

MARIA SALOME KATSIGA
versus
HILDA TAMBUDZAI CHARLIE
and
NYASHA LOVEMORE MACHAKAIRE
and
MASTER OF HIGH COURT
and
REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE
KUDYA J
HARARE, 30-31 July and 10-12 November 2008 and 5 February 2009

FAMILY LAW COURT--DECEASED ESTATE-TRIAL

Mrs. V. Nyemba, for the plaintiff
R. Harvey, for 1st and 2nd defendants
No appearance for 3rd and 4th defendants

KUDYA J: On 3 May 2007 the plaintiff issued summons out of this court seeking the nullification of an agreement of sale that was entered into between the first defendant and the late Gladys Mutasa; the nullification of the appointment of the second defendant as an executor in the estate of the late Augustine Katsiga; the nullification of the distribution account that was confirmed by the third defendant in that estate; a declaration that three minor children of the late Augustine and Gladys Mutasa are the beneficiaries of their late father's estate; the transfer of stand 6673 Ruwa Township of Dispute Estate measuring 609 m² into the names of the three minor children and costs of suit against the first and second defendants. The first and second defendants contested the action.

The plaintiff and the first and second defendants gave evidence in person. In addition, the plaintiff produced 14 documentary exhibits and called two witnesses while the first defendant produced two documentary exhibits and called four witnesses. The second defendant produced three documentary exhibits and was the only witness in his defence. The two witnesses who were called by the plaintiff were two members of the Norton branch of the Jesus Embassy Church Gift Chilengwe and Fadzisai Mutatabikwa while the four who were called by the first defendant were her erstwhile legal practitioner based in Murewa, Benjamin William Chirambasukwa; her nephew Briam Mafemba Charlie; her maid Gaudencia Gula and Mafunasi Gula.

THE ISSUES

At the pre-trial conference that was held on 16 April 2008, seven issues were referred to trial. They were worded as follows:

1. Whether or not the late Gladys Mutasa had authority to sell stand 6673 Ruwa Township.
2. Whether or not the late Gladys Mutasa sold stand 6673 Ruwa Township to the first defendant
3. Whether the sale should be declared a nullity
4. Whether the appointment of the second defendant as executor was valid
5. Whether the confirmed distribution account is valid or not
6. Who is the rightful beneficiary of the estate of the late Augustine Katsiga
7. Whether the stand should be transferred to the minor children of the late Augustine Katsiga and the late Gladys Mutasa.

THE AGREED FACTS

These were the facts and events which were not disputed during trial. The late Augustine Katsiga (Augustine) married the late Gladys Mutasa (Gladys) by civil rites on 7 October 2000. The union was blessed with three children, that is, Kelvin Philbert Katsiga born 11 June 1992; Tafadzwa Ignatious Katsiga born 8 March 1997 and Augustine Tinotenda Katsiga born 4 December 2001. Augustine was the registered owner of an undeveloped stand in Ruwa, commonly known as Stand 6673 of Ruwa Township (the stand). The title deeds were produced as exhibit 4.

He died on 26 October 2002 and was survived by his wife and three children. His wife died on 3 November 2005 and was survived by the three children. The plaintiff was the sister to Augustine. On 16 April 2007 she was appointed the guardian of the three children by the Children's Court. The information concerning the dates of death and appointment as guardian are found in exhibits 1, 2 and 3, respectively.

Exhibit 5, though in contention, was produce by consent. It consists of three photocopied one paged documents. The originals of the second and third documents were produced by the first defendant as exhibit 15. The three documents were prepared by the first defendant. While the first and third documents are not dated, the second document is dated 26 April 2005. These documents purport to be a memorial of an agreement of sale entered into between Augustine and Gladys as the sellers and the first defendant as the buyer.

Gladys and her children resided at D14 Flamingo Norton while the first defendant lived at 3835 Instamac Norton. They all attended Jesus Embassy Church in Norton together with Gift Chilengwe (Gift), Fadzisai Mutatabikwa (Fadzisai) and Mafunasi Gula (Mafunasi). By the end of October 2005 Gladys was seriously ill. She was in pain, could not walk and was bedridden.

Gladys' condition deteriorated. The first defendant, who was an influential member of her church, made an appeal in church for the sum of \$5 million to buy food and medicines for Gladys. The church failed to raise the amount sought. The first defendant advanced the required amount to Gladys. The church undertook to refund her.

