

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

KENANZI DUBE

MRS KENANZI DUBE

MASTER OF THE HIGH COURT N.O

THE REGISTRAR OF DEEDS, N.O

IN THE HIGH COURT OF ZIMBABWE
NDLOVU J
BULAWAYO 18 MAY AND 6 JULY 2023

Unopposed Application

N. Mpofu, 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 respondents.

It happened that the applicant had not filed proper proof of service on the 3rd and 4th respondents on 18 May 2023. The 2nd respondent had not even been cited. These and other issues relating to this matter cast some doubt in my mind about the appropriateness of this application and the relief sought. That caused me to put questions to counsel representing the applicant in the Motion Court. Counsel answered some of those questions. I then directed that he answer the rest in writing. He has since obliged the directions and I am grateful to him for his industry in that regard. I must however indicate that some answers counsel gave orally in court were later corrected in writing.

BACKGROUND FACTS

Jabulisiwe Arnot Khumalo and Florence Khumalo were a couple by marriage. They are now both deceased, Florence Khumalo having pre-deceased Jabulisiwe Arnot Khumalo on 23 January 2011. Jabulisiwe Arnot Khumalo passed on, 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, by the 3rd respondent.

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 2017, 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 1st and 2nd respondents. 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 ongoing, 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 sale agreement entered into between Jabulisiwe Arnot Khumalo and the 1st and 2nd Respondents on 24 August 2017 for purchasing a piece of land 50 Acres being part of Kent Farm be and is hereby declared to be a legal nullity.

- (2) The 1st and 2nd Respondents and anyone claiming occupation of/or any part of the Remainder of Subdivision D of Claremont held under Deed of Transfer No. 1999/95 through either of them be ordered to vacate the said property within 30 (thirty) Days of service of this Court 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