

KUMBIRAI MUGWAZIWENDOTA N.O. (*In his capacity as Executor of Estate Late Makarudze Zizhou*)

versus

Mavis Muzenda

HIGH COURT OF ZIMBABWE

MAFUSIRE J

HARARE, 19 & 21 June 2018; 16, 17 & 19 July 2018; 27 August 2018 & 14 November 2018

Civil trial

Ms Y. Chandata, for the plaintiff

Ms L. Rufu, for the defendant

MAFUSIRE J:

[a] *Synopsis*

[1] The trial before me was a conflict among family members over inheritance. There is credence in the Shona saying, “*Pfuma yenhaka inoparadza ukama!*” Literally, inheritance destroys family ties.

[2] The defendant was a daughter of the Late Makarudze Zizhou (“*the deceased*”). In court the contest pitted her on the one side, with support from her mother, Esther Zizhou (“*Esther*”) and an official from the Mwenezi Rural District Council (“*Mwenezi RDC*” or “*the rural council*” or “*council*”), one Albert Ndlovu Chivanga (“*Albert*”). On the other was the plaintiff, the executor dative to the estate of the deceased.

[3] Notionally the executor represented the estate. But behind him were several other family members. The members of the family that testified on behalf of the executor were Rangarirai Zizhou (“*Rangarirai*”), a half-brother to the defendant; Tamburai Chaminuka, nee Zizhou (“*Tamburai*”), a half-sister to the defendant, and Theresina Zizhou (“*Theresina*”) a step-mother to the defendant.

[4] Although from the family only Esther testified for the defendant, it was evident the fault lines ran deeper. It was a divided and very large family. At its peak there were eight (8)

wives (or mothers) and seventy-six (76) children. Berita Zizhou (“**Berita**”), now deceased, was the deceased’s first wife. Tamburai was the deceased’s first child with Berita. Rangarirai and one Nhamo, also now deceased, were Berita’s other children. Esther, the defendant’s mother, was the second wife. Theresina was the third. The rest of the wives and children are not relevant to this judgment. At the time of trial, death had robbed the family of three (3) wives and eight (8) children, thus leaving five wives and sixty-eight children surviving.

- [5] At the heart of the dispute were two pieces of land at a rural business centre called Neshuro in Mwenezi RDC in the province of Masvingo (“**Neshuro**”). In court the properties were described as Stands 22 and 23 or 503 and 504 respectively. The plaintiff wanted them declared part of the estate. The defendant said no and claimed that they had been donated and ceded to her by the deceased during his life time and that therefore they belonged to her in her own individual right. The estate vigorously disputed both the donation and the cession.
- [6] The trial before me was not the first time the courts had been called upon to adjudicate over the dispute, or some facets of it. I suspect this judgment shall not be the last word either.
- [7] The deceased died on 19 September 2001. It appears soon thereafter the dispute began to simmer, given that as early as July 2002, the Mwenezi RDC, the local authority under which the properties lay, was driven to write two letters in the same month advising its parent ministry, Local Government and National Housing (“**the Ministry**”), of the alleged cession. Then in 2007 the Provincial Magistrate for Masvingo wrote to council, *inter alia*, formally advising of the existence of the dispute and calling upon it to supply certain information and documents. Litigation started in earnest in September 2013 with the executor claiming the property for the estate. An aspect of the dispute relating to rentals over the properties went on appeal to the High Court, culminating in a judgment of this court in November 2016. For this case the summons was issued in December 2016.

[8] The above narration is the snapshot. Below is the detail. Much of it was common cause or uncontentious.

[b] *Background*

[9] By general standards the deceased had been a wealthy entrepreneur. Among other things, he ran a chain of retail shops; liquor outlets and grinding mills at several business centres throughout Mwenezi and Chivi districts in Masvingo Province. He died intestate.

[10] On the aforesaid properties the deceased had constructed, among other things, a general dealer's shop; an eating house; a liquor outlet and a residence.

[11] Originally the two stands were part of a single composite property but comprising four contiguous or transmittable pieces. The single property was initially denoted as Stands 20 – 23, understood to be standing for Stands 20, 21, 22 and 23, inclusive.

[12] The type of legal interest or right the deceased had in the property with the Mwenezi RDC *ought* to have been leasehold, as opposed to direct ownership, or freehold. I say “*ought*” because it was by no means clear what kind of title he had, and this was part of the contest.

