NARESH JIVAN
versus
MASTER OF THE HIGH COURT
and
VERITAS EXECUTORS (PRIVATE) LIMITED
and
CAROL BRENDA LEEPER

HIGH COURT OF ZIMBABWE
MANYANGADZE J
HARARE, 22 March & 24 May 2023

**Urgent Chamber Application**

Mr *C Ngweshiwa*, for the applicant
Ms *R T Hove*, for the 2nd and 3rd respondents

MANYANGADZE J:

This is an urgent chamber application in which the applicant seeks an order to the effect that the second and third respondents be stopped from dealing with the estate of the late Shirley Valley Trelc (deceased estate). The applicant seeks this relief pending an application he filed under Case No. HC 3723/20 for the removal of the said respondents from their position as executors of the deceased estate. The draft order, which was inelegantly and ineptly drafted as the applicant was a self actor when he filed the urgent application, reads as follows:

> "1. All processes in this estate be and hereby stopped pending the finalization of case number HC 37623/20.
> 2. The 2nd and 3rd respondent must not interfere in any manner and stop doing work in this estate *sine die*.
> 3. Approval to revalue the properties at 8 fern road be and are hereby revoked.
> 4. 2nd and 3rd respondents to pay costs."

The applicant, together with his siblings who have not been cited in the application, are beneficiaries to the deceased estate. The estate was registered with the first respondent

under reference DR 1383/04. The second and third respondents were appointed executors of the deceased estate under Letters of Administration issued in June 2004. Papers filed of record indicate that the administration of the deceased estate had gone as far as the publication of the liquidation and distribution account in 2019.

I must point out, from the outset, that I have great difficulty understanding exactly what relief the applicant wants. In the title to his application, he styles it an "URGENT CHAMBER APPLICATION FOR REVOCATION OF CONSENT LETTER". This suggests that the application is exclusively focused on a consent letter to sell immovable property belonging to the deceased estate. It is specific to that consent letter and the property described therein. This is a process usually done in the final stages of the winding up of the deceased estate, and is done by the authority of the Master of the High Court.

However, a perusal of the founding affidavit presents a different form of relief. The applicant wants an order to stop "any authorisation granted or to be granted" pending the finalisation of HC 3723/20.This is no longer specific to the consent letter, but is challenging the Master's general authority to deal with the deceased estate. Authority of the Master in dealing with the assets of the deceased estate is at the centre of the administration of the estate. If this authority is suspended, the process necessary for winding up of the estate is arrested. In the draft order, the applicant wants all processes to do with the deceased estate stopped. Further to that, he wants the 2nd and 3rd respondents to stop all work on the estate *sine die*. Effectively, the applicant wants the relief he is seeking in the main matter, HC 3723/20, granted in the urgent chamber application.

The second and third respondents have raised some points *in limine* to the effect that;

(i) The matter is not urgent
(ii) There is already a pending matter
(iii) The relief sought is incompetent
(iv) The applicant has not cited other beneficiaries
(v) The applicant has not exhausted domestic remedies

On the first preliminary point, which relates to urgency, the respondents aver that the founding affidavit does not explain precisely what it is that has given rise to the urgent application. There is no clear explanation as to when the need to act arose. Further to that, the applicant has failed to demonstrate what irreversible consequences will ensue if the relief claimed is not granted.

On the other hand, the applicant insists that the matter be treated as urgent. He basically fears that some property forming part of the deceased estate might be disposed of without him benefitting. In particular, he refers to a consent to sell that was granted by the 1st respondent, which will allegedly result in one of the properties being disposed of by sale to his prejudice.

The law on urgency is trite. It was clearly enunciated in the leading cases of *Kuvarega* v *Registrar General & Anor* 1998(1) ZLR 188(H) and *Document Support Centre Ltd* v *Mapuvire* 2006 (2) ZLR 240. It was highlighted in those cases that what constitutes urgency is not the imminent arrival of the day of reckoning. It is such that when the need to act arises, the matter cannot wait. The harm threatened must be addressed then and there.

