

EMMAH NDLOVU

Versus

JANET DUBE

And

ESTATE LATE ISAIAH SITHOLE

And

V. MPOFU N.O.

ADDITIONAL ASSISTANT MASTER

And

BULAWAYO CITY COUNCIL

And

MASTER OF THE HIGH COURT

IN THE HIGH COURT OF ZIMBABWE

MOYO J

BULAWAYO 18 MAY & 21 OCTOBER 2021

Civil Trial

L. Mpofo for the plaintiff

K. Nxumalo for the defendant

MOYO J: Plaintiff issued summons seeking to set aside the final liquidation and distribution account, in the estate of the late Isaiah Sithole DRBY 500/13 and declaring her the surviving spouse of the late Isaiah Sithole and thus her entitlement to inherit house number 928 Luveve in Bulawayo. She also seeks an order declaring her the sole beneficiary over house number 928 Luveve, Bulawayo.

The facts of the matter are that the late Isaiah Sithole first married 1st defendant and registered a customary law marriage with her. He then married plaintiff and had an unregistered customary law union with her. This fact seems to be common cause. Clearly, from the facts of the matter whilst plaintiff avers that 1st defendant was no longer married to the deceased Isaiah Sithole, 1st defendant from the facts of this matter was still married to the deceased at the time of his death as no evidence was given to the effect that the 2 were then divorced. A registered marriage, whether in terms of the Marriages Act Chapter 5:11 or the African Marriages Act Chapter 5:09, can only be legally dissolved through a divorce. Only a divorce can lawfully end a registered marriage.

Whilst evidence seemingly shows that both women were married to the deceased, there is no evidence that the 1st defendant was divorced by the deceased. In the circumstances, it cannot be competent to hold that plaintiff is the surviving spouse and 1st defendant is not. As to who occupied the property at the time of the deceased's death it is also not clear as 1st defendant says she had gone to South Africa to work yet plaintiff says it was no longer her home. 1st defendant also disputed that plaintiff lived with the deceased at the time of his death and in fact she claims that the deceased lived with another woman at the time of his death. I thus cannot hold firmly that plaintiff is telling the truth on that point and that 1st defendant is lying.

The plaintiff has clearly not proven what she claims that she be the sole beneficiary of stand 928 Luveve after having been declared as the surviving spouse. A fair outcome of this case will be one that recognizes both women as surviving spouses and thus each entitled to a 50% share in stand 928 Luveve Township.

2nd defendant is improperly cited and should be cited as Lovemore Hlongwane N.O. cited in his capacity as the Executor in the estate of the late Isaiah Sithole DRBY 500/13.

An outcome that will serve the interests of justice in this case is the one that recognizes both parties as spouses and an order that the property be sold to best advantage and the net proceeds therefrom be shared equally between the parties.

I accordingly order as follows:

1. Stand 928 Luveve Township be sold to best advantage and the net proceeds therefrom be shared equally between plaintiff and 1st defendant.
2. That each party bears its own costs.

Malinga & Mpofu Legal Practitioners, plaintiff's legal practitioners
Messrs Ncube & Attorneys, 1st defendant's legal practitioners