

STANLEY SIZIBA

Versus

JETHRO SIZIBA

And

ASSISTANT MASTER, HIGH COURT (N.O.)

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 20 FEBRUARY & 1 APRIL 2004

T A Cherry for applicant
J Tshuma for 1st respondent

Judgment

CHIWESHE J: The applicant seeks the following order.

“It is ordered that:

1. The first respondent is removed as the executor of the deceased estate of Lucas Matshilo Siziba DRBY 618/98.
2. The second respondent is to convene a meeting between the heirs and beneficiaries of the deceased estate in order to appoint a new and impartial executor.
3. That the deceased estate should bear the costs of the application.”

The background facts to this matter are as follows. On 2 October 1998 the first respondent was appointed as the executor of the deceased estate of Lucas Matshilo Siziba. In his founding affidavit the applicant states that the deceased was his father and as a son he is a beneficiary and heir of the estate. There are also other siblings and the widow of the deceased all of whom are beneficiaries of the estate.

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Of concern to the applicant is the fact that he has never been consulted on issues relating to the administration of the estate. No distribution plan has been made available despite requests from the applicant and fellow siblings.

It is the applicant's belief that certain business properties have not been included in the inventory of the assets of the estate and that first respondent is misusing or converting to his own use the profits from these business entities. The applicant also accuses the first respondent of attempting to sell some assets without consulting him and the other beneficiaries.

For these and other reasons the applicant believes that the first respondent has exhibited dishonesty and gross inefficiency in his administration of the estate and ought on that basis to be removed from the position of executor of the estate. He states that it has taken the executor six years to submit a distribution plan, a fact which in itself indicates failure by the executor to properly and diligently administer the estate. In these criticism of the first respondent's actions the applicant is supported by one Brazio Siziba his brother.

It is clear from the first respondent's affidavit that relations between him and the applicant have not been cordial owing to disputes over the administration of the estate. The first respondent says family meetings have been held to discuss the estate contrary to the applicant's assertions. He says these meetings invariably became rowdy and disorderly owing to the applicant's conduct. The first respondent says progress has been made in the administration of the estate save for the valuation of a company in which the deceased had shares. He says all the properties have been registered and that he will submit a distribution plan as soon as valuations of the outstanding company is complete. He states that although the process has taken seven

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years, this is not uncommon given the need to follow the correct procedure. He states that the applicant's conduct in failing to co-operate with him has contributed to the delays in the administration process. Contrary to the applicant's assertions the first respondent avers that he has conducted the affairs of the estate in an accountable and transparent manner. He says he has kept records of all transactions and kept the relevant authorities informed regularly. He denies deliberately delaying the distribution of the estate in order to gain personal benefit. Where he has disposed of assets it was because he was a director of the company concerned and therefore entitled to take such business decisions as may benefit the company. He states that no assets of the estate per se have been disposed and that allegations to the contrary by the applicant are motivated by malice. He further states that he will ensure that any distribution of the estate will first and foremost cater for his mother (the widow) with whom he says the applicant is not on speaking terms.

Briefly such are the facts. What then is the law applicable to these facts, disputed as they may be. Two points have been raised by Mr *Tshuma* (for the first respondent). The first point is that in terms of section 117(1) of the Administration of Estates Act chapter 6:01 it is only the Master who is empowered to make an application such as the present, seeking the removal of the executor. The section does not empower anyone else other than the Master. The applicant therefore clearly has no *locus standi* to bring this application. He can only seek remedy through the Master's Office. Section 53(1) of that Act does empower the Master or any interested party to summons the executor before this court to show cause why the estate account has not been lodged within a prescribed period. It however does not provide for the removal of the executor.

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For these reasons the application is not properly before the court for want of *locus standi*. *Advocate Cherry* (for the applicant) has conceded this point and in my view properly so. He has however sought to advance the argument that the applicant has a legitimate expectation to receive a share of the estate on its distribution. That might be so but clearly the order that he seeks can only be granted through the Master's Office. In any event assuming such order were to be granted, it would not in itself guarantee him a share in the estate. He has not shown on the papers that he is entitled to inherit from the estate and if so, the nature of such inheritance. At customary law the eldest child is the sole heir and beneficiary of an intestate estate.

His only duty to members of the immediate and extended family is to maintain those dependants who may be entitled to receive such maintenance from the estate. Clearly the applicant has no automatic right of inheritance. That is the second point raised by Mr *Tshuma*. *Advocate Cherry* has also properly conceded to that point. But even if the point were to be decided in favour of the applicant he would still be handicapped in the prosecution of the present application in which he seeks removal of the executor. He would be barred by the provisions of section 117 (1) of the Act.

The amendment brought into effect by Act No. 6 of 1977 (the Administration of Estates Amendment Act) have no bearing on this application.

For these reasons it is ordered that the application be and is hereby dismissed with costs.

Coghlan & Welsh, applicant's legal practitioners
Webb, Low & Barry, respondent's legal practitioners