The plaintiff came to know the first defendant towards the end of October 2005. The first defendant telephoned her and demanded the sum of \$5 million. She indicated that she would not surrender the title deed to the stand and other documents unless the money was repaid. The plaintiff went to Norton to pay the money. The first defendant increased her demand to \$7, 2 million averring the new amount included interest. When she attempted to pay the increased amount the first defendant declined to accept it; intimating that the title deed was in the possession of her legal practitioners in Murewa.

In the meantime, Fadzisai, Gift, the first defendant and Marvelous Gula (also known as Floyd's mother) made what was to be their last visit to Gladys. She failed to rise from her bed. When they were identified as her fellow church members, she asked them to help her recover the title deed, her national identity card, her marriage certificate, her husband's death certificate and her children's birth certificates from the first defendant. Apparently they had been handed to her by the maid under the pretext that she required the birth certificates to register the children for school. The maid had given her the file with all the documents. Gift asked the first defendant in the presence of Fadzisai to return the documents. The first defendant stated that she would only do so after Gladys refunded her the \$5 million that she had loaned to her.

Gladys died at Kadoma on 3 November 2005. The first defendant was advised of her death by the plaintiff but she did not attend the funeral.

In November 2005, Mr. Chirambasukwa prepared exhibit 9, an agreement for the sale of the stand in question, between the first defendant and Laston Tachiona (Laston). The first defendant signed the agreement in November at her residence in Norton while the purchaser,

Laston signed it on 14 December 2005 at Chirambasukwa and Associates offices in Murewa. Laston paid the purchase price of \$220 million on 13 December 2005. On 16 December 2005, the first defendant executed a power of attorney authorizing Mr. Chirambasukwa to transfer the stand to Laston. In both documents she misrepresented that she was the registered owner of the stand. The transfer failed and Laston reported her to the police for fraud before he cancelled the agreement and demanded the purchase price. In exhibit 13, the first defendant agreed to refund Laston the purchase price by 31 January 2006. She then sold the stand to Florence Sibongo on 18 January 2006 for \$750 million.

On 9 January 2006, two events occurred. The plaintiff retrieved the documents which Gladys's maid had given to the first defendant. She also registered Augustine's estate, reference DR 50/06, oblivious of the fact it had been registered by Gladys in 2003.

On 15 February 2006, the first defendant filed a court application, case number HC 877/06, against Gladys seeking an order for the transfer of the stand to her in terms of the Titles Registration and Derelict Lands Act [*Cap 20:20*]. She falsely declared in both her founding and supplementary affidavits, which were produced as exhibit 19 and 8, respectively, that Gladys was the executor dative in the estate of Augustine; that she last saw her in December 2005; that she had only been advised of her death by the plaintiff in February 2006 and that the plaintiff had declined to provide her with the names of Gladys' relatives. In exhibit 16, her opposing affidavit to the urgent application brought by the plaintiff to stop the transfer of the stand to her, she indicated that she knew where Gladys' mother resided. Her court application for transfer was struck off the roll on 17 May 2006.

On 7 and 16 August 2006, at her instigation, the Master called for an edict meeting in the estate of Augustine. The Master dispatched notices of the meeting to the residence of the first defendant and the house where Gladys used to reside in Norton. The first defendant did not advise the Master of the address of Gladys's mother. She was aware at the time that the plaintiff was a police woman based at Mabelreign police station and had her contact details yet she did not provide this information to the Master. The Master was prevailed upon by the first defendant to appoint a neutral executor and appointed the second defendant on 8 September 2006.

On 19 September 2006, the second defendant perused the Master's file on the estate of Augustine. He noted that Gladys had not been appointed an executor and that the purported sale of the stand had not been sanctioned by the Master. He also noted that case number HC

877/06 had been struck off the roll. He however accepted the validity of exhibit 5 and without receipts to prove that payment in the sum of \$135 million had been paid acknowledged that the first defendant had done so before accepting payment for the balance of the purchase price of \$65 000.00 (after the removal of three zeroes from our currency in August 2006).

The second defendant compiled exhibit 6, the distribution account in the estate of Augustine on 1 November 2006. He awarded the stand to the first defendant on the ground that she was a creditor to Augustine's estate. He stated that Gladys as the surviving spouse of Augustine was entitled to receive the stand.

