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Charity Oparaocha v Winfrida Murambiwa (2004) Z.R. 141 (S.C.)

Milambo Chibbonta- Pupwe¹

Facts

This was an appeal from the High Court to the Supreme Court. The Appellant was the administrator of the estate of the late Dr. Christopher Oparaocha and his widow. She got married to the late Dr. Christopher Oparaocha on 15th July 1971, under the Marriage Act of Kenya. She informed the Court below that she lived with her husband throughout the marriage until his death.

The Respondent was also married to the late Dr. Christopher Oparaocha. In December 1986, the Respondent and the late Dr. Oparaocha had a traditional ceremony of marriage in Nigeria at the deceased's village. The trial court heard that at that time of the marriage, the Respondent knew that the deceased was married but did not know the type of marriage contracted between the deceased and the Appellant. The Respondent had three children with the deceased, two of whom, were born at the University Teaching Hospital in Lusaka, and the third, in Nigeria. The birth Certificates in respect of the three children indicated the deceased and the Respondent as the parents. The Respondent lived with the deceased up to 1992, when he died. The Respondent testified that the deceased had rented a house for her in Kabwata Estates and met all her needs together with those of the children ²

The Appellant's testimony in lower Court was that she never knew the Respondent or her children before the death of her husband. The Appellant went on to state that after the death of her husband, she checked the family file at Immigration Department and found that the Respondent's children were not registered. Using the statistics from the immigration file, she administered the estate. She put up a death notice in Zambia and abroad and no one called with any claim. The Appellant told the Court that she completed the administration of the estate and was now no longer the Administrator. Sometime later in 1992, the Appellant became aware that someone claimed to have children with her husband, but since the claiming did not provide any proof, she disregarded the claim and did not make any provision for her. ³

The learned trial Judge in the High Court found that the Respondent's marriage to the deceased was null and void, because the deceased had been married to the Appellant under the Kenyan Statutory Law. On this premise, the trial Judge was of the view that the Respondent could not validly claim to be the deceased's widow. ⁴ The trial Judge was of the view, however, that in view of the size of the estate, it was beyond the jurisdiction of the local Court and the Subordinate Court as prescribed by law. According to the Court below, the Appellant should have obtained probate in the High Court for Zambia. On the evidence, which was before him, the learned trial Judge found that the Respondent was a dependent of the deceased and therefore entitled to her share of 10% of the estate since immediately prior to his death, she was maintained by the deceased together with her children and they were housed in a rented house for which the deceased paid rent. The trial Judge also found that there was cogent evidence to prove that the Respondent had three children with the deceased. The trial judge went on to state

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² Charity Oparaocha v Winfrida Murambiwa (2004) Z.R. 141 (S.C.).

³ Ibid.

⁴ Ibid.

that the children were entitled to the share of their father's estate in accordance with the applicable law and that these shares must be equal to the shares taken by the Appellant's own children. The High Court therefore found that an order of administration of the estate of the late Dr. Christopher Oparaocha, obtained by the Appellant, was null and void *ab initio* and cancelled it *post facto*. The High Court ordered that the Appellant should provide a full inventory of the estate showing how it was distributed, within sixty days of the judgment. It also ordered that all traceable assets should be re-assembled for fresh re-distribution under the Intestate Succession Act No. 5 of 1989.⁵ Dissatisfied with the Judgment of the Court below, the Appellant appealed to the Supreme Court.

Holding

The Supreme Court dismissed the appeal and therefore upheld the decision of the High Court by stating that the evidence before the lower Court clearly established that the respondent's interests together with those of her children, who were beneficiaries under the estate were completely ignored.

Significance

The case highlights two significant issues, the definition of who a dependent is and the jurisdiction of the Local Court.

With reference to the first issue, the definition of a dependent is provided for in both Wills and Administration of Estates Act and the Intestate Succession Act. Counsel for the Appellant referred the court to the definition of dependent in both statutes and the court stated that it was common cause that the deceased died intestate, and his estate was administered under the Intestate Succession Act and it was on this premise that the court relied on the definition of who a dependent is under the Intestate Successions Act.

The definition of dependent in the Intestate Successions Act is:

dependent' in relation to a deceased person means a person who was maintained by that deceased person immediately prior to his death and who was

(a) A person living with that deceased person; or

(b) A minor whose education was being provided for by that deceased person; and who is incapable, either wholly or in part of maintaining himself;⁶

For purposes of the case the court only relied on option (a) since the party to the case was not a minor.

Counsel for the Appellant argued that the intention of the legislature was to cater for close relatives and not every person including mistresses. Counsel's argument was based on the fact that the Respondent's marriage to the deceased in this matter was declared null and void by the lower court and the court rightly did so since the deceased was already married under Kenyan statutory law. In upholding the decision of the lower court, the court stated that the wording of Section 3 of the Act is clear. A dependent is any person who meets the criteria given in the Section. If the Intention was to cater for close relatives, such intention could have been expressed in the language of statute.⁷

In view of the foregoing, it is safe to say the court took the literal meaning of the word dependant. The court could have looked to other rules of interpretation in search of the

⁵ Ibid.

