

TOGARA KUNJENJEMA
and
OBRAM TRUST COMPANY (PRIVATE) LIMITED
and
MASTER OF HIGH COURT
versus
ANNAMORE NGIRICHI (N.O)

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 12 September 2022

OPPOSED APPLICATION (Reasons for judgment)

Applicant in person
Mr S Chatsanga, for the 1st Respondent
Mr C Maunga Jnr, for the 3rd Respondent

MUZENDA J: On 5 February 2020 applicant brought to court a chamber application for an interdict seeking the following relief:

“IT IS HEREBY ORDERED THAT

- a) *The adjudication findings by the 1st respondent are hereby reversed.*
- b) *The 1st respondent and those acting under its instructions are interdicted from evicting or threatening to evict the applicant or any member of the family from or otherwise interfering with their right of occupation of Stand Number 2640 Gaza O Suburb in Chipinge.*
- c) *1st respondent shall restore possession and occupation by the applicant family members to the deceased’s house, namely Stand Number 2640, Gaza O Chipinge.*
- d) *1st respondent to pay costs on an ordinary scale for this application.*

The application is opposed by all three respondents.

Background

Applicant is the son of the late Hebert Kunjenjema who died intestate on 24 November 2005. Applicant strongly states that he was appointed by deceased’s family to be executor and heir to the estate. Mr Oliver Masomera on behalf of first respondent was appointed by second respondent to be executor of the estate on 21 December 2016. Stand 2640 Gaza O, Chipinge was sold to Bernadette Makichi (a minor) on 2 July 2019. After the sale of the house first respondent advised applicant about the new owner and also the need for the family to vacate the house and give vacant possession to the purchaser. Applicant then rushed to court alleging that he and the family of deceased do not know first respondent at all and that to his best

knowledge he was the executor. To the applicant he does not know how first respondent sold the house without consulting deceased's family. So in principle applicant wants first respondent's selling of the house suspended or set aside and then have the whole administration of the estate revisited.

The first respondent contended that from 2017 applicant directly dealt with first respondent and exchanged correspondences between each other. First respondent even informed the deceased's family about the disposal of the house in order to meet estate liabilities and invited family members to buy the house. No one from the deceased's family bought the idea until first respondent sold the house.

Third respondent, the buyer mainly argued in her papers that she bought the subject house and wanted to take occupation. However she received the application for an interdict filed by applicant. She approached the magistrate civil court for eviction and the matter was postponed *sine die* pending finalisation of the High Court application.

The question for determination by this court is whether applicant has managed to place facts before the court that can warrant an order for an interdict?

The Law

For an applicant to succeed it must clearly be established:

- i) that he has clear right patently established law.
- ii) that he has either suffered actual injury or has a reasonable apprehension of injury.
- iii) that there is no other ordinary remedy by which he can be protected in the same way as by an interdict.
- iv) balance of convenience.

(See the case of *Flame Lily Investment Company (Private) Limited v Zimbabwe Salvage (Private) Limited and Another* 1980 ZLR 3780)

Application of Law to Facts

The first respondent was competently appointed to the position of an executor to the estate by the Master. First respondent sought for the Master's consent to dispose of the house in dispute, he got the consent and duly advised the applicant. Applicant and her family could not raise the money to pay the estate's liabilities and first respondent validly sold the house to third respondent. Applicant failed to state in his papers why he and those claiming occupation of the estate house through him should not be ejected from that property. The house in question

has since been ceded to third respondent and she now has registered rights over the property. Applicant has neither real nor personal rights to the property. So in effect applicant has failed to show that he has a clear right.

Applicant did not explain the actual injury nor did he manage to show a reasonable apprehension of injury. Applicant did not apply to nullify the appointment of first respondent as executor nor did he apply for the setting aside of the selling of the subject house. The position of first respondent as executor remains extant and third respondent is and remains the registered owner as the buyer of the house. As for the other requirements relating to other remedies as well as the balance of convenience, these to me appear secondary. The first two requirements form the backbone of an application for an interdict and applicant could not pass those two hurdles, he ought to fail in his application.

Both first and third respondents pray for costs on legal practitioner-client scale. Applicant attached documents relating to the estate of his late father which documents include an advertisement. To applicant he genuinely believed that he was the “heir” and executor to his father’s estate. Incidentally he was not appointed by the second respondent, the Master and was under a false perception that first respondent was fraudulently imposed as an executor to the estate. I fail to see the basis which respondents want applicant to pay costs at a punitive scale. This is a case appropriate for no order as to costs.

Accordingly the application is dismissed for lack of merit.

Chatsanga & Partners, 1st respondent’s legal practitioners
Maunga Maanda & Associates, 3rd respondent’s legal practitioners