

MELFORD NDLOVU

versus

MARTIN CHIKWANA N.O
(cited herein as the Executor of Estate Late Key Ndlovu DRB 200/12)

And

MARGARET NZIMA

And

MDUDUZI NDLOVU

And

ANDREW NDLOVU

And

DEPUTY MASTER OF THE HIGH COURT N.O

IN THE HIGH COURT OF ZIMBABWE

BERE J.

BULAWAYO: 10 OCTOBER 2016 & 30 JANUARY 2020

Urgent Chamber Application

N. Dube, for the applicant

C. Dube Banda, for the respondent

BERE J: This is an urgent chamber application that was filed in this Court on 19 September 2016 and heard on 16 October 2016.

After hearing argument on the preliminary issues on 16 October 2016, I formulated the conclusion that the matter could not be heard on merits as the urgency had not been sufficiently established. I believed I had made the appropriate order on the day of the brief hearing in chambers.

It came as a total surprise to me when this matter was reflected as one of my outstanding matters in Bulawayo. The oversight is regrettable and it was not intended.

The brief facts of this matter are that the late Key Ndlovu died intestate leaving among other properties, House No. 3501, Magwegwe North, Bulawayo, which is relevant to these proceedings. Four beneficiaries including the applicant have an interest in this estate.

During the initial stages of the administration of this estate, it would appear that the applicant was given an opportunity upon request to buy other estate beneficiaries out of their interest in the above-referred house. This decision was made against the decision of the other beneficiaries who had expressed interest in having the house sold with the proceeds of sale being shared equally amongst them. It was agreed that the applicant raise US\$4 000-00 for the house.

On 15 June 2016, the applicant indicated his inability to buy the house in question as originally planned and instead offered to buy the house on completely new terms. On 2 August 2016 the applicant was advised by the first respondent that the proposed terms were unacceptable.

On 23 August 2016 the first respondent upon request was granted authority by the 5th respondent to dispose of the house by private treaty.

On 19 September 2016, the applicant filed this application seeking a provisional order interdicting first to fifth respondents from causing the sale of the house in issue pending finalization of the estate account.

When the parties appeared before me Mr *Dube Banda* for the first respondent raised the preliminary point centred on the non-urgency of the matter.

Counsel argued that for all intents and purposes, this matter was non-suited for urgency as the applicant had put nothing in his papers to demonstrate that this matter was urgent or to explain why the applicant had not promptly filed his application.

Counsel argued that this matter could not be treated as being urgent merely on the basis that the applicant, being one out of four other beneficiaries who had expressed the desire to have the house sold, would be deprived of the house (which he was unable to buy for the benefit of others).

It was argued that the applicant was acting in the most selfish manner which did not have regard to the other beneficiaries' interests and that to demonstrate this none of them had supported his urgent application. As regards whatever applicant had expended on the house in anticipation of the failed sale, it was argued that his remedy lay not in bringing an urgent application but in putting his case against the estate like any other creditor.

Mr *Dube* for the applicant conceded that the applicant's founding affidavit had not adequately canvassed the issue of urgency, in particular the reasons why he had not immediately acted. He also conceded that the issue of the expenses incurred in the abortive sale could not justify urgency.

It is imperative that whenever a matter is brought on urgency, the issue of urgency be properly and adequately explained in the founding affidavit as well as the certificate of urgency.

Any failure to do so will obstruct the hearing of the matter on urgency.

There is no sound reason advanced to justify hearing this matter on urgency.

Accordingly, I decline to hear this matter on urgency with no order for costs since none have been asked for.

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A handwritten signature in black ink, appearing to be 'Dube'.

Messrs Dube, Mguni & Dube, applicant's legal practitioners
Messrs Dube Banda & Nzarayapenga, 1st respondent's legal practitioners