[13] Subsequent re-planning by the local authority or central government saw the single property being split and some two stands from that split being consolidated. They were all re-numbered anew. What was Stand 22 was split into two and re-numbered Stands 501 and 502. The rest were re-numbered Stands 503 and 504. Evidently, this was a recipe for confusion, and for conflict.

[c] *Outline of the dispute*

[14] The defendant asserted that sometime in 1990 the two properties had been donated to her by the deceased for her personal benefit. She said on 15 January 1990 a formal cession was executed between the deceased and herself at Mwenezi RDC in the presence of Esther and Rangarirai both of whom had signed as witnesses after she had duly paid the cession fees.

[15] On the other hand, the estate, and those behind the executor, denied any such donation or any such cession. Rangarirai denied ever going to Mwenezi RDC for the purpose of the alleged cession, let alone appending his signature on any such document.

[16] The plaintiff sought an order to have the two stands declared part of the estate and liable for distribution like all the other assets of the estate. The defendant not only sought to have the action dismissed, but also she made a counter-claim for payment of the sum of US\$18 200 (eighteen thousand two hundred United States dollars), and interest thereon, as a refund of the rentals unlawfully collected by the executor from the tenants occupying the property for a twenty-six month period stretching from September 2014 to November 2016. Both parties claimed costs of suit, the defendant on an attorney and client scale.

[d] *Issues for trial*

[17] The joint pre-trial conference minute listed the issues for trial as follows:

- “(1) Whether or not this matter is *res judicata*, that is ownership of the property in issue Stands 22 and 23 Neshuro Growth Point, Mwenezi – onus is on defendant.
- (2) Whether or not Stands 22 and 23 Neshuro Growth Point, Mwenezi belong to the estate of the late Makarudze Zizhou – onus is on the plaintiff.
- (3) Whether or not defendant is entitled to recover the sum of US\$18 200.00 – onus is on the defendant.”

[18] At the commencement of the trial, the defendant abandoned issue No 1. Obviously of the remaining issues, No 2 was the whole case. It was the sole reason for the trial.

[e] *Onus*

[19] The deceased established his business empire in the late 1950s or early 1960s. The disputed property was acquired in the 1970s. Although whether or not the deceased had a formal lease with the Mwenezi RDC in respect of the two properties was thrown into the fray as part of the contest, I need not be detained by this. This was rural land. In terms of the Communal Land Act, [Cap 20:04] communal land is vested in the

President who is to permit it to be occupied and used in accordance with the Act¹. A rural district council is empowered, with the approval of central government, through the line ministry, to issue permits authorising any person to occupy and use any portion of communal land within its area of jurisdiction, for, among other purposes, hotels, shops or other businesses². I take judicial notice of the fact that in practice, rural district councils issue standard term leases with an option to buy to the beneficiaries of such permits.

[20] Therefore, if at all relevant times the deceased was the lessee or permit holder in respect of the disputed property – and this was not, or could not be, in contest – and if the defendant was asserting that at some stage before his demise he had donated and ceded to her his rights, title and interest in those properties – which of course he could legitimately do – it means that the true onus lay on her. The plaintiff said the donation and cession never happened. She claimed they did. She who alleges must prove.

[21] Thus, in spite of the fact that on the joint pre-trial conference minute the onus on issue No 2 was said to lie on the plaintiff, in reality it was for the defendant to prove the donation and cession. In this regard, it is logical that the assessment of the evidence should start with the defendant's case.

[f] *The defendant's case*

[22] From the pleadings and the *viva voce* evidence led from her and Esther, the summary of the defendant's case was this:

- Sometime in 1990 the deceased donated the properties to her. The properties were just two of numerous other properties over which the deceased had rights and interest in throughout the districts of Mwenezi and Chivi. At that time, she was staying with her family in Bulawayo. The reason for the donation was so that the defendant could look after her mother.
- After the donation the deceased arranged with herself, Rangarirai and Esther to meet at Mwenezi RDC for the purpose of executing the formal cession. They all did meet on the appointed date, 15 January 1990. The formal cession document was executed whereby the deceased ceded and transferred his rights and interest in the property to

¹ Section 4 of the Communal Lands Act, *Cap 20:04*

² Section 9 of the Act

her. He signed. She accepted the cession. She signed. Rangarirai and Esther witnessed the cession. They too signed. She paid the cession fees and was given receipts for it. The council officials retained all the documents explaining that they had to be referred to the Ministry in Harare for approval. She went back to Bulawayo.

