

FREDDY CHIMBARI  
(In his capacity as the Executor to the Estate of the late Kudakwashe Mutongi)  
versus  
MAKEPEACE MUZENDA  
and  
CHIEF EXECUTIVE OFFICER- GUTU RURAL DISTRICT COUNCIL N.O  
and  
MASTER OF HIGH COURT

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 23 June, 15 September 2021,  
24 May and 13 July 2022

**Civil Trial**

*C Tafireyi*, for plaintiff  
*A A Debwe*, for first defendant  
*S Charowa*, for second defendant

**TAGU J:** The Plaintiff issued summons claims against the first, second and third Defendants claiming a declaratur that stand number 414 Gutu is considered to be the property of the late Kudakwashe Mutongi and is liable for distribution to his beneficiaries. That transfer of the property from the estate of the late Kudakwashe Mutongi to the first Defendant by the second defendant is null and void and costs of suit.

The Plaintiff's declaration is to the effect that the late Kudakwashe Mutongi was a holder of certain lease rights with the option to buy of stand number 414 Gutu. The property is a commercial property which is a partly developed commercial stand. The property was registered in the name of Kudakwashe Mutongi during his life time. The property is listed in the inventory filed with the Master of the High Court as property which belongs to the late Kudakwashe Mutongi. The inventory was signed by the first Defendant. Sometime in 2009 the first Defendant in connivance with the officials at Gutu Rural District Council caused the property to be transferred from the Estate of the late Kudakwashe Mutongi to the first Defendant without following due

process of the law. The distribution account has not been drawn and neither was the estate wound up. Further, the first and second Defendants had not sought the consent of the third Defendant to transfer the property. The first Defendant acquired the said property for no consideration. It has since been transferred into the first Defendant's names and she is currently the registered owner of the estate property.

Both defendants denied in their pleas that stand number 414 GUTU Township was ever leased to the late Kudakwashe Mutongi. They stated that even assuming that the late Kudakwashe Mutongi had a lease agreement for the property in question, which is denied, it would not mean that the property in question becomes estate property which should be administered by Plaintiff. Any such lease agreement would have been terminated by the death of the late Kudakwashe Mutongi. first defendant denied ever drafting an inventory to the estate late Kudakwashe Mutongi which had the stands in question. They said proof of ownership of immovable property is through a title deed and not lease agreement.

The issues for determination as captured by the Joint pretrial conference minute are-

1. Whether or not Stand Number 414 Gutu was leased to the late Kudakwashe Mutongi by the second Defendant;
2. If so, whether or not lease rights in Stand Number 414 Gutu in favour of Kudakwashe Mutongi formed part of his Estate at the time of his death;
3. Whether or not first Defendant acquired lease rights in Stand Number 414 independent from the Estate Late Kudakwashe Mutongi.

### **THE LAW**

The relief for a declaratur is provided for in s 14 of the High Court Act [*Chapter 7.06*] (“the Act”) which provided as follows:

“The High Court may, in its discretion, at the instance of any interested person into and determine any existing, future or contingent right or obligations, notwithstanding that such person cannot claim any relief consequential upon such determination.”

The requirements that need to be satisfied by a party seeking declaratory relief, were succinctly set out by GUBBAY CJ (as he then was) in *Johsen v Agricultural Finance Corp* 1995 (1) ZLR 65 (SC) at p 72 as follows:

“The condition precedent to the grant of a declaratory order under s14 of the High Court of Zimbabwe Act 1981 is that the applicant must be an “interested person”, in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the Court. The interest must concern an existing, future or contingent right. The court will not decide abstract, academic or hypothetical questions unrelated thereto. But the presence of an actual dispute or controversy between the parties interested is not a prerequisite to the exercise of jurisdiction.

As to what constitutes a “direct and substantial interest” this has been decided on a number of cases and was aptly set out in *United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd And Another* 1972 (4) SA 409 (C) as follows;

“In *Henri Viljoen (Pty) Ltd v Awerbuch Brothers*, 1953 (2) SA 151 (O), HORWITZ, A.J.P (with G whom VAN BLERK, J concurred) analysed the concept of such a “direct and substantial interest” and after an exhaustive review of the authorities came to the conclusion that it connoted-

“.....an interest in the right which is the subject- matter of the litigation and .....not merely a financial interest which is only an indirect interest in such litigation.”

