

SOPHIE MAPHOSA N.O.
And
NKULULEKO MADUMA FUZWAYO N.O.
And
LOVEMORE NCUBE .O.
And
TRUST MAZIBUKO N.O.
And
BONGANI NDLOVU N.O.

Versus

THE ASSISTANT MASTER, HIGH COURT, BULAWAYO N.O.
And
THE MASTER OF THE HIGH COURT OF ZIMBABWE N.O.

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 16 OCTOBER & 3 NOVEMBER 2016

Opposed Application

N. Mazibuko for the applicants
T. Dodo for respondents

KAMOCHA J: The applicants in this mater sought and were granted a declaratory order in the following terms:-

“It be and is hereby declared that:

- (1) The 1st and 2nd respondents’ requirement that the applicants file with them Executors’ Inventories and Liquidation and Distribution Accounts in respect of the Estate of the late Tjenjelani Ndlovu, Resmond Nkala, Major Mbelesi, Josiah Bruce Gwizi and Petty Gwizi respectively is wrongful and unlawful as it runs counter to the provisions of section 38 of the Administration of Estates Act [Chapter 6:01] as well as section 8 (1) (a) of the estate Duty Act [Chapter 23:03].
- (2) It be and is hereby declared that the 1st respondent’s rejection, as abetted by the 2nd respondent, of the Liquidation and Distribution Accounts in the Estate of the Late Tjenjelani Ndlovu who died on the 4th January 2007 as well as the Estate of the Late Resmond Nkala who died on the 4th July 2003 was both wrongful and unlawful.
- (3) The 1st and 2nd respondents are obliged to accept Liquidation and Distribution Accounts and Executor’s Inventories denominated in Zimbabwe dollar currency in respect of any deceased estate whose subject died before the 1st February 2009.

- (4) The 1st and 2nd respondents are barred from levying Estate Duty or the Assistant Master's fee based on any value other than the value of the Estate as at the date of death.
- (5) The 1st and 2nd respondent shall pay the costs of this application, jointly and severally, the one paying the other to be absolved."

After hearing legal representatives of the respective parties I granted the above order. What follows are the reasons why this court granted the order.

The issue at the centre of the dispute between the parties was whether or not the values of the respective assets of the deceased Estates should be as at the death of the respective deceased or at the date of submission of the respective Liquidation and Distribution Account.

The applicants relied on section 38 of the Administration of Estates Act [Chapter 6:01] which lays down what every executor ought to do as soon as the Letters of Administration have been granted to him or her. He or she must forthwith make an inventory showing the value of all property, goods and effects, movable and immovable, whatever kind belonging to the estate which he has been appointed to administer.

Every such Executor shall forthwith cause every inventory and additional inventory, if any, to be transmitted to the Master. See section 38 which has to be read with the Estate Duty Act [Chapter 23:03]. Section 4 thereof defines what constitutes an estate and recites thus:-

“4. What constitutes an Estate

1. For the purposes of this Act, the Estate of any person shall consist of:-
 - (a) All property of that person as at the date of his death which is defined in subsection (2) and which was acquired by that person on or after the 1st January, 1967, and
 - (b) All property which in accordance with subsection (3) is deemed to be property of that person at the date of his death; and
 - (c) All property of that person as at the date of his death which is defined in subsection (6) and which was acquired by that person before the 1st January, 1967.” (my emphasis)

In my view, the above section clearly spells out that the estate of a deceased person ought to be determined as at the date of his or her death.

Section 6 of the same Act does also make it clear that the valuation of a deceased estate ought to be the value of the estate property as at the date of death.

The relevant parts of the section read as follows:-

“Value of property in Estate

(1) The value of any property included in the estate of any person shall be:-

(a) ...

(b) ...

(g) in the case of shares in any company not quoted in the official list of a securities exchange registered under the Securities Act [Chapter 24:25] or any securities exchanged outside Zimbabwe, the value of such shares in the hands of the deceased at the date of his death as determined, subject to section nine, by sworn valuation by some impartial person appointed by the Master, subject to the following provisions, that is to say:-

...

(h) in the case of any property referred to in paragraph (e) of subsection (3) of section four which consists only of profits, an amount determined by capitalizing at nine per centum of such amount as the Master may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his death, and in the case of any other property referred to in the said paragraph (e) the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he had at that date exercised his power of disposition ...” Emphasis added

Counsel for the applicants referred the court to the 2nd edition of the book *The Law and Practice of Administration of Estates* by D Meyerowitz where it is stated as follows at page 142:-

“It may happen that the deceased is entitled to immovable property which had not been transferred into his name at the time of his death. Such property must also be shown as an asset with a suitable note to the effect that transfer is still to be passed to the estate.

If the property has been sold by the executor the sale price will be the figure reflected in the account. If the property is not sold but is to be transferred to the legatees or heirs the value of the property must be ascertained by a sworn appraisal, which must appraise the value of the property as at date of death and not at the time of appraisal.” (my emphasis)

Section 8 of the Estate Duty Act [Chapter 23:03] requires every executor to submit to the Master a return in a prescribed form, disclosing the dutiable amount of the estate together with full particulars regarding the property of the deceased as at the date of his death. Such property is, indeed, deemed to be his property as at the date of his death.

The respondents articulated the issues to be determined by the court as follows:-

“Issues for determination

- (1) Whether or not assets valued in Zimbabwe dollars are still operational; and
- (2) Whether or not applicants complied with the law as at winding up.”

They, in a nutshell vigorously, argued that all the Estates were liable to pay Master’s fees in United States Dollars because on the date the Final Liquidation and Distribution Account was submitted which was 29 October, 2012 dollarization of the economy had already commenced in February 2009. It was further contended that the advent of multi-currency rendered the Zimbabwe dollar *de facto* valueless and moribund.

The defendants also submitted that it was against public policy for the applicants to insist on submitting an estate account in Zimbabwe dollars when such currency was no longer a medium of exchange with any value. The fiscus would be financially prejudiced if the applicants were to be permitted to pay Master’s fees in Zimbabwe dollars.

The respondents’ submissions would have been applicable if the respective deceased estates related to deceased persons who died after the dollarization of the economy in February 2009. Their submissions are clearly not tenable in respect of properties of deceased persons who died prior to February 2009.

It is not clear what law the respondents relied on because the provisions of the Estate Duty [Chapter 23:03] quoted in this judgment have not been amended and still extant.

The above were the reasons why the court granted the order sought *ex tempore*.

Calderwood, Bryce Hendrie & Partners, applicants' legal practitioners
Civil Division of the Attorney-General's Office, respondents' legal practitioners