

IN THE HIGH COURT OF MALAWI

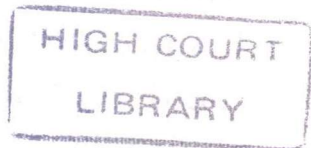
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 97 OF 2000

BETWEEN:

IN THE MATTER OF WILLS AND INHERITANCE ACT (CAP  
10:02 LAWS OF MALAWI)

- AND -



IN THE MATTER OF AN APPLICATION BY TICHAONA  
RYSON KAPAZIRA - SON OF THE DECEASED IN THE  
ESTATE OF LATE EZEKIEL LABON KAPAZIRA

CORAM: TWEA, J.

Tsingano, of Counsel for the Applicant  
Tembo (Mrs), Official Interpreter

RULING

This application was brought by Tichaona Ryson Kapazira the son of late Ezekiel Laban Kapazira who died intestate on 28th September, 1992 at Queen Elizabeth Central Hospital, in Blantyre. The application was brought under Section 42 of the Wills and Inheritance Act, for a limited grant of letters of

administration of the deceased estate.

The affidavit of the applicant deponed that since this court removed one Frank Kapazira and Feredae Mchulu and replaced them with Administrator General as the Administrator of the Estate, the Administrator General has done nothing to administer the estate. The applicant thus sought to be granted limited grant to enable him sell one of the houses which form part of the estate in order that he may pay off the accumulating city rates, pay tuition fees for himself and also pay off messrs G. G. Kaliwo and Company who represented the estate earlier and are refusing to hand over the account of the estate and the books unless and until their fees are paid.

I initially requested counsel to file an supplementary affidavit in respect of what the Administrator General has done since appointment. When the same was filed, it was deponed that all the administrator had done was request the account of the monies and records from Messrs G. G. Kaliwo and Company. Messrs G. G. Kaliwo and Company never responded in any way. Whether this is because they want their fees to be paid first or merely due to inemptitude, it is not clear. I find the conduct of this firm most wanting in professionalism, to say the least. Further, it is my view that the Administrator General could have done more. Seriously speaking one gets the impression that these matters are treated casually and that there is a lot of laxity in the way the deceased estate are handled by his office..

The Administrator General as an institution of the Government is a safety net for most people dying intestate in this

country. It is created to look after the affairs of such estates, among other things, to protect the interests of the deceased estates, the beneficiaries and the Government. It is appalling that they can let the estate waste away like this. I would have removed the Administrator General as the administrator, but I will retain him for reason I will give later. Be this as it may, I order counsel to bring a such conduct to the Attorney General attention with a view to restoring professionalism in this institution.

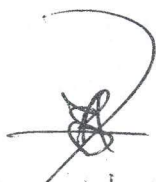
Coming back to the present application, I note that the applicant is distressed by the apparent impasse, and this is understandable. However, it is clear that this estate has had a troubled history and the trouble may not be over yet. The deceased had a family from two wives. The status of the marriages is not material for the purposes of this application. All I can say is that the removal of the first administrators was not without cause. The first administrators were family members, but did not enjoy the confidence of the whole family. This is what influence the court to appoint the Administrator General as a neutral party.

In the case of **Getrude Lunguzi and others Vs Sera Lunguzi and another**, Civil Cause No. 1750 of 1998, this court said that where there are several branches of the family who are beneficiaries to the estate, it is essential, where practicable, to have representative of each branch. This, in my view, would be the best approach in respect of this estate, which, as has already been seen, has difficulties.

The applicant and his sister are from one mother against the other children and other relatives of the deceased. Giving them

the grant on their own would trigger the same emotion from the others. It is for this reason that I retain the Administrator General. However, in view of the impasse and the legitimate concern on the waste of the estate raised by the applicant I **order that he be joined as a grantee of the estate together with the Administrator General.** They will administer the estate as would be in the best interest of the estate and all the beneficiaries. The applicant to file his bond within 15 days. Messrs G. G. Kaliwo and company to produce the accounts and books of the estate within 60 days of this order and they must be paid the fees agreed or taxed within 21 days of the agreement or taxation, but not later than 30 days after production of the accounts and books.

**Pronounced in Chambers this 25th day of January 2000 at Blantyre.**



E. B. Twea  
**JUDGE**