I will look at the evidence adduced in favour of the Plaintiff’s case as well as the evidence adduced in favour of the defendants’ case in deciding whether to grant the declaratory order or to dismiss the case.

Two witnesses testified in this case in favour of the Plaintiff’s case and were cross examined by the counsels for the first and second Defendants. The Plaintiff closed his case.

At the close of the Plaintiff’s case the first Defendant filed an application for absolution from the instance which was supported by the second Defendant on the basis that there was no sufficient evidence at that stage on which a court could or might make a reasonable mistake and give judgment for the Plaintiff. The application for absolution from the instance was opposed by the Plaintiff. After hearing submissions the court dismissed the application for absolution from the instance in case HH 456-21 as there were certain issues raised in the defendant’s plea as well as from cross-examination of the witness which were not clear and needed clarification from defendants vis- a -vis the plaintiff’s evidence. In short the plaintiff had established a *prima facie* case.

### **PLAINTIFF’S CASE**

The first to give evidence was Mr. Freddy Chimbari. He told the court that he is the Executor to the Estate of the late Kudakwashe Mutongi. He was appointed by the Master of the High Court in July 2007. The deceased’s relatives could not agree on the choice of an Executor

before the Master of the High Court. He was then appointed by the Master of the High Court as a neutral Executor to the estate of the late Kudakwashe Mutongi. He called for an edict meeting with the relatives of the deceased. The deceased's children, two wives, a lawyer from Muzenda and Partners representing the first Defendant attended the meeting. They discussed an inventory of assets compiled by the first Defendant and other documents that had been filed with the Master of the High Court before his appointment. He produced the inventory as exhibit "2". Stand 414 Gutu was listed as one of the deceased's assets. After the meeting some assets were confirmed including the stand in question. He visited the stand and saw some trenches with bricks built from a foundation. There was no compaction and there was some tall grasses, a heap of quarry stones and river sand at the stand. He then sent an independent evaluator to value the stand. He said he was not aware how stand 414Gutu had been eventually transferred to the first Defendant because they were to agree as to who was to inherit what assets. He said at the edict meeting the first Defendant had confirmed that stand 414 Gutu belonged to the Estate. He denied the suggestion that the stand in question was never leased to the late Kudakwashe Mutongi and averred that the first Defendant never suggested that the stand belonged to her. He therefore wanted the stand to be transferred back to the estate to be dealt with in terms of the law since it was fraudulently transferred to the first Defendant by the second Defendant.

During cross examination by the counsel for the first Defendant he denied the suggestion that the first Defendant never compiled exhibits "1" (Death Notice) DR724/07 and exhibit "2" (Preliminary Inventory) DR724/07 both dated 7 May 2007. His response was that the first Defendant was denying what she did. These were signed by herself and later she produced an affidavit to the Master of the High Court because there were complications in the estate. See exhibit "3" dated 14 May 2007. Secondly, in the meeting that they held first Defendant never disputed her efforts to register the estate at the Master's Office. He further disputed the suggestion that the first Defendant was allocated that stand in her capacity as the District Coordinator for the second Defendant. Had that been the case then she should have stated the same during the meeting, but she did not. Neither did she raise any objections when the estate was advertised. Lastly, he said it is awkward that she could have paid for the stand without council resolution in 2004, and then goes back to sign 2 or 3 years back. The second Defendant signed in 2009 hence she connived with the second Defendant.

The second to testify on behalf of the Plaintiff was Kuda Magondo. He is a son to the late Kudakwashe Mutongi. His father changed his surname after he had already obtained his birth certificate hence the differences in surnames. His evidence was that he came to know of stand 414 Gutu in 2005 when he was shown the said stand by his father. According to him a slab had been constructed, there was a heap of quarry stones and sand at the site. At the time of his father's death on 20 January 2007 there was a perimeter fence at the stand. It was his further evidence that the first Defendant registered the estate of his father at Gutu and they were called to attend a meeting. They were then called to the Master of the High Court in Harare after the first Defendant had sued them. He produced a lease agreement in the name of the deceased Kudakwashe Mutongi dated 28 December 2005 (Exhibit 5) in respect of the said stand 414 Gutu. He further produced two receipts from Gutu Rural District Council and the other receipt related to the Plan Inspection and Construction inspection fees of stand 414 Gutu dated 13 July 2005. The other receipt for Lease processing fee is dated 28 December 2005. These were noted as exhibits "5" and "6a" and "6b" respectively. Later he discovered that there was some developments taking place on the stand. He went to second Defendant council offices and he was told that the records in respect of the stand were missing. Having gone there on several occasions he was then shown a file for the first Defendant in respect of the said stand. He disputed the suggestion that the stand was allocated to the first Defendant and said the first Defendant was allocated the same stand by the second Defendant after his father passed on. He therefore does not know how and why the second Defendant allocated the said stand to first Defendant.

