

ISHMAEL MADAMOMBE
versus
WINNIFILDAH MADAMOMBE
and
SIBONGILE MADAMOMBE
and
MOLLY KAPUNGU
and
INNOCENT MADAMOMBE
and
THE MASTER OF THE HIGH COURT (N.O)

HIGH COURT OF ZIMBABWE
CHITAKUNYE J
HARARE 16-17 July, 3 August 2018, 6 March 2019 & 4 July 2019

Civil Trial

Z W Makwanya, for plaintiff
N T Tsarwe, for 1st to 3rd defendants

CHITAKUNYE J. The plaintiff was married to the late Nyembesi Kapungu on the 9th May 1997 in terms of the Marriage Act [*Chapter 5:11*]. Prior to that date they had been living as husband and wife in an unregistered customary law marriage from about 1982. Their marriage was blessed with three children; that is, first, second and fourth defendants. The third defendant, Molly Kapungu, was the late Nyembesi Kapungu's child from an earlier relationship hence applicant's step child.

During the subsistence of the marriage an immovable property, namely stand 9208 Paradise Highfield, Harare was acquired in the name of the late Nyembesi Kapungu through Highfield Co-operative Society (Pvt) Ltd. The plaintiff and defendants are, however, not agreed as to whether the late Nyembesi Kapungu (hereinafter referred to as the deceased) joined the co-operative in her own right or both the deceased and plaintiff joined the co-operative as a couple albeit the name registered was that of the deceased.

The plaintiff averred that he joined the Co-operative Society together with the deceased in 1989 for purposes of acquiring a stand to build a house. However, the Co-operative Society by-laws were such that only one spouse could be registered as member and so, as he was on military assignments most of the time they resolved to register the deceased's name as she

would be available to attend meetings of the Co-operative Society in his absence. As far as he was concerned he was the one who provided funds for joining the Co-operative and for developments on the Stand.

The defendants on the other hand contended that their late mother joined the co-operative in her own right and that she developed the Stand on her own as plaintiff was an irresponsible father. Defendants contended that plaintiff deserted their home and their mother in 2000 only to resurface at her funeral in August 2007. As far as they were concerned the plaintiff was not living at the property in question at the time of their mother's death. Instead plaintiff, after abandoning their mother in 2000, went and begun cohabiting with another woman. Later he secured a plot in Gutu where he was now staying with that other woman. They thus maintained that at the time of their mother's death on 19 August 2007, plaintiff was not living at Stand 9208 Paradise Park, Highfield but had his home at a plot in Gutu.

The stance taken by the parties led to a dispute as to who should inherit Stand 9208 Paradise Park, Highfield, Harare. It was, however, common cause from the pleadings that as at the date of death of deceased, the property in question was under her name hence it was treated as part of her estate. It was also not disputed that the plaintiff was not present with the deceased at the time she died.

After a flurry of exchanges the fifth respondent eventually recommended that the property be inherited by applicant and the parties' children in equal shares. This was premised on the finding that the plaintiff was not living at the property in question immediately before the demise of his wife and so he could not inherit on his own in terms of section 3A of the Deceased Estates Succession Act [*Chapter 6:02*].

This did not go down well with applicant who then approached this court on an application seeking, *inter alia*, an order that:

1. The 5th respondent's decision is hereby set aside
2. The applicant be and is hereby declared the surviving spouse for purpose of inheritance
3. The applicant be and is hereby declared the sole beneficiary of his matrimonial house being stand number 9208 Paradise Highfield, Harare
4. The 5th respondent is hereby directed to do everything necessary to ensure that the applicant is the sole beneficiary in terms of paragraph 3 above
5. The 1st to 3rd respondents to pay the costs of suits.

The first to third respondents opposed the application. When the opposed application was placed before a Judge for hearing on the opposed roll, a determination was made to the effect that there were disputes of facts that could not be resolved on the papers. The application was thus converted to action proceedings and parties were directed on how to proceed. Upon

filing additional pleadings in tandem with an action matter a pre-trial conference was held on the 18th October 2017 after which the issues for trial were identified as follows:

1. Whether or not the plaintiff is entitled to inherit his matrimonial property to the exclusion of his major children as a surviving spouse of the deceased whom he was married to in terms of the Marriage Act [*Chapter 5:11*].
2. Whether or not the plaintiff deserted his matrimonial home or was away from his matrimonial house on duty at the time when the deceased passed away.

