

BONGANI NDLOVU  
(in his capacity as the Executor Dative,  
Estate Late Kenneth Sithole)

**versus**

HOWARD SITHOLE  
and  
MELODY SITHOLE

HIGH COURT OF ZIMBABWE  
MUTEMA J  
BULAWAYO, 23 FEBRUARY AND 5 MARCH, 2015

*R. Moyo-Majwabu* for the applicant  
Respondents in person

### **Opposed Court Application**

**MUTEMA J:** Kenneth Sithole died at Bulawayo on 6 February, 2013. During his lifetime he purchased from Rebecca Howes, a piece of land being Stand 15 Rangemore Township 3 of Lot G of Upper Rangemore, also known as Plot 15 Gramps Way, Rangemore (hereinafter referred to as the Plot). Kenneth Sithole's widow one Monica Sithole, with whom he contracted a civil marriage, is the only surviving spouse with whom he had one issue Nozipho Sithole now aged six years. Kenneth Sithole also left other children of whom the respondents herein are some of them, from his previous marriage. All those children were majors at the time of his death.

Prior to his death Kenneth Sithole, his widow and the minor child lived on the Plot and none of the respondents lived there. Following his death the respondents and their families forced their way onto the Plot and despoiled the widow and the minor child of it. This was before the applicant was appointed executor of the estate. After applicant was appointed

executor on 15 October, 2013 the Assistant Master of this Court and himself advised the respondents to move out of the Plot so as to facilitate the smooth administration of the estate. That advice fell on deaf ears. The respondents remained put disrupting the administration of the estate. The surviving spouse has not been allowed back and the tenants on the Plot have been forced to run away therefrom. Due to respondents' unlawful conduct alluded to *supra*, which conduct applicant deems interferes with the fulfillment of his functions of administering and winding up the estate, applicant filed this application seeking eviction of the respondents and all those claiming occupation of the Plot through them, an interdict that respondents be ordered not to set foot on the Plot and costs of suit.

The application is opposed by both respondents who are brother and sister respectively. In their imagined understanding of the applicable law to the dispute I am constrained to quote *in extenso* the respondents' supposed opposing affidavit which goes as follows:

“NOTICE OF OPPOSITION OF THE DRAFT ORDER (undated)

We Respondents above, do hereby oppose the Draft Order Application as follows:

1. That the Draft Order by the Executor is baseless and without the Court Order to support it.
2. That according to the local custom, it would be illegal to evict the rightful heirs to the estate of their late father and mother.
3. That we have the most valid title to the land after the death of our parents since we also contributed financially to pay for it before Applicant came to stay with the late or after our mother died.
4. We pray that the Master of the High Court could look into the Administration of this estate.
5. The executor to this estate was biased and took sides with the original applicant. Instead he disregarded his duty to settle this estate the right way within the law of intestate succession.
6. At the time of marriage, the late was critically ill raising suspicion of marriage of convenience.

7. We therefore pray to the Master of the High Court to appoint another executor who will be able to settle this issue with justice.
8. We also pray that the Honourable Court throw out Applicant's Application and then consider the Administration of this Estate in accordance with the laws and custom of the land and also grant us ownership of this estate."

The document is signed by both respondents and a commissioner of oaths, one P.

Ndlovu. It is crystal clear from a reading of the purported opposing affidavit that the respondents, in their layperson's understanding of the general law of intestate succession, have no clue as to how it operates. Such an estate is supposed to be administered in terms of the relevant provisions of the Deceased Estates Succession Act [*Chapter 6:02*] as read with the Administration of Estates Act [*Chapter 6:01*] and not according to custom. They did not advert to the real issues raised by the applicant in their opposing papers. They did not deny that Monica Sithole is the sole surviving spouse of the late Kenneth Sithole. They did not deny that the widow and the minor child lived at the Plot with the deceased at the time of his death. They also did not deny that themselves and all those claiming occupation of the Plot through them were not living at the Plot at the time Kenneth Sithole passed on. Further, they both did not deny forcing the widow from the Plot and that they are obstructing the executor from fulfilling his duties of winding up the estate by forcibly and arbitrarily occupying the Plot.

In his oral submissions at the hearing of the application first respondent made a bare denial of the allegation simply alleging that the application is based on fabrication and that he never threw out his step-mother from the Plot. I am not convinced that his denials are well founded. If he did not throw out his step-mother from the Plot, she would not have left and I do not believe that the applicant would have launched this application. As regards the allegation that he is frustrating the applicant in his duties to administer the estate, first respondent said,

"It is not very true that we are impeding the work of the executor."

The ordinary grammatical meaning of this statement is clearly that there is some impediment. He is not supposed to engender any amount of impediment to the applicant however slight.

It account is had to the tone of the opposing "affidavit" it is not difficult to infer that both respondents are entirely inimical to the widow benefitting from the estate and also to the

applicant administering this estate. It therefore must be true that they did and continue to do what the applicant alleges.

The second respondent, in her oral submissions was more comical. She said she went to stay at the Plot at the invitation of the widow and when the latter told both of them to leave, they left and as it is the applicant is executing his duties “nicely.” Nothing can be further from the truth. If that were so I do not think that the applicant would have approached this court seeking the relief alluded to above. Also, the widow would not have left the Plot.

In view of the foregoing, I have no difficulty finding that applicant has made a good case for the relief sought.

In the result it is ordered as follows:

1. The respondents and all those claiming occupation through them be and are hereby ordered to vacate Plot 15, Gramps Way, forthwith failing which the Sheriff or his lawful deputy is authorized to evict them.
2. The respondents be and are hereby interdicted from setting foot on the Plot.
3. The respondents shall pay the costs of suit jointly and severally the one paying the other to be absolved.

*James, Moyo-Majwabu and Nyoni, applicant's legal practitioners*