Under cross examination by the counsel for the first Defendant he told the court that he is the one who purchased and assisted his father in carrying some of the quarry stones, pit sand and river sand which was at the stand since he had a truck. Further, he said he would sometimes go and pay rates to the second Defendant and the receipts were in his father's names. When it was put to him the first Defendant applied in 2004 and 2005 was replied and given the said stand, he disputed the suggestion because she could not have been allocated a stand that was being developed by the late Kudakwashe Mutongi. He further disputed that the late Kudakwashe Mutongi would pay on first Defendant's behalf. He therefore maintained that the stand 414 Gutu belongs to the estate. Under cross examination by the counsel for the second defendant he denied the suggestion that the stand had been allocated to first Defendant as a senior official in the council

hence necessary procedures were not followed. Finally he maintained that he went to council offices on numerous occasions but the file in respect of his late father could not be located but that of the first Defendant was availed after he persisted.

The first Defendant gave evidence herself and abandoned to call a second witness she intended to call. In her evidence -in -chief she told the court that she is employed by the Ministry of Local Government and Public Works as a District Development Coordinator (formerly District Administrator) responsible for Mhondoro Ngezi but at the material time she was responsible for Gutu. She testified to the effect that the late Kudakwashe Mutongi was her husband during his life time. As to the stand 414 Gutu which is in dispute she denied that it belonged to the estate. Her contention being that in 2004 she applied for a commercial stand to pay in instalments. She said the late Kudakwashe Mutongi assisted her with money. The stand was only availed in 2005 as per exhibit "7-1" to "7-3" the lease agreement dated and signed first September 2009 and she started developing it in 2007. She further said sometimes she would send the Late Kudakwashe Mutongi to pay on her behalf and this explains why some receipts bore the names of Kudakwashe Mutongi.

It was first Defendant's evidence that she is not the one who compiled and signed exhibit "2", the Preliminary Inventory. Asked by her defence council as to who could have compiled and signed it she said it may be an unknown clerk. She claimed that her signature has always been faked by a man who was working at the reception. Asked to look at exhibit "1" the Death Notice, her response was that the signature looks like hers but she was not the one who signed. When probed to explain when she became aware of the inclusion of Stand 414 Gutu on the estate documents, she said she started knowing it after these proceedings started here. She was in Karoi then and when she wanted to develop the said Stand, she was told that the case was now in Court. Commenting on exhibit "5" produced by the Plaintiff she confirmed that indeed it is a lease statement but was quick to say there should be a signature of an official. Asked why she did not disclose to the Master of the High Court that Stand 414 Gutu belonged to her she said she was not made aware when advertisement was done. When further probed to explain why she did not raise the issue at the edict meeting the response was that she was not invited to the edict meeting. That she first met Mr. Freddy Chimbari at Court. In concluding her evidence -in -chief she said from the time her husband passed on she has never known peace and that she suffered thefts from her

houses when she was residing at Gutu, Masvingo, Karoi and Kadoma hence she lost most of the proof as to how she acquired the stand in question. All she could say was that she was not on the waiting list but second Respondent used her office to allocate the Stand in question to her.

During cross-examination by the counsel for the plaintiff the first defendant maintained that she was married to the deceased Kudakwashe Mutongi and that there were other wives. As to how the deceased's estate was registered she said other people advised her to go Gutu Magistrates Court. She then went to Gutu Court in 2007 but the Court told her that it did not have jurisdiction as she had a Chapter 37 (Cap 5.11) marriage and that she had to go to the High Court. She then instructed her lawyers Muzenda and Partners but did not recall the instructions she gave her lawyers. All she can recall was that the estate was registered but she was not part and parcel of it. She said the deceased's relatives registered the estate while she was just seated there watching. Further she said she was never made aware as to when the Death Notice was taken but was quick to admit that it was as a result of instructions she gave to her Lawyers Muzenda and Partners, Masvingo. Asked as to who was the informant on exhibit "1" she said she could not dispute it that her names appear but said her signature was forged. She admitted that the signature looked like hers but it is not so. She admitted that the signature on exhibit "3" was hers. Under cross examination she changed her story and admitted that she attended the edict meeting and actively participated at the edict meeting before the Master of the High Court. First Defendant further admitted that she did not produce proof of how she got the stand, proof of the amount she paid for it, other than the resolution, her position in Gutu Rural District Council and the lease to buy. She maintained that her documents were stolen hence was unable to produce other documentary exhibits. She confirmed that she did not take the trouble to go to the offices of the second respondent to get copies of receipts and other documents to support her story.