He submitted his report to the Master and advertised it in the Herald and Government Gazette of 16 February 2007. Before the advertisements were flighted, the plaintiff came to his offices with a police officer who was based at Norton police station and Laston. She complained that he was conniving with the first defendant to cheat the minor children of Augustine of their inheritance.

On 13 March 2007, at his request, the Master confirmed the account. He did not advise the Master of the complaint he had received from the plaintiff. He prepared exhibit 18, the Consent to Transfer of Immovable Property E.D. 16 form for the transfer of the property from the Estate of Augustine to the first defendant. The Master gave his consent to the transfer on the same date. He then referred it to the first defendant's legal practitioners for conveyancing. The defendant attempted to sell the stand to Nyarai Nyandoro on 17 April 2007. On that day, the plaintiff registered her complaints with the Master, who on 23 April 2007 recalled the distribution account and directed the executor to stop the transfer of the property to the first defendant pending the resolution of the complaints.

The transfer was stopped by the urgent chamber application which was launched by the plaintiff and the subsequent consensual order of this Court of 17 May 2007. Despite, the interdict against her, she attempted to sell the stand to Nyikayaramba in October 2007.

THE DISPUTED FACTS

The contentious issues between the parties were on the authenticity of the documents that make exhibit 5 and the validity of the appointment of the second defendant as the executor in the estate of Augustine. The plaintiff was adamant both in her evidence in chief and under cross-examination that exhibit 5 was a forgery. She also maintained that the second defendant was appointed as result of a flawed process that was driven by the first defendant. The first defendant insisted that exhibit 5 was authentic and denied misleading and manipulating the

Master into appointing the second defendant. The second defendant, on the other hand, opined that he did not solicit for appointment and stated that once appointed he acted professionally and scrupulously observed the dictates of the law.

I resolved the disputed facts in favour of the plaintiff for the full reasons that appear in the determination of each issue that was referred to trial. Suffice it to add that I found the plaintiff and her two witnesses to be truthful witnesses. Her two witnesses were unknown to her until after the death of Gladys. They volunteered to testify on her behalf. They were closer to the first defendant. On the other hand, I did not believe the first defendant and her witnesses where their evidence differed with that of the plaintiff. The defendant was a pathological liar. She prevaricated in her testimony. The version of her witnesses was not canvassed with the plaintiff's witnesses when they were cross examined. Her witnesses also differed with her on matters in which agreement was expected. Mr. Chirambasukwa did not assist her in her bid to show that exhibit 5 was genuine. He also drew misleading documents which falsely painted her as the registered owner of the stand.

As for the second defendant, I was satisfied that his appointment was based on a flawed process that was designed to exclude Augustine's relatives. By his own admission in cross- examination, the executor failed to make a diligent search for Augustine's relatives. When the plaintiff presented herself to him, instead of working with her, he rebuffed her. He awarded the stand to the first defendant well knowing that the purported sale was invalid. He had no proof that the first defendant had paid \$135 million in reduction of the purchase price. He deliberately misrepresented that Gladys had been appointed an executrix. His fees were paid by the first defendant and he was defended by her legal practitioner in this trial.

RESOLUTION

I turn to determine each issue that was referred to trial.

1. Whether or not the late Gladys Mutasa had authority to sell stand 6673 Ruwa Township

The evidence led at the trial demonstrated that Gladys registered the estate of her late husband but was never appointed executrix. It was common cause that the stand in question belonged to her late husband. Exhibit 4, demonstrated beyond doubt that he held title to the stand. On his death, the stand vested in his estate. In our law, an executor is the only person who is looked upon by the court as the person to represent the estate of the deceased. This position was enunciated in 1890 by DE VILLIERS CJ in *Fischer v Liquidators of the Union Bank* 8 SC 46

at 52. It has been religiously followed by our courts ever since in such cases as *Clarke v Barnacle, NO & Two Ors* 1958 R&N 348 (SR) at 349B; *Mhlanga v Ndlovu* HB 54/2004 and *Nyandoro & Anor v Nyandoro & Ors* HH 89/2008. I agree with the submission by Mrs. Nyemba, for the plaintiff, that Gladys did not have the legal power to dispose of the property.

