

MANALA LOVENESS MOTSI

Versus

GAMILA ATWA IBRAHIM ELZONT
(Executor in the Estate late John Joseph Manolakakis)

And

DEPUTY MASTER OF THE HIGH COURT

And

THE REGISTRAR OF DEEDS N.O

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 21 & 24 NOVEMBER 2016

Urgent Chamber Application

R. Ndlovu for the applicant
1st respondent in person

MAKONESE J: This urgent chamber application was filed on the 17th November 2016. The applicant claims fees as *curator bonis* in the Estate of the Late John Joseph Manolakakis. 1st respondent challenges the propriety of the fees which she feels are excessive and would wipe out the estate. Applicant was appointed *curator bonis* on the 12th November 2014 in terms of the Administration of Estates Act (Chapter 6:01).

At the hearing of the matter I observed that the curator's fees were lodged on 16th May 2016. I notice that various correspondence has been exchanged between the applicant, the Master and the 1st respondent. A First and Final Distribution Account was filed with the Master and approved on the 15th November 2016. The interim relief sought by the applicant is in the following terms:

“Interim Relief granted

Pending determination of this matter, the applicant is granted the following relief:

1. Any dealings related to the Estate Late John Joseph Manolakakis, be and are hereby suspended immediately;
2. The 1st respondent be and is hereby suspended from being the Executrix Dative of the Estate Late John Joseph Manolakakis and is interdicted from conducting herself as Executrix Dative of the said estate immediately;
3. The 3rd respondent is ordered to immediately place caveats over the estate properties being an undivided 1.39% there being number 1703 in stand 12144 Ascot Bulawayo held under Title Deed Number 4062/96, undivided 1.39% there being stand 12144 Ascot, Bulawayo held under Title Deed Number 4063/96 and certain piece of land being the remaining extent of stand 6, Bulawayo held under Title Deed Number 2140/2001.”

The issue I raised with applicant’s counsel is why an order is being sought for the 1st respondent to be removed as Executrix Dative when essentially the dispute is over payment of the curator’s fees. I raised the point that the curator’s fees which are in the sum of US\$59 131,25 on appointment and additional sum of US\$59 131,25 on the final account and sundries of US\$5 913 in respect of sundries are simply staggering and have the effect of depriving the beneficiaries of any financial benefit. It would seem that, the dispute over the curator’s fees has become so bitter and ferocious that this application is an attempt to prevent the winding-up of the estate. The state of affairs does not benefit the beneficiaries. In my view, the Master ought to have the curator’s fees properly taxed. That is the remedy the applicant is entitled to. In other words, the applicant has an alternative remedy. The matter does not deserve to be treated on an urgent basis as this dispute over the curator fees has been on-going since May 2016. The principles of urgency have been well established in various cases in this jurisdiction. See *Kuvarega v Registrar General & Anor* 1988 (1) ZLR 188 and *Graspeak Investments (Pvt) Ltd vs Delta Operations (Pvt) Ltd & Anor* 2001 (2) ZLR 551.

For the foregoing reasons I make the following order.

1. The application be and is hereby dismissed.
2. The applicant is to bear the costs of suit.

R. Ndlovu, applicant's legal practitioners