

**SIMON BHIRI**

**Versus**

**THE MASTER OF THE HIGH COURT**

**And**

**OLIVER MASOMERE**

**And**

**TAKURIRA KATIDZIRA**

IN THE HIGH COURT OF ZIMBABWE  
NDOU J  
BULAWAYO 14 & 27 SEPTEMBER 2012

*J Sibanda* for applicant  
*S Chatsanga* for 2<sup>nd</sup> respondent

Judgment

**NDOU J:** The applicant was married to the late Patience Bhiri at the time of her untimely death in a road traffic accident on 13 May 2012. The 3<sup>rd</sup> respondent is the brother of the late Patience Bhiri (“the late”). The applicant and the late contracted a civil marriage on 20 October 2006 at Bulawayo Magistrates’ Court. The parties were living at number 7 Cecil Avenue, Ilanda, Bulawayo. There are five (5) children born of the marriage. Following the death of the late, the applicant did not register her estate as is required of him in terms of section 5 of the Administration of Estates Act [Chapter 6:01] (“the Act”). He was enjoined by the said provision to register the estate within fourteen (14) days of the date of death. As a nearest relative, the 3<sup>rd</sup> respondent went on to register the estate with the Master of the High

Court, Harare without informing the applicant. The Master was of the opinion that there were disputes in the estate amongst family members and as a result he decided to protect and safeguard the assets by appointing a *curator bonis*. The *curator bonis*, the 2<sup>nd</sup> respondent, was appointed pending the appointing of an executor at an edict meeting. Even before attempting to register the estate, the applicant approached his late wife's employers enquiring about her terminal benefits. The employers informed him about the above mentioned registration of the estate with the Master in Harare. Applicant proceeded to the Master's Office, Harare where he examined the estate file DR 1243/12. On 22 August 2012, applicant made a written application for the estate to be transferred to the Deputy Master, Bulawayo. It is apparent that up to the time this application was filed on 7 September 2012, the Master had not determined this application for transfer, or if he did so, he had not communicated the determination to the applicant. Instead, it appears that the Master went on to publish a notice in the Government Gazette calling for next-of-kin and interested parties to attend an edict meeting at his office in Harare scheduled for 27 September 2012 at 10:00 hours. This notice was set out a day before the current application was filed. In terms of the Act, the 3<sup>rd</sup> respondent was entitled, in fact obliged, to register the estate. The applicant, as a surviving spouse had the same right and obligation. The applicant as alluded to above, failed to register the estate within the mandatory period of fourteen (14) days so he cannot be heard complaining when the 3<sup>rd</sup> respondent did so. The Master has called for an edict meeting as alluded to above. The issues that the applicant raised in this application can be dealt with at the edict meeting. The notice in the Gazette is costly. The next-of-kin and interested parties have been informed of the date of the edict meeting as evinced by annexure to the 2<sup>nd</sup> respondent's opposing affidavit. The *curator bonis*, 2<sup>nd</sup> respondent has compiled his report and account and filed the same with the Master. The *curator bonis* is based in Harare and so is 3<sup>rd</sup> respondent. The *curator bonis* has executed his mandate and what is left is for him to formally hand over his report and account at the edict meeting. On a balance of convenience the edict meeting should be allowed to take place as

scheduled. The applicant can then deal with the issues relating to the registration of the estate, his appointment as executor and transfer of the estate to the Deputy Master, Bulawayo. In any event, if he is appointed executor at this edict meeting, all the issues raised in this application will invariably fall away. There is no irreparable harm if the edict meeting is held as scheduled. Admittedly the applicant will be inconvenienced by having to travel to Harare this time around but this cannot be compared to costs of cancellation of the scheduled edict meeting and starting the process all over in Bulawayo. As indicated above he caused this by his failure to register the estate timeously as the surviving spouse. He has not even bothered to explain why he failed to register the estate within the statutory period of fourteen days. This application, according to the draft order, is aimed at the 2<sup>nd</sup> respondent. It comes as no surprise that it is only the latter who filed opposing papers. There was nothing wrong that the 2<sup>nd</sup> respondent did by accepting appointment by the Master as a *curator bonis*. In the circumstances the application has no merit against the 2<sup>nd</sup> respondent.

From the foregoing it is clear that I have determined that the application is urgent hence the determination of the merits of the application. It is urgent because the master has already set down the date of the edict meeting.

Accordingly, the application is dismissed with costs.

*Job Sibanda & Associates*, applicant's legal practitioners  
*Robinson & Makonyere*, 2<sup>nd</sup> respondent's legal practitioners