest in respect of which he applies to be registered as Proprietor, and, if so required by the Registrar, the statements in such application shall be verified by the oath or statutory declaration of the applicant."**

Since the registered proprietor of the property was deceased and the appellant was claiming an interest on the basis of being a beneficiary, such claim could only be sustained through an executor or administrator. In this case, since the appellant's father died intestate, recourse must be had to **The Intestate Succession Act. Section 24** of that Act provides that:

> **"(1) Subject to any limitations and exceptions contained in a grant of letters of administration the grant entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death except that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.**
>
> **(2) Subject to subsection (1), letters of administration shall have effect over the whole of the estate of the deceased throughout Zambia and shall-**
>
> **(a) be conclusive against all debtors of the deceased and all persons holding any property of the deceased;**
>
> **(b) afford full indemnity to all debtors paying their debts, and all persons delivering up that property to the administrator."**

By virtue of **section 24 of the Intestate Succession Act**, following her appointment as administrator of the estate, Theresa Hope Lwembe Mambo, assumed the proprietary interests of the appellant's father, in Lot 2725/M Central Province. Consequently, we find that the trial judge rightly found that the appellant had no *locus standi* to commence these proceedings.

Having found that the appellant had no *locus standi* to commence the proceedings, consideration of the appellants arguments on the trial judge's failure to determine the case on its merits, become otiose.

We find that this appeal has no merits and it is dismissed. Each party will bear their own costs.

.....

C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT

.....

J.Z. Mulongoti
COURT OF APPEAL JUDGE

.....

D.L.Y. Sichinga
COURT OF APPEAL JUDGE