REPORTABLE (99)

MASTER OF THE HIGH COURT OF ZIMBABWE N. O.
v
(1) DAVID TAKAENDESA (2) MACDONALD TAKAENDESA (3) DEN TAKAENDESA (4) HOUSE OF SARI (PVT) LTD (5) RUGARE MANDIMA N. O. (6) REGISTRAR OF DEEDS

RUGARE MANDIMA N. O.
v
(1) DAVID TAKAENDESA (2) MACDONALD TAKAENDESA (3) DEN TAKAENDESA (4) MASTER OF THE HIGH COURT N.O. (4) HOUSE OF SARI (PVT) LTD (5) REGISTRAR DEEDS

HOUSE OF SARI (PVT) LTD
v
(1) DAVID TAKAENDESA (2) MACDONALD TAKAENDESA (3) DEN TAKAENDESA (4) RUGARE MANDIMA N. O. (5) MASTER OF THE HIGH COURT N. O.(6) REGISTRAR OF DEEDS

Judgment No. SC 101/22
Civil Appeal No. SC 109/21
Civil Appeal No. SC 15/21
Civil Appeal No. SC 17/21

SUPREME COURT OF ZIMBABWE
GUVAVA JA, KUDYA JA & MWAYERA JA
HARARE: 19 OCTOBER, 2021 & 26 SEPTEMBER 2022

A.B.C. Chinake, for the first appellant

G. R. J. Sithole, for the second appellant

T. W. Nyamakura, for the third appellant

F. Mahere, for the first, second and third respondents

No appearance for the fourth respondent

GUVAVA JA:

INTRODUCTION

[1] At the hearing, the appeals were consolidated with the consent of the parties, and heard in the following manner; the appellant in SC 109/21 made submissions as the first appellant, the appellant in SC 15/21 as second appellant, and the appellant in SC 17/21 as the third appellant. The first to third respondents in all the appeals remained as previously cited, with the Registrar of Deeds being the fourth respondent, though there was no appearance on his behalf. Although there were three different appeals attacking the same judgment, I intend to address all the appeals in one composite judgment as the issues raised are similar. In this judgment I will also refer to the first appellant as 'the Master,' the second appellant as 'the executor', the third appellant as 'the purchaser' and the first to third respondents as 'the beneficiaries'.

[2] The three appeals herein are against judgment No HH806/20 of the High Court ('court *a quo'*) dated 16 December 2020, which granted an application to set aside "two consents of sale" issued by the Master, agreements of sale signed between the executor and the purchaser and finally set aside the transfer of title made in favour of the purchaser.

BACKGROUND FACTS

[3] The first to third respondents are beneficiaries of the estate of the late Kudzai Takaendesa (the deceased), who died on 15 July 2015. The second appellant was appointed as the executor of the estate in terms of a Will in which the deceased

directed that the senior partner of Danziger and Partners be appointed as such upon her passing. The estate comprised three farms being; Certain piece of Land situated in the District of Gatooma called Koppies measuring 1, 358, 0053 hectares, Certain piece of Land situated in the District of Hartley called Lorraine of Richmond measuring 595, 5918 hectares and Certain Piece of Land situated in the District of Hartley called Remainder of Richmond measuring 679,7636 hectares ('the farms') and a butchery in Kwekwe situated at stand 2040 Amaveni Township, Kwekwe.

[4] The estate had liabilities amounting to USD$ 16 287.13 arising from administrative costs inclusive of the Master's fees, Value Added Tax, advertising, valuation charges, and a provision for duty. The executor, in the execution of his duties, requested the beneficiaries to settle the estate liabilities. The beneficiaries only managed to pay USD$ 2 625 leaving a balance of USD$ 14 047 as at 10 January 2018.

[5] Following the beneficiaries' failure to settle the full amount, the executor wrote to the Master on 10 January 2018 seeking authority to sell the three farms by private treaty in order to liquidate the estate liability. The Master issued a consent to the sale in terms of s 120 of the Administration of Estates Act [Chapter 6:01] (the Administration of Estates Act) on 25 January 2018 in respect of two farms known as Koppies measuring 1358,0053 hectares and Lorraine Richmond measuring 595,5918 hectares, and on the 17th of October 2019 in respect of the farm known as remainder of Richmond measuring 679,7636 hectares. The consents were granted

on condition that the executor would first communicate the decision to dispose the farms to the beneficiaries. As a result of the "consents to sell", all three farms were sold to the purchaser represented by one Mr. Arafas Mtausi Gwaradzimba, who owns a neighbouring farm for a total amount of USD$ 700 000.

