



**MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
ZOMBA DISTRICT REGISTRY  
FAMILY AND PROBATE DIVISION  
PROBATE CAUSE NO. 43 OF 2018**

**IN THE MATTER OF THE ESTATE OF IBRAHIM YUDA MKUMBA (DECEASED)**

**-AND -**

**IN THE MATTER OF THE MATTER OF THE DECEASED ESTATES (WILLS,  
INHERITANCE AND PROTECTION)**

**-AND -**

**IN THE MATTER OF**

**FALIDA MKUMBA .....1<sup>ST</sup> CLAIMANT  
JAFELI TWEYA.....2<sup>ND</sup> CLAIMANT**

**-VS -**

**MAVUTO ISHMAIL MKUMBA.....1<sup>ST</sup> DEFENDANT  
HASSAN GANIZANI MKUMBA.....2<sup>ND</sup> DEFENDANT**

**CORAM: HONOURABLE JUSTICE R.E. KAPINDU**

Mr. Kita, Counsel for the Claimants

Mr. Kalaya, Counsel for the Defendants

Mr. Nkhwazi, Senior Court Clerk/Interpreter

## RULING

### KAPINDU, J

1. Mr. Ibrahim Yuda Mkumba, now deceased (hereafter referred to as the deceased person), was an accomplished entrepreneur in the City of Blantyre. A man of substantial means. The evidence shows a man who owned various properties and investments in the City of Blantyre. Evidently, he also had a rather eventful and complex family life. As it shall become apparent below, he was the father of 13 children from 8 different mothers.
2. Regrettably, despite his business accomplishments and his expansive family life, he died intestate, without leaving behind a valid Will. A Will, according to section 2 of the Deceased Estates (Wills, Inheritance and Protection) Act (Cap. 10:02 of the Laws of Malawi) (DEWIPA), is a legal declaration by a person of his or her wishes or intentions regarding the disposition of his or her property after his or her death. The deceased person died on 16<sup>th</sup> June, 2018 at Blantyre Adventist Hospital in the City of Blantyre. It did not take long after his death before a serious family dispute arose regarding the management and distribution of his deceased estate.
3. The matter arises out of that dispute. Before the Court goes into the details of the dispute, the Court wishes to state in advance that the dispute exemplifies the need for people to execute valid Wills that clearly define the manner in which they would like their property estates to be distributed and/or disposed upon their demise. Drawing up and validly executing a Will, particularly in big and/or complex estates, is likely to go a long way in avoiding lengthy and convoluted property inheritance disputes such as the one in the present matter. The matter also shows the need for people with substantial property interests to be well informed and methodical in estate planning and management.
4. The genesis of the matter herein is that between August and early September, 2018, the Claimants approached this Court, *ex-parte*, seeking Letters of Administration. Initially, the 1<sup>st</sup> Claimant sought a limited grant of Letters of Administration for her to be able to

sell a house, Title No. NY 586 in Nyambadwe suburb in the City of Blantyre. This Court is generally averse to authorizing piecemeal dispositions of deceased estates in the absence of proper explanations. The Court declined to grant the limited Order and stated that the 1<sup>st</sup> Claimant had to bring an application for full grant of Letters of Administration. The Court also directed that there was need for a Co-Administrator in view of the fact that there was minority interest in the estate. The result was that upon an *ex-parte* application made by the Claimants herein, namely Mrs. Falida Mkumba, widow of the deceased person; and Mr. Jafeli Tweya, uncle to the deceased person, the Court granted them Letters of Administration on the 10<sup>th</sup> of September, 2018.

5. Since the grant of those Letters of Administration, the simmering family dispute descended into the theatre of litigation before this Court. The matter has been characterized by back and forth *in limine* applications with sworn statements in support and in opposition.
6. The present application is the first and major *inter partes* hearing that this Court heard in relation to this matter. In order to do justice to the matter, in the unique circumstances of the present matter, this Court will go to great lengths outlining the detailed facts that underly the present dispute.
7. As earlier stated, the Letters of Administration in dispute herein were granted following an *ex-parte* application made by the Claimants. In the Administration Oath in support of the application, they stated that they were entitled to apply for Letters of Administration, and that to their knowledge, no person entitled to be granted Letters of Administration Court Letters of Administration had at that time, so applied.
8. They stated that the whole estate herein comprised K70,000,000.00 (Seventy Million Kwacha) being the total sum of death benefits and they exhibited a copy of an evaluation report that was marked as “FM2”
9. The Claimants undertook to administer the deceased’s estate according to law and that they would produce a true and perfect account of the said estate whenever required by law to do so.

10. In the Order of the Court dated 10<sup>th</sup> September, 2018 abovesaid, in which this Court made an Order granting the Claimants the Letters of Administration, the Order required the Claimants to administer the deceased's estate in strict compliance with the law by among others; paying assessed estate duty and publicly advertising the intended distribution of the estate for the notice of debtors, creditors and other interested parties.
11. Further to the Order of 10<sup>th</sup> September, 2018, on 17<sup>th</sup> September, 2018, the Claimants took out Summons for an Order of Interlocutory Injunction, *ex-parte*, seeking to restrain the Defendants either by themselves, their agents or servants whomsoever, from disposing or selling or dealing with the estate of the deceased person in any manner until the determination of this matter or until a further Order of the Court.
12. In their joint affidavit in support of the Application, the Claimants stated that upon obtaining the Letters of Administration and investigating into the inventory of the estate, they discovered that the Defendants had been disposing of items forming part of the deceased's estate and that some of those transactions were ongoing.
13. They stated that despite their having obtained the Letters of Administration, and having advised the Defendants to leave all matters in the hands of the Administrators, the Defendants continued to transact personally and continued to dispose of the property of the deceased's estate willy-nilly.
14. The Claimants deposed that they had gathered and reasonably believed that the Defendants had debts that they had promised to pay off upon selling property of the deceased's estate or to give away property of the estate in satisfaction thereof.
15. The Claimants therefore worried that unless the Defendants were coerced to stop this conduct by an order of this Court, they would continue to transact in the property of the estate and waste it. The Claimants further informed the Court that they had reported the matter to the Police to assist in tracing some of the property and to prosecute the Defendants if need be.
16. Upon considering the Application, the Court granted the Order of Interlocutory Injunction, and a formal Order thereof was perfected on 3<sup>rd</sup> October 2018.

17. Following these developments, on 9<sup>th</sup> October 2018, the Defendants herein filed an *Ex-Parte* Summons for the revocation of the grant of Letters of Administration or, alternatively, for the removal of an Administrator, namely Mr. Jafeli Tweya. An affidavit in support of this Application was sworn by Counsel Daniel Kalaya on behalf of the Defendants.
18. The Defendants deposed that the 1<sup>st</sup> Claimant, Mrs Falida Mkumba, was widow to their late father, Mr. Ibrahim Yuda Mkumba (Deceased). They acknowledged that she had obtained Letters of Administration on the 10<sup>th</sup> of September, 2018 in which herself and one Jafeli Tweya were made Co-Administrators of the deceased's estate.
19. The Defendants stated that in obtaining the said Letters of Administration, the 1<sup>st</sup> Claimant did not disclose the fact that the 2<sup>nd</sup> Claimant was neither a dependant nor a member of the immediate family of the deceased person, apart from being a mere uncle to the deceased.
20. They stated that the deceased person had surviving children of full age and other living spouses who could have been made joint Administrators with the 1<sup>st</sup> Claimant, rather than the 2<sup>nd</sup> Claimant herein. They stated that these surviving children, who are of full age, and other living spouses of the deceased, were in fact called during earlier meetings at the Administrator General's offices for family discussions, and that the said Jafeli Tweya was not invited as a beneficiary during such meetings.
21. The Defendants exhibited copies of the said invitations, marking them "HM1" and "HM2" respectively. They averred that if the said material fact had been disclosed to the Court, the Court would not have granted the said Letters of Administration to the 1<sup>st</sup> Claimant jointly with the 2<sup>nd</sup> Claimant.
22. They contended in their Skeleton Arguments, as well as in the said sworn statement in support, that it would therefore not be in the interests of the estate of the deceased person herein to maintain the 2<sup>nd</sup> Claimant as an Administrator because he was not a beneficiary.

23. They proceeded to argue that in fact the 2<sup>nd</sup> Claimant was a mere figurehead, and that effectively the estate was being managed by a single Administrator, being the 1<sup>st</sup> Applicant herein.
24. The Defendants alleged that the 1<sup>st</sup> Claimant, on 18<sup>th</sup> of September 2018, withdrew the sum of MK7,000,000.00 from the First Merchant Bank account of Blantyre Lodge Ltd, which was one of the companies owned by the deceased, in which the deceased was the sole signatory without the knowledge of the family members and also contrary to the Order of this Court dated 10<sup>th</sup> September 2018 in which the Court ordered that the administration of the said estate had to be in strict compliance with the law by, among other things, publicly advertising the intended distribution of the estate for the notice of the debtors, creditors and other interested parties. The Defendants exhibited a copy of a bank statement to this effect and marked it "HM3".
25. The Defendants further alleged that as a family, they had also been reliably informed by officials from Ministry of Lands that the 1<sup>st</sup> Claimant had been attempting to sell properties belonging to the deceased, namely a house in Nyambadwe Suburb and a workshop situated in Manja Township by virtue of being Administrator of the deceased's estate herein without the knowledge of any of the family members and without following the law relating to the administration of deceased's estates.
26. They argued that from the foregoing, the estate of the deceased person risked being destroyed by the 1<sup>st</sup> Claimant who, according to them, was in essence a sole Administrator in the matter and who had been administering the estate in a manner that was contrary to the laws relating to the administration of deceased's estates in Malawi.
27. The Defendants claimed that the estate of the deceased person had outstanding loans with banks such as Standard Bank of Malawi and New Building Society Bank who might be short-changed if the estate was abused as was the case at the material time.
28. In the premises, the Defendants prayed to the Court to revoke or annul the said Letters of Administration for having been obtained fraudulently by making a false suggestion or by concealing from the Court something that was material to the case, until a further order of the Court.

29. The Court, after considering the Defendants' Application for the revocation and/or annulment of Letters of Administration herein, declined to grant the Order sought. Instead, the Court decided to suspend the Claimants as Joint Administrators of the deceased's estate herein pending hearing of an *inter-partes* application in the matter.
30. The Court made a further Order that the 1<sup>st</sup> Claimant had to account for the MK7,000,000.00 that she had withdrawn from the First Merchant Bank Account of Blantyre Lodge Ltd, and that the said account had to be furnished to the Court and verified by a sworn statement within (7) days from the date of the Order.
31. The Court however emphasized that the Order of injunction that it granted on the 21<sup>st</sup> September 2018, and which was perfected on the 3<sup>rd</sup> day of October, 2018 against the Defendants herein remained in effect.
32. Pursuant to the Order of the Court that she had to provide an account on the use of funds withdrawn from the Blantyre Lodge account held at First Merchant Bank, by a Sworn Statement made on the 19<sup>th</sup> of October, 2018, the 1<sup>st</sup> Claimant stated that she was the only widow of the deceased person. She stated that in exercising their joint powers as Administrators of the said deceased's estate, on 18<sup>th</sup> September, 2018 the Claimants herein withdrew a sum of MK 7,000,000.00 from the First Merchant Bank account of Blantyre Lodge Ltd, which was one of the companies owned by the deceased.
33. She stated that MK 4,900,000.00 of the said sum was used to pay the estate duty for the said deceased's estate, MK 1,000,000.00 was used as part payment for the legal fees that were incurred in obtaining the said Letters of Administration; MK 800,000.00 was used to pay for the school fees and other necessities for Mariam Mkumba and Izhaka Mkumba who are the children that she had with the deceased and that they are 4 years and 2 years old respectively, in that they were in need of special care.
34. She further stated that an amount of MK 300,000.00 was used for household requirements.

35. In January, 2019, the Claimants brought another application, *inter partes*, for an Interlocutory Order to vacate or vary the Order of Suspension of Falida Mkumba and Jafeli Tweya as Administrators of the estate of the late Ibrahim Yuda Mkumba
36. In her sworn statement in support of this Application, the Claimant reiterated that the deceased person was survived by one wife, being herself, and that there was no other surviving spouse other than herself. She exhibited a copy of the Marriage Certificate marked “FK 1”.
37. She stated that the deceased had two children with her who survived him, namely Marriam Mkumba, aged 4 years old at the material time, and Izhaka Mkumba aged 2 years old at the material time.
38. She stated that the deceased person was previously married to one Grace Mkumba, but that they divorced in or around 1992. She stated that prior to the said divorce, they had four children namely; Aisha Jane Mkumba aged 38 years old, Ishmael Mabvuto Mkumba aged 36 years old, Kamkosva Mkumba aged 34 years old and Hassan Ganizani Mkumba aged 33 years old.
39. She stated that after the death of the deceased person, a family meeting was arranged to decide on who would be the Administrators of the deceased’s estate. She stated that during the meeting, it was discovered that every child of the deceased who had attained the age of majority wanted to be an Administrator of the estate
40. It was her statement that in order to make sure that there was a balance among the children of the deceased, it was resolved that the surviving widow of the deceased, being herself, and the uncle of the deceased, being Mr. Jafeli Tweya, the 2<sup>nd</sup> Claimant herein, were the ones to apply to be the Administrators of the estate.
41. It was her story that in the absence of the parents of the deceased person, the said Jafeli Tweya was listed as one of the beneficiaries of the deceased’s estate by the Administrator General as he represented all the relatives of the deceased at his home village.

