

TAFADZWA MASAWI
and
MICHAEL MASAWI
and
NYEMBESI MASAWI
and
LETWIN MASAWI
and
ROSE MUZENGEZA (NEE MASAWI)
versus
MASTER OF HIGH COURT
and
ESTATE LATE ABEL MASAWI
and
ABIGAIL CHIPURU
and
MUNYARADZI KAZINGIZI

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 17 November 2020

Opposed Application

1st Applicant in person
No appearance for 2nd to 5th applicants
No appearance for 1st and 2nd respondents
T.D. Mutsikadowo, for the 3rd respondent

ZHOU J: This is a court application for review. What is being sought to be set aside according to the founding affidavit and draft order, is the alleged revocation by the Master of the High Court of letters of administration which the applicants allege were issued to the first applicant in respect of the Estate of the late Abel Masawi. Applicants also seek the setting aside of the sale by the Executor of the immovable property of the estate of the Late Abel Masawi by the second respondent, the Executor. The first relief is being sought on the grounds that the alleged revocation of the letters of administration was done without affording the first applicant the right to be heard and in the absence of an order of court. The second relief seeks to impeach

the sale of the property on the grounds that it was done without affording the beneficiaries of the estate an opportunity to make representations and without the consent of the beneficiaries. It is further alleged that the sale was not advertised and also, that the decision to sell the property was grossly unreasonable.

The application is opposed by the second and third respondents. The second respondent is the Executor, the third respondent is the one who purchased the immovable property in question.

The facts, which are material to the determination of this matter are as follows. All the applicants are children of the deceased Abel Masawi and therefore potential beneficiaries of his estate. The fourth respondent, Munyaradzi Kazingizi, is a widow of Anthony Masawi who is a son of the late Abel Masawi. The late Abel Masawi owned an immovable property, Stand 8094 Glen View Township, Harare, measuring 200 square metres on which was a seven roomed house. After the death of Abel Masawi an edict meeting was called at which the first applicant was nominated to be appointed Executor of the Estate of the Late Abel Masawi. The Master did not issue him with letters of administration. His explanation is that after considering the small size of the estate he did not consider it necessary to go through the process of appointing the applicant as Executor by issuing letters of administration. A dispute ensued pitting the fourth respondent against the applicants over her occupation of the immovable property. The fourth respondent who had children with Anthony Masawi demanded her husband's share of the Estate.

Owing to the dispute the Master called another meeting at which it was resolved to appoint a neutral Executor dative. This decision is clearly justifiable given that the first applicant had become a party to a dispute over the estate. He was also a potential beneficiary of the estate. Following that resolution, the Master appointed the second respondent as the Executor Dative. Second respondent was duly issued with the letters of administration.

By letter dated 14 October 2016 the second respondent invited the beneficiaries of the estate to contribute towards the expenses of the estate in order to avert the sale of assets of the estate. The letter is addressed to the first applicant. The beneficiaries failed to contribute the money required to cover the expense. Meanwhile the fourth respondent had written to the Executor demanding her husband's share in the Estate. On 17 October 2016, the second respondent sought the consent of the Master to sell the immovable property in order to be able to pay the expenses of the estate and also pay the fourth respondent and the other beneficiaries their

shares. The authority to sell the property was granted by the Master on 8 November 2016. After receiving the authority to sell the property the second respondent advised the applicants by letter dated 16 November 2016 to which he attached a copy of the authority to sell. In that letter he informed the applicants that he would proceed to dispose of the immovable property unless they came up with money to cover the administration expenses and to pay out Anthony Masawi's share. It is common cause that none of the applicants raised the money or even made an offer to pay it. The second respondent proceeded to sell the property to the third respondent on 6 December 2016.

The first relief sought by the applicants is clearly misplaced, because first applicant was never issued with letters of administration. The relief is founded upon the false claim that he had been issued with letters of administration. In his submissions before the court the first applicant stated that the Master had appointed him Executor without issuing letters of administration. But this is not the cause of action pleaded. No relief based on that assertion is sought in the draft order. In any event, the meeting which the applicant relies upon merely nominated him. The nomination was not constitutive of appointment as Executor in the absence of a letter from the Master.

In respect of the complaint pertaining to the sale of the immovable property, the Executor gave the applicants an opportunity to contribute towards the administration expenses in order to obviate the sale of the immovable property. They failed. Even after obtaining the Master's authority to sell the property the Executor invited the applicants again to pay the required money to avoid the sale of the property. They failed. The claim that the beneficiaries were not informed of the sale is therefore false. The consent of the beneficiaries to a disposal of the asset of the estate is not a prerequisite to the validity of the sale. An Executor is not an agent of the beneficiaries. There is nothing to show that the alleged failure to advertise the property prejudiced the estate. On the facts which are common ground the allegation that the conduct of the first and second respondents was grossly unreasonable is not supported.

In the result, the application is dismissed with costs.

Maposa and Ndomene, applicants' legal practitioners
Chatsanga Legal practitioners, 2nd respondent's legal practitioners
Mugomeza and Mazhindu, 3rd respondent's legal practitioners