

VICTOR ZINYENGERE  
versus  
JOANAH MHUKA  
and  
TINOTENDA CLAYTON ZINYENGERE  
and  
THE REGISTRAR OF DEEDS N.O.

HIGH COURT OF ZIMBABWE  
MHURI J  
HARARE, 10 & 11 May and 9 August 2023

### **Civil Trial**

Mr *TG Manhombu*, for the plaintiff  
Mr *O Chituwamombe*, for the 1<sup>st</sup> & 2<sup>nd</sup> defendant  
No appearance for the 3<sup>rd</sup> defendant

**MHURI J:** On 28 May 2021, plaintiff caused the issuance of summons against first and second defendants claiming:

- (a) revocation of a donation he made in their favour in respect of a piece of land called the Remainder of Lot 135 Athlone Township of Green Grove situate in the district of Salisbury and held under Deed of Transfer 320/2000 also known as 10 Hopley Avenue Athlone, Greendale, Harare (the property).
- (b) that third defendant be ordered to register the property in the plaintiff's name.
- (c) that third defendant be ordered not to allow the sale of the property by first and second defendants.

The revocation was on the basis that the first and second defendants failed to appreciate the donation and through their conduct have shown ingratitude to the plaintiff.

First and second defendants opposed the claim mainly on the basis that they were not aware of the donation and hence could not have shown ingratitude towards plaintiff.

Two issues were referred to trial for determination and these were:-

1. whether or not the first and second defendants showed ingratitude to the donation made to them by the plaintiff.

2. whether or not the plaintiff is entitled to revoke the donation he made.

To prove his claim, plaintiff was the only witness who led evidence. His evidence was to this effect, that he currently resides in the United Kingdom having migrated in July 2001. He is the father to second defendant and step father to first defendant. He took first defendant as his own daughter from the time he married her mother in 1994 and at that time she was in grade 4 and about 9 years of age. For all intense and purposes he was her father providing all her requirements. Her mother passed on in 1998 and he took both motherly and fatherly roles over first defendant and saw her up to secondary school.

In July 2001 he left for the United Kingdom together with Tinotenda (second defendant). First defendant was left in the custody of her grandmother and uncles in Glen Norah. He continued contact with her through her uncle who eventually told him to give her a break as she was trying to connect with her biological father. His efforts to communicate with her and see her were to no avail. In 2019 he saw a profile picture of both defendants at their mother's (his wife) grave. The picture was produced as Exhibit 1. He felt disrespected and aggrieved as the defendants had not told him about this event.

The next event that aggrieved him and felt disrespected was when he was told by second defendant about first defendant's marriage ceremony. First defendant did not tell him about the marriage and neither was he acknowledged as a father. Further, when he enquired about second defendant's whereabouts from first defendant, as the two were always in contact, he got a cold response.

Another incident was when they came to court to attend a Pre-trial Conference. First defendant was disrespectful in that she never greeted him, never offered him a seat and she refused to engage with him when they were told to resolve the issue among themselves. She also did not introduce her husband to him. Second defendant also refused to engage with him to resolve the issue amicably indicating they (first and second defendants) had agreed to sell the property as the property was left to them by their mother. Plaintiff submitted further that first defendant badly influenced second defendant to such an extent that he changed his behaviour and attitude towards him and his siblings. All these incidences by first defendant left him stressed and wondering whether he made a wise decision in the first place to adopt her as a daughter.

As regards second defendant, it was plaintiff's evidence that second defendant's conduct caused him a lot of financial loss and emotional pain. When he enrolled at Plymouth University (UK) to do a civil engineering degree, his attendance was very poor, the result of which the Registrar wrote to him and phoned him about it. Second defendant also changed his programme to mechanical engineering without informing him. Second defendant did not keep up with rental payments resulting in him paying the arrears on his behalf over and above the monthly £1 000 he sent to him for his upkeep. He also forfeited the rent deposit because second defendant did not keep the rented accommodation in a good state. Despite the change in programme, at the end of it, second defendant was awarded not a degree but higher education certificate. After efforts to have him apply for apprenticeship failed, he and second defendant came back to Zimbabwe in December 2018. He decided to enrol him at the University of Zimbabwe and he paid the fees for him and sent him upkeep money as well. He also gave him money to do driving lessons which he never did. He did not continue with his studies at the University of Zimbabwe but left for the UK without even telling him and when he finally located where he was and upon enquiring from him about his studies at the University of Zimbabwe, his response was, "if I failed in UK why should I pass in Zimbabwe where they teach Shona which I do not like. You are forcing me to do this programme you are oppressing me." After this, there was no meaningful communication.

Plaintiff's evidence was also that he made the donation out of love and fear that upon his death the property would not be distributed according to his will as relatives would seize the property leaving the children struggling. He made the uncles and grandmother aware of the donation and made second defendant aware of the donation in 2017 when he was in his final year at Plymouth University. He did not expect any remuneration when he made the donation. His expectation was to be respected as a parent and treated with dignity. He was concerned about the defendants' wish to sell the property, when he considered it his retirement home and he also need the rentals for his medical bills as he is not in good health. He borrowed heavily to repair the property which the defendants want to sell for only US\$80 000.