42. She proceeded to state that prior to his death, the deceased person was survived by two companies namely Kwenda Jenda Transport Ltd and Blantyre Lodge Ltd, and that it was the proceeds from these two companies that were the source of provision for every beneficiary of the estate during the life time of the deceased.
43. She stated that upon the death of the deceased person, the abovesaid Mavuto Ishmael Mkumba, aged 36 years old at the time, and Hassan Ganizani Mkumba who was 35 years old, being the Defendants herein, started selling and grabbing every property that belonged to the deceased before its distribution among the beneficiaries of the deceased's estate.
44. She stated that among others, the Defendants, as at January 2019, had already sold 9 buses each being valued at MK 30,000,000.00 (Thirty Million Kwacha) and above, and used the proceeds thereof without considering the beneficiaries of the deceased's estate and without any authority.
45. She stated that in total, the Defendants had wasted or otherwise pocketed a minimum sum of MK 30,000,000.00 X 9 Buses, thus amounting to above MK 270,000,000.00 (Two Hundred and Seventy Million Kwacha) from the sale of the 9 buses.
46. She stated that the deceased person also owned property under the name of Blantyre Lodge Ltd situated next to Wenela Puma Filling station which, at the material time, made a minimum of MK 300,000.00 (Three Hundred Thousand Kwacha) on a daily basis.
47. She stated that from 16<sup>th</sup> June 2018, which was the day the deceased person died up to present, the Defendants had been collecting the proceeds of Blantyre Lodge Ltd for their personal use without considering the beneficiaries of the estate and without any due authorization
48. She proceeded to state that even by using the minimum amount to calculate the proceeds of the said Blantyre Lodge Ltd from the day the deceased person died to the date of her Sworn Statement herein, which would be MK300.000.00 X 30 Days X 6 Months (16<sup>th</sup> June to 18 December 2018), it would all add up to a total sum of

MK54,000,000.00 (Fifty-Four Million Kwacha) which was unaccounted for by the Defendants.

49. She proceeded to state that further to the foregoing, the Blantyre Lodge premises had tenants namely Intercap Bus Co. Ltd and Airtel Malawi Limited who were paying rentals every three months. She stated that in the month of July 2018, Intercap Bus Co. Ltd paid the Defendants a total sum of MK 3,800,000.00 (Three Million Eight Hundred Thousand Kwacha) for rentals and that the Defendants used the same for their personal use. She further stated that in the same month of July 2018, Airtel Malawi Limited paid the Defendants a total sum of MK 500,000.00 (Five Hundred Thousand Kwacha) which the Defendants also had for their own use.
50. She stated that in the month of October 2018, the Defendants were paid another sum of MK 3,800,000.00 (Three Million Eight Hundred Thousand Kwacha) by Intercap Bus Co. Limited for rentals, and that in the month of October 2018 Airtel Malawi Limited paid the Defendants another MK500.000.00 (Five hundred Thousand Kwacha) for rentals.
51. She further stated that State House Officials and Mary's Meal Organisation Officials were being accommodated at Blantyre Lodge and that the estate of the deceased was expecting payments for the services rendered around July/August 2018. She stated that the Defendants collected the said payments and pocketed the same for their personal use.
52. It was the 1<sup>st</sup> Claimant's statement that further to the foregoing, the deceased person left assorted metal objects (scraps) from his previously owned motor vehicles, and that the Defendants sold all those objects/items at an undisclosed price and used or otherwise pocketed the proceeds thereof.
53. She contended that to sum it up, the Defendants had pocketed or wasted a sum of 270,000,000.00 (Two Hundred and Seventy Million Kwacha) + MK 54,000,000.00 (Fifty Four Million Kwacha) + MK 3,800,000.00 (Three Million Eight Hundred Thousand Kwacha) + MK 500,000.00 (Five Hundred Thousand Kwacha) + MK 3,800,000.00 (Three Million Eight Hundred Thousand Kwacha)+ Undisclosed State

House Payment + Mary's Meals Organisation Payment + Sales of scraps which all added up to a minimum sum of MK328,300,000.00 (Three Hundred and Twenty Eight Million Three Hundred Thousand Kwacha).

54. She stated that in exercising her powers as a Co-Administrator of the deceased's estate, she wrote the Defendants through their lawyer one Mr. Jai Banda to account for all the money they had received under Blantyre Lodge, as well as to account for all the items they had sold. She exhibited a copy of the letter, marked as "FK 2". She stated that the Defendants failed, denied or otherwise neglected to make such account.
55. She stated that in order to protect the estate from further damage by the Defendants, herself (the 1<sup>st</sup> Claimant) and Mr. Jafeli Tweya (the 2<sup>nd</sup> Claimant), as Administrators, obtained a restraining order against the Defendants from dealing with any property that form part of the deceased's estate. She stated however that contrary to the said order of the Court, the Defendants herein continued dealing in, selling and managing the property forming part of the deceased's estate and using the proceeds for themselves without considering the other beneficiaries.
56. The Claimants claim that in fear of being held accountable for the loss or damage that they have caused to the deceased's estate, the Defendants rushed to the Court and made an application to nullify the Letters of Administration or alternatively joining one of the Defendants as a Co- Administrator. She added that prior to the said application, the Court suspended her and the said the 2<sup>nd</sup> Claimant as Administrators pending the hearing of *inter partes* summons.
57. The Claimants further stated that unless the Court ordered otherwise, the estate stood to be destroyed or damaged by the Defendants as they continued dealing with the property that forms part of the deceased's estate contrary to the Order of the Court.
58. The 1<sup>st</sup> Claimant pointed out that the Defendants had since appointed themselves as Managing Director and Operations Director respectively, of the said Blantyre Lodge Ltd. She exhibited a copy of a letter dated 11<sup>th</sup> October, 2018 confirming the same, and marked it "FK 3".

59. The 1<sup>st</sup> Claimant stated that she and her two children were suffering as there was no financial support being rendered to them for their everyday needs and other necessities.
60. She pointed out that all documents relating to houses, motor vehicles, plots and every other property that formed part of the deceased's estate were under the custody of the Defendants and that they could easily sell or dispose of the property the subject matter of the estate using the said documents
61. She stated that unless this honourable Court vacated or varied the order suspending the Administrators, the deceased's estate would be damaged by the Defendants and that it would be the minors who would suffer the most.
62. The Claimants therefore prayed that the Court should vacate the suspension of the Administrators from undertaking their duties; or alternatively vary the Order suspending the Letters of Administration so as to allow the Administrators access to the funds in bank accounts so as to support the infants as they had special needs. They also prayed for an Order restraining Mabvuto Ishmael Mkumba and Hassan Ganizani Mkumba from dealing in any manner with any property forming part of the deceased's estate.
63. They further prayed for an order that the said Mabvuto Ishmael Mkumba and Hassan Ganizani Mkumba had to account for the money that they received from the sale of the 9 buses, and also to account for the money they had received from the business transactions of Blantyre Lodge, and for the rentals that were paid by Intercap Bus Company Ltd and Airtel Malawi Limited. Finally, the Claimants prayed for an order that Mabvuto Ishmael Mkumba and Hassan Ganizani Mkumba were to surrender every document relating to any property forming part of the deceased's estate.
64. The Defendants responded to the Claimants Application through a Sworn Statement in Opposition of 5<sup>th</sup> February, 2019 sworn by Mr. Hassan Ganizani Mkumba (hereafter referred to as Mr. Hassan Mkumba).
65. Mr. Hassan Mkumba deposed that he was the 2<sup>nd</sup> Defendant in the present matter, and a son of full age of the deceased person herein, the deceased person.

66. He stated that he was the Managing Director of Blantyre Lodge Ltd, one of the properties in which the deceased was shareholder and director.
67. Mr. Hassan Mkumba stated that the facts he was deposing to had come to his knowledge by virtue of being son to the deceased and also through the reading of the Court record herein.
68. He asserted that the deceased person was survived by two wives namely Grace Mkumba, who is the mother to Aisha Jane Mkumba, Ishmael Mkumba, Kamkosya Mkumba and himself; and the 1<sup>st</sup> Claimant herein, Mrs. Falida Mkumba. He emphasized that the deceased person never divorced Mrs. Grace Mkumba at any point in his life. It was his evidence that the deceased married the 1<sup>st</sup> Claimant herein because Mrs. Grace Mkumba authorised him to do so according to their Muslim faith and teachings.
69. He proceeded to state that apart from the said children of Mrs. Grace Mkumba, the deceased also had surviving children with Falida Mkumba namely Marriam Mkumba and Izhaka Mkumba aged 4 and 2 respectively, as at February, 2019.
70. He then turned to the issue of Blantyre Lodge Limited.
71. Hassan Ganizani Mkumba stated that Blantyre Lodge Limited is a limited liability company which was duly registered under the Companies Act, 1984. He exhibited a copy of the certificate of incorporation and marked it “GHM1”.
72. He stated that prior to the deceased’s death on 16<sup>th</sup> June, 2018, the deceased owned one third of the shares in Blantyre Lodge Limited. It is significant here to mention that in the earlier Sworn Statement of 2018, the same deponent had deposed that the deceased person “*owned*” the said company.

73. Hassan Mkumba proceeded to claim that the other Directors and shareholders in the company were Alhaji Jameel Mkumba and one Khadija Mkumba. He exhibited a copy of the Memorandum of Association of the company and marked it “GHM 2”
74. He proceeded to state that Kwenda Jenda Transport Limited was also a limited liability company duly registered under the Companies Act, 1984. He exhibited a copy of the company’s certificate of incorporation and marked it “GHM 3.”
75. Mr. Hassan Mkumba stated that the deceased person and his mother, Mrs. Grace Mkumba, were joint directors and shareholders in equal terms in Kwenda Jenda Transport Limited. He exhibited a copy of the memorandum of association and marked it “HGM 4.” Again it is interesting to note that he had earlier deposed under oath that this company was “owned” by the deceased person.
76. It was his assertion that the 1<sup>st</sup> Claimant’s status was that of a widow to the deceased, and that it was the deceased person who was one of the directors and shareholders of the Blantyre Lodge Limited and Kwenda Jenda Transport Limited. He emphasized that the 1<sup>st</sup> Claimant was not a director or shareholder in Blantyre Lodge Limited or Kwenda Jenda Transport Limited. He stated that the interest of the 1<sup>st</sup> claimant in the two named companies was therefore only limited to the level of shareholding of the deceased, and not as a sole beneficiary but jointly with all the children and dependants of the deceased.
77. Mr. Hassan Mkumba proceeded to state that the effect of the Letters of Administration granted to the beneficiaries of the estate of the deceased person may only be limited to the level of shareholding of the deceased in the said companies.
78. He contended that the Letters of Administration granted in respect of the deceased’s estate should not be construed as giving the Administrator(s) powers to manage the affairs of the said companies due to their limited liability status in law.
79. He claimed that the 1<sup>st</sup> claimant misconstrued her position as a beneficiary to the estate of deceased person by interfering in the operations of the said two companies until the said companies obtained an Order of Interlocutory injunction restraining her from interfering in their operations in Civil Cause No. 276 of 2018; *Blantyre Lodge Limited*

*and Kwenda Jenda Transport Limited vs Falida Mkumba.* He exhibited a copy of the said order, made by the Hon. Justice N’Ntiva, and marked it “GHM5.” The Court will make some comments about this Court process at the end of this decision.

80. Mr. Hassan Mkumba proceeded to state that any sale of buses or any income made by the said companies if any was being done within the operational framework of the companies concerned and not by the Defendants in their personal capacity.
81. He then turned on the status of the 2<sup>nd</sup> Claimant, Mr. Jafeli Tweya who was appointed as co-Administrator by the Court. He reminded the Court that the 1<sup>st</sup> Claimant, widow to the deceased person, obtained Letters of Administration on the 10<sup>th</sup> of September, 2018 in which she and one Jafeli Tweya were made joint Administrators of the estate of the deceased.
82. It was his case that in obtaining the said Letters of Administration, the 1<sup>st</sup> claimant did not disclose the fact that the said Jafeli Tweya was neither a dependant nor a member of the immediate family of the deceased; and that he was just a mere uncle to the deceased person.
83. He stressed that the deceased left behind children of full age and also another living spouse, Mrs. Grace Mkumba, who could have been made joint Administrators together with the 1<sup>st</sup> claimant.
84. He argued that these surviving children, of full age, and another living spouse of the deceased, were the ones who, during earlier meetings at the Administrator General’s office, were duly invited for family discussions. He pointed out that the said Jafeli Tweya was not invited as a beneficiary during such meetings. He exhibited copies of the said invitations and marked them “GHM6” and “GHM7” respectively.
85. He stated that as such, if this material fact had been disclosed to the Court, the said Court would not have granted the said Letters of Administration to her jointly with Jafeli Tweya.

86. He further stated that under the circumstances, it would not be in the interests of the deceased's estate to maintain Mr. Jafeli Tweya as Co-Administrator because he was not a beneficiary under the estate. He expressed the view that by maintaining Jafeli Tweya as a joint Administrator, which in his view was in a mere figurehead capacity, the estate of the deceased person was effectively being managed by a single Administrator in the name of the 1<sup>st</sup> Claimant.
87. Mr. Hassan Mkumba stated that shortly after obtaining Letters of Administration in the present matter, the 1<sup>st</sup> Claimant, on 18<sup>th</sup> September, 2018, withdrew the sum of MK7, 000,000.00 from the First Merchant Bank account number 0706797946 of Blantyre Lodge Ltd. He exhibited a copy of a bank statement and marked it as "GHM8."
88. He that such withdrawal was contrary to the Order of the Court dated 10<sup>th</sup> September 2018 in which the Court stated clearly that the administration of the said estate had to be in strict compliance with the law by, among other things, publicly advertising the intended distribution of the estate for the notice of the debtors, creditors and other interested parties.
89. He pointed out that the 1<sup>st</sup> Claimant did not, at any point, advertise the intended withdrawal of this amount nor did she inform creditors and debtors of the deceased's estate and other interested parties when withdrawing such an amount as was ordered by this Court.
90. He alleged that the 1<sup>st</sup> Claimant had not made any account of the said funds to Blantyre Lodge Limited or to the entire estate.
91. Mr. Hassan Mkumba proceeded to state that notwithstanding the order of injunction issued at the High Court Principal Registry referred to above, the 1<sup>st</sup> claimant still collected a wedding booking book and a receipt book through her agent, a Mr. Boston Mphutsi at Blantyre Lodge Limited until when the Defendants' lawyers wrote her by way of a demand letter dated 24<sup>th</sup> September, 2018 demanding an immediate return of the said items. He exhibited a copy of the said letter and marked it "GHM9".

