

**ESTATE LATE ELVIS NCUBE
(Represented by Landiwe Ncube)**

and

LANDIWE NCUBE

versus

CATHRINE MAHLANGU

And

SETHUKANI NCUBE

And

ASSISTANT MASTER N O

And

CITY OF BULAWAYO

And

REGISTRAR OF DEEDS

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 22 MAY 2008

Ms N Dube for the applicant

S S Mazibisa for the 1st and 2nd respondents

Opposed Application

NDOU J: The applicant seeks a provisional order in the following terms:

“Terms of the final order sought

It is ordered:

That you show cause to this honourable court why a final order should not be made on the following terms:

1. 1st and 2nd respondents and all those who claim through them be and are hereby permanently interdicted from looting the property of the late Elvis Ncube pending registration and winding up of his estate by 2nd applicant Landiwe Ncube [sic].

2. 1st and 2nd respondents be and are hereby permanently interdicted from interfering with 1st applicant Landiwe Ncube [sic] in his day to day duties as the Executor testamentary of the Estate Late Elvis Ncube.

1st and 2nd respondent be and are hereby permanently interdicted from physically and verbally abusing 1st applicant and stand number 24098 and 24099 Pumula South, Bulawayo and/or whenever they meet.

Deputy Sheriff be and is hereby to permanently stay execution of a confirmed order under cover of HC 289/06 pending finalisation of an application for rescission of judgment to be filed by the applicants by the 1st May 2006.

1st and 2nd respondents to return all immovable [sic] property they took from stand number 24098 and 24099 Pumula South, Bulawayo pending the winding up of the Estate Late Elvis Ncube failure of which the Deputy Sheriff, Bulawayo to proceed to their respective homes and retain the property.

[sic] 1st and 2nd respondent to pay costs of suit on an Attorney-Client scale.

Interim relief sought

1. 1st and 2nd respondents and all those claiming through them be and are hereby interdicted from looting any property from stands number 24098 and 24099 Pumula South, Bulawayo pending the return date of this matter.

Deputy Sheriff be and is hereby ordered to stay execution in HC 289/06 pending the return date of this matter.”

The background facts of the matter are the following. The late Elvis Ncube died on 4 November 2005 following a road accident. The late Elvis Ncube’s father, Landiwe Ncube registered the estate with the Assistant Master. He produced a Will allegedly made by the late Elvis Ncube. The Will was allegedly deposited to on 23 October 2003. It is 1st and 2nd respondents’ case that the said Will is forgery. 1st respondent was the late Elvis Ncube’s ex-wife at the time of his death, 2nd respondent is the late Elvis Ncube’s surviving spouse.

Before going into the merits, Mr *Mazibisa*, for 1st and 2nd respondents raised a point *in limine*. In short, it is alleged that the applicant is approaching the court with “dirty hands”. The basis of this averment is that the 1st and 2nd respondents

obtained two orders in this court under cases number HC 949/06 and HC 375/06 against the applicant. The essence of these two orders is that Landiwe Ncube should vacate stands 24098 and 24099 Pumula South and barred from visiting the said premises respectively. In his wisdom, the applicant remains in occupation in defiance of the

orders of this court. In this application, attacks one of the orders under Rule 449 of the High Court Rules, 1971. Even when the applicant is challenging the court order, he is required to abide by it before it is properly set aside or rescinded by the court. In *ANZ (Pty) Ltd v The Minister of State for Information and Publicity & Ors* SC-20-03 the Supreme Court stated:

“This court is a court of law and, as such, cannot connive at or condone the applicant’s open defiance of the law. Citizens are obliged to obey the law of the land and argue afterwards. It is entirely open to the applicant to challenge the constitutionality of the Act before the deadline for registration ... For the avoidance of doubt the applicant is not being barred from approaching this court. All that the applicant is required to do is to submit itself to the law and approach this court with clean hands on the same papers” – see also *Macheka v Moyo* HB-78-03 and *Merspin Ltd v Sikholiwe Burukai & Ors* HB-37-05.

In casu, the applicant cannot ignore the court orders because he disagrees with them. The issue here is one of compliance with the law. Nobody is above the law. Once the applicant complies with the law, he will be afforded the same protection that is accorded to all law abiding citizens. The ball is in the applicant’s court to submit to the law and thereafter approach the court with clean hands.

On this basis alone I refuse to entertain the application. Accordingly, the application is dismissed with costs on the legal practitioner and client scale.

Maronedze & Partners, applicant’s legal practitioners

Cheda & Partners, 1st and 2nd respondents’ legal practitioners