

JOYCE PEDZISAI (NEE MUKARONDA)
and
TRACY PEDZISAI (NEE MAGUNJE)
vs
GETRUDE DADE PEDZISAI
and
THE MASTER OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
BHUNU J.
HARARE, 11 March, 2004 and 7 April 2004

Mr Musimbe, for the plaintiff
Mr Zhou, for the defendant

BHUNU J: The late George Muchafara Pedzisai died on the 11th of May 2003. He was survived by the first respondent to whom he was married in terms of the Marriage act [*Chapter 5:11*] on the 29th of September 1980. Apart from the first respondent the deceased contracted unregistered customary law unions with the first and second applicants.

Although the deceased was married to the first respondent in terms of a civil marriage which is monogamous, he lived a polygamous life for a very long time. The first respondent appears to have acquiesced to this arrangement as she does not appear to have taken any legal action against the applicants. The first applicant's child under that arrangement is now 19 years of age.

The first respondent appears to have been estranged from her husband for quite sometime because at the time of his death the deceased was living with the second applicant at Mushanda Farm allocated to deceased in terms of the Land Acquisition Act [*Chapter 20:10*].

The first applicant actively participated in the development of the farm and invested considerable amounts of money in the farming enterprise.

The first respondent never lived on the farm with the deceased during his life time nor does she appear to have contributed anything to the development of the farm.

While the two applicants may not be legal wives they were nevertheless *defacto* customary law wives of the late George Pedzisai and they were recognised as such by his relatives. It is clear that the applicants have a stake in the deceased's estate. They are rival

wives of the late George Muchafara Pedzisai. It is inconceivable that the first respondent would be fair in administering the estate.

She is by no means a neutral administrator. She has an axe to grind with the applicants.

To allow her to be administrator is tantamount to allowing her to be a judge in her own case.

During her husband's life time the first respondent was engaged in a civil dispute concerning ownership of the Bulawayo house which is supposed to be part of the deceased estate.

Ordinarily an executor steps into the shoes of the deceased. It is inconceivable that the first respondent will be able to pursue the legal wrangle on behalf of the deceased and argue against herself should the matter proceed to trial.

The probabilities are that she will award the disputed house to herself without any further ado regardless of the other wives interest in the house.

I consider that in the circumstances of this case it is wholly undesirable that the first respondent should be appointed executor to the hotly contested estate at the behest of her *defacto* co-wives at customary law although they may not be legal wives, they have a vested interest in the administration of the estate. Although the court is aware that it should not lightly set aside the appointment of an executor, in this case I consider that there are weighty and justifiable grounds for setting aside the appointment.

In the result it is ordered:

1. That the appointment of the first respondent as executrix dative to the estate of the late George Muchafara Pedzisai be and is hereby set aside.
2. That the second respondent appoints a fit and neutral person to be executor to the estate of the late George Muchafara Pedzisai.
3. That costs of this application be costs of the administration of the deceased estate.

Musimbe and Associates, the applicant's legal practitioners

Musunga and Associates, the 1st respondent's legal practitioners