92. Mr. Hassan Mkumba stated that notwithstanding the suspension of the Letters of Administration herein by this Court, by its Order dated 10<sup>th</sup> October 2018, the 1<sup>st</sup> Claimant went to the Road Traffic Department in Blantyre and forced herself to be made proxy of the deceased in an effort to change ownership of motor vehicle Toyota Passo registration number KA 6163.
93. He stated that the Defendants' lawyers then wrote the Road Traffic Directorate requesting for the removal of the 1<sup>st</sup> claimant as a proxy herein on the 1<sup>st</sup> of November, 2018. He exhibited a copy of the said letter to the Road Traffic Department and marked it as "GHM 10."
94. He stated that the Road Traffic Directorate then removed the 1<sup>st</sup> claimant as proxy on the 2<sup>nd</sup> November, 2018 following the said letter. He exhibited a proxy unlink note from the Road Traffic Directorate and marked it "GHM11".
95. He stated that the 1<sup>st</sup> claimant had, on several occasions, been sending her agents, Mr. Boston Mphutsi, Mr. Noel Phiri and the 2<sup>nd</sup> Claimant, to demand money (in the form of cash) from Blantyre Lodge Limited cashiers.
96. It was his conclusion therefore that from the foregoing, it was evident that the 1<sup>st</sup> Claimant did not respect Court orders, was blatantly very arrogant, irresponsible and that as such, she was not fit to be an Administrator of the said estate.
97. He stated that efforts by the family to identify mutually acceptable Administrators became futile because the 1<sup>st</sup> Claimant vehemently refused to attend meetings which the Administrator General convened as per exhibits "GHM6" and "GHM7" respectively.
98. He also stated that the 1<sup>st</sup> Claimant refused to release the death certificate of late of the deceased person until when she travelled to Zomba Registry, all the way from Blantyre, whilst the nearest Registry was the Principal Registry, to make an application for Letters of Administration jointly with Jafeli Twea who was not a beneficiary of the estate.

99. He therefore concluded, and urged the Court to agree with him, that the said Letters of Administration were, under the circumstances, not obtained in good faith.
100. Mr. Hassan Mkumba went on to state that as things stood, the 1<sup>st</sup> Defendant was now a shareholder of Blantyre Lodge Limited after purchasing the shares held by one Khadija Mkumba following a share transfer which took place on the 16<sup>th</sup> of July, 2018 and that this transfer was duly accepted by the Registrar on the 31<sup>st</sup> July, 2018. He exhibited a copy of the share transfer certificate and marked it “GHM 12”.
101. He proceeded to point out that the Defendants were members of the Board of Directors of Blantyre Lodge Limited following their appointment on the 7<sup>th</sup> of July, 2018. He exhibited hereto a copy of the company's resolution and marked it "GHM 13”.
102. He further stated that the Defendants were also members of the Board of Directors of Kwenda Jenda Transport following their appointment on the 10<sup>th</sup> of September, 2018. He exhibited a copy of the company's resolution and marked it “GHM 14”. I should however point out that Exhibit “GHM 14” shows that the purported resolution was in fact made on 8<sup>th</sup> July, 2018 and not 10<sup>th</sup> September, 2018.
103. It was Mr. Hassan Mkumba’s story that the sale of buses of Kwenda Jenda Transport Limited was sanctioned by its Board of Directors by its resolution dated 9<sup>th</sup> July, 2018 since they were not roadworthy and were scraps. He exhibited a copy of the company resolution and marked it “GHM 15”. The Court however also notes that Exhibit “GHM 15” shows that this was a decision of members of Kwenda Jenda Transport Ltd which was made by way of resolution at a General Meeting of the company and not a mere operational decision of the directors of the company.
104. The Defendants stated that they had never collected and pocketed the sum of MK300,000 per day from the Blantyre Lodge Limited, as alleged by the 1<sup>ST</sup> Claimant, because the said company was a legal person capable of making its own financial decisions.
105. Mr. Hassan Mkumba proceeded to state that the Defendants had never pocketed any sums of money from Airtel Malawi Ltd and Intercape Bus Co.Ltd and shared the

money amongst themselves; because any money paid if any, was paid into the account of the company and not to the Defendants individually in their personal capacities.

106. He also stated that the Defendants had never pocketed any sums of money from bookings made by State House Officials because any money paid if any, would be paid into the account of the company and not to the Defendants individually in their personal capacities.

107. The Defendants stated that Blantyre Lodge Limited and Kwenda Jenda Transport Limited had, all along, managed their affairs notwithstanding the death of the deceased because of their separate legal personality from its owners (limited liability), and that the company had perpetual succession and was a separate entity from that of the owners and that the shareholders were also separate from management.

108. It was his statement that discussions bordering on the affairs and management of Blantyre Lodge Ltd and Kwenda Jenda Transport Limited were generally sub judice because the same were the subject matter in Civil Cause No. 276 of 2018; *Blantyre Lodge Limited and Kwenda Jenda Transport Limited vs Falida Mkumba*.

109. He proceeded to state that the deceased had other properties apart from his interest in Blantyre Lodge Ltd and Kwenda Jenda Transport Ltd which need to be managed by a sober and level headed Administrator.

110. Mr. Hassan Mkumba stated that the title documents of the Blantyre Lodge Limited and Kwenda Jenda Transport Limited were in fact in the possession of banks as the deceased and other shareholders got loans from Standard Bank Limited and NBS Bank to the tune of MK132,019,248.52 as at 4<sup>th</sup> April, 2012 and MK109,236,257.10 as at 26<sup>th</sup> June, 2018 respectively. He exhibited copies of the said loan details and marked them “GHM 16” and “GHM17”.

111. He therefore stated that as such, it was pure imagination to say that the Defendants intended to dispose of the property of the deceased when title documents of the same were already in the hands of creditors who were interested parties in the administration of the deceased’s estate.

112. He repeated that from the foregoing, any Administrator of the deceased's estate had to be sober and well apprised of the indebtedness of the deceased's estate and had to involve all the stakeholders such as creditors, debtors and other interested parties such as members of the immediate family in the distribution of the said estate. He pointed out that in fact, this had already been alluded to by this Court in its order of 10<sup>th</sup> September, 2018 of whose obligations the 1<sup>st</sup> claimant had already fallen short of.

113. With regard to the needs of the infants in issue, Mr. Hassan Mkumba stated in his Sworn Statement that the Defendants had all along been assisting the said infants, namely Marriam Mkumba and Izhaka Mkumba from the profits of Blantyre Lodge Limited.

114. He stated that the Defendants stopped giving the said infants financial assistance following the 1<sup>st</sup> claimants' orders that they should stop doing so after she had obtained Letters of Administration in the present matter. As evidence, he exhibited a copy of a WhatsApp conversation between the 1<sup>st</sup> Claimant and himself and marked it "GHM 18". He stated that as such, the 1<sup>st</sup> claimant could not blame the Defendants for not giving financial assistance to her children.

115. The Defendants therefore prayed to this Court to make any of the following Orders:

(a) Revoke the Letters of Administration granted herein for having been obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case, namely, the status of one Jafeli Tweya, the 2<sup>nd</sup> Claimant, who is not a beneficiary to the estate and the fact that members of the immediate family are available.

(b) Declare the 1<sup>st</sup> Claimant as not fit and hence disqualified to be an Administrator of the estate of the deceased due her blatant abuse of the estate and total disregard of Court orders.

(c) That the 1<sup>st</sup> Claimant should account for the MK7,000,000.00 which she withdrew from the First Merchant Bank account of Blantyre Lodge Ltd, one of the companies owned by the deceased person herein in which the deceased was the sole signatory without the knowledge of the family members and also contrary to the Order dated 10<sup>th</sup> September, 2018 in which the Court ordered that the administration of the said estate should be in strict compliance with the Law by among other things publicly advertising the intended distribution of the estate for the notice of the debtors, creditors and other interested parties.

(d) That beneficiaries of the estate of the deceased should choose mutually agreed Administrators to administer his estate.

116. On the 27<sup>th</sup> of February 2019, the 1<sup>st</sup> Claimant swore a Supplementary Sworn Statement in response to the Sworn Statement in Opposition of one Hassan Mkumba.

117. She acknowledged having read the sworn statement of Hassan Ganizani Mkumba in opposition of the application for an interlocutory order to vacate or vary the suspension of herself (Falida Mkumba) and Jafeli Tweya as Administrators of the estate of the deceased person herein.

118. She stated the Defendants herein in fact appointed themselves as directors of Blantyre Lodge Limited and Kwenda Jenda Transport Limited.

119. She stated that even though Exhibits “GHM 12”, “GHM 13”, “GHM 14” and “GHM 15” bore the stamp of the office of the Registrar of companies, the same could not be used as evidence that the documents are valid.

120. She stated that it was a common practice and procedure by every public body or institution to stamp every document that has been served on them and to return a copy of such document to the person presenting it.

121. She stated that upon inquiring with the office of the Registrar of Companies in reference to the abovesaid documents, she was informed that the said transfer of shares and appointment of the Defendants as directors of Blantyre Lodge Limited and Kwenda

Jenda Transport Limited were not done in accordance with the law and proper procedure.

122. She further stated that she was informed by the office of Registrar of Companies that, among other things, the Defendants had failed to present resolutions by the two companies for the appointment of new directors.

123. She stated that she was also informed by the office of Registrar of Companies, and that it was also her position, that an individual shareholder could not appoint new directors of a company as in the manner prescribed in Exhibit “GHM 12”, “GHM 13” and “GHM 14” without the approval of the other shareholders or their majority.

124. She stated that it was further the information passed on to her by the office of Registrar of companies, which she also believed to be true, that there could not be any transfer of shares for the said companies in the absence shareholder certificates or a register of such shareholders

125. Further, she stated, the Registrar of Companies had rejected the resolution exhibited as GHM 15 on the basis that shares of a subscriber do not get dissolved due to his death, but rather the shares are administered by a person conferred with Letters of Administration in a situation of intestacy. She therefore stated that the Defendants were, as such, attempting to misrepresent to the Court by presenting false evidence in the form of Exhibits “GHM 12”, “GHM 13”, “GHM14” and “GHM 15” as provided in the sworn statement in opposition of Hassan Ganizani Mkumba.

126. The 1<sup>st</sup> Claimant asserted that the Defendants were using the position of directorship as a means of grabbing and diverting property forming part of the deceased’s estate.

127. She agreed with the proposition, which was also advanced by the Defendants, that Blantyre Lodge Limited, as a Limited company with separate a legal personality, was capable of owning its own property.

128. She stated that should the Defendants claim that they are selling or otherwise managing or receiving proceeds from a particular property on the basis of being directors of the said companies, such as Blantyre Lodge Limited, they must prove that the said property is owned by the company.
129. She stated that observably, the leasehold documents for the property known as Blantyre Lodge Ltd did not bear the name Blantyre Lodge Limited as the owner or title holder for the said property. She stated that the leasehold documentation indicated “*IBRAHIM YUDA MKUMBA*” as the owner and titleholder of the said property under title number Nyambadwe 539. She exhibited a copy of the title deed and marked it as “CP1”.
130. The 1<sup>st</sup> Claimant added that apart from the existence of Blantyre Lodge Limited, the said Alhaji James Mdala and Khadija Mkumba, even though they appear on the Articles and Memorandum of Association as shareholders, never paid for such shares. She asserted that the deceased person had all along been managing the said company as a sole proprietorship until his demise without considering the existence of the other said directors or shareholders as appearing in the articles and memorandum of association of the company.
131. She stated that all liabilities and benefits or profits of the said Blantyre Lodge Limited were and have all along been for the deceased and that the other shareholders never benefited from the said company since its incorporation in 1997 to present.
132. She further stated that the said Alhaji Jameel Mdala and Khadija Mkumba had not, at any time or in any way, managed the said Blantyre lodge. She proceeded to point out that in all the bank accounts of Blantyre Lodge Limited, the deceased person was the sole signatory until sometime in 2012 when he suffered from stroke and decided to include Hassan Ganizani Mkumba, the 2<sup>nd</sup> Defendant herein, as a signatory for the Blantyre Lodge Bank accounts of FDH Bank and Ecobank since the deceased was incapacitated in that he could not make it to the banks due to his illness.
133. She stated that it was on this basis that the said Hassan Ganizani Mkumba was and is still able draw funds from the said bank account as well as to clear cheques meant

for Blantyre Lodge Limited. She added that it was further on the same basis that upon being granted the Letters of Administration, herself and Jafeli Tweya were able to withdraw the amount of the amount of MK7,000,000.00 (Seven Million) in their capacity as Administrators of the estate from the FMB Bank account of Blantyre Lodge Limited regardless of the said Blantyre Lodge, the same being a limited company. She stated that had it been that the said Blantyre Lodge Company Limited had any other shareholders interested in it, those other shareholders or the Company itself or the Bank would have taken criminal proceedings against herself and Mr. Jafeli Tweya for illegally withdrawing the money or rather stealing from the bank. She stated that this clearly proved that the said Blantyre Lodge Company Limited was a company solely owned by the deceased.

134. The 1<sup>st</sup> Claimant went on to state that it was on this same basis that the Defendants were and are illegally managing the said Blantyre Lodge Ltd without any complaint from Alhaji James Mdala and Khadija Mkumba who, on documents, appear as shareholders and directors.

135. The 1<sup>st</sup> Claimant stated that since the incorporation of the said Blantyre Lodge Limited in 1999 to present, the said Alhaji Jameel Mdala and Khadija Mkumba have not received any money in the form of dividends from the profits made by the said Blantyre Lodge Company Limited. She therefore stated that under the circumstances, it was evident enough that the Defendants herein were using the incorporation of Blantyre Lodge Limited as a means of depriving the other dependants and beneficiaries of the estate.

136. She stated that the deceased person was also carrying on a passenger Bus Service business in the name of “*KJ TRANSWAYS*”. She produced and exhibited a copy of a certificate of registration for the said bus service business marked “CP 2”.

137. She stated that *KJ TRANSWAYS* was registered in 2008 which is the same year the deceased bought his first fleet of the buses.

138. She pointed out that the deceased person was the sole owner of the buses well known as “*KJ TRANSWAYS*” which had now been sold by the Defendants. She stated

that all the documents relating to the said buses had been stolen by the Defendants since the documents were being kept at the office of the deceased, and that immediately after the death of the deceased, the Defendants broke into the said office and removed all the documents relating to every property of the deceased including the said documents relating to the buses.