⁶ Section 3 of the Intestate Successions Act.

⁷ Charity Oparaocha v Winfrida Murambiwa (2004) Z.R. 141 (S.C.).

legislative intent. Chirwa J⁸ in quoting Sir Williams Blackstone in his book stated that ‘the fairest and most rational method to interpret the will of the legislator is by exploring the legislator’s intentions at the time when the law was made, by *signs* the most natural and probable...these signs are either words, the context, the subject matter, the effects and consequence, or the spirit and the reason of the law’.

The above extract brings out ‘effects and consequence’ which therefore means that when the interpreter interprets the words of the statute that interpretation will have effects as well as consequences. In the case in *casu* the respondent who was considered not a wife and neither was she a relative to the deceased was categorized as a dependant of the deceased. The effects and consequence of this interpretation is that any woman who has children with someone’s husband and expenses are being paid for by that man can rely on such authority and claim as a dependant of the deceased, which is absurd. the responded also contributed to her situation in that she was married to the deceased under customary law and she did state that she knew he was married to someone else at the time but did not bother to find out what sort of marriage it was and even if the first marriage to the appellant was also customary, ideally the two wives and children should have known each other as they would be married to the same man but in this case both were kept a secret.

The rules of statutory interpretation do state that were the literal rule creates an absurd result then the golden rule of interpretation can be resorted to in order to provide a reasonable meaning in light of a statute. Further in the preamble of the Intestate Succession Act it provides: ‘... to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate...’

If we are to apply the *ejusdem generis* rule which translates as ‘of the same kind’ and the rule requires that where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specifically mentioned.⁹ We assume the word to be interpreted are the general words ‘other relatives’, and owing to the case in *casu*, does it mean that other relatives may mean one who is not a relative since the list has the word dependent in it?

Furthermore, the court relied on a letter written by the Nigerian high commissioner to Zambia who was confirming that the deceased had two wives and three children. The concentration is on the fact that the letter was adduced as evidence and relied on to prove that the respondent was also the wife and living together with the deceased, but still the letter does not validate the marriage, and this has already been labored on as why the marriage to the respondent was invalid and moreover this letter does not prove living together. In the case in *casu* both parties stated the deceased lived with them until his death in 1992. What then is the definition of living together? The court should have defined or interpreted the meaning of such words because clearly there was no way the deceased was in two places at the same time.

The second issue is on the Local Court’s jurisdiction on granting letters of administration. The court relied on section 43(2) of the Act which limits the jurisdiction of the Local Court in matters of successions to estate whose value do not exceed fifty thousand Kwacha. It was clear to the court that this provision was enacted at a time when the Kwacha had more value and that going by the current trends very few, if any, would an estate the value of fifty thousand Kwacha and below. It was however on record in this case that the deceased’s estate had property within and outside Zambia, which included real property. Clearly, the value of the deceased’s estate went beyond the jurisdiction of the Local Court. The court therefore upheld the decision of the

⁸ Chirwa J (2021). *The Legal Process in Zambia: Cases and Materials*, Juta and company: Claremont. P. 110.

⁹ <https://ca.practicallaw.thomsonreuters.com/retrived> on 28/07/22.

lower court in finding the appointment of the appellant as administrator of the estate of the deceased null and void and consequently cancelling the Order of appointment *post facto*.¹⁰

Local Courts, being Courts that interface with the most venerable members of the community, they are located in all remote and urban areas of the Country. In terms of access to justice, there are several Local Courts in Zambia as compared to all the superior Courts put together, mainly due to the demand by most community members to litigate through the Local Courts and further that Local Courts are less complicated to access as compared to superior Courts where mostly its by services of Lawyers.¹¹ It is due to the foregoing that most people find it easier to go to the local court for appointment as administrator and more importantly lack of sensitization to the public on which court has jurisdiction to handle which succession matter as well as the local court staff over stepping their jurisdiction in such matters when the law is clear on the extent they should exercise their jurisdiction. That being said, the question to be addressed in this regard is whether or not the justice system is blameworthy for lack of sensitization on the local court's operations or perhaps on the failure by local court staff to know the extent of their jurisdiction?

Conclusion

The superior court in this matter could have gone further in interpreting dependent and living together and requested for more tangible evidence and still worth mentioning that evidence or not, a mistress should not be categorized as a dependent for this defeats the whole purpose of the definition of marriage which includes the union of one man and one woman. This may lead to a plethora of problems in succession matters because anyone with a child with a deceased person may claim to be a beneficiary of the estate.

¹⁰ Charity Oparaocha V Winfrida Murambiwa (2004) Z.R. 141 (S.C.)

¹¹ judiciaryzambia.com/local-courts retrieved on 28/07/22