[6] On 12 March 2018 the beneficiaries wrote an email to the executor with an instruction that he should not sell the farms but that he should rather sell the butchery in Kwekwe to recover the estate liabilities. On the 20th of July 2018, legal practitioners representing all the beneficiaries wrote to the executor objecting to the proposed sale of the farms on the basis that, firstly, they did not consent to the sale of the farms and secondly, that the proceeds from the sale of the Kwekwe butchery would be sufficient to settle the estates liabilities. This letter was copied to the Master. It was further alleged that the executor was advancing his own personal interest in insisting on the sale of the farms rather than the interests of the beneficiaries. By letter dated 6 of August 2018 the Master informed the beneficiaries that their objections had been noted but however the consent to sale could not be revoked as the decision had already been made.

[7] Dissatisfied by the Master's decision to grant the executor's request for "consent to sell" the three farms, the beneficiaries made an application before the court *a quo* in terms of s 4 of the Administrative Justice Act [*Chapter 10:28*] ('the Administrative Justice Act') seeking the setting aside of the decision of the Master on the basis that he acted unlawfully, unreasonably and in an unfair manner in granting the consent.

DECISION OF THE COURT A QUO

[8] The court *a quo,* in dealing with the application held that the Master failed to conduct a 'due inquiry' in accordance with s 120 of the Administration of Estates Act. The court *a quo* further held that the decision to issue the "consent to sell" the three farms without holding an inquiry in terms of s 120 of the Administration of Estates Act was illogical and grossly unreasonable. The court *a quo* reasoned that the Master ought to have enquired into the propriety or otherwise of the sale of the three farms in light of other possible assets that could have been sold and whether or not it was in the best interest of the beneficiaries to sell the farms. The court found that the Master ought to have granted the beneficiaries an opportunity to be heard before making his decision.

[9] The court *a quo* accordingly found that as s 120 of the Administration of Estates Act had not been complied with, the decision by the Master authorising the executor to sell the three farms was unlawful, unreasonable, and unfair. It also found that the sales of the farms were a nullity and ordered that they be set aside. The court consequently vacated the agreements of sale entered into it between the executor and the purchaser. It set aside the consents to the sales of the farms issued by the Master, cancelled the transfers of the farms, and ordered the resuscitation of the Estate Deed of Transfer Number 6708/2019 back into the deceased's estate. With regards to costs, the court ordered that the Master and the purchaser pay the beneficiaries' costs on a party and party scale with the executor being ordered to pay costs *de bonis propriis* on the basis that there was collusion between him and the purchaser.

[10] Aggrieved by the decision of the court *a quo* the three appellants each noted separate appeals attacking the judgment essentially on the basis that it erred in failing to find that the Master's decision was properly made after due compliance with the Administration of Estates Act.

ISSUES FOR DETERMINATION

[11] An examination of the grounds of appeal shows that the single thread that runs through the three appeals is the question of whether or not the Master complied with the provisions of s 120 of the Administration of Estates Act before issuing the "consent to sell" the three farms.

SUBMISSIONS BEFORE THIS COURT

[12] Counsel for the first appellant, Mr. *Chinake,* argued that the Master had no real interest in this case and was essentially a passenger in the litigation. This was, so the argument went, because once he had made a decision in respect of the sale of the three farms, he became *functus officio*. He contended that the Master reached the decision to" consent to the sales" after due consideration of the facts of the case as placed before him by the executor. It was his submission that s 120 of the Administration of Estates Act does not place an obligation on the Master to carry out a judicial investigation before issuing a "consent to sell". He asserted that the inquiry which must be conducted by the Master merely related to whether or not there are any restrictions to sell that may be contained in the will of the deceased. He thus submitted that it was a very limited inquiry.