139. As regards the premises of Kwenda Jenda Transport in the city of Blantyre, she pointed out that on the leasehold documents from Ministry of Lands and Malawi Housing Corporation, it was indicated that the late Ibrahim Yuda Mkumba (the deceased person herein) was the title holder and owner of the said premises. She therefore stated that should the Defendants claim that the said premises of Kwenda Jenda Transport were owned by the so called Kwenda Jenda Transport Company Limited, then the property of the company should have been registered in the name company and not in the name of a shareholder since a limited company has a legal personality capable of owning property under its own name.

140. She proceeded to state that even with existence of the said Kwenda Jenda Transport Company Limited, from the aforesaid information, it was clear that it did not own any property.

141. The 1<sup>st</sup> Claimant stated that during the lifetime of the deceased, the said Mrs. Grace Mkumba never received any benefit from the said Kwenda Jenda Transport Ltd nor had she been involved in the running of the affairs of the said Kwenda Jenda Transport. The Court must just hasten to add that if this was indeed the case, then it calls into serious question the manner in which the deceased person was managing the corporate affairs of Kwenda Jenda Transport Ltd.

142. She stated that it was evident from the foregoing that the Defendants were using the incorporation of Kwenda Jenda Transport as a mechanism to deprive the beneficiaries of the estate.

143. The 1<sup>st</sup> Claimant then turned to the claim of one Mrs. Grace Mkumba whom it is alleged is one of the widows of the deceased.

144. The 1<sup>st</sup> Claimant stated that she had read clauses 4, 5, 6, 7 and 8 of the sworn statement of Hassan Ganizani Mkumba in opposition, in which he stated that Grace Mkumba was also a widow of the deceased person. She stated that she had also read clauses 26, 27 and 28 of the said sworn statement of Hassan Ganizani Mkumba in opposition to her Application herein, in which he stated that the wives of the late Ibrahim Yuda Mkumba, namely Grace Mkumba and Falida Mkumba, and the children were invited to meetings scheduled by the Administrator General as exhibited by “GHM6” and “GHM 7”.
145. She stated that by looking at the said exhibits “GHM6” and “GHM7” mentioned above, the name “*Grace Mkumba*” did not appear anywhere on such invitation letters by the Administrator General.
146. She further stated that the name of Falida Mkumba appears on the said invitation letters as she was so invited by the Administrator General in her capacity as the widow/spouse of the deceased person.
147. The 1<sup>st</sup> Claimant stated that from the exhibits “GHM6” and “GHM7”, it appeared that Grace Mkumba was never invited by the Administrator General to attend such meetings. She stated that had it been that the said Grace Mkumba was indeed a widow/spouse of the late Ibrahim Yuda Mkumba (the deceased person herein), she could have been invited to attend such meetings.
148. The 1<sup>st</sup> Claimant therefore said that it was, under the circumstances, a big misrepresentation by the Hassan Ganizani Mkumba, the 2<sup>nd</sup> Defendant herein, to state that his mother, by the name Grace Mkumba was invited by the Administrator General to such meetings. As such, she stated, the 2<sup>nd</sup> Defendant could not claim that her late husband was survived with two widows.
149. The 1<sup>st</sup> Claimant maintained her stand that Grace Mkumba was divorced by the deceased person and that she was the only widow of the deceased person.

150. The 1<sup>st</sup> Claimant stated that the said Grace Mkumba was already married to another man in Kasungu at the time of death of the deceased person and that as such, she could not claim to be the deceased person's widow.
151. The Claimant then turned to the issue of the motor vehicle registration number KA 6163 Toyota Passo which was said to be among the property owned by the deceased person. She stated that it was the said motor vehicle which was used to take her minor children namely Mariam Mkumba of 4 years old and Izhaka Mkumba of 2 years old to school, hospital and any other places.
152. She stated that as of the 26<sup>th</sup> October, 2018, the Certificate of Fitness (COF) for the said motor vehicle had expired. She stated that this made it impossible for the said motor vehicle to be used to transport the said minors to school. She added that the said minors (Infants) had to switch to public transport and sometimes walk so as to get to their school which was about 2 Kilometers from home.
153. She stated that in the circumstances, the minor children were facing hardship since not even once during the lifetime of their father did they use public transport to access school or access health services.
154. She stated that being a mother, she could not watch her children suffer as such, and that she went to the Road Traffic department requesting the renewal of the COF of the said motor vehicle registration number KA 6163 Toyota Passo.
155. She stated that upon explaining her issue, she was included as a proxy for the said motor vehicle just to make sure that she could be able to renew the said COF when it expired. She added that being a proxy does not make one a title holder of the motor vehicle nor does it give a person the right to transfer ownership of the said motor vehicle.
156. She explained that she managed to renew the COF for the said motor vehicle so as to ensure that her children had easy access to school and hospital. She exhibited a copy of the said COF and marked it "CP3".

157. She stated that it was so surprising that the Defendants would want the minors to be facing hardship by not having means of transport, yet the Defendants themselves were all along using motor vehicles owned by the deceased person for their transportation.
158. She stated that the conduct by the Defendants by writing the Road Traffic department to cancel the said access of renewing the COF of the motor vehicle used by the minor children was clear evidence that the Defendants herein intended to cause hardship to the said minors which was a reasonable ground of disqualifying them from being Administrators of the estate.
159. She stated that she renewed the said COF of the motor vehicle in an attempt to serve the best interests of the children who depended on the said motor vehicle for transportation.
160. The 1<sup>st</sup> Claimant stated that she had seen exhibit “GHM 18” provided by Hassan Ganizani Mkumba in his sworn statement in opposition based on which he sought to convince this Court that the same was proof that there had been financial support rendered to herself for the assistance of her minor children.
161. She invited the Court to observe that the said exhibit did not provide the date on which such conversations were made and neither did it prove that the conversation was between herself and the said Hassan Mkumba. She stated that this clearly proved the fact that there had not been any support rendered to her and her infants in that together with the other beneficiaries, they were facing hardship due to the conduct of the Defendants. The Court wishes to immediately state here that it has observed with keen interest that the 1<sup>st</sup> Claimant did not expressly state that “GHM 18” was fake.
162. The 1<sup>st</sup> Claimant therefore maintained her prayers.
163. On 27<sup>th</sup> February, 2019, the 2<sup>nd</sup> Claimant, Mr. Jafeli Tweya, also filed a Supplementary Sworn Statement in support of the application to vacate the suspension of the Letters of Administration herein.

164. In his Supplementary Sworn Statement, the 2<sup>nd</sup> Claimant stated that he had read the sworn statement of the 1<sup>st</sup> Claimant in support of the application for an interlocutory order to vacate or vary the suspension of the Claimants herein as Administrators of the estate of the deceased person herein.
165. He stated that beyond what had been contained in the sworn statement of the 1<sup>st</sup> Claimant, he wished to add more information in support of the application.
166. He pointed out that the deceased person was also survived by other children who were born outside marriage and who also needed to benefit from the deceased's estate namely; Tisatayane Mkumba, Ibrahim Mkumba Jr., Takondwa Mkumba, Suhaila Mkumba, Paskari Mkumba and Jameel Mkumba.
167. He stated that all the children of the deceased added up to a total number of 13 (Thirteen), and that they were born from 8 (Eight) different mothers.
168. He further stated that the deceased was also survived by other minor dependants namely Michael Mputi aged 12 years old and Belinda Mputi aged 17 years old. He did not however mention the nature of the relationship between the deceased person and these two alleged dependants.
169. The 2<sup>nd</sup> Claimant stated that prior to his death, the deceased had given each of the Defendants herein a house in the city of Blantyre and a motor vehicle for each of them.
170. He stated that the 1<sup>st</sup> Defendant herein then left for Dubai where he was working and that he only resurface immediately after the death of his father, the deceased person herein.
171. He further stated that prior to the death of the deceased, the 2<sup>nd</sup> Defendant was working for First Merchant Bank (FMB) and that he was supporting himself.
172. He stated that even though the Defendants herein presented themselves as beneficiaries of the estate, they were not in any way dependants of the deceased person

at the time of his death as they were working and providing for themselves. He stated that the Defendants herein have post graduate degrees and that they can get employed anywhere and provide for themselves; unlike the other dependants who are still minors and have not yet completed their studies.

173. He also stated that the late Ibrahim Yuda Mkumba, the deceased person herein, was survived by only one widow by the name Falida Mkumba, being the 1<sup>st</sup> Claimant herein, and that there was no other surviving spouse other than the 1<sup>st</sup> Claimant.

174. The 2<sup>nd</sup> Claimant asserted that the deceased person was previously married to one Grace Mkumba who is the mother to the Defendants herein, but that they divorced around 1992 and that, since the said divorce, the said Grace Mkumba had been married several times including her current marriage to another man in Kasungu district.

175. He further stated that after the death of the deceased person, a family meeting was arranged to discuss the issue of applying for Letters of Administration for the deceased's estate, and that during the meeting the Defendants herein showed their interest to be Administrators of the estate but that the family decided not to accept them to be Administrators of the estate after they failed to account for the money they received from the sale of the buses and other items, and the money they had been receiving from Blantyre Lodge.

176. He added that the other children of the deceased by the names Aisha Mkumba and Kamkosya Mkumba were domiciled in the United Kingdom (UK) and that they had not shown any interest or willingness to be Administrators of the estate.

177. It was his statement that unlike the Defendants, there was no other child of the deceased who had shown any interest to be joined as an Administrator of the estate.

178. He stated that the Defendants herein could not be joined in any way as Administrators of the estate as they had already proved to be irresponsible and wasteful individuals by failing to account for the money they received and the property they had sold including the 9 buses of whose proceeds they used for themselves.

179. He continued to state that apart from the Defendants being irresponsible and wasteful individuals, the 1<sup>st</sup> Defendant was being investigated by the Police following an armed robbery in which he was alleged to have been involved.
180. Further to the above, the 2<sup>nd</sup> Claimant stated that the 1<sup>st</sup> Defendant was convicted, deported and banned from the United Kingdom (UK) following a crime of theft that he had committed in that country.
181. The 2<sup>nd</sup> Claimant stated that since the demise of the deceased person, the beneficiaries of the estate, especially the minors, had been suffering due to the conduct of the Defendants.
182. It was his case that taking into consideration the fact that there were over 13 (thirteen) children and dependants of the deceased from different mothers, it would be in the interests of the whole estate and its beneficiaries, which included himself, that he remain a co-Administrator of the estate with the 1<sup>st</sup> Claimant so as to ensure fair distribution and proper administration of the estate's property for the benefit of all the children and other dependants since they were all his relations regardless their different mothers.
183. The 2<sup>nd</sup> Claimant stated that the Defendants were very much aware that their shares of the deceased's estate were very minimal since they were adults with postgraduate degrees and capable of providing for themselves unlike other children and dependants who were still minors and not capable of supporting themselves.
184. He stated that the Defendants were trying all possible means to grab the property of the estate so as to deprive the rights of the minors.
185. The 2<sup>nd</sup> Claimant emphasized that unless the Court vacates the order of suspension for the Administrators of the estate or otherwise takes action against the Defendants for contempt of Court for disobeying the Order made by this Court, the deceased's estate stood the risk of being damaged by the Defendants, and the beneficiaries of the estate would continue to face hardship as there would be no person monitoring the said deceased's estate.

186. All in all, the 2<sup>nd</sup> Claimant supported the prayers sought by the 1<sup>st</sup> Claimant.
187. On 28<sup>th</sup> February, 2019, the 2<sup>nd</sup> Defendant filed a Sworn Statement in Opposition to the Supplementary Sworn Statement of Jafeli Tweya and the Supplementary Sworn Statement of Falida Mkumba.
188. The 2<sup>nd</sup> Defendant stated that the issue of who are beneficiaries to the estate of the deceased would be dealt with by the duly appointed Administrators in line with the law, and in consultation with all beneficiaries of the estate of which the Defendants were a part.
189. He stated that it was premature at this stage to start arguing on who were the beneficiaries of the deceased's estate, even before the appointment of the Administrators to the said estate.
190. He stated that it was also premature at this stage to start the allocation and distribution of property to various individuals and persons before the value of the said estate was known, in the light of the many loans which the deceased person had with various banks.
191. He stated that the fact that a beneficiary has a postgraduate degree does not have a bearing on whether or not he should be a beneficiary.
192. He continued to state that the Defendants had not, at any stage, flagged themselves to be appointed Administrators of the deceased's estate, and neither had they, at any stage, applied to this Court to be appointed Administrators of the said estate.
193. He stated that the Claimants were motivated by serious greed and anger in trying to start identifying who should be a beneficiary of the estate of the deceased and who should not, even when their Letters of Administration had been suspended.
194. It was his statement in opposition that from the tone of their language, the Claimants could not make good Administrators of the estate.

195. The 2<sup>nd</sup> Defendant stated that apart from the fact that Jafeli Tweya was not a beneficiary to the said estate, Falida Mkumba, the 1<sup>st</sup> Claimant, stole the sum of MK7,000,000.00 from Blantyre Lodge which she had not properly accounted for.
196. The 2<sup>nd</sup> Defendant also asserted that the Defendants did not have any criminal record anywhere in the world and were free to travel, at any point in time, across the globe without any restrictions.
197. He further stated that Jafeli Tweya, by virtue of being an uncle to the deceased person, should not force himself to be an Administrator of the deceased's estate because the said estate was not governed by customary law.
198. It was his statement that the estate had proper beneficiaries of full age who could ably administer the said estate in accordance with the law.
199. He stated that previous attempts by the family to appoint Administrators by way of Letters of Administration proved futile because the 1<sup>st</sup> Claimant refused to release the Death Certificate of the deceased even when pressured by the office of the Administrator General in Blantyre.
200. He stated that the the 1<sup>st</sup> Claimant bypassed all family members to obtain Letters of Administrators with a stranger to the estate, namely Jafeli Tweya, with the aim of single handedly and fraudulently administering the said estate.
201. He stated that he had also read the supplementary sworn statement of Falida Mkumba, the 1<sup>st</sup> Claimant.
202. He responded by stating, first, that this Court should not interfere in the running of Blantyre Lodge Ltd and Kwenda Jenda Transport as these were limited liability companies capable of running their own affairs.
203. He further stated that the transfer of shares and appointment if found wanting could only be challenged by the companies themselves through resolutions made during

shareholders meetings and not through an application by a wife to a deceased shareholder.

