

FAITH RUDO SEKERAMAYI
versus
ESTHER DZWOWA
and
DORCAS MAKAZA (in her capacity as Executer of the Estate Lovemore Sekeramayi Chipunza)
and
MASTER OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 30 March 2022

Opposed Matter

N T Tsarwe, for the applicant
T Zhuwarara with L Matapura, for the 1st respondent

MUREMBA J: I heard this application for review on 15 October 2021 and dismissed it by consent. Each party was to bear its own costs.

1. The applicant who was legally represented then has personally written to the Registrar of this court asking for the written reasons for judgment. I hereby furnish them.
2. The applicant's application was for the review of the decision of the Master of the High Court in authorising and approving the First and Final Liquidation Account lodged by the second respondent, the executor of the estate of the late Lovemore Sekeramayi Chipunza.
3. In the First and Final Liquidation Account the executor awarded the only immovable property called 31 Hindhead Avenue, Chisipite, Harare to the first respondent. The applicant wanted this property awarded to her.
4. In her application the applicant averred that she was customarily married to the Late Lovemore Sekeramayi Chipunza in 1971 and in 1982 they registered their marriage in

terms of the African Marriages Act 238. In 1983 the husband obtained a loan against a Mortgage Bond and they managed to buy the immovable property mentioned above.

5. The applicant averred that she was employed by the Family Planning Council of Zimbabwe and would spend the working days of the week at the accommodation given to her by her employer in 1984. She would go to her matrimonial house during the weekends. When her husband passed on, on 4 June 2014 she discovered that the first respondent was coming to her house during her periods of absence to be with her husband. She also discovered that her husband had contracted a customary law marriage with the first respondent in 2008. In the wake of the funeral the first respondent had already assumed permanent residence at the applicant's and the deceased's matrimonial house.
6. The second respondent, the executor awarded the matrimonial property to the first respondent and the Master who is the third respondent approved that decision.
7. The applicant further averred that this court had gone on to uphold the Master's determination that the first respondent was customarily married to the deceased and qualified as a surviving spouse as well.
8. In bringing the application for review the applicant contended that the Master's decision was irrational and grossly outrageous or unreasonable in its defiance of logic. She contended that the first respondent had not contributed anything towards the acquisition of the property and that she ought not to have been awarded that property. The applicant averred that since the property was acquired during the subsistence of her marriage to the deceased it ought to be awarded to her.
9. The applicant averred that the Master had confirmed that she was also a surviving spouse of the deceased.
10. In opposing the application the first respondent made averments that were conceded by the applicant. Apparently, the applicant had not disclosed in her founding affidavit that the deceased had gone on to contract a civil marriage with one Anita Stella Sekeramayi on 23

December 1990 and they divorced on 11 July 2001. When they divorced the late Lovemore Sekeramayi was awarded as his sole and exclusive property, the property in issue, i.e. Number 31 Hindhead Avenue, Chisipite, Harare.

11. During the hearing the court then sought to understand from Mr. Tsarwe the status of the applicant's marriage to the deceased at the time the deceased was married to Anita Stella Sekeramayi seeing that the property in issue later became subject to distribution at the divorce of the deceased and Anita. It was not making sense that the property that the applicant was claiming to always have been her matrimonial property with the deceased had actually gone on to be shared between the deceased and Anita who had been married after the applicant. Mr. Tsarwe submitted that at the time the late Sekeramayi and Anita were married, the late Sekeramayi and the applicant were living apart and there was no more marriage between the two. He further submitted that given that the applicant's marriage to the deceased was a customary one it came to an end when the late Sekeramayi contracted a civil marriage with Anita. This submission was wrong at law because a civil marriage does not override a customary law marriage which was contracted before it. The civil marriage contracted under such circumstances is a nullity. If the applicant and the late Sekeramayi were not divorced before the late Sekeramayi had married Anita, it means the applicant's marriage was still subsisting.
12. What is surprising is that the late Sekeramayi married Anita and stayed with her from 1990 to 2001, a period of 11 years without the applicant doing anything about it. He was staying with Anita at the property the applicant continues to claim to be her matrimonial property. The property even formed part of the assets that were subject to distribution at the divorce of the late Sekeramayi and Anita. The property was then awarded to the late Sekeramayi as his sole and exclusive property.
13. From the foregoing it appeared that the first respondent was telling the truth that at the time the late Sekeramayi married Anita in 1990 he had divorced with the applicant. That explained why Mr. Tsarwe submitted that the applicant and the late Sekeramayi were living apart at the time the late Sekeramayi was married to Anita.