2. *Whether or not the late Gladys Mutasa sold stand 6673 Ruwa Township to the first defendant*

The basis of the alleged sale was exhibit 5. Gladys purportedly sold the stand in question, which was a vacant piece of land. The provisions of section 7 of the Contractual Penalties Act [Cap 8:04] would apply to such a sale. The section reads:

7 Instalment sales of land to be in writing

Every instalment sale of land shall be reduced to writing:

Provided that, where any such contract or any term or condition thereof has not been reduced to writing, the onus of proving the existence of that contract, term or condition, as the case may be, shall rest on the person alleging its existence.

It was on the basis of this section that Mrs. Nyemba submitted that the onus lay on the first defendant to show on a balance of probabilities that the sale took place. Her submission is not supported by the wording of the section. After all, the first defendant relied on exhibit 5 as the memorial of the terms and conditions of the agreement. It was an instalment sale that was reduced to writing and which captured the agreed terms. The onus was therefore on the plaintiff to show on a balance of probabilities that Gladys was not a party to this agreement. After all, she was the one who averred that the agreement was a forgery. The onus would be on the first defendant to prove those terms that she alleged were agreed but were not written into the agreement.

On the face of it exhibit 5 would satisfy the basic tenets of an agreement of sale. The thing to be sold is identified and the price is indicated. The intention to sell and buy is presupposed. In addition, the signatures of the seller, buyer and witnesses are appended in the agreement.

The plaintiff did not provide a sample of Gladys's signature nor call expert evidence of a questioned document examiner. Rather, she interrogated the documents which form exhibit 5. She took issue with the reference in all the three documents to Augustine as a party to the agreement when he had long died. The first and third documents did not indicate the dates on which they were executed. A date was shown on the second document. The format of the first

document was unusual. The signatures were appended above the content of the agreement; a situation which created room for mischief. The terms of payment in the first document are different from those in the second document. The third document does not indicate the dates on which the 12 sums of money were paid. The first defendant did not prove that those moneys were ever paid. The third document contradicted the terms of payment in the first document. It was unclear whether the first defendant paid a deposit of \$5 million or \$100 million. Tariro Mutasa did not exist and the national identification number attributed to her in the first and second documents was for Mary Bvungwe. There are 8 signatures in the three documents that were attributed to Gladys which, even to the untutored eye of a non-expert in questioned documents, are all different.

She also used extrinsic factors to attack exhibit 5. When the first defendant first contacted her, she did not indicate to her that she had purchased the stand. She handed the title deed back to her on 9 January 2006 without claiming ownership of the stand. She did not claim ownership to her fellow church members Gift and Fadzisai when they asked her to return the documents. Her witnesses did not agree with her that Heather Charlie lived in their neighborhood or that she witnessed the agreement. The only Heather Charlie who was known to them was her daughter who went to the United Kingdom in 1999 and had not been back to Zimbabwe since then. She waited until Gladys had died to claim the stand. The first defendant was a proven liar. Her affidavits demonstrated that she held no qualms about gilding the lily. She tailored her evidence to that of her witnesses that Fadzisai masqueraded as Heather. The point was not taken with Fadzisai during cross-examination. It was an after thought designed to discredit Fadzisai's evidence. That allegation also demonstrated that it was not beyond the first defendant to recruit others to assist her to forge the agreements. After all, she had the file which had Gladys's details.

The above factors that the plaintiff highlighted satisfied me that she had discharged the onus on her to show that the agreement was not authentic. It was a forgery. I, accordingly, hold that Gladys did not sell the stand to the first defendant.

3. Whether the sale should be declared a nullity.

Mr. *Harvey*, for the first and second defendants, made the ingenious submission that the sale had been validated by the Master when he approved the distribution account on 13 March 2007. Neither the Master nor for that matter a court of law could validate an invalid sale. Such a sale does not exist. It is well to remember the timeless words of LORD

DENNING in *McFoy v United Africa Co Ltd* [1961] 3 All ER 1169 (PC) at 1172I which were quoted with approval in *Jensen v Acavalos* 1993 (1) ZLR 216 (S) at 220 C that:

“Every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

The Master could not validate a sale that never was. He recalled the confirmed distribution account in exhibit 7 on 23 April 2007 after his error had been brought to his attention by the plaintiff.

The only reasonable conclusion to draw from either of my findings in answer to the first and second issues is that the sale was a nullity. Firstly for the reason that there was no sale in the first place and secondly that even if the sale was executed, it was invalid because Gladys was not an executor to the estate of her late husband. It would also appear that even if she were the executor, the absence of the Master’s prior consent to the sale by private treaty would in terms of section 120 of the Administration of Estates Act have been invalid.