[13] Mr *Chinake* further asserted that there was nothing unlawful about issuing a consent with a condition that the executor must inform beneficiaries about the sale. He, however, conceded that the absence of consent to sale at the time when the agreement of sale was executed in respect of the third farm meant that the agreement was void as there was no condition in the agreement stating that the agreement would only become *perfecta* once the consent from the Master on the third farm had been obtained. In the final analysis, he submitted that the decision by the Master was not unreasonable or unfair in the circumstances because the finalisation of the estate had been outstanding for a long time. Further, that the order of costs made against the Master was unwarranted and ought to be set aside as the decision was made in the course of his administrative functions. He prayed for the appeal to be allowed with costs.

[14] Counsel for the executor, Mr. *Sithole*, argued that the Master correctly exercised his discretion in granting the "consent to the sale" based on the documentation placed before him. He asserted that there was nothing unreasonable or unfair about the Master's decision to "consent to the sale" of the three farms as he acted in accordance with the law. Counsel also submitted that the phrase 'due inquiry' under s 120 of the Administration of Estates Act is limited only to the question of the mode of disposal of the property and not to any other issue. He argued that the order of costs *de bonis propriis* made against the executor was improper because the order was not sought by the applicants *a quo* but was imposed by the

court without inquiry as required by law. He therefore prayed for the appeal to succeed.

[15] Counsel for the purchaser, Mr. *Nyamakura,* submitted that the beneficiaries could not challenge the sale of the farms without surrendering the proceeds of sale that had been transferred into their accounts. He argued that the due inquiry in terms of s 120 of the Administration of Estates Act is restricted only to the question of whether to sell by private treaty or public auction. He asserted that the Master's decision was lawful. He thus prayed for the appeal to be allowed.

[16] *Per contra,* counsel for the beneficiaries, Ms *Mahere,* submitted that the Master's decision violated s 68 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013 (hereinafter referred to as 'the Constitution') and s 3 of the Administrative Justice Act. She contended that the Master's decision to sell three farms for USD$ 700 000 to settle estate liabilities totalling USD$ 14 047.00 when other properties of less value could have been sold was grossly unreasonable and unfair.

[17] Counsel submitted that due inquiry, as interpreted in past decisions of the courts, is not a superficial inquiry but meant an informed independent inquiry that involves considering the submissions of beneficiaries of the estate. She asserted that in this case no due inquiry was done and thus both the Master and the executor did not ultimately act in the best interests of the beneficiaries of the

estate as mandated by the law. She further argued that the order of costs made against the Master and the executor were justified because both acted unlawfully, unreasonably and unfairly. In the result, she prayed for the appeal to be dismissed.

ANALYSIS

[18] An application made in terms of the Administrative Justice Act seeking the setting aside of a decision of an administrative authority must allege and prove that it has acted unlawfully, unreasonably and in an unfair manner. Section 3 of the Administrative Justice Act provides:

"**3 Duty of administrative authority**

(1) An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall—

(*a*) act lawfully, reasonably and in a fair manner; and

(*b*) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and

(*c*) where it has taken the action, supply written reasons therefor within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned.

(2) In order for an administrative action to be taken in a fair manner as required by paragraph (*a*) of subsection (1), an administrative authority shall give a person referred to in subsection (1)—

(*a*) adequate notice of the nature and purpose of the proposed action; and

(*b*) a reasonable opportunity to make adequate representations; and
(*c*) adequate notice of any right of review or appeal where applicable. …."(emphasis added)

Section 4 (1) of the Administrative Justice Act, empowers a court to set aside a decision that breaches its provisions.

[19] The administrative action which was the subject of complaint by the beneficiaries in this case was that the Master granted the executor the right to sell by private treaty, three farms which were bequeathed to them without conducting an inquiry as mandated by s 120 of the Administration of Estates Act.

[20] Section 120 of the Administration of Estates Act provides as follows:

"**120 Sale of property otherwise than by auction**

If, **after due inquiry**, the Master is of opinion that it would be to the advantage of persons interested in the estate to sell any property belonging to such estate otherwise than by public auction he may, if the will of the deceased contains no provisions to the contrary, grant the necessary authority to the executor so to act."

