

**IN THE SUPREME COURT OF ZAMBIA****Appeal No. 36/2006****HOLDEN AT LUSAKA**

(Civil Jurisdiction)

**BETWEEN:****MASILISO LUBASI**Appellant(Suing as Administratrix of the Estate of the  
Late Rose Monde Akayombokwa)**AND****IMATAA MUKENANI AKAYOMBOKWA**Respondent**Coram:** Mumba, Chitengi and Silomba, JSSon 21<sup>st</sup> June 2007 and 30<sup>th</sup> May, 2008**For the Appellant :** Mr. C. L. Mundia SC of  
Messrs C. L. Mundia & Company**For the Respondents:** Mr. M. L. Mukande of  
Messrs M. L. Mukande & Company

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**JUDGMENT**

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Chitengi, JS, delivered the Judgment of the Court

In this judgment we shall refer to the Appellant as the Plaintiff and the Respondent as the Defendant which were their designations in the High Court.

The facts of this case are briefly that the Plaintiff is the sister and Administrator of the estate of Rose Monde Akayombokwa (deceased) who was the wife of the Defendant. The Defendant and deceased had three children. During their marriage the parties built a house on Plot Number 4666/m Lusaka. As the law now stands, it is of no consequence to say who contributed what to the construction of the house. The deceased died in 1998. According to the Plaintiff, while

the deceased and the Plaintiff were reflected as joint tenants in the provisional certificate of title the subsequent certificate is only in the name of the Defendant. The Plaintiff who abandoned her main claim of sale of the house and distribution of the proceeds of sale to the beneficiaries sought the inclusion on the certificate of title of the children of the marriage of the deceased and the Defendant. The Plaintiff has since remarried claiming himself to be a bachelor and not a widower.

The Defendant told the court that he built the house from his resources and had no difficulty to include his children on the certificate of title.

On this evidence the learned trial Judge correctly reviewed the law relating to matrimonial property and held that it did not matter who provided to construct the house and that after the death of one spouse the house becomes the property of the surviving spouse and the children and, according to the learned trial Judge the surviving spouse and the children become joint tenants. In this case the learned trial Judge held that the Defendant and the children are joint tenants.

The Plaintiff now appeals to this court against the decision of the High Court. The Plaintiff in her further amended notice of appeal advanced one ground of appeal which is that the learned trial Judge erred in holding that the Defendant and the children are joint beneficiaries of the house and/or Lot No. 4666/M without taking into account the interests of the parents of the deceased who was a statutory joint tenant which interests accrued to be beneficiaries in accordance with the provisions of the Lands and Deeds Registry Act.



Mr. Mundia, learned counsel for the Plaintiff and Mr. Mukande, learned counsel for the Defendant filed detailed written heads of argument and addressed us orally.

However, on account of the view we take of this appeal we do not find it necessary to restate the submissions of counsel. Suffice it to say that we have given the submissions our careful consideration.

We appreciate the force of Mr. Mundia's submissions but as Mr. Mukande quite rightly pointed out and as the learned trial Judge said in his judgment, the Plaintiff resiled from her other claims and asked the learned trial Judge to rule on the interests of the children vis-a-vis those of the Defendant and the learned trial Judge ruled in her favour. We are, therefore, at a loss to understand why the Plaintiff is now raising the issue of interests of the parents. We cannot now be asked to rule on a matter which the learned trial Judge was not asked to adjudicate upon. As we see it and as Mr. Mukande rightly pointed out, the Plaintiff's duty now is to ensure that the judgment of the court below has been complied with and, if not, is enforced. Apart from correcting the learned trial Judge's nomenclature so that the Defendant and his children are designated as tenants in common and not joint tenants, we see no basis for interfering with the judgment of the learned trial Judge.

We find no merit in this appeal and we dismiss it with costs to the Defendant to be agreed upon and in default to be taxed.

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**F.N.M. MUMBA**  
**SUPREME COURT JUDGE**

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**PETER CHITENGI**  
**SUPREME COURT JUDGE**

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**S. S. SILOMBA**  
**SUPREME COURT JUDGE**