I hold that the purported sale was a nullity.

4. Whether the appointment of the second defendant as executor was valid.

Mrs. *Nyemba* submitted that the appointment of the second defendant was invalidated by the fraudulent misrepresentations that were made to the Master by the first defendant. She further submitted that even if he had been properly appointed, he would be removed from office for failing to protect the estate. Mr. *Harvey* did not counteract these submissions. It was clear from the contents of the first defendant’s founding and supplementary affidavits in case HC 877/2006 that were filed on 15 February and 8 June 2006 that she portrayed the false impression that Gladys was still alive when she knew that she had died. The second defendant was appointed to accommodate her false claims that she had a valid sales agreement. She was the only party in attendance at the edict meeting of 16 August 2006. She was aware of the existence of the plaintiff and deliberately failed to inform the Master of her whereabouts. It transpired in evidence that she knew that the plaintiff was a police woman who was based at Mabelreign police station. She could still have referred the Master to Norton police station where the plaintiff had made her report in January 2006 if she really wanted the plaintiff to be party to the edict meeting. She was eager to have the stand transferred to her in the absence of the late Augustine’s relatives. The Master dispatched notices to the addresses where the first defendant knew the deceased Gladys would not be found. Her misrepresentations prejudiced the estate in that it lost the stand to the first defendant who was not even one of its creditors.

Her misrepresentations to the Master are a good and sufficient reason to declare the appointment of the second defendant invalid.

Accordingly, I hold that the appointment was invalid.

The second defendant, however, opposed his removal on the basis that he acted professionally in administering the estate. It is now accepted in our law that there are two ways in which an executor may be removed from office. The first is by the Master in terms of section 117 (1) of the Administration of Estates Act and the second is through the common law. The first method is demonstrated in *Siziba v Siziba & Anor* HB 25/2004 while the second is highlighted in *Katirawu v Katirawu & Ors* HH 58/2007. In the *Katirawu* case, *supra*, at page 5 the LEARNED JUDGE PRESIDENT held thus:

“While s117 (1) empowers the Master to approach the court for the removal of an executor for the listed grounds, in my view, such a power granted to the Master was not intended to take away the right of all those having an interest in the estate from approaching the court at common law to have the executor removed if they can establish to the satisfaction of the court that the continuance in office of the executor does not augur well for the future welfare of the estate and beneficiaries. The power granted to the Master by s117 is in my view complementary to the inherent power of the court at common law. In any event, if it was the intention of the legislature to revoke the common law power of the court in this regard, it would have done so in express language for the jurisdiction of the court is not ousted other than in clear language.”

The plaintiff approached the court as the lawfully appointed guardian of the minor children. She followed in the footsteps of the petitioner in *Volkwyn NO v Clarke & Damant* 1946 WLD 456.

The bases for such removal are set out in the following cases:
In *The Master v Edgcombes Executors and Administrators* 1910 AD 271 at 266-7 Mason J stated that:

“the authorities are quite clear that any unfaithful dealing by an executor, whether connected directly with the administration of the estate under his charge or whether consisting in breach of trust in connection with other matters will justify his removal from office Voet 26, 10, 102; *Bronkhorst v Rasmus* 1907 TS 486.”

At page 271 he concluded thus:

“I have come to the conclusion that the court has exactly the same power to remove the respondents from the position of trustees and administrators as it would have to remove them under the common law from the position of executors.”

In *Volkwyn's* case, *supra*, Murray J stated in similar vein at p 462 that:

“This Court, it has been held, possesses under common law, the same power of removal in regard to administrators and trustees, though these offices are not mentioned in the statute, as it has in regard to executors. (*The Master v Edgcombe's Executors* 1910 TPD at p271) The paramount consideration in deciding whether the executor or administrator should be removed is apparently whether his continuation in office will prejudicially affect the future welfare of the trust estate placed under his control”.

Under the common law the first consideration is whether the executor's continuation in office is detrimental to the future welfare of the estate. Sandura JP, as he then was, in *Vermaak & Anor v Nish N.O.* HH 166/88 at p 7 phrased this requirement in similar language when he stated that:

“The acts complained of are such as to stamp the executor as dishonest, grossly inefficient or untrustworthy person whose future conduct can be expected to expose the estate to actual loss or of administration in a way not contemplated by the will”

To the same effect was Solomon ACJ in *Sackville West v Nourse & Anor* 1925 AD 516 with reference to trustees that:

“The continuance of the trustees would prevent the trusts being properly executed or would be detrimental to the welfare of the beneficiaries.”