The second Defendant's legal representative Mr. S. Chako indicated that he had no questions to ask the first Defendant. Instead he led evidence from the representative of the second Defendant Mr Alexander Mutembwa. In his opening remarks Mr. S. Chako indicated that ordinarily the second Defendant would not have opposed the application and would have been guided by the decision of the Court. But because the Plaintiff raised fraud against it, it found it necessary to oppose.

Mr Alexander Mutembwa' evidence was short. It can be summarized as follows. He said he is currently the second Defendant's Chief Executive Officer (C.E.O). That he started working for Gutu Rural District Council sometime in 2010 as an Agricultural and Environment Officer and later promoted to C.E.O. in March 2014. Asked by its Lawyer to comment on exhibit "5", the lease statement issued by Gutu Rural District Council in favour of Plaintiff on 28 December 2005 his response was that from the time he joined second Defendant in 2010 the Council was issuing offer letters to those who applied for stands, hence he was not able to accept or deny its authenticity. Asked to comment on the allegations that second and first Defendant were conniving to deprive the owner of stand 414 Gutu, his response was-

"My answer is based on records I found. When I came this Lease was already there in 2009 and I came in 2010. I did not connive, I found paperwork already there.

During cross examination by the counsel for the Plaintiff, certain exchanges between second Defendant's witness and the Plaintiff's counsel took place which this court found unavoidable to repeat here.

Q- Where you involved in Stands allocation?

A- No

Q- first Defendant said she applied for it (stand 414 Gutu) in 2004?

A- I am hearing from her, it needs time to go and check records.

Q- Is there a record to show she applied in 2004?

A. – The file contains the Lease and the history is about resolution. There is nothing else.

Q- Would one develop without authority from Gutu Council?

A- No.

Q- It was indicated by 2007 development had started, was it possible?

A- It was not possible. I do not know if they had authority.

Q- Can council allow development when there is no lease?

A- Council cannot allow it. If things were followed well it was lease processing fee to be paid first not processing fee."

During further cross-examination he said there were no records of any lease processing or receipts in respect of first Defendant. Also no documents that show that first Defendant applied for a stand in 2004. He was quick to say there were loopholes he noted in that there were no receipts attached to her papers. He was candid to say the first Defendant was the District Administrator (D.A.) responsible for Gutu at the time hence she had influence on the second Defendant as the Ministry she works for is the mother to which the second Defendant report to. Asked as to how one can wake up with a lease to purchase agreement yet there is no paper work as first Defendant did, his response was "that is the loophole I found in the second Defendant's organization. There were no proof of payment of US1000.00, that he did not know the person who signed first

Defendant's agreement. Asked if it was possible for first Defendant to start development on Stand 414 Gutu in 2005 before payment, the response was "at law this was not possible. Maybe due to her position she was given a leeway. On whether first Defendant has an offer letter for this Stand in question, the witness reiterated that first Defendant did not have one. He said at the time he joined second Defendant he found it like that but that was not normal, there was a weakness that there were no attachments of receipts in the records. Finally he was asked if there was something to prevent cooking of documents, he reiterated that there were loopholes in the second Defendant. He maintained that a lease agreement could not have been made without records, but in the present situation that is the status quo he found.

When re-examined by his counsel as to whether it is true that there is no history for first Defendant when considering the significance of lease number and resolution. He said the full Council number shows who was given Stand 414 Gutu, lease number shows it was given in 2009 and that is the only history. Finally, he was asked whether in the record there is an application form, offer letter or lease agreement in respect of Plaintiff, he concluded by saying there is none.

Let me say from the onset that Mr. Alexander was very candid and honesty to the court as he was very neutral in his testimony despite that he had come to protect the second Defendant and to rebut the suggestion that first Defendant and second Defendant connived and fraudulently caused the transfer of Stand 414 Gutu an estate property to the first Defendant without following due process of the law.