204. He further stated that marriage to a shareholder does not transfer rights of a shareholder to a spouse, either during the subsistence of marriage or at the demise of the said shareholder.

205. He added that likewise, paternity of a shareholder does not transfer rights of such shareholder to a son or daughter either during the life of a shareholder or at the demise of the said shareholder.

206. He stated further that the status of Blantyre Lodge Limited and Kwenda Jenda Transport Ltd was clear in that the two were limited liability companies and were governed by the Companies Act, 2013.

207. He stated that much as the deceased person was a shareholder and Director in the said companies, his interest and indeed the interest of his estate should be only limited to the level of his shareholding in the said companies.

208. He stated that the Claimants had all along misconstrued the grant of Letters of Administration in this matter as a grant of a licence for them to take over the management of the said companies which was legally misconceived.

209. He then referred to exhibit "CPI" which, according to him, purported to suggest that the deceased person was running Blantyre Lodge Limited as a sole proprietorship. He stated that the deceased person's contribution to the share capital of the said Blantyre Lodge by way of his property could however only be appreciated by looking at his share capital in the certificate of registration of the company and not otherwise, vis-à-vis the contribution of the other shareholders.

210. He stated that the hardship to the children of the 1<sup>st</sup> Claimant, if any, was caused by her refusal to get any financial assistance from him as was the case previously after she obtained letters of Administrators on the 10<sup>th</sup> of September, 2018 which she wrongly construed as granting her a licence to take over the running of Blantyre Lodge

Ltd and Kwenda Jenda Transport Ltd. He exhibited what he stated to be evidence of previous payments made to the 1<sup>st</sup> Claimant and marked them “HM1”

211. The 2<sup>nd</sup> Defendant therefore maintained his earlier prayer.

212. Such were the facts in relation to the instant Application.

## **ISSUES**

213. The following are the issues for determination in respect of the present application:

- (a) Whether Blantyre Lodge Limited and Kwenda Jenda were/are companies solely owned by the late Ibrahim Yuda Mkumba;
- (b) Whether the Defendants herein are guilty of property grabbing and diverting property forming part of the deceased’s estate;
- (c) Whether the Defendants qualify to be Administrators of the deceased’s estate;
- (d) Whether under the circumstances the order of suspension of the Letters of Administration need be vacated or varied by the Court;
- (e) Whether the Court should either to revoke or annul the Letters of Administration herein for having been obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case, that is to say the status of Jafeli Tweya, the 2<sup>nd</sup> Claimant, who is not a beneficiary to the estate;
- (f) Whether the Court should declare the 1<sup>st</sup> Claimant as not fit to be an Administrator of the estate of the deceased due her blatant abuse of the estate and total disregard of Court orders;
- (g) Whether the 1<sup>st</sup> Claimant should account for the MK7, 000,000.00 which she withdrew from the First Merchant Bank account of Blantyre Lodge Ltd, one of the companies

owned by the Late Ibrahim Yuda Mkumba in which the deceased was the sole signatory without the knowledge of the family members and also contrary to the Order dated 10<sup>th</sup> September 2018.

214. Counsel Kita, for the Claimants, started by stating that the issues in the present matter were simple and straightforward. First, that it is about who is entitled to be the Administrator of the deceased person herein.

215. Secondly, he stated that it was also about what is the property which should be the subject of the administration.

216. Counsel pointed out that if the Court examined Exhibit “CP1” to the Supplementary Sworn Statement of the 1<sup>st</sup> Claimant, which is the title deed for property Title No. Nyambadwe 539, the Court will observe that the same was in the personal name of the deceased person. He argued that Nyambadwe 539 is not the property of Blantyre Lodge Limited, the two having separate personalities.

217. Counsel Kita argued that as much as Blantyre Lodge Limited was the business of the deceased person, the property on which the said business was operated remained his personal property.

218. Counsel pointed out that he was making this point early in his submissions because the Defendants’ position, through and through, had been that Blantyre Lodge Limited had separate legal personality from the deceased.

219. Then Counsel invited the Court to observe that the Defendants made themselves directors soon after the death of the deceased. He stated that the deceased person passed away on 16<sup>th</sup> June, 2018, and that up to that date, none of the Defendants were directors nor shareholders of Blantyre Lodge Limited. He stated that it was only after his death that they went behind the Claimant’s back, went to the Registrar General’s office and changed the ownership status and directorship of the company, making themselves directors.

220. He stated that the 1<sup>st</sup> Claimant was the surviving widow of the deceased person. At the point of his death, he was staying with her two young children she had with the deceased person. The 1<sup>st</sup> Defendant was in Dubai as shown in the Sworn Statement of the 2<sup>nd</sup> Claimant, Mr. Jafeli Tweya. He further pointed out that the evidence shows that the 2<sup>nd</sup> Defendant was working for First Merchant Bank (as it was then called). Counsel stated that both Defendants are of majority age and able to take care of their own affairs. He stated that this was unlike the 1<sup>st</sup> Claimant who had two young children and was dependant on the deceased person.
221. Counsel then invited the Court to take note that the deceased person died intestate, and that as such, section 17(1) of the Deceased Estates (Wills, Inheritance and Protection) Act, 2011 (DEWIPA) applied. He stated that the principles under that distribution regime enjoin the Court to have regard to the protection of members of the immediate family from hardship so far as property can do. He contended that there could, under the circumstances, be no better person than the 1<sup>st</sup> Claimant to receive such protection.
222. Counsel Kita proceeded to state that what he had said regarding Blantyre Lodge Limited equally applied to Kwenda Jenda Transport Ltd where the ownership and directorship of the company changed soon after the death of the deceased person.
223. Counsel called upon the Court to notice that the Defendants had not disputed the fact that buses belonging to Kwenda Jenda Transport Ltd were sold by the Defendants under the pretext of being directors of the new company, claiming that such buses were the property of the company and not the deceased person.
224. The Claimants' argument in this regard was that the Court should not allow the veil of incorporation to be used as an instrument for committing illegal acts. He challenged that the Defendants could not show any properties that were registered in the name of the limited companies herein.
225. Counsel argued that the building, which belonged to the deceased, was an income generating building which needed to benefit the Claimants who are facing hardship and are entitled as beneficiaries.

226. Counsel Kita pointed out that section 84(1) of DEWIPA makes it an offence for any person to, upon any intestacy and in contravention of the Act, take possession of, grab, seize, divert or in any manner deal in, or dispose of, any property forming part of the estate of a deceased person, or do anything, in relation to such property, which occasions or causes, or is likely to occasion or cause deprivation or any form of hardship to a person who is entitled thereto.

227. He contended that the Defendants in the present case, under the guise of the veil of incorporation, were committing the offence under section 84(1) of the DEWIPA.

228. Counsel also pointed out that the suspension of the Letters of Administration could not be in perpetuity and that there had to be a time when the Defendants would move the Court to either revoke or annul the said Letters of Administration. In this connection, Counsel Kita argued that according to section 55(1) of DEWIPA, the statutory grounds upon which a Court could revoke or annul Letters of Administration were laid down. Section 55 of DEWIPA provides as follows:

*“(1) The grant of probate and Letters of Administration may be revoked or annulled for any of the following reasons—*

*(a) that the proceedings to obtain the grant were defective in substance;*

*(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;*

*(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;*

*(d) that the grant has become useless and inoperative;*

*(e) that the person to whom the grant was made has without reasonable cause omitted to furnish an account of his or her administration after having been lawfully called upon to do so or has prepared an account which is untrue in a material respect.*

*(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the Court may suspend or remove an executor or Administrator and provide for the succession of another person to the office of such executor or Administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.”*

229. Counsel Kita argued that the Defendants had not satisfactorily shown how any of the grounds listed in section 55(1) above were applicable to the present matter, and for the Court to revoke or annul the Letters of Administration it earlier granted. He submitted that in view of such failure, the Claimants’ prayer was that the Order of suspension of the Letters of Administration herein be vacated or lifted, and that the initial Letters of Administration be restored on such terms and conditions and the Court may deem fit, if any at all.

230. Counsel Kalaya for the Defendants began by drawing the Court’s attention to the fact that the Defendants were opposing the application and that they had filed two Sworn Statements, sworn by Hassan Ganizani Mkumba, the 2<sup>nd</sup> Defendant in the matter, which he adopted.

231. Counsel Kalaya observed that the 1<sup>st</sup> Claimant had submitted through Counsel, that when she made the initial application for the grant of Letters of Administration, she was duly advised by the Court that she needed to identify another person who could be a joint Administrator in this matter. This is how Mr. Jafeli Tweya was later appointed as co-Administrator.

232. Counsel argued that there was suppression of material facts when the name of Jafeli Tweya was presented to the Court. He stated he was making that argument in relation to the provisions of section 55(1) of DEWIPA. He stated that the material fact was that Jafeli Tweya was not a beneficiary under the estate. He stated that under section 17 of the DEWIPA, Letters of Administration could only be granted to members of the immediate family or dependants of the deceased person.

233. Counsel Kalaya proceeded to state that he found it erroneous and wrong that the 2<sup>nd</sup> Claimant applied to be an Administrator because section 43 of DEWIPA excluded him from obtaining Letters of Administration since he was not a beneficiary under the estate in terms of section 17 of the Act. Counsel then referred the Court to provisions under section 3 of the Act defining the terms “*members of the immediate family*” and “*dependants.*” He contended that the persons listed under section 18 of the Act could only come in if there was no person entitled under section 17 surviving and able to obtain such letters. He submitted that in this regard, a condition precedent which needed to be fulfilled before Mr. Tweya would qualify as an Administrator was absent. Counsel further pointed out that in fact, the 2<sup>nd</sup> Claimant himself clearly stated in his Sworn Statement that the deceased had 13 surviving children and that most of these were of majority age, of which two are the Defendants in the present matter.
234. Counsel Kalaya submitted that if this Court had known that the estate had surviving children and spouses, it could not have considered the addition of Mr. Tweya as a joint Administrator.
235. With regard to the 1<sup>st</sup> Claimant, Counsel Kalaya pointed out that when this Court made the Order granting Letters of Administration on 10<sup>th</sup> September, 2018, the Court made it clear in the said Order that the administration of the Estate had to be in strict compliance with the law by, among other things, publicly advertising for the notice of debtors, creditors or other interested parties.
236. Counsel contended that contrary to these clear directives of the Court, the 1<sup>st</sup> Claimant proceeded to withdraw MK7 million from an account of Blantyre Lodge Limited held at First Merchant Bank before making any advertisement as per the Court’s Order. He referred the Court to exhibit “GHM 8” as evidence of such withdrawal of funds from the said bank account.
237. He proceeded to state that when the Court demanded an account of the said MK7 million, the 1<sup>st</sup> Claimant indicated that the money was used for school fees, lawyer’s fees and estate duty tax at the Registrar General’s office. He stated however that the 1<sup>st</sup> Claimant did not attach either a receipt from the school where the fees were

paid nor a receipt from the lawyers where she paid for the services, or indeed a receipt from the Registrar General's office where she paid the estate duty fees.

238. In short, Counsel Kalaya argued, the 1<sup>st</sup> Claimant did not properly account for such a small amount of money, and yet the estate of the deceased was huge. He emphasized that if she could not properly account for Mk 7 million, she could not make a proper account for such a huge estate.

239. Counsel Kalaya also pointed out that both Blantyre Lodge Ltd and Kwenda Jenda Transport Ltd were heavily indebted with the banks. He therefore stated that with so many interested parties such as these creditors, the estate required a proper sober person to be its Administrator and not the 1<sup>st</sup> Claimant.

240. Counsel Kalaya then referred to Counsel Kita's argument that the Defendants were trying to hide behind the veil of incorporation and also to the proposition that they were mismanaging the estate.

241. He contended that when one looked at the Claimants' sworn statement evidence, there was no evidence to justify the conclusion that the Defendants were abusing or mismanaging the estate. He therefore argued that the purported abuse was mere speculation.

242. He then argued that in terms of the status of both Blantyre Lodge Ltd and Kwenda Jenda Transport Ltd, it was clear from the Sworn Statement of Hassan Mkumba that both of these were limited liability companies and that the respective shareholding in the two companies has been clearly shown. He referred specifically to exhibit "GHM15".

243. He stated that if at all there was any misconduct on the part of the Defendants, then it was the respective companies themselves that needed to take action and sue, and not the 1<sup>st</sup> Claimant.

244. In response, Counsel Kita stated that it was not entirely correct to state that it is only beneficiaries that are entitled to take out Letters of Administration. He referred to section 43(4) of DEWIPA. The Section provides that:

*“Where it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of Letters of Administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be Administrator; and in every such case Letters of Administration may be limited or not as the Court thinks fit.”*

245. Counsel Kita argued that an examination of this provision shows that the law gives discretion to the Court to appoint some other person other than a beneficiary under the estate to be an Administrator of the deceased’s estate. He pointed out that one of the issues that the Court takes into account under such circumstances is consanguinity. He submitted that as an uncle to the deceased person, the 2<sup>nd</sup> Claimant was close in terms of consanguinity to the deceased person. He was not only related to the children of the 1<sup>st</sup> Claimant, but to all the 13 children of the deceased, including the Defendants herein.

246. Counsel Kita therefore argued that the 2<sup>nd</sup> Claimant was best placed to ensure the best interests of all the possible beneficiaries related to him.

247. With regard to the 1<sup>st</sup> Claimant, Counsel Kita argued that it was not correct to state that she disobeyed the Order of the Court. He stated that the Court Order did not set time limits within which she was to effect such advertisement. He stated that within a month of the said Order having been granted, there was another Order suspending the Letters of Administration. He therefore argued that under such circumstances, she could not be said to have acted in non-compliance of the Order of the Court.

248. With respect to the MK7 million which she withdrew, Counsel stated that the 1<sup>st</sup> Claimant provided an account to the Court on how she used the money, including payment of estate duty, legal fees and school fees for the children. He stated that these were vital expenses which were justified. He stated that had it not been of the Order of suspension, the advertisement would have come out and strict compliance achieved.

