

LAZARUS CHIGORA
versus
LUXMORE CHIGORA
and
FLORENCE CHIGORA
and
WALTER CHIGORA
and
WELLINGTON CHIGORA
and
KUDAKWASHE CHIGORA
(In his personal capacity and also
in his capacity as executor in the
Estate of the late Rosemary Chigora)
and
MASTER OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 29 May 2018, 30 May 2018 & 20 June 2018

Civil Trial

Plaintiff in person
K Zvinorova, for the defendants

MANZUNZUN J: The plaintiff, a self-actor, issued summons against 5 defendants who are all his children and the sixth defendant being the Master of the High Court in his official capacity. The plaintiff prays for judgment against the defendants for; I quote;

- “a) Nullification of Will LW542/12 registered as LAST WILL AND TESTAMENT OF ROSE CHIGORA (Nee KAHARI).
- e) Removal of KUDAKWASHE CHIGORA AND AGNESS KAHARI as EXECUTORS OF THE ESTATE OF THE LATE ROSEMARY CHIGORA – DR2722/16.
- f) Appointment of LAZARUS CHIGORA as EXECUTOR OF THE ESTATE OF THE LATE ROSEMARY CHIGORA –DR2722/16.
- g) Cost of suit.”

This is the relief sought by the plaintiff which I extracted verbatim at the end of his declaration.

The facts of this case are fairly straight forward and are mostly common cause. Rosemary Chigora (hereinafter referred to as the deceased) died on 19 August 2016 and is survived by her husband Lazarus Chigora who is the plaintiff in this case and 5 children who are the defendants in this case. This is therefore an action by a father against his own children. Prior to her death, the deceased and Lazarus Chigora had deep seated matrimonial conflicts. As a result the two had, four or five years before her death, gone into voluntary separation leading to the deceased living at the matrimonial home in Harare and the plaintiff moved to reside at the rural home in Goromonzi.

The estate of the late Rosemary Chigora was registered at the Master's office without the participation of the plaintiff. It later emerged that the deceased was said to have left a Will a copy of which was shown to the plaintiff at the Master's office. He then took exception to the said Will leading to the present action. He was of the view that the purported Will is not genuine and hence the Master should not have treated same as valid. He then raised the issue with the Master who correctly advised him to seek recourse with the courts.

The defendants content that the Will is valid.

There are only three issues for determination by the court as agreed by the parties at pre-trial conference. These are:

1. Whether or not the last will and testament of Rosemary Chigora (nee Kahari) as accepted by the Master is invalid.
2. Whether or not the Plaintiff should replace Kudakwashe Chigora as Executor of the Estate of the late Rosemary Chigora.
3. Whether or not Rose Chigora is Rosemary Chigora.

The parties gave evidence in support of their positions.

THE VALIDITY OR OTHERWISE OF THE WILL

The plaintiff claimed that the Will was invalid in so far as it relates to the deceased. The plaintiff in his evidence advanced reasons why he said the Will must be nullified. The reasons were:

1. The deceased's names were Rosemary Chigora (nee January) as it obtains on the marriage certificate and not Rose Chigora (nee Kahari) as obtained in the Will. In other words what the plaintiff is saying is that the Will in the name Rose Chigora (nee Kahari) is not a Will by Rosemary Chigora and the Master erred in accepting it as such.
2. The children mentioned in the Will as Lucky Chigora and Kuda Chigora cannot be his children with the deceased because his children's names in so far as they relate to those two are Kudakwashe Chigora and Luxmore Chigora.

3. The third ground though not elevated in the pleadings was the fact that he was the surviving spouse who cannot be dispossessed of his rights to inherit by virtue of a Will. Plaintiff spoke very strongly on this point to the extent that it became apparent that it was his primary ground why he fought for the nullification of the Will. He further claimed he was the owner of the house whose ½ share was bequeathed in the Will and yet he was the rightful beneficiary. But this was not the issue before this court hence the court will not delve into whether a Will can take away what one believes to be his rights at law to inherit.
4. The plaintiff also said the Will was suspect when one considers the secrecy surrounding its non-disclosure when one would have expected its revelation at a traditional gathering on 10 December 2016 when the deceased's other property was distributed according to custom. But the non-disclosure of the Will without more does not make it invalid, so I will not consider this piece of evidence any further than a mere mention.