Under cross examination plaintiff reiterated that there was no condition attached to the donation, that the defendants disrespected him to the extent that he got stressed and suffered high blood pressure and was hospitalised. He however stated that he did not bring any proof of this as he was not asked to bring any proof. He reiterated and stuck to all the incidences he stated in his

evidence which he felt were actions of total disrespect of him by the defendants. When asked how relevant some of the incidences were since they happened well after he had instituted these proceedings, his response was that these incidences go to reinforce what he had known before, that is that first defendant did not respect him or regard him as a parent.

Further as regards second defendant, under cross examination, plaintiff maintained his position that of dishonesty and deceit when he changed his degree programme without informing him, failure to account for the money he gave him for renovation of the property. He maintained also his position that he suffered a lot of financial loss due to second defendant's conduct and also that second defendant does not appreciate the value of the property which they intend to sell at only US\$80 000.

After adducing evidence from the plaintiff, plaintiff closed his case. I found this witness, i.e. plaintiff to be a credible witness. He gave his evidence well, was not shaken under cross examination. He did not exaggerate the incidences which in his view were conduct showing complete disrespect of him by the defendants which incidences led him to consider withdrawing the donation he did to the defendants.

Defendants opened their case by calling first defendant who was the only witness for both defendants by virtue of a power of attorney.

She adduced evidence to the effect that she is an administrator at a clothing company called Rellington Clothing Company. She was 15 years of age when plaintiff left for the UK and he left her in the custody of her grandmother Mhuka (her maternal grandmother) after plaintiff had left for the UK their first communication was in 2018 i.e. 18 years after he had left. She felt abandoned by plaintiff for he did not communicate with her and had promised that he would be there for her as he had been when she was a 9 years of age when he married her mother.

She only became aware of the donation in 2021 when she received the summons. Her grandmother and uncles never told her about the donation, as such she could not be ungrateful for a donation she did not know about. She would not be living in a rented apartment if she knew about the donation.

She denied being a bad influence on second defendant and testified that second defendant loves plaintiff. He has been through a lot and probably needs more time and space. She was of the view that as a parent one should not penalise a child for changing a programme and failing.

Second defendant was struggling in the same programme he was told to do at University of Zimbabwe. She denied that both her and second defendant intended to sell the property as they did not even know about the donation and that their names were on the Title Deed until they received the summons. She was shocked and hurt when she received the summons as she did not know what wrong they had done. She admitted not greeting plaintiff on the Pre-trial Conference day at Court as she was hurt. They had not talked in the past 20 years. She maintained that she held no grudge against plaintiff but only that she was hurting, had many questions to ask him.

Having called first defendant as the only witness, the defendants closed their case. First defendant impressed as a reliable witness. She did not exaggerate her evidence. She stuck to her evidence and was not shaken under cross examination. I found her to be a credible witness as well.

In this case, plaintiff seeks to revoke the donation he made to the two defendants on the basis that the defendants have been grossly ungrateful.

It is a trite legal position that in civil proceedings the burden of proof is on a balance of probabilities and also that he who alleges bears the onus of proof. In *casu*, the onus to prove ingratitude by defendants over the donation is on the plaintiff. This he tried to do by narrating events starting from the time he left for the UK. From his own testimony, plaintiff did not tell first defendant about the donation of the property to her. He testified that he told the grandmother Mhuka and the uncles. This was just his word as he did not seek corroboration of this from any one of the uncles. He did not know whether the grandmother or uncles later told first defendant about the donation. I therefore believe first defendant's testimony that she was not aware of the donation until in 2021 when she received the summons. Further according to his testimony plaintiff only told second defendant about the donation after he had completed his studies at Plymouth University. This shows that some of the events plaintiff says were acts of ingratitude happened well before second defendant became aware of the donation. The same applies to some of the events narrated by plaintiff in respect of first defendant to wit that at Pre-trial Conference at the court, these happened after the issuance of the summons.

I also did not find as ingratitude defendants' visit to their mother's grave and laying of wreaths without consulting plaintiff. As testified by first defendant they are adults and have the right to do so without consulting anyone. Neither was the holding of marriage ceremony in the absence of plaintiff. First defendant explained the reason why she did not inform him, she was

hurting as the plaintiff was no longer in her life as a fatherly figure as from the time he left for the UK when she was only 15 years of age. Further I do not find it to be actions of ingratitude by second defendant, his failure to account for moneys given to him for driving lessons or renovations of the property. His conduct merely shows that he was an irresponsible person that is all. Plaintiff also failed to produce proof that he suffered high blood pressure as a result of the ingratitude of the defendants. He did not adduce any medical evidence to support this assertion. It is also not correct that after his retirement from employment and when he returns to Zimbabwe, he has no place to stay in. He did not dispute that he has another property in Borrowdale where he stays when he is in Zimbabwe. Defendants denied that they intended to sell the property because they were not even aware that the property was theirs as it has been donated to them.

Overallly I find that plaintiff has failed to discharge the onus on him to prove on a balance of probabilities that defendants showed gross ingratitude to him over the donation he made. Having so found, it follows that plaintiff cannot be allowed to revoke the said donation.

In the result, the plaintiff's claim as per his summons be and is hereby dismissed with costs.

*Jiti Law Chambers*, plaintiff's legal practitioners  
*Atukwa Attorneys*, first & second defendants' legal practitioners