

**THULANI NDLOVU**  
**(In his capacity as Executrix Dative in the Estate Late**  
**Jabulisiwe A. Khumalo DRB 718/21**  
**And Florence Khumalo DRB 397/23)**

**Versus**

**OSIEN SIBANDA**

**And**

**MASTER OF THE HIGH COURT N.O**

**And**

**THE REGISTRAR OF DEEDS, N.O**

IN THE HIGH COURT OF ZIMBABWE  
NDLOVU J  
BULAWAYO 18 MAY AND 29 JUNE 2023

**Unopposed Application**

*N. Mpofo*, for the applicant  
No appearance for the respondents

**NDLOVU J:** This is an application for a declaratur. The matter surrounds the sale of land. The seller is now deceased and the application is brought by the Executor Dative to his estate together with that of his also late wife. The matter is not opposed by the 1<sup>st</sup> respondent. He was served with the application through his niece and he has not filed a notice of opposition long after the expiration of the *dies induciae*.

It happened that the applicant had not filed a proper proof of service for the 2 other respondents on 18 May 2023. This and other issues relating to this matter that cast some doubt in my mind about the appropriateness of this application and the relief sought caused me to put questions to counsel representing the applicant in the Motion Court. Counsel answered some of the questions I gave him and I directed that he answer the rest in writing. He has since

obliged the direction and I am grateful to him for his industry in that regard. I must however indicate that some answers counsel gave orally were later corrected in writing.

### **BACKGROUND FACTS**

Jabulisiwe Arnot Khumalo and Florence Khumalo were married couple. They are both deceased, with Florence Khumalo having pre-deceased Jabulisiwe Arnot Khumalo on 23 January 2011. Jabulisiwe Arnot Khumalo passed on 17 July 2019. Florence Khumalo's estate was not registered with the Master of the High Court until shortly before the death of Jabulisiwe Arnot Khumalo. The applicant was appointed Executor Dative of both estates.

During their lifetime the now deceased couple jointly owned in equal and undivided shares an immovable property known as *a Certain Piece of Land in the District of Bulawayo being the Remainder of Subdivision D of Claremont measuring 175, 3611 hectares under Deed of Transfer No. 1999/95 dated 3 July 1995.*

Sometime in August 2012, after the death of his wife and before the registration and distribution of her estate Jabulisiwe Arnot Khumalo sold part of this immovable property to the 1<sup>st</sup> respondent. The sale was before the acquisition of a subdivision permit, which was later acquired. It turns out that several other portions of this land were sold to several other persons whose respective litigations with the applicant over those sales are at various stages.

### **DISPOSITION**

On the basis that: (1) there has been no opposition to this application, (2) counsel for the applicant has responded to my queries, (3) litigation involving other persons is going on, and those matters are not before me, and (4) the need to avoid conflicting judgments in these related matters, I am satisfied that I can proceed and finalize this matter. It is therefore ordered as follows:-

### **ORDER**

- (1) The agreement of sale entered into between Jabulisiwe Arnot Khumalo and the 1<sup>st</sup> Respondent on 13 August 2012 for the purchase of 40 Acres being part of Kent Farm be and is hereby declared to be a legal nullity.

- (2) The 1<sup>st</sup> Respondent and anyone claiming occupation of Lot 37, 38, and 39 of Subdivision D of Claremont held under Deed of Transfer No. 1999/95 through him be ordered to vacate the said property within 30 (thirty) Days of service of this Order on them, failure to which the Sheriff of the High Court be directed to evict them.
  
- (3) There be no order as to costs.

*Cheda and Cheda Associates*, the applicant's legal practitioners