### **FACTS FOUND PROVED**

It was proved that the late Kudakwashe Mutongi who passed on on t20 January 2007 was a holder of certain lease rights on Stand 414 Gutu per exhibits 5 dated 28<sup>th</sup> December 2005, exhibits 6(a) dated 13<sup>th</sup> July 2005 –Plan inspection and Construction fees, and 6(b) dated 28<sup>th</sup> December 2005- Lease processing fees. It was proved that the first Defendant who was then the District Administrator for Gutu was the wife of the late Kudakwashe Mutongi. Further proved was that same Stand 414 Gutu was allocated to first Defendant by the second Defendant on the 2<sup>nd</sup> first September 2009 per exhibit 7. It is common cause that Mr Freddy Chimbari is a duly appointed Executor dative to the Estate of the Late Kudakwashe Mutongi having been appointed a neutral Executor by the Master of the High Court in July 2007. It is not in dispute that Stand 414 is listed

as part of the deceased estate per exhibit 2. Further, it is not in dispute that the Death Notice exhibit 1 and the Preliminary Inventory exhibit 2 shows that they were compiled by the first Defendant. Further to be proved is that there were no records in the first Defendant's file to show that she procedurally acquired Stand 414 Gutu. Lastly to be proved was that things were shambolic in the Office of the second Defendant and that the file for the late Kudakwashe Mutongi mysteriously disappeared and could not be located.

### **ANALYSIS OF THE EVIDENCE**

In analyzing the evidence led before this court, and in determining whether the Plaintiff has managed to prove his case, I took into account the documentary evidence, the viva voce evidence and the comprehensive closing submissions made by the parties. The matter before the court is a claim for a declarator that stand number 414 Gutu is considered to be the property of the late Kudakwashe Mutongi and is liable for distribution to his beneficiaries and that the transfer of the property from the estate of the late Kudakwashe Mutongi to the first Defendant is declared null and void. The counsel for the first Defendant articulated properly the requirements for a declarator. Among other authorities the first Defendant's counsel referred the court to the case of *Johnsen v Agricultural Finance Corp supra*, where GUBBAY CJ (as he then was) said-

“The condition precedent to the grant of a declaratory order under s i.14 of the High Court of Zimbabwe Act 1981 is that the applicant must be an “interested person”, in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the Court. The interest must concern an existing, future or contingent right. The court will not decide abstract, academic or hypothetical questions unrelated thereto. But the presence of an actual dispute or controversy between the parties interested is not a prerequisite to the exercise of jurisdiction.”

Counsel for the first Defendant submitted that the plaintiff in this matter cannot be regarded as an “interested person” who has a direct and substantial interest in the immovable property which is the subject matter of these proceedings. Further, he submitted that exhibit “5” cannot be regarded as a Lease Agreement, by any standards, between the second Defendant, a local authority established in terms of the Rural District Councils Act [*Chapter 29.13*], and the late Kudakwashe Mutongi hence the Plaintiff is not entitled to a declarator.

Let me hasten to state that the Plaintiff in this case is the Executor Dative to the estate of the late Kudakwashe Mutongi. He has instituted these proceedings on behalf of the estate of the late Kudakwashe Mutongi. He has not instituted the proceedings on his own behalf. The interest he has in the subject matter is not a personal interest but that of the estate. The interest concern an existing, future or contingent right of the estate. The court is not being asked to decide an abstract, academic or hypothetical questions unrelated thereto. Among other duties of an Executor Dative is to preserve the assets of an estate, to account for all assets of an estate and to distribute the same to the rightful beneficiaries. To that extent an Executor Dative has a direct and substantial interest to the subject matter. What constitutes direct and substantial interest was aptly set out in *United Watch & Diamond Co. (Pty) Ltd and Others v Disa Hotels Ltd And Anor* supra, as “...an interest in the right which is the subject –matter of the litigation and ...not merely a financial interest which is only an indirect interest in such litigation.”