Section 3A of the Deceased Persons Succession Act; [*Chapter 6:02*] under which plaintiff intended to exclusively inherit the property in question states that:

“The surviving spouse of every person who, on or after the 1st November 1997, dies wholly or partly intestate shall be entitled to receive from the free residue of the estate-

- (a) The house or other domestic premises in which the spouse or the surviving spouse, as the case may be, lived immediately before the person’s death; ..”

The term ‘lived immediately before the person’s death’ has been interpreted to mean that the surviving spouse must having been resident in that property, if not, there must at least be links that the deceased and surviving spouse still regarded that property as their house in which they lived as husband and wife.

In *Ndoro v Ndoro & Another* HH 198-12 at p 6 GUVAVA J (as she then was) after considering evidence on the circumstances of applicant’s absence from what had been her matrimonial home, concluded that:

“In order for a spouse to inherit the house they must show that they lived in that house immediately before the deceased’s death. The applicant in my view has failed to show that she lived at 4 Mimosa road Kadoma immediately before the death of the deceased. The evidence shows that she had left the property. She was not just staying in Norton because of her work commitments but she had separated from the deceased. However, it was clear from the evidence that during the period February 2008 to June 2009 she passed through the property once for a few minutes in order to collect her belongings. This cannot be said to be living at the residence particularly in view of the fact that she had issued summons for divorce in October.”

It is clear that the physical separation of the parties coupled with the issuance of divorce summons whilst staying away from the house appears to have confirmed that she was no longer living at the house in question.

In *Chinzou v Masomera N.O & Others* 2015 (2) ZLR 274(H) @ 279H upon considering the purpose and background of the legislation in question I stated that:

“..... the intention of the legislature was that a surviving spouse in an intestate estate should not be uprooted from the house or domestic premises he / she lived in immediately before the death of the person, and provided such property formed part of the deceased person’s estate.”

In my view, it may not always be that one must be physically present at the premises as living together does not necessarily mean physically present. Thus in instances where a spouse is away on employment, education or such other causes but for all intents and purposes the spouse still considers the premises as the matrimonial house where when not away on the aforementioned reasons, that is the premises he or she comes to as home, such spouse would still be considered as living at the premises.

It is apparent from the above that the circumstances of the spouse's absence from the property in question must be examined to ascertain if they lead to a conclusion that the spouse was not just temporarily away but had intention to permanently be away.

It was upon plaintiff to satisfy court that for the period he was not on deployment, he was resident at Stand 9208 Paradise Park, Highfield and so court should find that though he was not physically present at Stand 9208 Paradise Park Highfield on the date of the demise of the deceased, he should be held to have been living at that address immediately before deceased's death as his absence was due to work commitments.

The plaintiff gave evidence and called two witnesses. The plaintiff's evidence was to the effect that in 1989 he was on military assignment in Mozambique. One weekend he came home and his late wife, (the deceased), advised him about a housing co-operative. They agreed to join the co-operative. They were, however, advised that the co-operative rules were such that only one spouse could be registered as a member. They agreed to have the deceased's name registered as she was the one who was available to attend meetings of the co-operative. She was, however, to pay the cooperative dues using his bank account as she was unemployed.

In 1996, they were then allocated the house in question. At that time it was a three roomed house. The following year they solemnised their marriage in terms of the Marriage Act, (*Chapter 5:11*).

The plaintiff averred that he continued his military service and in that vein in 1999 he was deployed to the Democratic Republic of Congo (DRC). He left his bank card with his wife to continue with payments of the co-operative dues and buy building materials for the extension of the house to 6 rooms. In 2002 he returned from DRC and continued staying with his family until 2007 when he was deployed to Nyamapanda Border Post. It was whilst he was at Nyamapanda border Post on duty that his wife passed on.

As far as he was concerned, therefore, his absence from the matrimonial home at the time the deceased died was because he was on duty and not that he was no longer living at the

matrimonial house. In support of the assertion that he was indeed deployed at Nyamapanda plaintiff tendered a letter from the army dated 7 March 2017 authored by one R L Chikwari as exhibit 2. The letter was to the effect that plaintiff was employed by the Zimbabwe National Army from 1980 to 2007 and that during the period April 2007 to October 2007 he was deployed at Nyamapanda Border Post.