249. On the issue of separate personality of the companies, Counsel Kita stated that what the Claimants were trying to show was that the companies were meddling in the affairs of the estate of the deceased person. He stated that under these circumstances, the Court was mandated to lift the veil and deal with the third parties that were using the company to deprive the beneficiaries of the deceased's estate of their entitlements.

250. Such were the arguments in the instant matter. The Court is very thankful to Counsel for their great industry and for having argued this matter with passion and professionalism. The arguments they have advanced, both written and oral, have been of great assistance to this Court in arriving at its decision.

251. Section 73(1) of the DEWIPA provides for the scope of jurisdiction of the Court in cases where there is a dispute relating to a deceased person's estate. It provides that:

*(1) On the application in the prescribed manner by an interested person, a Court shall have jurisdiction, where there is a dispute, in relation to a deceased person's estate –*

*(a) to decide whether a document purporting to be a will is a valid will and whether the deceased person died testate or intestate;*

*(b) to decide what is the property to which the deceased person was entitled at the date of his or her death;*

*(c) to decide if any person is or is not entitled as a beneficiary of the estate;*

*(d) to decide how the distribution of the property forming part of the deceased person's estate should be carried out;*

*(e) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purposes of distribution;*

*(f) to appoint a guardian in place of a guardian who has acted improperly;*

*(g) to decide whether an Administrator or the person administering the property of a deceased person by agreement under section 61 has failed to carry out any of his or her duties and to order payment of compensation by such Administrator or other person to a person who has suffered injury as a result of such failure; and*

*(h) to decide any other matter in dispute which the Court considers to be competent for its jurisdiction.*

252. I must also make it abundantly clear, that under section 78(1) of DEWIPA, the Court always has discretion whether or not to grant probate or Letters of Administration. The section provides that:

*“A court shall not be bound to grant any application under this Act for a grant of probate or letters of administration but may exercise probate or its discretion in relation thereto.”*

253. In deciding the present dispute, the Court shall remain keenly mindful of these provisions.

254. I find it apposite to first start with the issue of defining the property that forms the subject matter of the estate. Section 73(1)(b) of DEWIPA gives this Court the jurisdiction, in cases of dispute, *“to decide what is the property to which the deceased person was entitled at the date of his or her death.”*

255. I wish to point out that the 1<sup>st</sup> Claimant stated that the value of the whole estate herein was in the region of MK70,000,000 (Seventy Million Malawi Kwacha). After going through the facts in the present matter however, I seriously doubt the accuracy of this statement. It seems to be a very significant understatement of the total value of the estate. The Administrator appointed herein will have to ensure that a proper valuation of the estate herein is made. I now turn to identifying the properties which have been established to be part of the deceased person herein and also discussing any issues that have emerged in that regard.

256. First there is a property, Title No. NY 586 in Nyambadwe in the City of Blantyre which is in the name of the deceased. This is the property in respect of which the 1<sup>st</sup> Claimant first sought a limited grant of Letters of Administration for the sole purpose of transferring that property into her name. The Deed of Lease was exhibited as “FM2” to her Sworn Statement in support of the Application. That property is part of the personal estate of the deceased person. It will be subject to distribution, in accordance with the law, by the Administrator of the Estate.
257. Secondly, there is motor vehicle Registration No. KA 6163, Toyota Passo, registered in the name of the deceased person. This vehicle clearly forms part of the estate of the deceased person.
258. The 1<sup>st</sup> Claimant also pointed out that the deceased person had another bus company called KJ Transways and she exhibited a certificate of incorporation marked it as “CP2.” This is a claim which has not been disputed by the Defendants or indeed any other person and the Court concludes that this entity also forms part of the estate of the deceased person unless otherwise proven before the Court to the contrary.
259. In addition, the 1<sup>st</sup> Claimant stated that the deceased person owned a workshop in Manja Township in the City of Blantyre. This is a claim which has not be disputed. The workshop is therefore part of the deceased person’s estate.
260. Further, there is no dispute that the property on which Blantyre Lodge Limited operates is Title No. Nyambadwe 539. According to exhibit “CP1”, the lease for this property was issued to Ibrahim Yuda Mkumba, the deceased person herein, on the 1<sup>st</sup> day of July, 1997 for a period of 99 years.
261. The Evidence is therefore very clear that the property on which Blantyre Lodge Ltd has been operating was personally owned by the deceased person. It was not the property of either of the two companies under dispute.
262. Any proceeds from the rentals paid by any person, body, entity or organization were therefore due to the personal estate of the deceased person and, since his death,

they form part of the deceased's estate. They must be fully and personally accounted for by those that have been managing the premises since the death of the deceased person. These are the Defendants. The Defendants must provide a full account of how the proceeds from the tenants of the premises have been used since the death of the deceased person.

263. As this Court has earlier observed, both parties correctly pointed out that under the law, there was separate legal personality between the companies as incorporated entities limited by shares, and the deceased person in his individual (personal) capacity. Indeed, the issue of the companies having separate legal personality was greatly emphasized by the Defendant throughout the proceedings.

264. What this means is that if Blantyre Lodge Ltd, as a separate legal person, was occupying the deceased person's premises as their business premises. Under such circumstances, one would ordinarily expect that Blantyre Lodge Ltd would be paying rentals to the personal property estate of the deceased person. Unfortunately, there does not seem to be evidence that Blantyre Lodge Limited was paying any consideration for operating from the deceased person's property. Put differently, it seems that the deceased person and the two companies were not operating at arm's length in so far as the personal affairs of the deceased and the business affairs of the companies were concerned. The deceased person had been mixing his personal business affairs as owner of the premises, with the corporate business affairs of Blantyre Lodge Ltd.

265. In the premises, it is the considered view of this Court that the Administrators of the deceased's estate are within their rights to charge Blantyre Lodge Ltd the two companies herein rentals for occupying the premises on title No. Nyambadwe 539. They are also to demand an account from the directors of Blantyre Lodge Ltd, or whoever has been in charge of the company since the death of the deceased person, reasonable rentals due to the estate of the deceased person since his death. However, justice does not demand that the Court should make any retrospective order as to the payment of reasonable rentals by Blantyre Lodge Ltd prior to the death of the deceased person.

266. Another important issue that the Court should address is the fact that soon after the death of the deceased person, a decision was taken, purportedly by the members of Kwenda Jenda Transport Limited, to dispose of all the buses and other property of the company. In addition, the decision went further to purport that the deceased person's shares in Kwenda Jenda Transport Ltd had dissolved into the company as per the company's memorandum of association upon the deceased's death. This was no doubt a resolution that had far-reaching implications on the status of the company. The Court must also quickly observe that there is nothing in the memorandum of association of Kwenda Jenda Transport Ltd that supports this startling resolution.

267. In connection with this issue, the Court forms the view that this is an appropriate stage at which to state a few things relating to the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the immediate aftermath of the death of the deceased person. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the deceased person's sons. There is therefore no doubt that, in terms of section 17 of DEWIPA, they are among those beneficially entitled to the estate. There were some suggestions from the Claimants that perhaps their entitlement as beneficiaries should be placed into question because they were independent and not dependant on the deceased person upon his demise. This suggestion is of course unwarranted and contrary to law. Their status as beneficiaries is unaffected by their station in life. Their status as beneficiaries inures to them by reason of being the sons of the deceased person. However, their station in life would be a very relevant factor when the Administrator allocates how much share of the intestate estate is to go to a particular beneficiary, considering for instance that some of the beneficiaries are minors who were wholly or almost wholly dependant on the deceased person.

268. Coming back to the issue of the conduct of the Defendants following the death of the deceased person herein, the evidence in the present matter is unequivocal. Notwithstanding that the two companies in issue herein were incorporated and limited by shares, the deceased person was essentially running them as a sole proprietor and did so for a very long time. At all material times, until his death, none of the Defendants herein were either a shareholder or a director of either of the companies.

269. Upon the death of their father, who passed away on 16<sup>th</sup> June, 2018, none of the two sons herein thought it appropriate to take out Letters of Administration for purposes of taking care of the business interests of their deceased father.
270. Instead, it appears that to this Court, they proceeded to start dealings with what this Court will call the “*sleeping shareholders*” of Blantyre Lodge Limited and Kwenda Jenda Limited on how to legally take over the running of the two companies herein. Three weeks from the death of the deceased, on the 7<sup>th</sup> and 8<sup>th</sup> of July, 2018, the existing shareholders of the two companies herein respectively adopted an ordinary resolution to appoint the two Defendants herein as directors of the two companies, respectively.
271. It should be pointed out that until the death of the deceased person, it seems Blantyre Lodge Limited only had three shareholders who were also the initial subscribers of the company, namely the deceased person, Alhaji Jameel Mdala and Khadija Mkumba. Each of them took out one share of MK100 each out of the total share capital of MK1,000,000 divided into 10,000 shares of MK100 each. The deceased person was also the Managing Director of the Company whilst the other two were simply members thereof.
272. Kwenda Jenda Transport Limited had two shareholders, namely the deceased person herein and one Grace Mkumba. Each of them took out one share of MK1.00 each out of the total share capital of MK20,000 divided into 20,000 shares of MK1.00 each. The facts are evident from exhibits GHM2 and GHM 3 respectively.
273. Clearly at the point where the Defendants were being appointed directors of the two companies herein, there was no personal representative – no Administrator - for the estate of the deceased. The interests of the deceased’s estate in the two companies were therefore not taken into account in the adoption of this very important resolution. This is against a backdrop that as beneficially entitled persons under section 17 of DEWIPA, the Defendants could have first applied for Letters of Administration, or even made arrangements for someone to be appointed Administrator pending the finalization of judicial processes in terms of section 46 of DEWIPA, for purposes of

ensuring that the interests of the deceased person's estate were legally taken into account.

274. A day after the Defendants herein were appointed directors of the company, on 9<sup>th</sup> July, 2018, and also resolved to "*dissolve*" the shares of the deceased person into the company, the "*members*" of Kwenda Jenda Transport Limited proceeded to adopt a resolution to dispose of all buses and other property of the company. It should be recalled that at this point, there was only one surviving member of Kwenda Jenda Transport Limited, namely one Grace Mkumba, the Defendants' mother, who had decided to appoint her two sons as directors of the company a day before. It is apparent that she did not consider the interests of the deceased person's estate when making a decision with such far-reaching consequences. In fact, this is plain from the fact that by resolving the previous day that the deceased person's shares had dissolved into the company's capital, she had effectively plainly grabbed the deceased's estate's property interests in the company without any due process of the law on administration of deceased estates. It is therefore abundantly clear that Mrs. Grace Mkumba colluded with her two sons, whom she had just appointed as directors in the company in the absence the deceased person's estate's personal representative, to dispossess all the other beneficiaries of the estate of their interests in the shareholding of Kwenda Jenda Transport Ltd.

275. A week later, on 16<sup>th</sup> July, 2016, one Khadija Mkumba, one of the shareholders of the Blantyre Lodge Limited, issued an instrument, exhibit GHM 12 herein, transferring her single share in Blantyre Lodge Limited to the 1<sup>st</sup> Defendant herein. She also purported to transfer her directorship to him. Mabvuto Ishmail Mkumba signed the instrument in purported acceptance of the transfer. The purported transfer of directorship was notwithstanding the fact that by resolution of 7<sup>th</sup> July, 2018, the first Defendant had already been appointed director of the company.

276. It is the observation of this Court that the various processes concerning Blantyre Lodge Limited and Kwenda Jenda Transport limited that were taking place soon after the death of the deceased, as stated above, show bad faith and a conspiracy to defeat the interests of other beneficiaries in the estate by using the instrumentality of the

separate personality status of a private company limited by shares. In the case of Kwenda Jenda Transport Ltd, this was all too brazen.

277. It is settled law that the concept of the separate legal personality of a company, wherein there is the legal fiction of a corporate veil that separates the property estate of the shareholder from the property estate of the company, dates back to the seminal decision of the House of Lords in *Salomon v A Salomon and Co Ltd* [1897] AC 22. Lord Halsbury LC, stated that a limited liability company had to be viewed “*like any other independent person with its rights and liabilities appropriate to itself*”.

278. There are however instances where the Courts may pierce or lift the corporate veil, where the justice of the matter so requires, so that the Court may appreciate the true nature of the transactions or dealings in issue, and the identities of the actual individuals behind the company. Such exceptions or departures from the separate legal personality principle established in *Salomon v A Salomon and Co Ltd* may be founded upon statute, the law of torts, the common law generally, the principle of unjust enrichment, equity or the law of trusts, among others.

279. In the United Kingdom, the locus classicus on the issue of lifting the corporate veil is the case of *Prest (Appellant) v Petrodel Resources Limited and others (Respondents)*, [2013] UKSC 34, particularly the decision of Lord Sumpton, JSC.

