



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
FAMILY AND PROBATE DIVISION  
PROBATE CAUSE NO. 22 OF 2022

IN THE MATTER OF SECTION 43 (1) OF THE DECEASED ESTATES  
(WILLS, INHERITANCE AND PROTECTION) ACT, CAP. 10:02 OF THE  
LAWS OF MALAWI

-AND-

IN THE MATTER OF THE ESTATE OF GRACE MBISA (DECEASED)

-AND-

IN THE MATTER OF AN APPLICATION FOR GRANT OF LETTERS OF  
ADMINISTRATION BY JANE CAROLINE ZEKI AND FRAZER LEWIS  
ZEKI PHIRI

**CORAM: HON. JUSTICE MANDALA MAMBULASA**

Mr. Kazembe Ngunga, Advocate for the Applicants

Ms. Christina Kazembe, Court Clerk

**ORDER**

## **MAMBULASA, J**

### **Introduction**

- [1] On 21<sup>st</sup> January, 2022 this Court was seized with an application for the grant of Letters of Administration. The intended administrators are Jane Caroline Zeka and Frazer Lewis Zeka Phiri. The two are a daughter and grandson to the deceased herein, Grace Mbisa. The application has been taken out under section 43 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act.<sup>1</sup> The application has been filed by Advocate, Mr. Kazembe Ngunga of Messrs Legal Marshal Attorneys.
- [2] The application shows that the deceased herein died on 4<sup>th</sup> December, 2000 at Kamuzu Central Hospital in Lilongwe District. She hailed from Miyombo Village, Traditional Authority Fundi in Karonga District.
- [3] The Estate Duty Sworn Statement<sup>2</sup> shows that the total property in Malawi that the deceased herein left is the sum of MK8,200,000.00. This sum is the market value of a leasehold interest that the deceased held under Title No. Ndirande 234/11 as at 4<sup>th</sup> December, 2000. The property valuation report has been prepared by Park Hill Associates, registered property consultants. The opinion of value by Park Hill Associates is couched in the following terms:

We certify that on the basis of the inspection and description of the property as contained in this report and our experience in the property market and that having

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<sup>1</sup> Cap. 10:02 of the Laws of Malawi.

<sup>2</sup> See Order 18, rule 1 (1) of the Courts (High Court) (Civil Procedure) Rules, 2017.

considered all the relevant factors pertaining to the property market, we are of the opinion that the market value of the leasehold interest in the subject property for estate duty purposes as at 4 December 2000 is in the sum of K8,200,000.00 (Eight Million Two Hundred Thousand Kwacha).

- [4] The Estate Duty Commissioner in Blantyre assessed the total amount of estate duty payable on 21<sup>st</sup> December 2021 at nil. This is clear both on the last page of the Estate Duty Sworn Statement (Form III) and also the Assessment by Commissioners (Form II).

#### **Issue for Determination**

- [5] The only issue for determination before this Court is whether the Estate Duty Commissioner correctly applied the law when she assessed the estate duty payable in this matter.

#### **The Law**

- [6] Section 4 of the Estate Duty Act<sup>3</sup> provides as follows:

In the case of every person dying after the commencement of this Act, there shall, save as hereinafter mentioned, be levied and paid to the Government upon the principal value of all property belonging to the deceased **at his death** (in this Act

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<sup>3</sup> Cap. 43:02 of the Laws of Malawi.

referred to as the “estate of the deceased”) a duty, called, “estate duty,” at the graduated rates set forth in the Schedule.

[7] The Estate Duty Act took effect on 19<sup>th</sup> February, 1946.<sup>4</sup>

[8] The current Schedule<sup>5</sup> referred to in Section 4 of the Estate Duty Act provides as follows:

SCHEDULE

s.4

The rates per centum of estate duty shall be according to the following scale-

	<i>Rate per cent</i>
Where the principal value of the estate does not exceed K20,000,000.00	Nil
exceeds K20,000,000.00 but does not exceed K25,000,000 ..	4
exceeds K25,000,000 but does not exceed K35,000,000 ..	5
exceeds K35,000,000 but does not exceed K50,000,000 ..	6

[9] The repealed Schedule to the Estate Duty Act provided as follows:

SCHEDULE

s.4

The rates per centum of estate duty shall be according to the following scale-

	<i>Rate per cent</i>
Where the principal value of the estate does not exceed K30,000	Nil
exceeds K30,000 but does not exceed K40,000 ..	5

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<sup>4</sup> See The long title of the Act.