Coming to exhibit “5” the lease granted to the late Kudakwashe Mutongi dated 28/12/2005, this lease statement has all the features of a lease agreement with the option to buy. I say so because it is headed “GUTU RURAL DISTRICT COUNCIL LEASE STATEMENT” It was given to Mutongi K., in relation to Stand no. 414, total area 3 750 square metres, amount per square metre \$40 000.00, total amount \$150 000 000.00, period of payment 6 years, amount per annum \$25 000 000, lease processing fee \$150 000.00 and amount payable first year \$25 150 000.00. While the first Defendant argued that this lease is not signed, she failed to appreciate that it is date stamped with the second Defendant’s stamp. Why I am further convinced that this was a lease with the option to buy is that on the 28<sup>th</sup> December 2005 a lease processing fee of \$150 000.00 was paid by the late Kudakwashe Mutongi to the second Defendant in respect of Stand 414 Gutu, exhibit “6a”. Then on the 13<sup>th</sup> July 2005 two payments in respect of the same stand were paid by Kudakwashe Mutongi to the second Defendant being Plan Inspection fee of \$150 000.00 and Construction Inspection fee of \$550 000.00 respectively, exhibit “6b).

While a proper offer letter should have been given, Mr. Alexander Mutembwa explained that there was chaos in the office of the second Defendant when he joined second Defendant, and they were now issuing offer letters.

From the evidence led before this court it is clear that Stand 414 Gutu had been offered to the late Kudakwashe Mutongi during his life time. In this case it is not in dispute that the deceased passed on the 20<sup>th</sup> of January 2007 as per the death certificate exhibit “1”. This is confirmed by first Defendant’s affidavit exhibit “3”. It is also not in dispute that the deceased was survived by 3 wives as shown on exhibit 4, the notes uplifted from the Master of the High Court’s file. One of the wives being the first Defendant who is recorded as the third wife. It is also not in dispute that the first Defendant is a senior official in the second Defendant, being the District Coordinator. Exhibit “2” which was uplifted by the Executor from the office of the Master of the High Court compiled by the first Defendant lists stand 414 Gutu as one of the deceased property, that is, the preliminary inventory DR 724/07. The first Defendant put her names on that inventory as the surviving spouse though first Defendant denied having compiled exhibits “1” and “2” and alleged forgery of her signature. The law is clear that he who alleges must prove. In this case first Defendant failed to prove that her signatures were forged. She admitted that the signatures on exhibits “1”, “2” and “3” were similar. Though the court is not a handwriting expert agrees with the first Defendant that the three signatures look similar. Further exhibit “5” the lease Statement from Gutu Rural District Council dated 28 December 2005 in respect of stand 414 is in the names of the deceased. Not only that, two exhibits “6” are two receipts in the names of the deceased, receipt no. 212135 being in respect of the lease processing and another being in respect of plan inspection in respect of the same stand.

The first Defendant in my view failed to explain why she inserted stand 414 Gutu on the preliminary inventory as one of the deceased’s property. If she did not do so herself she failed to satisfactorily explain why the documents uplifted from the office of the Master of the High Court bear her names as the informant. On one hand she said an unknown clerk could have done so, on the other hand she suspects her lawyers from Muzenda and Partners in Masvingo could have done so. First Defendant failed to explain why she did not indicate that she was the owner of the stand when the estate was advertised. Further she failed to explain why she did not raise the issue at the edict meeting with the Master and or the Executor. Initially she said in her evidence in chief that she did not participate at the edict meeting, only to turn around during cross examination and admitted that she actively participated. She conceded that as a senior officer in the second Defendant she was

allocated the Stand without following due process. In my view possibility of connivance with second Defendant or even corruption is very high. Since the estate has not been administered to finality it is unclear how she was allocated the stand in question. The same applies to the second Defendant's officials they failed to show that what they did was above board. In fact the second Defendant's witness Alexander Mutembwa destroyed the second Defendant's defence by admitting that there were loopholes in the second Defendant's office hence things were not being done above board. It is not coincidental that they allocated a stand to first Defendant, their official when records indicate the same stand was in the names of the deceased during his life time considering that the late Kudakwashe Mutongi and the first Defendant were husband and wife. The Plaintiff therefore managed to prove his case on a balance of probabilities and is entitled to the declarators.

IT IS ORDERED THAT

1. Stand number 414 Gutu is considered to be the property of the late Kudakwashe Mutongi and is liable for distribution to his beneficiaries.
2. That transfer of the property from the estate of the late Kudakwashe Mutongi to the first Defendant is declared null and void.
3. first Defendant to pay costs of suit.

*Tafireyi & company*, plaintiff's legal practitioners  
*Debwe & partners*, first defendant's legal practitioners  
*Mushangwe & company*, second defendant's legal practitioners.