- By arrangement with the deceased, the defendant would start running the businesses and occupying the properties only after his demise. He died in 2001. In July 2002 she submitted to the Mwenezi RDC a formal application for the standard lease agreement. It was eventually approved. The formal lease agreements were both dated 8 December 2006 in respect of Lease No R/C013/06 for Stand 503, formerly Stand 22, and Lease No R/C014/06 for Stand 504, formerly Stand 23.
- Even though the formal leases were executed only in December 2006, as far back as 1990 she was already appearing in the records of the Mwenezi RDC as the lessee. Prior to that, it was the deceased who was in the council's records as the lessee.
- The plaintiff was not the first executor to the deceased's estate. He was administering the property through a power of attorney granted to him by one Isaac Franklin Muzenda³. But even this Mr Muzenda was not the first executor. The first executor was a Mr Jonas Dondo of an entity called Polka Executors Services ("*Polka*").
- After their own investigations, Polka established that the deceased had indeed donated the disputed properties to the defendant and that therefore they did not belong to the estate. Some family members were unhappy with that finding. Rangarirai in particular could not stomach the fact that the deceased had seen it fit to donate his assets to a mere girl child in place of male children. At one point Rangarirai had tried to talk the deceased out of the donation but the latter had stuck to his word. Rangarirai and other family members put pressure on Polka to relinquish their administration of the estate.
- The deceased's donation to her was nothing unusual. Before that he had donated several other business premises to several other family members. Those donations had been to a sister of his, a Mrs Martha Mahachi ("*Martha*"); his first wife, Berita; his first born child, Tamburai; his first born son, Rangarirai, and his other son, Nhamo.
- The defendant was running the disputed properties from the time of the deceased's death until about October 2013 when Mr Muzenda applied to the magistrate's court to reclaim the properties for the estate. Although she contested the claim and lost, it turned out that the application and the resultant order granted were of no concern to her because they were in respect of shops situate on Stands 20, 21 and 25 Neshuro Township over which she had no interest. The properties donated and ceded to her were Stands 22 and 23, now Stands 503 and 504 respectively.
- She continued to operate the businesses on the disputed properties. Mr Muzenda instructed her tenants in those properties to direct their rent payments to the estate account with his firm. This prompted her to apply for an interdict in the magistrate's court on the basis that the estate had no right to such rentals as the properties belonged

³ Now Hon Muzenda J.

to her in her own right and that the previous court order had referred to totally different premises.

- She lost the interdict application but appealed to the High Court at Harare⁴. As the appeal was pending, Rangarirai forced the tenants to make their rental payments to the estate.
- The High Court at Harare allowed the appeal in November 2016. Thus the counter-claim for rent in the sum of \$18 200 was for the period September 2014 to November 2016 because even though her interdict application had initially been unsuccessful, she had eventually succeeded on appeal, meaning that all along the estate had had no right to the rentals.
- The Mwenezi RDC and its parent ministry had consistently maintained that according to their records the deceased had, during his life time, ceded the disputed properties to the defendant, but that no formal leases had ever been executed in favour of the deceased because when he had acquired them the land was rural property but that at the time of the cession the land had become State land. A re-planning exercise had resulted in the pieces of land being given new stand numbers. Lease agreements had then been executed directly into the name of the defendant. The defendant's witness on this aspect of her case was Albert who was the new Chief Executive Officer of council.

[g] *The defendant's evidence*

[23] In support of the *viva voce* evidence, the defendant tendered or referred to a number of documents the most relevant of which were the following:

- A lease card, as proof that the records at Mwenezi RDC showed that from 1987 to 1990 the deceased was the lessee, but that from that year onwards she was the lessee.
- Several letters and an affidavit from both the Mwenezi RDC and the Ministry in which the consistent message was that according to records the disputed properties belonged to the defendant; that they had once been owned by the deceased who had subsequently ceded them to the defendant at a time when Neshuro was being changed from being a communal land business centre to a State land business centre, with the result that no formal cession had been processed from the deceased to the defendant.
- A First and Final Liquidation and Distribution Account drawn up by Mr Muzenda in January 2007 in the course of his administration of the estate which excluded the disputed properties from the inventory in recognition of the fact that as executor, he had been satisfied that they did not belong to the estate.
- A letter from Polka in January 2007 to the Assistant Master of the High Court agreeing to the removal of the disputed properties from the list of estate assets.