[21] It was not in dispute, as between the parties, that the Master is an administrative authority as defined by the Administrative Justice Act. Indeed that this is the correct position cannot be debated as the Master carries out administrative functions that affect other persons as defined in s 2 (1) (d) of the Administrative Justice Act. (See also *Logan v Morris N.O & Ors* 1990 (2) ZLR 65 (S)

The first issue for determination therefore, is whether the Master conducted himself in a lawful, fair and reasonable manner when he exercised his power under s120 of the Administration of Estates Act. CHITAKUNYE J (as he then was) in *Madzingaidze N.O v Katanga Service Station* HH 256/13 at page 4-5 of the cyclostyled judgment, had occasion to grapple with the issue of what should be considered by the Master when presented with a request, by the executor, to sell estate property by private treaty. He stated the following at p 4:

> "1. The Master has to formulate his own opinion;
>
> 2. The opinion has to be formulated after a due inquiry and
>
> 3. The opinion has to be in furtherance of the advantage of the persons interested in the estate, in this case the beneficiaries.
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> The section does not *per se* require that all the interested parties must agree. It is the opinion of the Master, after due inquiry that is crucial. The fact of the interested parties all agreeing may only be one of the considerations to be taken into account by the Master as he carries out due inquiry.
>
> A due inquiry may be described as a fitting or appropriate investigation or research on the subject matter before arriving at a decision. This necessarily involves a consideration of submissions made by all interested parties, including the beneficiaries, and an assessment of what would be appropriate given the circumstances of the matter. The Master will want to know the reason why the property has to be sold and how the sale will be advantageous to the beneficiaries."

[22] It appears to me, from the above, that in order for the Master to lawfully grant a consent to sell in terms of s 120 of the Administration of Estates Act, he must comply with the requirements of the Administrative Justice Act. He must also consider the requirements established by case law. A proper application of the above requirements will lead the Master into making a decision which is lawful,

reasonable and fair. I therefore agree with the sentiments expressed in the above judgment. Indeed, as stated in the above cited case, it is critical that the Master formulates an independent opinion after considering all the facts. That this is the position can be gleaned from the case of *Logan v Morris N. O. & Ors* 1990 (2) ZLR 65 (S) at p 71D-72A, where this Court, while interpreting the powers of the Master as provided for under s 117 of the Administration of Estates Act [*Chapter 3:01*] (which was repealed and replaced by the current s 120 of the Administration of Estates Act), had this to say:

> "The power given to the Master under s 117 is not a power to compel a sale by private treaty where the beneficiary does not want to sell at all. It is a power to allow a sale by private treaty where the beneficiary wants the property sold (or it has to be sold to meet the cash obligations of the estate). If he does not allow the sale by private treaty then the normal procedure of sale by public auction has to be followed.
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> Seen in that light it is apparent that it is not the purpose of the "due inquiry" by the Master to ascertain whether or not the beneficiary is legally bound to sell as a result of an alleged contractual obligation, or whether that contract has or has not been induced by fraud so as to entitle the beneficiary to resile. Such matters are proper matters for a judicial inquiry. The Master is not empowered to conduct judicial inquiries. Where matters of law arise he is enjoined to refer the matter to a Judge or to the Court (see eg s 113).
>
> The "due inquiry" envisaged by s 117 is no more than a practical, financial inquiry. He must not authorise a private sale unless he is of the opinion that such a sale will be more advantageous to the beneficiary than a sale by public auction. His inquiry therefore is limited to a consideration of the relative advantages of the proposed private sale on the one hand and a sale by public auction on the other. He will in such circumstances, after making "due inquiry" as to the realistic value of the property, reach his decision. He will be influenced primarily by the price offered as opposed to the price likely to be realised on an auction. He may also be influenced by such matters as the uncertainty and delay involved in a public auction, or by the wishes of the beneficiary in a marginal case.
>
> I do not intend this to be regarded as an exclusive list of the considerations which may influence the Master in coming to a conclusion under s 117. The point I am making is simply that the need for a decision by the Master

under the section arises only when he is asked to choose between a sale by public auction and a sale by private treaty."(emphasis added)

[23] There can be no doubt that the Master is required to conduct a basic inquiry before formulating his opinion on whether or not to consent to a sale by private treaty.

[24] Clearly, this is not what the Master did in this case. The Masters Report, which was filed in opposing the application before the court *a quo*, gives an insight on how the Master dealt with the request. The Master stated as follows:

> "The Master's consent is required only where the executor intends to sell by private treaty. Our understanding is that the inquiry to be made by the Master is not necessarily to establish the reasons for the sale or to determine which assets should not be sold, but it is to establish whether it would be advantageous to sell by public auction or by private treaty. It can thus be inferred that the decision to sell and the identification of assets for sale lies with the executor and not the Master. The Master is only approached if the executor intends to sell otherwise than by public auction. We believe this is why there is no provision which empowers the Master to be involved in the sale modalities as that is the prerogative of the executor reposed with authority to administer the estate. It is however expected that before selling, the executor would have done his due diligence and proper consultations with potential beneficiaries which justify the need to sell."