The test is therefore whether the acts or omissions of the executor were detrimental to the estate property and his continuance in office would prevent the proper execution of his mandate or would be against the interests of the beneficiaries of the estate.

It was an undeniable fact that the second defendant did not act to protect the interests of the estate. He was eager to assist the first defendant divest the stand from the estate. He did not make a diligent search for the relatives of Augustine and Gladys. He perpetuated the lie that Gladys had been appointed an executor. He accepted exhibit 5 without demur. He failed to act with professionalism when the plaintiff confronted him with the allegations that the first defendant was acting dishonestly. He did not alert the Master of the complaint he had received from the plaintiff. He acted with indecent haste to transfer the estate property to the first

defendant. His actions undermined the estate whose only valuable asset was the stand. Even though he had almost completed his task, he had not been discharged by the Master from office.

He would have been a ripe candidate for removal had I not been satisfied that his appointment was invalid by reason of the fraudulent misrepresentation that was perpetrated by the first defendant.

5. Whether the confirmed distribution account is valid or not

The distribution account is grounded in false misrepresentations made by the executor and the first defendant. It is the product of a void agreement of sale. It is built on nothing and cannot exist. I hold that it is invalid and must be set aside.

6. Who is the rightful beneficiary of the estate of the late Augustine Katsiga?

It was agreed by counsel that the late Augustine died intestate. The spouse of the deceased was incorporated as an heir by section 3 of the Deceased Estates Succession Act [*Cap 6:02*]. This repealed the customary law principle that a wife could not inherit from her husband's estate. The other beneficiaries besides Gladys in the present estate were the three minor children. The stand in question was not the matrimonial home where Gladys resided at the time of her husband's death. Gladys and her children were thus each entitled to an equal share in the stand. She could not legally dispose of the children's shares without the authority of this Court.

7. Whether the stand should be transferred to the minor children

The net effect of my findings is that the estate of Augustine should be properly administered by an executor appointed by the Master after a proper edict meeting attended by Augustine and Gladys's relatives. The appointment of the second defendant was invalid because of the misrepresentations that were made by the first defendant. The sale agreement was invalid. The first defendant does not have a share in the estate of Augustine. She would also have no share in Gladys's estate. The child's share that Gladys had in the stand vested in her estate on her death. In terms of section 3 of the Deceased Estates Succession Act her children would be the beneficiaries in her estate of the child share she would receive from her husband's estate.

It would be necessary that the estate of their late mother be registered before the stand can be transferred into their joint names. It seems to me, therefore, that the estates of both their parents should be administered first before they can inherit the whole stand in their names.

COSTS

The plaintiff has succeeded in her suit. It would be inequitable to order the estate to meet the costs of the parties in the light of the perverse conduct of the first and second defendants in the administration of the estate. Rather, the two defendants will be ordered to meet the plaintiff's costs, jointly and severally, the one paying the other to be absolved.

DISPOSITION

Accordingly, it is ordered that:

1. The agreement of sale in respect of Stand Number 6673 Ruwa Township of Dispute Estate entered into between the first defendant and the late Gladys Mutasa be and is hereby declared null and void.
2. The appointment of the second defendant as the executor dative in the Estate of the Late Augustine Katsiga (DR 2653/2003) be and is hereby declared null and void.
3. The First and Final Liquidation and Distribution Account in the Estate of the Late Augustine Katsiga which was confirmed by the Master on 13 March 2007 be and is hereby set aside.
4. It is declared that the minor children Kelvin Philbert Katsiga born 11 June 1992 and Tafadzwa Ignatious Katsiga born 8 March 1997 and Augustine Tinotenda Katsiga born 4 December 2001 are equal and joint beneficiaries with their deceased mother Gladys Mutasa in the Estate of the Late Augustine Katsiga.
5. The first and second defendants shall pay the plaintiff's costs jointly and severally the one paying the other to be absolved.

V. Nyemba & Associates, plaintiff's legal practitioners

Granger & Harvey, 1st and 2nd defendants' legal practitioners.