280. The appeal in the *Prest* case arose out of ancillary relief proceedings which followed the divorce of Michael and Yasmin Prest. In the distribution of assets, Mrs Prest was a £17.5 million lumpsum, plus £24,000 per annum and provision for school fees for the four children. There were assets, mainly in the form of residential property, which were held by various companies owned and controlled by Mr Prest. Mr Prest argued that as the companies were not being used for any improper purposes, and the properties were held by the companies for tax purposes long in advance of the divorce, the properties could not be touched due to the operation of the corporate veil. In his decision, Lord Sumpton began by upholding the sanctity of the concept of separate legal personality – the efficaciousness of the corporate veil, in the context of a company limited by shares. He stated that a company:

*“has rights and liabilities of its own which are distinct from those of its shareholders. Its property is its own, and not that of its shareholders. In **Salomon v A Salomon and Co Ltd** [1897] AC 22, the House of Lords held that these principles applied as much to a company that was wholly owned and controlled by one man as to any other company. In **Macaura v Northern Assurance Co Ltd** [1925] AC 619, the House of Lords held that the sole owner and controller of a company did not even have an insurable interest in property of the company, although economically he was liable to suffer by its destruction. Lord Buckmaster, at pp 626-627 said: “no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.”*

281. He then proceeded to state that:

*“when we speak of piercing the corporate veil, we are not (or should not be) speaking of any of these situations, but only of those cases which are true exceptions to the rule in **Salomon v A Salomon and Co Ltd** [1897] AC 22, i.e. where a person who owns and controls a company is said in certain circumstances to be identified with it in law by virtue of that ownership and control...Most advanced legal systems recognise corporate legal personality while acknowledging some limits to its logical implications. In civil law jurisdictions, the juridical basis of the exceptions is generally the concept of abuse of rights, to which the International Court of Justice was referring in **In re Barcelona Traction, Light and Power Co Ltd** [1970] ICJ 3 when it derived from municipal law a limited principle permitting the piercing of the corporate veil in cases of misuse, fraud, malfeasance or evasion of legal obligations. These examples illustrate the breadth, at least as a matter of legal theory, of the concept of abuse of rights, which extends not just to the illegal and*

*improper invocation of a right but to its use for some purpose collateral to that for which it exists.”*

282. He proceeded to state, at paragraph 18, that:

*“English law has no general doctrine of this kind. But it has a variety of specific principles which achieve the same result in some cases. One of these principles is that the law defines the incidents of most legal relationships between persons (natural or artificial) on the fundamental assumption that their dealings are honest. The same legal incidents will not necessarily apply if they are not. The principle was stated in its most absolute form by Denning LJ in a famous dictum in **Lazarus Estates Ltd v Beasley** [1956] 1 QB 702, 712: “No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever...”*

283. He added that the principle of lifting or piercing the corporate veil applies in cases:

*“in which the benefit of some apparently absolute legal principle has been obtained by dishonesty....In my view, the principle that the Court may be justified in piercing the corporate veil if a company’s separate legal personality is being abused for the purpose of some relevant wrongdoing is well established in the authorities...[T]he recognition of a limited power to pierce the corporate veil in carefully defined circumstances is necessary if the law is not to be disarmed in the face of abuse. I also think that provided the limits are recognised and respected, it is consistent with the general approach of English law to the problems raised by the use of legal*

*concepts to defeat mandatory rules of law...the corporate veil may be pierced only to prevent the abuse of corporate legal personality. It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement.”*

284. There may well be categories of cases, and the present one seems to be one, where apparently innocuous legally sanctioned processes, such as the transfer of shares, are used for a clandestine purpose of putting away otherwise inheritable property of the deceased person’s estate beyond the reach of the Administrators and others who are beneficially entitled. Such practices must not receive the endorsement of the Court if the law is not to be disarmed in the face of abuse.

285. The Court is therefore entitled to see beyond the façade of the transfer of shares in Blantyre Lodge Limited in order to see that one Khadija Mkumba transferred her share in the company to Mabvuto Ishmail Mkumba, and purported to transfer her directorship to him, a practice that is alien to any known norms of Malawian company law, because she wanted him to essentially circumvent inheritance law processes and take over the running of his father’s company.

286. The conduct of Khadija Mkumba helps us to put matters in better perspective. It helps us to understand that even though she was a shareholder in the company, she was basically a nominal one and that there was always an understanding that the company, in essence, belonged to and was run by the deceased person. This is why she was prepared to cede her roles both as shareholder and as Director in Blantyre Lodge Limited, a multi-million Kwacha worth of an investment, to the deceased person’s son at a nominal consideration of MK100 for her lone taken out share in the company. With such conduct, it seems justifiable to conclude that she never really invested resources in the company that would have made her think against the idea of ceding her property interest in the company at such a pittance – a nominal value of MK 100 that was fixed close to 30 years earlier.

287. I should also point out that there is uncontested evidence that the Defendants, whilst running the affairs of Blantyre Lodge Limited, which operates from the deceased person’s premises, i.e Title No. Nyambadwe 539, have been collecting rentals from

such tenants as Intercap Malawi Limited, among others, with the money being credited to the accounts of Blantyre Lodge Limited and applied to the purposes of Blantyre Lodge Limited. The result is that the accounts of Blantyre Lodge Limited have contained mixed funds, some of which ought to have gone into the personal accounts of the deceased and not the company's.

288. The Court holds the view that the purported appointment of the two Defendants herein as directors of the company, without taking into consideration the interests of the estate of the deceased person, and indeed without making any efforts at all to ensure that such interests were taken into account, and the Defendants' decision in accepting such appointments, were all in bad faith and meant to prejudice the interests of the estate of the deceased. Such decisions needed to have been taken together with the person legally entitled to act as personal representative of the deceased's estate, and especially in view of the fact that the Defendants knew that they were beneficiaries under the deceased's estate together with other members of the deceased person's immediate family. By circumventing the administration of estates process and proceeding to take major decisions affecting the whole company, the two Defendants herein would essentially be jumping the queue and in all probability, indirectly reap more than what they would ordinarily have been allotted from deceased person's estate.

289. A proper audit of Blantyre Lodge Limited's accounts since the death of the deceased person is therefore appropriate in order to:

- (a) segregate funds which should be to the credit of Blantyre Lodge Limited from those which should be credited to the deceased person's estate;
- (b) Establish whether any decisions made by the Defendants herein as shareholders and directors of the company have affected the interests of the deceased's estate in the company, whether to the benefit or detriment of the estate.
- (c) If such decisions have been to the benefit or detriment of the estate, to establish the quantum, as far as a monetary value can be assessed, of the same.

290. Such audit is to be done and completed, and the Report to be furnished to the Court, within 60 days from the date hereof

291. With respect to Kwenda Jenda Transport Limited, the situation is far more serious. Mrs. Grace Mkumba was evidently at the centre of developments in this company soon after the deceased person's death. The Court wishes to point out that the evidence shows that she was divorced from the deceased person at the point of the deceased person's death. In these proceedings, both the 1<sup>st</sup> and 2<sup>nd</sup> Claimants made very serious allegations that not only did she get divorced from the deceased person in or about 1992, but that she in fact got remarried and at the time the matter was being argued, she was living in Kasungu with her husband. It is noteworthy that even in the face of such serious claims, she never thought it appropriate to join these proceedings. This Court is thoroughly satisfied that she was keenly aware of the instant proceedings. As shown earlier, in Civil Cause No. 276 of 2018, Kwenda Jenda Transport Ltd of which she has effectively been the de fact "*sole shareholder*" since the deceased person's death, and of which she is also Director, commenced litigation against the Claimants herein, and in the said Court proceedings, made explicit reference of the present proceedings. The Court has already stated that the circumstances of the present matter are such that it has lifted the corporate veil in order to examine the actual personal conduct of people like Mrs. Grace Mkumba who seek to hide behind the corporate veil to disguise breaches of inheritance law. Mrs. Mkumba, at the time Kwenda Jenda Transport Ltd was suing the Claimants in relation to the present proceedings, was the person in firm control of Kwenda Jenda Transport Ltd. She was fully aware of these proceedings. If she had therefore intended to be recognized as widow of the deceased person, she should surely have joined the present proceedings. The Court believes the claim made by the 2<sup>nd</sup> Claimant herein, an uncle to the deceased person, that Mrs. Grace Mkumba had indeed long been divorced from the deceased person at the time of his demise.

292. In the instant matter, the evidence shows that alongside her two sons, the two Defendants herein, she proceeded to state that members of the company resolved at a General Meeting to dispose of the assets of the company including all its buses, and also that the members of the company had resolved that the shares of the deceased person be dissolved into the company. Yet, according to exhibit "GHM 3", the company only had two members who were the subscribers of the company, being herself and the deceased person herein. The Companies Act (Cap 46:03 of the Laws of Malawi),

defines a member of a company as “a shareholder within the meaning of section 71.”

Section 71(1) of the Companies Act in turn provides that:

*“(1) For the purposes of this Act, shareholder” means—*

*(a) a person whose name is entered in the share register, where applicable, as the holder for the time being of one or more shares in the company;*

*(b) until the person’s name is entered in the share register, a person named as a shareholder in an application for the registration of a company at the time of incorporation of the company.”*

293. By stating that the resolution was made at a duly constituted general meeting of the members of the company, as shown by exhibit GHM 15, and under circumstances where there was no Administrator to take care of the interests of the deceased person’s estate in the company, the Court forms the view that this is an appropriate case where it has to lift the veil and observe that this was the sole resolution of Mrs. Grace Mkumba. As there is no evidence of a shareholder agreement having been concluded indicating the shareholding proportions in the company, one accepts the Defendants’ claim that the shareholding of the subscribers of Kwenda Jenda Transport Limited was 50% each. This means that in order for such a resolution to have been made, Mrs. Grace Mkumba also gave herself a casting vote. If truth be told, there cannot be a meeting of one person. That is a no brainer. The disposal of the assets at the purported duly constituted general meeting was palpably unlawful and indeed fraudulent. The company had no authority to take the decision that it took. Indeed, the purported appointment of the two Defendants herein as directors of the company cannot be sustained. The appointments were invalid ab initio.

294. The proceeds of the sale of all the property must therefore be fully accounted for by Mrs. Grace Mkumba and all the directors of Kwenda Jenda Transport Limited who were part of the decision to dispose of the assets personally, with equal personal liability, and half of such value must be restored to Kwenda Jenda company limited as representing part of the market value of the deceased person’s share capital that he held in the company. Again, subject to any liabilities that the company may have, the interest of the deceased person’s estate is half of the current share market value of the company.

295. In making these findings and decisions, the Court is mindful that a company would have liabilities that it must settle as a corporate entity. However, such liabilities ought to have been dealt with by ensuring that there was involvement of the personal representatives of the deceased person in the making of the decisions. The surviving shareholder in this matter acted maliciously, fraudulently and capriciously.

296. The Court wishes to emphasise the principle that was established in the renowned case of *Rochefoucauld v Boustead* [1897] 1 Ch 196 (CA) that a statute is not to be used as an instrument for perpetrating or perpetuating a fraud. The decision of the Defendants, as purported directors of Kwenda Jenda transport Limited, along with one Mrs. Grace Mkumba as shareholder and director, to dispose of all the buses and other assets of Kwenda Jenda Transport Limited, and dissolve the deceased person's shares into the company without having a personal representative of the deceased person's estate making his or her representations on such disposal, was a way of using the legal device of a company under the Companies Act, 2013 to disinherit the beneficiaries of the estate of the deceased person, and thus amounting to a fraud on the estate of the deceased person.

297. The attempt to use the company law as an instrument to fraudulently disinherit other beneficiaries is clear from what Mr. Hassam Mkumba stated, as show at paragraph 80 above, that:

*“any sale of buses or any income made by the said companies if any was being done within the operational framework of the companies concerned and not by the Defendants in their personal capacity.”*

298. This was a clear attempt by the Defendants to avoid personal legal consequences for any breaches of the law committed in the process of handling matters relating to the estate of the deceased person. As pointed out earlier, the company law cannot be invoked as an instrument for legitimating such conduct.

299. Inheritance law under DEWIPA cannot be disarmed in the face of the abuse of the company law. The wrong use of company law concepts herein cannot be used to

defeat the mandatory rules of inheritance law under DEWIPA. Mrs. Grace Mkumba and the two other directors of Kwenda Jenda Transport Ltd, being the Defendants herein, must fully reconstitute that which belongs to the estate of the deceased person so that the Administrators can appropriately deal with the same in accordance with the law.

300. Further, as stated earlier, criminal law enforcement agencies must conduct investigations into the possible commission of a criminal offence or offences under DEWIPA in this regard.

301. Pausing there, the Court now turns to the conduct of the 1<sup>st</sup> Claimant. The evidence is clear that soon after obtaining the Order granting her, alongside Mr. Jafeli Tweya. Letters of Administration, the 1<sup>st</sup> Claimant proceeded to withdraw money from the accounts of Blantyre Lodge Limited. The Defendants argued that this was wholly wrong and that it showed that the 1<sup>st</sup> Claimant did not properly appreciate her role as an Administrator in the context of a company that had more than one shareholder. They state that soon after she obtained Letters of Administration, she proceeded to start issuing directives on the running of the company and also to withdraw money from the account of Blantyre Lodge Limited, namely the sum of MK7 million Kwacha referred to above.

302. The Court finds that this conduct on the part of the 1<sup>st</sup> Claimant was rather troubling. The Letters of Administration did not give her a warrant to go and start running the affairs of Blantyre Lodge Limited. Her interest as an Administrator was limited to the shareholding interest that the deceased person had in the company in their capacity as shareholders. Shareholders do not run the affairs of a company. Shareholders do not just proceed to withdraw money from the company's accounts. That would represent a crisis of corporate governance. The only way in which the 1<sup>st</sup> Claimant would have been involved in the day-to-day operations of Blantyre Lodge Limited was if, following a resolution of the company, she had been appointed a director of the company with authority to carry out day to day operations of the company. Directorships in incorporated companies are not inherited under inheritance law. The company must adopt a resolution to that effect.

303. It is also in evidence that the 1<sup>st</sup> Claimant was ignoring invitations from the Administrator General in connection with matters related to the deceased's estate herein. Whether at the time of ignoring such invitations she had been granted Letters of Administration or not, it was improper, inappropriate and a sign of not being responsible for her to ignore these invitations from the Administrator General, whom the law under DEWIPA recognizes as the Public Trustee. Assuming that at the time that she was receiving the invitations from the Administrator General she had already been granted the Letters of Administration, and that her authority had not yet been suspended, it would still have been proper for her to honour the invitation and inform the Administrator General about the legal developments.

304. Another issue that is up for this Court's determination related to the appointment of Mr. Jafeli Tweya, the 2<sup>nd</sup> Claimant, as co-Administrator along with the 1<sup>st</sup> Claimant. The Defendants' argument is that he was wrongly appointed because he is not a beneficiary under section 17 of the DEWIPA. The Defendants' argument is premised on section 43(1) as read with sections 17 and 18 of the Act. Section 43(1) of DEWIPA provides that:

*“(1) Where the deceased has died intestate, Letters of Administration of his or her estate may be granted to any person who, under sections 17 or 18, would be entitled to the whole or any part of such deceased's estate.”*

305. The argument of the Defendants is that in the scheme of the law under DEWIPA, the categories of persons listed under section 18 of the Act would only become entitled if there is none available under section 17. They contend that in the present case, there is no shortage of beneficiaries under section 17 of the Act and hence no person can claim to be entitled under section 18. In this regard, the Defendants argue that section 43(1) of DEWIPA should be read, in the circumstances of the present case, as excluding any person who would only be entitled under section 18 of the Act from being considered for appointment as Administrator under section 43(1) because under present circumstances, such persons are not beneficially entitled.

