

DANIEL MAKUWERE  
versus  
LINDA CHIPATON.O  
and  
MASTER OF THE HIGH COURT N.O.

HIGH COURT OF ZIMBABWE  
BHUNU J  
HARARE 9 July 2015, 22 July 2015 and 25 November 2015

### **Opposed Application**

*C Mucheche*, for the applicant  
*Ms L Maurayeni*, for the respondent

BHUNU J: This is an opposed application in which the applicant seeks transfer of Stand No. 576 Helensvale Township Harare measuring 4083 M<sup>2</sup> in extent registered in the name of the late Christopher Mushonga. The first respondent is being sued in her official capacity as executrix of the estate of the late Dr Christopher Mushonga whereas the second respondent is the Master of the High Court responsible for the administration of deceased estates.

The applicant claims to have bought the disputed property from the estate of the late Dr Christopher Mushonga through its erstwhile executor the late Israel Gumunyu. The sale of the property to the applicant is however mired in controversy rendering it virtually impossible to determine the various competing interests on the papers.

The respondent has raised a number of preliminary points objecting to the application both on procedural and substantive grounds. The respondent's counsel submits that the application is fatally defective for want of compliance with the mandatory requirements of s 79 of the Deeds Registry Act [*Chapter 20:05*] which require the applicant to give notice of the intended application to the Registrar of Deeds before lodging an application of this nature.

The section is couched in peremptory terms admitting no exception. It reads:

**“79 Notice to registrar of application to court**

Before any application is made to the court for authority or an order involving the performance of any act in a deeds registry, the applicant shall give the registrar concerned reasonable notice before the hearing of such application, and such registrar may submit to the court such report thereon as he may deem desirable to make.”

It is common cause that in lodging this application which requires transfer of the disputed property through the Deeds Registry, the applicant did not comply with the mandatory requirements of s 79 of the Act. As I have already pointed out, the section is couched in peremptory terms to such an extent that it amounts to a prohibition in case of noncompliance. Thus no one can avoid giving notice to the Registrar of deeds before lodging an application to court involving the performance of any act in the Deeds Registry. Failure to comply with the strict requirements of s 79 therefore, amounts to serious procedural irregularity rendering the application fatally defective and a nullity at law.

This should really be the end of the matter but it is germane to point out that the property is in any case mired in serious controversy of double sales with the other interested parties not having been cited or notified to enable them to defend and protect their rights and interest in the same property. It was therefore remiss of the applicant to bring this application in the face of the master’s report furnished in terms of r 248 of the HIGH Court Rules. The report reads:

“While I may not object to the relief sought by the applicant, I wish to highlight to this honourable Court that the said property is embroiled in an ownership wrangle with a company called Lonro Investments and that it was double sold to Mr and Mrs Mugari by the then executor the late Israel Gumunyu. I however confirm that the Master had granted his consent to sale (sic) in terms of section 120 of the Administration of Estates Act [*Chapter 6:01*]. I may not comment on the actual sale modalities as these are a prerogative of the executor save that at the time of granting the consent to sale, the disputes had not arisen and the property in dispute was said to be an estate asset.”

Seeing that that there were serious irreconcilable factual disputes it was inept for counsel to bring this matter as an application, a procedure wholly unsuited for the resolution of factual disputes. In the result the application cannot succeed.

**It is accordingly ordered that the application be and is hereby dismissed with costs.**

*Matsikidze and Mucheche*, applicant’s legal practitioners  
*Linda Chipato Legal Practitioners*, 1<sup>st</sup> respondent’s legal practitioners