The objective of the exhibit was to buttress plaintiff's argument that his absence from home at the time the deceased passed on was due to employment commitments and so he cannot be said not to have been living at home immediately before her death. Another letter was also furnished to court from the Army Headquarters. That letter dated 4 October 2018, by M Chinhondo, was to the effect that plaintiff was employed by the Army from 1 August 1979 to 31st October 2007. It also confirmed that during the period April 2007 to October 2007 he was deployed at Nyamapanda Border post and that he only returned to his Unit in Harare upon expiry of his six months deployment term on 31st October 2007. Though the above letters were intended to confirm plaintiff's whereabouts at the time of his wife's death, I am of the view that the letters were not adequate to establish that plaintiff was living at the property in question. The letters only covered a period of 6 months yet the period plaintiff was said to have been away prior to deceased's death is about 8 years.

The plaintiff in his evidence insisted that other than for the times he was on army deployment, he was always at home with the deceased and his family. He denied that he had moved on and married another woman. He equally seemed to deny setting another home with another woman in the period in question. His evidence in this regard was however undone when he was cross examined about this other woman. Under cross examination plaintiff had the audacity to deny coming with his 'wife' at the edict meeting in this manner:

“Q: is it not correct that in September 2011 you came with the wife you had been staying with for an edict meeting at the Master's office?

A: she never came what interest would she have?

Q: Your brothers-in-law complained bitterly that you had forsaken your wife and started staying with Time Chikosi?

A: is Time Chikosi someone's name? I know nothing about that name. Who is Time Chikosi?

Q: I put it to you that this is the woman you were staying with at Gutu Plot since 2000 to 2007.

A: I know nothing about Time Chikosi. My current wife I married her in 2009 and started living together at the plot.

Q. the person who recorded the minutes at the edict meeting recorded Time Chikosi as your wife.

A. I do not know that.

Q. At page 75 (exhibit 11) look at the attendance list do you see the name Time Chikosi there?

A. I do not know that name can we have some other person.

Q. what is written against Time Chikosi?

A. it is written 'wife to Ishmael.'

Q. and it is you Ishmael?

A. yes."

Despite confirming that pages 75 and 76 of the record are a recording of the edict meeting plaintiff persisted in denying that he knew Time Chikosi and that he had brought her to that edict meeting. The plaintiff could, however, not proffer any reason why the Master could have recorded a name of a woman and proceeded to indicate that the woman was plaintiff's wife if he had not brought such a woman and had not indicated that she was his wife. This exposed the plaintiff's penchant for lying.

When asked why the deceased had recorded on the Information sheet exhibit 15 and on the lease document at page 77 only her name and those of her children to the exclusion of plaintiff, if he was the one who had in fact recommended that they use the deceased's name and he was the provider of the funds, plaintiff had no answer. Equally deceased had in fact indicated that she was single on the lease document. On exhibit 15 she endorsed that the property was not a result of the marriage but it was hers and for the benefit of the children only. The plaintiff could not provide an explanation for deceased to have done all this if he was there at home and was the provider of the funds.

To buttress his story plaintiff called two executive committee members of Highfield Cooperative Society. Their evidence was basically on the manner in which the Cooperative operates. The first to testify was Power Chikonzo. His evidence was to the effect that he joined the co-operative at its inception in 1989. He was an ordinary member and only became an executive member in the capacity of Chairman in November 2010. His evidence was to the effect that for married couples, only one of them could register as member and the other would be recognised as a beneficiary. In the event of the one registered dying the surviving spouse would automatically take over as member. In this case therefore when the deceased died plaintiff was to automatically take over as member. As far as he was concerned though plaintiff had not been registered as member during the lifetime of his wife, he was nevertheless recognised as a beneficiary.

Under cross examination the witness confirmed that he had not brought the co-operative by-laws he referred to as conferring beneficiary status to plaintiff and as providing that a surviving spouse automatically takes over when the one registered as member dies. Further cross examination confirmed that the witness was not aware if such terms were in writing.

When shown exhibit 15 the witness confirmed that in terms of that document the deceased indicated that she joined the co-operative on her own, was paying on her own and it was for the benefit of her children only.

The witness was also heard to say that the co-operative by-laws forbade a spouse member from nominating any other person other than his/her spouse to take over upon his/her death. This evidence contradicted exhibit 15 which clearly showed deceased excluded plaintiff and included her children as beneficiaries only. On the same aspect the witness' evidence was contrary to by-law 13 which shows that a member is not restricted to nominate his/her spouse but can also nominate a child to take over their shares on their demise.