This was not the correct approach to take and does not comply with the requirements established by the Administration of Estates Act and the authorities cited above. This is a very narrow interpretation of the term 'due inquiry' and seeks to shift the onus of decision making from the Master to the executor. This is wrong. As was stated in the *Madzingaidze* judgment (*supra*) it is the Master's opinion that must inform the process and not that of the executor. From the

approach taken by the Master it is quite apparent that no inquiry was conducted at all.

[25] In spite of the fact that in the letter dated 10 January 2018, by the executor requesting the Master to "consent to the sale" of the farms, it was indicated that the beneficiaries generally objected to the sale of the farms, the Master issued two consents to sale on the 25th of January 2018 with the third consent being granted on the 18th of October 2019. The Master made no effort to engage the beneficiaries with regards to the sale of the farms. Had he done so it would have been brought to his attention that there was a butchery in Kwekwe which could be sold as an alternative to recover costs to settle the estate liabilities.

[26] The facts of this case clearly paint a picture of a situation whereby the Master did not apply his mind to the facts before him. He failed to formulate his own opinion and relied on the executor's decision. In the exercise of his duties in terms of s 120 of the Administration of Estates Act the Master ought to have carried out an inquiry into all the circumstances of the case. The fact that there was a buyer already in the wings offering to purchase the three properties should have raised a red flag which warranted further inquiry. So, too, the letter by the executor stating that the beneficiaries were generally opposed to the sale. This decision was particularly unreasonable when one takes into account that there was another property in the estate which could have been sold to meet the estate liabilities instead of disposing of the three farms.

[27] It should be noted that in arriving at a decision of whether or not to sell a property by private treaty the Master does not operate in a vacuum. He must take into account various competing interests the most important of which is that he must be satisfied that he is acting in the best interests of the beneficiaries. Section 3 of the Administrative Justice Act requires that he acts in a lawful, reasonable and fair manner. In this case the Master did not question whether or not it was in the interest of the beneficiaries to sell three farms in order to pay US$14 047 that was owed by the Estate. Indeed, had the Master applied his mind to the facts he would have realised that selling three farms in order to pay such a paltry amount was unreasonable and unfair on the beneficiaries. It should be noted that the inquiry required by s120 of the Administration of Estates Act and the authorities cited above, is not a judicial inquiry, but a simple inquiry merely to ascertain the facts and for the Master to satisfy himself that he is indeed acting in the best interest of the beneficiaries. Had the Master acted in this manner he would have sought the views of the beneficiaries. A simple letter asking for their views on the matter would have been more than sufficient.

[28] It is trite that the right to be heard is a basic tenet of our law. Where the Master intends to make a decision affecting the rights of beneficiaries it is incumbent upon him that he affords them an opportunity to present their side of the matter. In my view, the importance of this right is of particular import given that a sale by private treaty does not have the protection and transparency associated with a public auction. It is the objections or concerns raised by the beneficiaries which

lead the Master into making an appropriate decision. In essence therefore, the Master, in carrying out the inquiry must afford the beneficiaries a chance to be heard.

[29] Section 69 of the Constitution provides for the right to be heard for all citizens before a court of law, judicial body, quasi-judicial body or administrative authority. The Master being a quasi-judicial officer with an administrative role must allow beneficiaries the right to be heard and the right to make objections or raise concerns over the administration of the estate. This is also in line with the statutory provision of s 3 (2) of the Administrative Justice Act.

[30] In the case of *Logan v Morris N. O. and Ors* (*supra*) at p 69E-G the court pertinently noted that:

> "As LORD DENNING MR, said in *Breen v Amalgamated Engineering Union (now Amalgamated Engineering and Foundry Workers Union) & Ors* [1971] 2 QB 175; [1971] 1 All ER 1148 (CA) at 1153h-j:
>
> > 'It is now well settled that a statutory body, which is entrusted by a statute with discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other hand, or what you will. Still, it must act fairly. It must, in a proper case, give a party a chance to be heard.'"