This leaves us with only four disparities in terms of names upon which plaintiff says the court must declare the Will as invalid. I will summarise the incongruences in contrast as follows:

- Rosemary Chigora versus Rose Chigora
- (nee January) versus (nee Kahari)
- Kudakwashe Chigora versus Kuda Chigora
- Luxmore Chigora versus Lucky Chigora.

The plaintiff therefore takes issue with the following names as they appear in the Will; Rose, Kuda, Lucky and Kahari. The conflict surrounds these names and they form the basis of plaintiff's summons.

The defendants do not deny the existence of these discrepancies/disparities but nevertheless insist that despite their presence the Will is valid and was attested to by Rosemary Chigora. It is not in dispute that the deceased's ID, death certificate, and marriage certificate all carry the name Rosemary Chigora. I will turn later to the evidence of the defendants as to why they claim that the Will is valid.

The plaintiff also took issue with the appointment of Kudakwashe Chigora, the 5th defendant as the executor of the estate. He claimed a superior right to be appointed executor by virtue of his position as a surviving spouse. There was every reason why plaintiff wanted the Will declared invalid at all costs because it stood as a barrier to his right to inherit and have the power to administer the estate of his late wife.

At the end of his evidence the plaintiff maintained that Rose Chigora was not one and the same person as Rosemary Chigora.

The plaintiff called a witness, one Gladys Mususa, whose evidence brought no new features. She knew Rosemary Chigora as a friend as they attended church together and was a witness to the couple's marriage. She knew the deceased by no other name than Rosemary Chigora. She also knew her maiden surname as January. She said she did not know the name Kahari. She did not know if the deceased was known by other names other than those she knew. This witness did not say deceased was not known through other names other than those she knew, instead she said she did not know if she was known by other names.

The defendants stood by one story that when the deceased died they were informed by the Funeral services people that deceased left a Will which was lodged in four places including the Master's office. They approached the Master's office and indeed they found it there. They registered the estate.

They said the deceased was also known as Rose the short name for Rosemary. As to the maiden surname Kahari their evidence was that Kahari and January were their mother's family names. To show the existence of these two names within their mother's family they produced copies of their birth certificates with the consent of the plaintiff. These were marked exhibit 1 to 5. In the birth certificates of Wellington, Walter, Florence and Luxmore it was the plaintiff who was the informant. He registered the name of the mother as Rosemary Kahari. In one birth certificate of Kudakwashe, that is where the mother's name is recorded as Rosemary January and the informant was the deceased.

For the plaintiff to then say he does not know the name Kahari is just not being honest with the court. He is the one who registered the name Rosemary Kahari as the mother of his children on the birth certificates with the Registrar of Births.

The defendants also explained how the deceased used to call her children using short versions of their names in other words she would call Kudakwashe as Kuda and Luxmore as Lucky. The use of names in this fashion is very common among many people. The court will take judicial notice of that.

As I earlier on alluded to in this judgment the fight by the plaintiff to have the Will declared invalid stems from what the testatrix bequeathed in that Will as opposed to the discrepancies pointed out by the plaintiff the answers of which he already knows. The plaintiff's fight is to dissociate the Will from the deceased so that the estate proceeds as intestate.

The defendants were able to prove in their evidence many areas which go to show that the Will was attested to by Rosemary Chigora. These are:

- The national identity number is the same throughout all the material documents, namely marriage certificate, death certificate, one child's birth certificate, and the Will.
- Signature on marriage certificate and Will are similar.
- Date of birth of 20 April 1958 is the same on marriage certificate and Will.
- Children mentioned in the Will are those of the deceased.
- Reference to the matrimonial property.
- Reference to the 1st executor one Agnes Kahari who was her sister who died before the administration of the estate.

Apart from the allegations by the plaintiff in evidence as to variance in names, the plaintiff has not challenged the Will on the basis of any breach of formalities as laid down in section 8 of the Wills Act, Chapter 6:06.

The plaintiff failed to justify why the Will must be nullified neither has he succeeded to show that the appointment of Kudakwashe Chigora as executor by the Master was irregular. The defendants through their evidence have shown that Rose Chigora and Rosemary Chigora are one and same person and that she was the testatrix to the Will accepted by the Master. The issue of whether or not, in law, a testator can bequeath certain property is not a matter before this court.

On the whole the Will clearly shows compliance with formalities as required by the Act and the Master correctly accepted it as valid.

In the premise the plaintiff has failed to prove his case on a preponderance of probabilities and must fail. Accordingly;

IT IS ORDERED THAT:

The Plaintiff's claim is hereby dismissed with costs.

Muza & Nyapadi, defendants' legal practitioners