By- law 13, of the Co-operative Society's By-Laws tendered into evidence provides that:-

“13(1) Any member may, if he wishes by notice in writing signed in the presence of two or more witnesses, nominate a person to whom, on the member's death, the society shall transfer his shares and other interests in the society.
Provided that the nominee shall not be any person other than the spouse or child of the member if any of the children or the spouse have not been adequately provided with accommodation by the member. ...”

By virtue of the above a member is not restricted to nominate only their spouse, but can nominate a child as well.

Where a member has not nominated anyone by-law 13 (3) provides that:

“In the event of a member becoming insane or dying without having appointed a nominee or if such nominee is dead, missing or cannot otherwise be traced within a period of the member declared insane in terms of section 28 of the Mental Health Act, November 16 of 1996, his interest and share in the society shall form part of his deceased estate.”

The above by-laws are in tandem with section 74 of the Cooperative Societies Act *Chapter 24:05* on the nomination of nominees by a member and on the fact that if no one was nominated that member's share or interest go to his estate.

When this witness was referred to these provisions he could not persist with his contention that a surviving spouse automatically assumed a deceased member's shares even if he had not been appointed as the nominee. When the contents of exhibit 15 were read together with the above provision the witness was simply dumbfounded by the import of that exhibit and the lease document which clearly showed exclusion of the plaintiff and inclusion of children as beneficiaries. This tended to prove that the witness was not being truthful on how he said the deceased had joined the co-operative and the role he said plaintiff had played in all this.

The next witness was Daniel Bowa. He was elected into the Executive Committee as treasurer of the Co-operative in November 2010. He testified that he joined the Co-operative in 1994. His evidence was similar to Power Chikonzo's in material respect. His evidence on how the Co-operative functioned and who was to take over shares of a deceased member was contradicted by the by-laws and the Co-operative Societies Act, section 74 already alluded to. The witness could not deny that in terms of exhibit 15 the deceased indicated how she joined the cooperative and the fact that the property belonged to her and her children. This aspect of the exhibit contradicted the witness' evidence on what he said the Co-operative by-laws stated.

In as far as the two witnesses are Executive Committee Members of the Co-operative (Chairman and Treasurer) one would have expected them to produce the correct co-operative information sheets or lease documents if the ones tendered by second defendant were not the correct ones. This, the witnesses did not do. Their half-hearted misgivings on how second defendant was furnished with the documents did not mean that the documents were not a correct reflection of the records pertaining to deceased's joining of the co-operative.

I am of the view that the plaintiff's version as testified to by plaintiff and his witnesses did not tell a true story. This is why his version was not in sync with documents tendered.

The second defendant gave evidence and called two witnesses. The second defendant's evidence was to the effect that the plaintiff left Stand 9208 in 2000 after he had come back from army deployment in DRC. At that time plaintiff had a lot of money earned from the DRC mission. At the time plaintiff left home he intimated that he was going to find his own house as stand 9208 belonged to his wife. It was her evidence that she had witnessed misunderstandings in the home between plaintiff and the deceased during which plaintiff would allege that since deceased was saying that this was her house he was going to look for his own house. It was as a consequence of these misunderstandings that plaintiff eventually left Stand 9208. After he left she learnt that he was staying in Kuwadzana and later moved to Mufakose. In the process he started living with another woman as his wife.

The second defendant also testified that after leaving home in 2000 the plaintiff was no longer providing for the family such that her mother on at least two occasions applied for maintenance from the Maintenance Court. In this regard she referred to exhibit 9, summons for maintenance dated 15 April 2002 and exhibit 10 being another application for maintenance M 210/2005 dated 23 August 2005. She however indicated that due to some challenges the mother did not pursue the applications to their logical conclusions. It was also her evidence earlier on that in 2000 she was in form 3 and plaintiff was not paying for her school fees. At some point

her mother sent her and Winnifildah to see their father at his workplace for financial assistance. They proceeded to Cranbourne barracks where plaintiff was based and upon informing him of their financial plight *vis-à-vis* funds for food and school fees plaintiff referred them to their mother and did not give them anything. The second defendant was categorical that plaintiff virtually abandoned the family and never came home. He only surfaced at the deceased's funeral. As far as second defendant was concerned therefore plaintiff was not living at 9208 at the time of the deceased's death. She instead contended that he was living with his new wife at a plot in Gutu.