In the same case MCNALLY JA raised the question at p 69H:

> "When should a party be given a chance to be heard?
> 'LORD DENNING continued at 1154f-k:
>
> Not always, but sometimes. It all depends on what is fair in the circumstances …'"

[31] It is accepted that it is not every case where the Master must hear the beneficiaries before making a decision. However, the particular circumstances of this case cried out for the Master to hear the beneficiaries before making a decision. The amount which was due by the estate, the fact that there was a ready buyer waiting to purchase the three farms and the fact that not one, but all three farms were to be sold to raise the small amount of USD 14 047 should have alerted the Master that there was a need to hear the beneficiaries. The Master, as an administrative body and custodian of the processing and finalization of deceased estates, is duty bound to guard against the excesses of executors of estates by ensuring that the interests of beneficiaries are protected. It could not have been the intention of the legislature, in enacting s 120, to provide for the Master to merely rubber stamp the decisions of an executor, especially with regards to the disposal of estate property, without being satisfied that the sale of such property is warranted and is conducted in a fair and lawful manner. The failure by the Master to conduct such a basic inquiry resulted in him failing to act lawfully, reasonably and fairly as an administrative authority. This failure in my view warrants the setting aside of the "consents to sell". The court *a quo's* finding that the Master had to formulate his opinion only after an inquiry had been made cannot be faulted in this regard.

[32] In my view sight must never be lost of the function of an executor in the administration of an estate. It must always be borne in mind that estate property

bequeathed to beneficiaries in a will is their property. Thus, any decision by the executor concerning estate property must be made with the knowledge that, at law, the property belongs to the beneficiaries. The executor's function is only to step into the shoes of the deceased and ensure that the beneficiaries receive their inheritance. It is noteworthy that in this instance the executor took it upon himself to act as big brother and decided that it was in the best interest of the beneficiaries that the farms be sold as there was no activity on the farms. This was clearly not the mandate of the executor. His function was to ensure that the beneficiaries received their inheritance. What they thereafter did with it was not his concern.

[33] With regards to costs *a quo*, this Court finds that the actions of the Master were conducted in the course of his duties. It has always been the practice of this Court not to mulct administrative bodies with costs unless it is proved that they were *mala fide*. As such, the order of costs awarded by the court *a quo* against the Master cannot be allowed to stand. I take the further view that it is trite that a court may not make an award of costs *de bonis propriis* unless they have been sought and the person affected has been given an opportunity to be heard. The executor was not heard on this point *a quo*. This award cannot be upheld and warrants interference by this Court. The purchaser was equally a victim of circumstances as his right to purchase emanated from the decision of the Master. In our view, the justice of the cases require that with respect to the costs *a quo*, each party should bear its own costs. The appeal will thus succeed in this respect.

In respect of costs on appeal the parties were agreed that each party must bear their own costs.

DISPOSITION

[34] The circumstances of this case bring to the fore the need for the Master to conduct an inquiry before authorising any "consent to sell" estate property. It is the Master who is mandated by the Administration of Estates Act to conduct an inquiry. It is the Master who must arrive at an opinion which is lawful, reasonable and fair. The inquiry must be done before granting the consents to sale. This may demand, as in this case, that the beneficiaries are heard so that the Master makes an informed decision. It is not necessary for the beneficiaries of the estate to "consent to the sale", but the Master must be aware of their concerns before making his decision. This function cannot be delegated to any other person including the executor. As this was not done, the court *a quo* correctly set aside the "consents to sell" in this case. The rights of the executor and the purchaser flow from the actions of the Master. Once his actions are successfully impugned, they are left with no leg to stand on.

[35] In the result, it is accordingly ordered as follows:

1. The appeal be and is hereby allowed in part with no order as to costs.
2. Paragraph 6 of the order of the court *a quo* is set aside and substituted with the following:

"6. Each party shall bear its own costs."

KUDYA JA **:** I agree

MWAYERA JA **:** I agree

Kantor& Immerman, 1st appellant's legal practitioners

Danziger & Partners, 2nd appellant's legal practitioners

Mhishi Nkomo Legal Practice, 3rd appellant's legal practitioners

Henning Lock, 1st to 3rd respondents' legal practitioners