⁴ Through a law firm called *Muzenda(!) & Chitsama Attorneys*

- A judgment of this court under HH 425-17 allowing the appeal by the defendant of her interdict application, a portion of which judgment stated that the defendant had lease agreements with the Mwenezi RDC in respect of the disputed properties; that the rural council recognised her as the leaseholder; that this was borne out by the affidavit deposed to by its Chief Executive Officer; that this put the issue to rest and that the plaintiff had no documents to support his assertion that the properties belonged to the estate.
- The lease agreements R/C013/06 and R/C014/06 aforesaid between the Mwenezi RDC and the defendant in respect of Stands 503 and 504 respectively.

[h] *The plaintiff's case*

[24] The plaintiff's case was told by the executor himself; Rangarirai, Tamburai and Theresina. It was this:

- When he assumed office as executor, the plaintiff discovered something irregular in the registration of the disputed properties in the name of the defendant. Among other things, not only was there no evidence of the donation and cession the defendant claimed, but also the records showed that the defendant had applied for the lease agreements only after the death of the deceased, twelve years later. Furthermore, the defendant claimed to have received the donation and taken cession in 1990 yet until his demise the deceased had continued to run his businesses as before.
- Whilst it was not unusual for the deceased to donate and transfer his interests in some of his properties, whenever he decided to do so he would convene a gathering of key family members at which he would announce his intention and discuss the matter. The donation and transfer to Martha had been in 1968; to Tamburai in 1985, and another one to her around 1988 to 1990, and to Nhamo in 1988. In all these, formal cessions had been executed at the rural district councils concerned.
- The deceased had founded and grown much of his business empire with Berita, his first wife, before he had gone on to marry the other wives. The business at Run'ai had always been operated in Berita's name.
- The donations and transfer to Tamburai of the business at Mapanzure in 1985, and the other one at Lundi between 1988 and 1990, had been to appease Berita for the deceased having gone on to marry several other wives after her when it had been the two of them together who had started and grown the business empire. Tamburai had in fact paid the deceased an amount in the sum of \$3 500 for the stocks-in-trade.
- As regards Rangarirai, actually the deceased had not donated a property to him as such. The shop Rangarirai was running was the same business, situate at Sarahuro, the deceased had donated to Martha in 1968. In about 1998 Martha had decided to dispose of that business due to her old age. The family had agreed Rangarirai could buy it off her.

- None of the family members except the defendant and her mother were aware of any family gathering convened by the deceased, as was the custom, for the alleged donation to the defendant. Rangarirai denied that he had been to Mwenezi RDC for the purpose of the cession as alleged by the defendant. He denied he had at any time expressed misgivings about the deceased donating his assets to a mere girl child.
- The purported lease agreements R/C013/06 and R/C014/06 were irregular and therefore a legal nullity in that they were executed well after the death of the deceased in respect of property that properly belonged to the estate.
- There was corruption at Mwenezi RDC. The evidence from council was unreliable. The defendant had connived with some council officials. Some important documents had been expunged from the records.
- In claiming a refund of the rentals in respect of the disputed properties, the defendant was merely trying to exploit an obvious mistake by the executor in the drafting of the court papers in the magistrate's court which had referred to Stands 20, 21 and 25, instead of Stands 22 and 23. It was this same mistake that had led the High Court at Harare in the interdict appeal to award her the right to the rentals in respect of the disputed properties. Originally the deceased had acquired a single composite property at Neshuro before the re-planning and re-numbering process. The defendant was not referring to any property as having been donated to her by the deceased other than those same sub-divisions. In the previous court cases, it was clear that the dispute had been in relation to those properties despite the fact that the court papers might have mistakenly referred to incorrect stand numbers.
- At about the time of the alleged donation to the defendant, the deceased had faced serious problems with income tax authorities for non-payment of tax. Legal advice received saw him transferring some of his operations into the names of other people like his children as a tax avoidance strategy. There was never any real intention by the deceased to transfer the disputed properties to the defendant.
- The estate legitimately collected the rentals from the disputed properties for the twenty-six month period in question under cover of court orders from the magistrate's court, the first of which had declared the disputed properties part of the estate, even though the stand numbers might have been incorrectly stated, and the second of which had dismissed the defendant's interdict application. As such there was no rent refund due to the defendant

[i] *Plaintiff's evidence*

- [25] Both parties produced separate bundles of documents. Even though the plaintiff's bundle was the more comprehensive the relevant documentation was common. Both parties referred to either party's bundle.

[j] *Analysis and synthesis*

[26] The parties largely glossed over some important aspects of the evidence. There were some salient points. The answer to this dispute lies largely in the detail.