I am of the view that second defendant's version is more credible than plaintiff's. As already alluded to above the two letters plaintiff sought to rely on do not state where plaintiff would be when he was not at his station of deployment. The second defendant on the other hand clearly stated that she had to go and see plaintiff at his workplace because he was no longer coming home and was no longer providing for the family. Had plaintiff been going home after work surely second defendant would not have visited him at his workplace. I did not hear plaintiff to deny that first and second defendant did indeed visit him at his work place seeking financial assistance for their schooling and other family needs at home. Had he been home as he alleges such a visit would not have been necessary.

The plaintiff could also not state when exactly he had left Stand 9208 for Nyamapanda and from where. It was clear that he left for Nyamapanda from some other place. It is in this respect that second defendant contended that he left from the place he was staying with his new wife and not from Stand 9208 Paradise Park, Highfield.

Neverson Kapungu gave evidence for the second defendant. He was a brother to the deceased. His evidence was that he used to visit his sister's residence and would find plaintiff there prior to 2000. However from 2000 whenever he visited he would not find plaintiff home. When deceased fell ill he had to take her into his house as plaintiff was nowhere to be found. The deceased spent about six months at his house before she died on the 19 August 2007. It was his evidence that when deceased died he indicated to the relevant officials that he did not know where plaintiff was and this led to an issuance of a death certificate indicating that deceased was divorced. The witness denied being the one who phoned plaintiff to inform him about his wife's death. He categorically stated that he could not have done so as he did not even know plaintiff's phone number.

In cross examining this witness I did not hear plaintiff to deny the assertion that as from 2000 whenever the witness came to Stand number 9208 Paradise Park he would not find

plaintiff. I also did not hear him to deny that the witness had indeed been a frequent visitor to their home. Further, I did not hear plaintiff to insist that it was this witness who had informed him about the deceased's death. Clearly the witness gave his evidence well.

The last witness for the second defendant was Philip Mahoso, an ex-soldier. The import of his evidence was to cast aspersions on the documents plaintiff produced as evidence that he was on deployment at Nyamapanda. In this regard the witness testified on the documents used when soldiers are deployed and that the letter by Chikwari was not proper as it ought to have emanated from the ZNA headquarters. I am however of the view that not much turns on this witness' evidence. His evidence was as an ex-soldier who retired in 2013 and not as someone who had been employed in the particular department that dealt with deployments or with responding to queries on deployments. His was thus a general view of what he believed was the procedure at the Army. In any case his reservations on the letter by Chikwari were clarified by the 2nd letter by Chinhondo from Army Headquarters.

After a careful analysis of the evidence by the parties and their witnesses I was convinced that plaintiff's version is not probable from a number of features.

For instance, it was plaintiff's evidence and that of his two witnesses that the Highfield Co-operative Society by-laws were such that only one spouse would be registered as member whilst the other spouse was to be a beneficiary. However both plaintiff and his witnesses did not tender such by-laws which prohibited the registration of two spouses or even the recording of the other spouse as a beneficiary. The two witnesses from the Co-operative Society were elected into office in November 2010 well after the co-operative had been formed and the deceased had died. As executive committee members one would have expected them to have tendered records from the co-operative such as the by-laws and documents relating to the property in question. Instead of bringing such documents to confirm plaintiff's stance, the witnesses chose to come and repeat what plaintiff had told them.

In this regard an examination of Co-operative Society's documents tendered by defendant exposed plaintiff's lack of probity. It was the plaintiff's evidence that the deceased and himself made a decision to have the wife's name registered as member whilst he retained position of beneficiary. Since this was an agreement one would expect such to be reflected in the documents signed at the cooperative but alas no such documents were tendered. Instead second defendant tendered documents which showed a clear exclusion of plaintiff from membership or position of beneficiary. The plaintiff and this two witnesses alluded to the fact that upon registering there is an information sheet where members enter their details and their

beneficiaries. Somehow the two witnesses did not produce such a sheet in respect of this case. No plausible reason was given for such failure. Upon being shown exhibit 15 the witnesses confirmed that it was the information sheet they were referring to but they did not know how second defendant got a copy thereof. That exhibit 15 contains the member's details, In this case deceased's details. On the next of kin are recorded the names of her children- Molly Kapungu, Sibongile Mercy Madamombe, Winnifildah Madamombe and Innocent Madamombe.