306. The Claimants however counterargued on the basis of section 43(4) of DEWIPA which states that:

*“Where it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of Letters of Administration, the Court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be Administrator; and in every such case Letters of Administration may be limited or not as the Court thinks fit.”*

307. It would seem indeed that section 43(4) of DEWIPA provides an exception to the general rule under section 43(1) of the Act. It appears to me that it lies within the discretion of the Court to decide whether indeed it is necessary or convenient to appoint a person to administer the estate of a deceased person other than the person who under ordinary circumstances would be entitled to the grant of Letters of Administration. Thus all the Court needed to be satisfied about was whether it was necessary or convenient to appoint Mr. Jafeli Tweya as Administrator notwithstanding that he was not a person to whom Letters of Administration would ordinarily be granted.

308. Pausing there, the Court notes that in their oath of administration on intestacy of 28<sup>th</sup> August, 2018, the Claimants herein stated that they were wife and uncle of the deceased person respectively, and at paragraph 3 thereof, stated that:

*“We are not aware of any person who has a greater or more immediate interest in such estate and that there is no minority or life interest in the estate; no life interest arises except ourselves.”*

309. This oath was sworn on 28<sup>th</sup> August, 2018. Paradoxically, this Court, by an earlier Order of 22<sup>nd</sup> August 2018, had declined to appoint the 1<sup>st</sup> Claimant as a sole Administrator, pointing out that there was minority and life interest in the estate, and that by reason thereof, there was need to have at least two Administrators. For instance,

it is very clear that there were minor children, being the 1<sup>st</sup> Claimants children with the deceased person. This was a minority interest. Yet the Claimants were purporting to say if at all there was any such interest, then it only related to the two of them. This was wholly irregular, unacceptable and wrong. Such conduct casts some doubt on whether indeed they Claimants are wholly sincere in their representations.

310. In addition, the 2<sup>nd</sup> Claimant surely ought to have been aware that the other children of the deceased person from other mothers, of whom he was well aware, 13 of them at his own count, had a more immediate interest in the estate than himself. Yet he joined the 1<sup>st</sup> Claimant in purporting to say that there was no one else with a greater interest in the estate than the 1<sup>st</sup> Claimant as the widow and himself as an uncle. This surely was a gross misrepresentation to the Court on his part.

311. Be that as it may, I considered the affidavit of Mr. Jafeli Tweya of 27<sup>th</sup> February, 2019 in support of the Application herein, with keen interest. One gets the impression, from his said affidavit, of a fairly balanced man who is seeking to embrace every family member and ensure that every possible beneficiary under the estate is not left out, and that their interests are well represented. Unlike the 1<sup>st</sup> Claimant, whose relationship with the other children of the deceased from another mother seems very acrimonious. The problem however is that when one reads appreciates all the facts, one again gets the impression that perhaps the 2<sup>nd</sup> Claimant is someone who is easily pliable to doing some things, some which may not be proper. It is very difficult to reconcile how the same man who claimed on 28<sup>th</sup> August, 2018, under oath, that apart from the 1<sup>st</sup> Claimant, there was no one else who had a greater entitlement to the estate of the deceased person than himself, could have been providing the seemingly well balanced account in his 27<sup>th</sup> February, 2019 sworn statement.

312. This takes me to the position of the 1<sup>st</sup> Claimant's appointment as Administrator. When the Court first appointed the 1<sup>st</sup> Claimant as an Administrator, together with Mr. Jafeli Tweya on 10<sup>th</sup> September, 2018, the Court had no hint that the circumstances of the estate herein are as contentious as they presently are, and that the relationship between the 1<sup>st</sup> Claimant and the Defendants was also as acrimonious as it is.

313. Indeed, if the Court had this information, it would have been reluctant to appoint the 1<sup>st</sup> Claimant as Administrator.

314. When all is considered, I find it appropriate to revoke the appointment of the 1<sup>st</sup> Claimant as co-Administrator, along with the 2<sup>nd</sup> Claimant. The conduct of the Claimants' in particular with regard to the Statements made in the Administration Oath of 28<sup>th</sup> August 2018, which was used in order to secure the Order granting them Letters of Administration on 10<sup>th</sup> September, 2018, was materially misleading and misrepresented material facts, knowingly in this Court's view. I find this to be an appropriate ground for revoking the Letters of Administration pursuant to section 55 of DEWIPA.

315. The Court proceeds to appoint the Administrator General, who is a body corporate under section 2 of the Administrator General Act (Cap 10:01 of the Laws of Malawi), and is the Public Trustee according to section 39(2)(f) of DEWIPA to trace any other property forming part of the deceased person's estate, verify all the legally entitled beneficiaries under the estate, generally manage and distribute the estate of the deceased person herein in accordance with the law. This is consistent with section 30(1) of the DEWIPA which provides that "*A corporation or company or trust corporation may be granted probate or Letters of Administration either solely or jointly with another person.*" The Administrator General is to organize with speed, a meeting with all the concerned beneficiaries, as outlined in the affidavit of Jafeli Tweya of 27<sup>th</sup> February, 2019 and identify a suitable person who is to be appointed as Co-Administrator by the Court in compliance with the law.

## **CONCLUSION**

316. The Court comes to the following final conclusions with respect to the present application:

- (a) In respect of the question as to whether Blantyre Lodge Limited and Kwenda Jenda were/are companies solely owned by the late Ibrahim Yuda Mkumba (the deceased person); the answer is in the negative. There is evidence of joint shareholding in the company with others, namely Alhaji Jameel Mdala and Khadija Mkumba in respect

of Blantyre Lodge Limited; and Mrs. Grace Mkumba in respect of Kwenda Jenda Transport Limited, which this Court cannot, in law ignore. However, the Court concludes that the deceased person used to run the two companies as if they were his own.

- (b) With regard to whether the Defendants herein are guilty of property grabbing and diverting property forming part of the deceased's estate; the Court's finding in respect of Kwenda Jenda Transport Limited is in the affirmative. The Defendants and Mrs. Grace Mkumba are to provide to the Court a full account, within 30 days from the date hereof, of the exact circumstances of the sale, the proceeds realized, the purposes to which the proceeds were applied and must, in any event, restore to the company any proceeds as described in paragraph...above which form part of the estate of the deceased person.
- (c) In respect of Blantyre Lodge Limited, the Court determines that an audit must be conducted, by auditors to be appointed by the Administrators herein, in order to establish the actual state of affairs of the company, and to further establish whether the Defendants have run the same to the benefit or detriment of the deceased's estate.
- (d) As regards whether the Defendants qualify to be Administrators of the deceased's estate; the Court, in view of the conduct exhibited by the Defendants herein, forms the opinion that whilst they are legally entitled beneficiaries of the estate of the deceased person, they would not be suitable Administrators of the estate of the deceased person herein.
- (e) As to whether, under the circumstances, the order of suspension of the Letters of Administration need be vacated or varied by the Court; the determination of the Court is that the said Order is hereby set aside and replaced with the Order appointing the Administrator General, being the Public Trustee under DEWIPA, as the Administrator herein. The Administrator General, in consultation with the family, is to propose the name of suitable co-Administrator to this Court for purposes of appointment, within 14 days from the date hereof. The Appointment of the 1<sup>st</sup> and 2<sup>nd</sup> Claimant as Administrators is hereby revoked.

- (f) The Administrator General is hereby empowered, even prior to the appointment of the Co-Administrator, to ensure, should need arise, that provision is made to the minor children and any minor dependants of the deceased person in order to relieve them from any hardship.
- (g) In respect of whether the Court should declare Falida Mkumba, the 1<sup>st</sup> Claimant, as not fit to be an Administrator of the estate of the deceased person herein due her blatant abuse of the estate and her total disregard of Court orders; the Court does not find as such, but holds the view that other circumstances, as earlier discussed, render her not to be an appropriate person to be Administrator of the estate on public policy considerations. Her administration of the estate would be riddled with endless disputes to the detriment of the estate as a whole. The Court is of opinion that the Administrator General would be best placed to administer the estate of the deceased person, and in view of the fact that there is minority interest in the estate, a Co-Administrator should be appointed upon mutual agreement by the beneficiaries as mediated by the Administrator General. Should the beneficiaries fail to mutually agree on a suitable Co-Administrator, then the Administrator General is hereby empowered to identify such Co-Administrator and present him or her to the Court for appointment upon making an application to that effect.
- (h) On whether the 1<sup>st</sup> Claimant should account for the MK7, 000,000.00 which she withdrew from the First Merchant Bank account of Blantyre Lodge Ltd, one of the companies owned by the Late Ibrahim Yuda Mkumba in which the deceased person was the sole signatory without the knowledge of the family members and also contrary to the Order dated 10<sup>th</sup> September 2018, the Court finds that such an account was already provided and the Court, having examined its contents, sees no need for making such an Order again.

317. The Administrators are under an obligation to trace any other assets forming part of the estate of the deceased, as well as any liabilities in relation to the same and distribute or otherwise deal with them accordingly pursuant to their authority under the law as Administrators.

318. The Court is also mindful that in cases of dispute such as in the instant matter, the Court has been given jurisdiction, under section 73(1)(c) of DEWIPA, “*to decide if any person is or is not entitled as a beneficiary of the estate.*”

319. The Court hereby decides that the beneficiaries of the deceased person’s estate, according to the facts established in the present matter are: (a) Falida Mkumba, being the widow of the deceased; (b) the following children of the deceased person, namely: (1) Aisha Jane Mkumba, (2) Ishmael Mabvuto Mkumba; (3) Kamkosva Mkumba; (4) Hassan Ganizani Mkumba; (5) Mariam Mkumba; (6) Izhaka Mkumba; (7) Tisatayane Mkumba; (8) Ibrahim Mkumba Jr.; (9) Takondwa Mkumba; (10) Suhaila Mkumba; (11) Paskari Mkumba; (12) Jameel Mkumba and (13) Hareed Mkumba. The beneficiaries also include two dependants, namely (1) Michael Mputi and (2) Belinda Mputi.

320. These beneficiaries are not listed in any order of preference with regard to the distribution of the estate by the Administrators. The Administrators of the estate herein will have the responsibility of distributing the shares of the estate to the beneficiaries. Such distribution shall be ascertained upon the following “*principles of fair distribution*”:

- (a) protection shall be provided for members of the immediate family and dependants of the deceased person herein from hardship, so far as the property available for distribution can provide such protection;
- (b) the spouse of the deceased person, the 1<sup>st</sup> Claimant herein, shall be entitled to retain all the household belongings which belonged to the household of the deceased person;
- (c) if any property shall remain after paragraphs 317(a) and 317(b) above have been complied with, the remaining property shall be divided between the 1<sup>st</sup> Claimant herein and the children of the deceased person;
- (d) as between the 1<sup>st</sup> Claimant and the children of the deceased person, their shares shall be determined in accordance with all the special circumstances including –

- (i) any wishes expressed by the intestate in the presence of reliable witnesses. [It is noteworthy that in the instant case, no evidence was led before this Court to suggest that the deceased person had expressed any such wishes.]
  - (ii) such assistance by way of education or other basic necessities that the 1<sup>st</sup> Claimant herein, and/or any of the children of the deceased person may have received or been receiving from the deceased person during his lifetime; and
  - (iii) any contribution made by the spouse of the deceased person, namely the 1<sup>st</sup> Claimant herein, or any child of the deceased person to the value of any business or other property forming part of the estate of the deceased, and in this regard the surviving spouse, the 1<sup>st</sup> Claimant herein, is to be considered to have contributed to the businesses unless proof to the contrary be shown by or on behalf of the children, which evidence the Court has not seen in the instant case;
- (e) as among the children of the intestate, the age of each child shall be taken into account with the younger children being entitled to a greater share of the property than the older children.

321. As I close, I need to mention that I am aware that the two companies herein, namely Blantyre Lodge Limited and Kwenda Jenda Transport Limited, which are under the direct control and management of the Defendants, took out separate proceedings at the High Court Principal Registry, in Blantyre, in Civil Case No. 276 of 2018, before my brother Judge N’riva, J. I am aware, as this decision has shown several times, that the two companies have separate legal personality. But I have also made it clear that the circumstances in which the affairs of the two companies have been run via-a-vis the deceased person’s estate, warrant a lifting of the corporate veil. In this respect, the Court directly attributes the decision of those two companies to commence the said legal proceedings at the High Court Principal Registry to the Defendants herein. Those proceedings were clearly commenced after the present proceedings had already been commenced in this Court.

322. As this decision has shown, the issue of ownership of the shares in those companies, and indeed the issue of the status and effect of some of the critical decisions that the Defendants and others, such as Mrs. Grace Mkumba, took under or in relation to those companies, are directly related and inextricably linked to matters of the administration of the estate of the deceased person. I find the Defendants' idea of commencing those separate proceedings, in a separate registry, with a view to impugning the conduct of the 1<sup>st</sup> Claimant based on an Order that she had been granted in ongoing proceedings before another Court of coordinate jurisdiction, to have been unwise. I read the ruling of the Honourable Judge, exhibited as exhibit "GHM 5", and formed the distinct conclusion that there was a clear possibility of the Defendants putting the two Courts of coordinate jurisdiction on a decisional collision course. Clearly, the issues that the Defendants, through the two companies herein sought to raise, could have been raised before this Court in the present proceedings. This Court, sitting as a probate Court, could not fail to separate matters related to the estate of the deceased person from those of the two companies, or indeed to point out whether the conduct of the 1<sup>st</sup> Claimant in her dealings with the companies was proper or not.

323. It appears to me that the Defendants' conduct in this regard was intentional. But my brother Judge in Civil Case No. 276 of 2018, at the High Court Principal Registry, in Blantyre has a better appreciation of the full context of the proceedings before him and I am sure that he will deal with them most appropriately in accordance with the law.

324. I have considered the issue of costs. Each party is to bear own costs.

325. It is so ordered.

Delivered in Chambers this 15<sup>th</sup> Day of February, 2022 virtually at Zomba.

**R.E KAPINDU**  
**JUDGE**