[27] The defendant's evidence was contradictory in some crucial respect. It turned out that the claim by the plaintiff's witnesses that there had been irregular conduct at Mwenezi RDC pertaining to this dispute had substance. They called it corruption. Albert, whilst not quite conceding it was corruption, quintessentially admitted something equally irregular. He called it "**manipulation**". He said his predecessor had been a professional of impeccable credentials. Unfortunately, his juniors around him had been up to no good. Documents had been **manipulated**. Some had gone missing. The predecessor had ended up locking up the records in his own office and himself dealing with the matter personally.

[28] The defendant was adamant that a formal cession to transfer the deceased's interest in the properties to herself had been done, among other things, with Rangarirai and Esther being present and signing as witnesses. She was adamant she had paid the cession fees and kept the receipts. But the letters from the rural council and the Ministry all said no such cession had been done because this was at a time when Neshuro was migrating from being a communal business centre to a State land business centre. For example, the letter by Albert's predecessor to the police on 10 August 2005, when the defendant was apparently having problems in relation to some liquor licences, read in part:

"This is confirmation that the properties at Neshuro B/C which belonged to the late Makarudzo (*sic*) Zizhou have since been ceded to Mavis Muzenda I.D. 54 – 030414 K 54. The Liquor Licence is still bearing the name Makarudzo Zizhou **because the ceding process is not complete**" (*emphasis added*).

[29] The same official had earlier on in July 2002 written to the Ministry saying:

"I write to confirm that the above lease R/2930 was ceded to Mavis Muzenda ... by Makarudzo Zizhou in January 1990. The cession was done when Neshuro was still a communal area business centre and this was also time Neshuro was changed from communal to State land.

I would like to believe that your office **might have failed to capture the cession process** because the cession was done during the time of change of Neshuro from Communal land B/C to State land B/C.

May I therefore request that you effect the cession from Makarudzo Zizhou to Mavis Muzenda” (*emphasis added*).

[30] Then following a pre-trial conference held in this matter at which the presiding judge, my brother *Mawadze J*, suggested the parties could seek confirmation from the responsible authorities as to the correct position, the Ministry wrote to the executor on 24 October 2014. After reiterating that the stands had originally been owned by the deceased allegedly with whom they had no lease, but who had ceded them to the defendant at the time of the change, went on to say:

“In view of the above **no cession was processed from Makarudzo Zizhou to Mrs Muzenda** but rather we started processing her Lease Agreement” (*emphasis added*).

[31] Either a cession had been executed or it was not. Such contradictions did not help the defendant’s case. On her part, despite claiming to have been issued with receipts for the cession fees, she did not produce them. She did not have them. Her Counsel said nothing about this. But the contradictions did not end there.

[32] The refrain in the letters from the council and the Ministry was that the deceased had no lease with them but that he had ceded the disputed properties to the defendant. The letter from council to the Ministry on 26 July 2002, to which was attached the defendant’s application for leases in respect of *inter alia* the disputed properties had, at the bottom, some seemingly innocuous endorsement to a Mr Makenzi:

“Since Mr Zizhou **did not accept our lease offer**, I suggest that we process the above application in favour of Mrs Muzenda” (*emphasis added*).

[33] I find it inconceivable that for such a seasoned businessman who had acquired the Neshuro properties in the 1970s the deceased would have continued to operate without any form of title until his demise more than thirty-one years later. But that he had no lease or that he may have declined one could not possibly be true. It was not borne out by the documents. The lease card listed him as the lessee from 1987 to 1990. What is

more, it clearly depicted a lease number, namely 12 800. Furthermore, it was the deceased's name that appeared on that card before someone had crudely crossed it out and inserted that of the defendant.

[34] It is my considered finding that the letters from council and the Ministry, and Albert's evidence, were an attempt to reconstruct events of the past but from none existent documents. Albert's evidence was largely mere conjecture. For example, in explaining a cession, he said the process would start with the cedent writing to council; that council would pass a resolution and write to the Ministry; that if it approved, the Ministry would write back to council, which in turn would write to the cedent inviting him and the cessionary for the cession. Albert said the deceased had written and that the cession had been done. But he could not produce the defendant's letter or the council minutes approving the cession, claiming manipulation of the council records. So on what evidence did he base his testimony?

[35] Most of those letters from council and the Ministry, as well as the affidavit by Albert's predecessor in the interdict application would say "... **according to our records** ..." But which records were these? It was those records that would have put the matter to rest.

[36] It is my conclusion that there was no credible evidence that the deceased had ever done a cession in favour of the defendant in respect of the disputed properties.