On remarks she wrote words to the effect that: 'I joined the cooperative in 1989 I was paying \$ 100 per month. I was allocated in December 1996. I did not have a marriage certificate. I got the marriage certificate on 9 May 1997. It is not for the marriage certificate it is mine. It is for my children please.'

This document was completed and signed on 10 May 2003.

Another document related to the stand is the lease on page 77. This documents shows the deceased as lessee at Cottage 9208. She is recorded as self-employed and single. In it are the names of her children. As with exhibit 15, the plaintiff is not mentioned anywhere in that lease document titled Part 1 Details of lease. This is a document from the co-operatives records but as with exhibit 15, the two witnesses for plaintiff had no such document.

The above two documents clearly show the exclusion of plaintiff from the property in question by the deceased. Such exclusion was not consistent with plaintiff's argument that they had joined the cooperative together and he was the provider of the funds for all payments required.

The second defendant's version on the other hand is credible. It is in my view clear and straight forward. The plaintiff left home as a result of quarrels with the deceased which quarrels plaintiff ascribed to deceased being the owner of the house and so he left to find his own. That aspect is supported by the information sheet exhibit 15 and the lease document. As stated above these documents exclude plaintiff from being beneficiary or nominee to deceased's shares in the cooperative. In those documents deceased clearly stated that she joined the co-operative on her own and was making payments on her own and that the property was for her and her children only.

It was also second defendant's evidence that after leaving home in 2000 plaintiff never came back till 2007. He instead moved on with another woman, she later learnt to be Time Chikosi. Though she had no first-hand information on how many houses plaintiff moved, she, nevertheless, stated that at the time of deceased's demise she heard that deceased was living at

a Plot in Gutu. The plaintiff himself confirmed that he had in fact acquired a Plot but this was in Chivhu and not in Gutu. Though he denied that he had moved on with Time Chikosi as his new wife, the minutes of the edict meting confirmed second defendant's evidence in this regard. The plaintiff's denial of Time Chikosi only served to show that he had something to hide as regards this woman. It is unfathomable that the Master would have brought up such a name on his own and ascribed that person to be plaintiff's wife if plaintiff had not brought such a woman with him and had not informed the Master that she was his wife. In fact the second defendant's assertion that plaintiff's brother in law complained bitterly about the presence of this woman makes probable reading given the circumstances of the case.

The probability is that plaintiff had moved on with another woman and had established another home at the Plot in Chivhu with this woman. He had effectively ceased to be resident at 9208 Paradise Park Highfield when he deserted the place in 2000.

As has already been alluded to the second defendant's version that plaintiff left the property in question in 2000 is more probable than plaintiff's version that he never left the property serve when going on military deployments.

This view is also buttressed by the fact that after the burial of the deceased plaintiff left only to resurface in about 2011 claiming the property. The fact that the dispute only arose so many years after deceased's death tends to support the view that Plaintiff was not resident at the property. I am of the view that had he been resident there, the wrangle over inheritance would have erupted soon after he came from his military deployment in 2007. It is apparent that the plaintiff only begun claiming the property after the Cooperative through his witnesses had registered his name against the property well after deceased's death. His witnesses confirmed that they were only voted into the executive Committee in November 2010 and it is after that that they effected the change of names. They were thus not privy to the state of affairs at the time of deceased's demise. In effecting this change they did not consider what deceased had stated in the information sheet and the lease documents referred to above. Instead they just considered that he was a surviving spouse and so he should take over the deceased's share. Unfortunately that is not what the cooperative by-laws and the Cooperatives Act section 74 provide. Their conduct was clearly a bid to clandestinely assist plaintiff in his dispute with the defendants.

I thus find that plaintiff was not living at Stand 9208 Paradise Park Highfield immediately before deceased's death. He had settled somewhere else at a plot in Chivhu. In

the circumstances, it cannot be said that he still retained his links to the premises in question to entitle him to exclusively inherit the same. Applicant had clearly moved on during the latter part of deceased's life and had established another home such that he was not living at the premises in question. It cannot be said by any stretch of imagination that by denying him exclusive inheritance plaintiff will be uprooted from a home or domestic premises he was resident.

I am thus of the view that the plaintiff cannot exclusively inherit stand 9208 Paradise Park Highfield in terms of s 3A of the Act. This is a property he should inherit together with the deceased's children in equal shares.

Accordingly therefore the plaintiff's claim is hereby dismissed with costs.

Makwanya Legal Practice, plaintiff's legal practitioners
Tadiwa and Associates, first to third respondents' legal practitioners