In the instant case, the gravamen of the applicant's complaint is that there is maladministration of the deceased estate. The respondents are allegedly failing in their duty to expedite administration of the deceased estate. This grievance is reflected in para (4) of the founding affidavit, wherein is stated:

> "This is an application for a revocation order to stop and revoke any authorisation granted or to be granted to the Second and Third Respondents pending the finalisation of the matter 3723/20 before this Honourable Court challenging the way, speed and matter (*sic*) Second and Third Respondents have handled the estate of the late Shirley Valley Trelc since 2004 and as to why vast assets are being left (*sic*) at one point claiming that two immovable properties were sold using one agreement of sale."

As pointed out by the respondents in para (7) of their notice of opposition, this matter has been pending for three years without the applicant bringing any urgent application to redress whatever complaints he had regarding the winding up of the deceased estate.

On the consent to the sale of the property concerned, the respondents pointed out that this is a long process. It does not entail the immediate disposal of the property. There is going to be a consultative and negotiation process that certainly will involve the applicant and the other beneficiaries to the deceased estate. More significantly, the first respondent noted the applicant's interest and there is a proposal to allow him to buy out the other beneficiaries instead of having it sold to third parties. It appears there is due process being followed by the first respondent, in terms of the Administration of Estates Act [*Chapter 6:01*].

It is significant to note that the fact that the consent letter by the first respondent will not result in the immediate disposal of the property in question was not controverted by the

applicant. The applicant simply did not want to take that route. He had his preferred way of dealing with the assets of the deceased estate. There is therefore no imminent or irreversible harm or loss to talk about. This is an estate whose administration dates back to 2004. The letters of administration were issued in that year. There is no satisfactory explanation, or any explanation at all, why the applicant did not seek the removal of the executors all those years. The court took the applicant's counsel to task on that aspect. The following exchange is on record:

> "Q – What is the average period applicant considers reasonable for winding up an estate of this nature?
> A – (Counsel consults client) – two years was reasonable.
> Q – So why did he not seek the removal of the executors after that, or say 3, 4 or 5 years?
> A – They engaged one another.....
> Q – So applicant was patient with the executors for 2, 3, 5, 10, even up to 20 years?
> A – Application was done around 2015. In 2015, there were correspondences done. There was something happening prior to this...
> Q – Does the applicant accept the respondents' explanation that a consent to sale will not result in the immediate disposal of the property, and that it will not be without his input?
> A – according to applicant, he does not agree with the respondents on the consent to sale.
> What he does not want is to go through that process. It is clear from his application that he does not want that process."

There is no doubt that there is a longstanding dispute over the deceased estate. It appears the applicant is at loggerheads with the other beneficiaries, whom he apparently accuses of colluding with the executors against his interests. The competence and integrity of the executors is the subject of the application pending under Case No. HC 3723/20.

It seems to me this is a matter where the applicant essentially seeks to bring forward the hearing of the application impugning the handling of the deceased estate by the second and third respondents. This application, as already indicated, is pending under Case No. HC 3723/20. It has been pending for three years now. There is no explanation as to why the applicant has not set down the matter. This is unusual if the removal of the executors appointed by the first respondent was a matter of great and urgent concern to the applicant. It is up to the applicant to take all the necessary steps to have this matter set down for hearing in terms of the rules. He cannot do so under the guise of an urgent chamber application, in which he seeks essentially the same relief.

Courts must be wary of urgent applications that are basically a ploy to get relief sought in a pending main matter by way of an ancillary urgent chamber application. There ought to be clear justification for the matter to be heard on an urgent basis, otherwise the chamber book will be cluttered with cases filed by litigants hoping for a chance to jump the queue. The facts of the instant case do not warrant its placement on the urgent roll.

In the circumstances, it is my considered view that this application fails the test for urgency, as laid down in the cases cited. The proper course of action is to order that it be struck off the roll of urgent matters, as provided for in rule 60 (18) of the High Court Rules, 2021. Since this point is dispositive of the application, there is no need to delve into the rest of the points *in limine*.

In the result**, IT IS ORDERED THAT:**

1. The point *in limine* that the matter is not urgent be and is hereby upheld.
2. The application be and is hereby struck off the roll of urgent matters.
3. The applicant bears the 2nd and 3rd respondents' costs.

*Tapera Muzana & Associates*, applicant's legal practitioners
*Hove & Associates*, second and third respondents' legal practitioners