[37] As regards the donation, it was the word of the defendant and her mother against that of Rangarirai, Tamburai and Theresina. Of course, it is not the number of witnesses for or against that determines a matter. It is the credibility of any such witnesses and the quality of their evidence. In my assessment, the plaintiff's evidence rang truer.

[38] The defendant's allusion to the plight of the girl child, personified by Rangarirai's alleged distaste of the alleged donation, seemed a contrived prototype casting of misogyny in a typical patriarchy. It did not add up. There was just no demonstration of such. Among other things, Tamburai was also a girl child. Berita was a woman. So was Martha. All had obtained beneficial interest in portions of the deceased's empire during his life time.

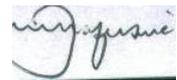
- [39] That the bequest by the deceased of some of his businesses to Berita, Martha, Tamburai, Rangarirai and Nhamo had happened during the deceased's lifetime and well before his demise, and that such bequests would each be preceded by family gatherings for consensus before the formal execution of the actual cessions, was not in the least challenged by the defendant. Instead, the focus on cross-examination on that aspect of the case was manifestly to depict unfairness or bias in that, apart from Martha, only Berita and her progeny had been the ones to benefit in their own individual capacities. But what could have motivated the deceased to regulate or re-arrange his business empire in that manner was not the trial before me. In fact, such feelings might well have been the driving force behind the defendant claiming the disputed properties for herself.
- [40] It was clear, or ought to have been clear, that the two orders from the magistrate's court: the one declaring the properties at Neshuro to be estate property, and the other dismissing the defendant's interdict application, related to the disputed properties. As the plaintiff showed, originally the deceased had acquired a single composite property before the re-planning and re-numbering process. The defendant was not referring to any property as having been donated to her other than those same two stands. This mis-numbering in the court pleadings and the resultant orders was clearly a mistake.
- [41] I find that there was no evidence that the deceased had transferred the disputed properties to the defendant. The claim by the estate that at some stage, and following some legal advice, the defendant had schemed a tax avoidance stratagem by transferring some of his businesses to some of his children seemed plausible. But there has been no evidence placed before me that by such a scheme the defendant had intended to transfer beneficial interest in any property to the defendant.
- [42] The evidence from council and their documents were discredited. By its own admission, council's documents had been manipulated. There was much alteration on much of the documentation, for example the lease card and the formal leases R/C013/06 and R/C014/06.

- [43] Incidentally, those formal leases were untruthful in some subtle respect. It is common knowledge that with such type of leases which bear an option to purchase, the lessee is required to construct buildings on the land the lease relates to, to a value approved by council, with such construction beginning within a period of twelve months from the date of inception. It was common cause that the disputed properties had well been developed into flourishing businesses by the time of the deceased's demise. Yet both the defendant's application for the leases, and the leases themselves, suggested that buildings were yet to be constructed.
- [44] Furthermore, and at any rate, the leases, though incepted in the name of the defendant, were for land on which the original title holder was the deceased. They were incepted in the name of the defendant well after the deceased had died. It was irregular for council or the Ministry to fritter away in such manner estate property without the involvement of the estate and the Master of the High Court. The leases were therefore a legal nullity.
- [45] With regards the defendant's counter-claim for rent for the past period, it follows that if the disputed properties are declared part of the estate, then the counter-claim becomes groundless. At any rate, there was no shred of evidence led on the quantum.
- [46] There should be no confusion with the High Court judgment HH425-17 aforesaid. It *inter alia* barred the estate from claiming the rentals from the disputed properties. However, in that sitting the court clearly acknowledged that the determination whether or not these properties formed part of the estate was a different question altogether which was not before it. Now it was squarely the question before me in the present trial.
- [47] In the final analysis, judgment is entered for the plaintiff. The following orders are hereby issued:
- i/ It is declared that the properties originally denoted as Stands 22 and 23, now Stands 503 and 504, situate Neshuro Growth Point, district of Mwenezi, Masvingo Province, belong to, and are part and parcel of the estate of the late Makarudze Zizhou who died intestate on 19 September 2001.

- ii/ The defendant's counter-claim in the sum of \$18 200 is dismissed.

- iii/ The defendant shall pay the costs of suit.

14 November 2018

A handwritten signature in black ink, appearing to read 'Muzenda', is written over a horizontal line.

Muzenda & Partners, plaintiff's legal practitioners
Rufu-Makoni Legal Practitioners, defendant's legal practitioners