

DZIDZAI GONDO

Versus

ROSEMARY GONDO

And

THE ASSISTANT MASTER

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 10 & 12 OCTOBER 2017

Opposed Application

T. Ndebele, for the applicant
In person, first respondent

BERE J: The applicant filed an application in this court on 14 February 2011 seeking to obtain the following order.

- “1. That the applicant be and is hereby declared the sole surviving spouse of Raymond Gondo as per Marriage Certificate No. 637/97 contracted on the 8th of August 1997 at Bulawayo.
2. That the 2nd respondent be and is hereby directed to wind up the estate of the late Raymond Gondo, DRB 1112/03.
3. That the 1st respondent pays costs at attorney and client scale.”

The Background

The brief facts to this case are that the applicant formerly married the late Raymond Gondo, (the late Raymond) on 8 August 1997. At the time of the marriage the late Raymond gave himself as a divorcee.

On 28 July 2003, the late Raymond died intestate with the result that the late Raymond's estate was registered in 2003.

The second respondent has encountered challenges in winding up the late Raymond's estate because the first respondent has maintained that at the time the late Raymond passed on their divorce had not been finalised and that she considered herself still duly married to the late Raymond. The first respondent has thus refused to recognize the applicant as the legitimate wife to the late Raymond.

In support of her case, the applicant has attached a copy of her marriage certificate to her application. The applicant has also attached a copy of divorce order granted by Justice Black on 12 July 1994 where both parties were legally represented.

It does seem that before the late Raymond passed on he, the applicant and the 1st respondent were in and out of court on a number of occasions but in all those matters, there is not a single order that nullified either the late Raymond's marriage to the applicant or the late Raymond's divorce against 1st respondent.

The 1st respondent has attempted to rely on the order purportedly from the High Court which order appears to be a fraudulent document. The authenticity of that order is put into question by the suspicious wording of the order.

The authenticity of this order relied upon by the 1st respondent (page 8 of bound papers) is further put into question by the then acting Assistant Registrar Bongani Dube's statement in which she denied having signed the order on the 19th of March 2001, the same day that she admits to have signed another order from the same Judges who dealt with the 1st respondent's appeal, which order the acting Registrar alleges was a legitimate one.

Be that as it may, it is quite significant to note that for all these years that have gone by, the 1st respondent has not made any attempt to have the divorce order granted by BLACK J nullified. The result is that that order remains extant and cannot merely be wished away by the 1st respondent.

To compound 1st respondent's position, there is nothing in her papers filed in court that shows that for all these years that she has been fighting the applicant, she has sought to have her divorce to the late Raymond nullified.

In my view, the stark reality is that as long as the applicant's marriage to the late Raymond remains in force, and as long as the late Raymond's divorce order by BLACK J, has not been tempered with, then the applicant remains the legitimate wife of the late Raymond.

Consequently the court makes the following order:

It is ordered

1. That the applicant be and is hereby declared the sole surviving spouse of Raymond Gondo as per marriage certificate number 637/97 contracted on 8th August 1997 at Bulawayo.
2. That the 2nd respondent be and is hereby directed to wind-up the Estate of the late Raymond Gondo DRB 1112/03.
3. That the first respondent pays costs of suit.

Messrs Lazarus & Sarif, applicant's legal practitioners