<sup>5</sup> It came into force on or about 14<sup>th</sup> January, 2016 following an amendment to the Estate Duty Act in 2016 through Act No. 1 of 2016.

exceeds K40,000 but does not exceed K80,000	..	6
exceeds K80,000 but does not exceed K140,000	..	7
exceeds K140,000 but does not exceed K200,000	..	8
exceeds K200,000 but does not exceed K400,000	..	9
exceeds K400,000 but does not exceed K600,000	..	10
exceeds K600,000	..	11

### **Analysis and Application of the Law to the Facts**

[10] The deceased in this matter, Grace Mbisa, died on 4<sup>th</sup> December, 2000. The Estate Duty Act came into force on 19<sup>th</sup> February, 1946 and remains so to-date even though it requires an overhaul. Some of its provisions are in conflict with the Deceased Estates (Wills, Inheritance and Protection) Act.<sup>6</sup> Clearly, the deceased died after the commencement of the Estate Duty Act. Consequently, section 4 of the Estate Duty Act applies to her estate. There is therefore to be levied and paid to the Government upon the principal value of all her property **at her death** an estate duty.

[11] As stated in paragraph 4 above, the Estate Duty Commissioner assessed the estate duty payable by the deceased's estate at nil. Obviously, the Estate Duty Commissioner used the current Schedule to the Estate Duty Act made pursuant to section 4 which came into force on 14<sup>th</sup> January, 2016. Under the current Schedule, any estate which does not exceed K20,000,000 is assessed at nil. The question is: was the application of the law and the assessment itself correct?

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<sup>6</sup> For instance, *cf* section 5 (2) of the Estate Duty Act and section 3 (1) of the Deceased Estates (Wills, Inheritance and Protection) Act on gratuity whether it is part of an estate or not.

[12] This Court is of the firm view that the Estate Duty Commissioner did not correctly apply the law and fell into error. The deceased herein having died on 4<sup>th</sup> December 2000 and the current Schedule to the Estate Duty Act having come into force on 14<sup>th</sup> January, 2016, it could not be applied to the deceased's estate. The current Schedule cannot apply retrospectively to the deceased's property at her death, namely, 4<sup>th</sup> December 2000. It is trite learning that when Parliament decides to change the law, it almost invariably, does so, prospectively, unless the instrument itself has expressly provided otherwise. Section 4 of the Estate Duty Act has a determining point for purposes of assessment. That point is **at his death**. Section 11 of the Estate Duty Act is also to the same effect - that even if the price of the principal value of the property for purposes of estate duty was to be estimated by the Commissioners themselves, it would have to be **at the time of the death of the deceased**. The use of "his" in section 4 of the Estate Duty Act does not mean that it only applies to males. Section 2 (2) of the General Interpretation Act<sup>7</sup> has always to be borne in mind. It is to the effect that in every written law, unless a contrary intention appears, words and expressions importing the masculine gender includes females, and words and expressions importing the feminine gender includes males. In this case, that point is 4<sup>th</sup> December, 2000 at Grace Mbisa's death.

[13] Before engaging in the assessment, the Estate Duty Commissioner should have asked herself the question: what was the applicable Schedule at the deceased's death? The answer in the view of this Court is the repealed Schedule or such other Schedule as was in force in the year 2000.

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<sup>7</sup> Cap. 1:01 of the Laws of Malawi.

That Schedule represents the correct position of the law as it stood in the year 2000. It is therefore this Court's finding that the assessment of estate duty in this matter was incorrect as it was based on the current Schedule which cannot apply retrospectively. The correct assessment of estate duty in respect of this matter should have been based on the repealed Schedule. Under the repealed Schedule, Government is clearly entitled to 11% and interest<sup>8</sup> on the principal value of the deceased estate, which in this case is the sum of K8,200,000.00.

[14] In view of all the reasons given and the analysis herein, the consideration of this application by this Court is pended until there is a fresh assessment of the estate duty payable in this estate by the Estate Duty Commissioner in Blantyre based on the Schedule to section 4 of the Estate Duty Act which was in force on 4<sup>th</sup> December, 2000. The Advocate for the Applicants must re-submit the Estate Duty Sworn Statement to the Estate Duty Commissioner for a fresh assessment along with a copy of this Order. It is so ordered.

[15] Made in Chambers this 21<sup>st</sup> day of January, 2022 at Blantyre in the Republic of Malawi.



**M. D. MAMBULASA**  
**JUDGE**

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<sup>8</sup> See Section 6 of the Estate Duty Act.