14. All the while the applicant was staying in old Tafara at House Number 2304 which was a council rented house. Annexure A to the first respondent's opposing affidavit is a letter from the City of Harare dated 7 November 2014 saying that the council records showed that property 2304, Old Tafara was occupied by co-tenants Faith Sekeramayi a divorcee and Rosemary Kamukwende, a widow. It cannot be a coincidence that the council records described the applicant as a divorcee. She must have been divorced with the late Sekeramayi. That explained why she was not living with him since 1984. It did not make sense that she would live separately with her husband to the extent that he would marry twice without her knowledge and stay with these other women at their matrimonial property for years without the applicant's knowledge
15. It was clear that the applicant only took advantage of the fact that the late Sekeramayi is no more and that there is no proof of the decree of divorce. However, that is beside the point since the Master declared her to be a surviving spouse as well. What was clear was that the applicant had not lived together with the late Sekeramayi for several years right from the time he married Anita. Nothing showed that from the time the late Sekeramayi divorced with Anita, the applicant went back to stay with him at the disputed property other than her mere so that she would go to Chisipite during weekends. From 2008 to 2014 when the late Sekeramayi then died, the applicant was not even aware that he had married the first respondent yet the first respondent was staying there full time. This only showed that the applicant was not being truthful about the status of her marriage to the late Sekeramayi.
16. After Mr. Tsarwe had submitted that the applicant's marriage was no more when the late Sekeramayi married Anita, he went on to submit that he could not continue motivating the applicant's application for review and applied that it be dismissed with each party bearing its own costs. Mr. Zhuwarara was amenable to that application.
17. Resultantly, I dismissed the application. The application by Mr. Tsarwe that the application be dismissed motivated the dismissal of the application. However, the sequence of events that I narrated above shows that even if Mr. Tsarwe had pursued the application, the applicant would still have lost the case. This is because in terms of s 68 F (2) (c) (i) of the

Administration of Estates Act [*Chapter 6:01*] the first respondent deserved to be awarded the property in dispute since she is the wife who was in occupation of the property at the time of the death of the late Sekeramayi. The argument by the applicant that she helped acquire this property does not have any merit. This property was acquired by the late Sekeramayi through a mortgage bond in his name alone. When he was divorcing with Anita, the applicant never joined in the proceedings yet this property was up for distribution between Anita and the late Sekeramayi. If she had a claim why did she not take any action then? For several years she was not staying at that property. She cannot therefore claim that the Master erred in approving the awarding of that property to the first respondent.

18. Section 68 F(2)(c)(i) of the Administration of Estates Act makes it clear that where two wives were living in separate houses, each gets the house she was living in at the time the husband died. It reads-:

“(c) Where the deceased person was a man and is survived by two or more wives, whether or not there are any surviving children, the wives should receive the following property, in addition to anything they are entitled to under paragraph (b)—
(i) where they live in separate houses, each wife should get ownership of or, if that is impracticable, a usufruct over, the house she lived in at the time of the deceased person’s death, together with all the household goods in that house”

19. It is illogical that the applicant now wants to assert her rights in respect of a property which she never lived in for more than 20 years when her husband was alive. She was staying in Old Tafara for all those years as a divorcee whilst other women were staying with her husband at the property which she claims to be her matrimonial property. If indeed it was her matrimonial property as she says, she ought to have asserted herself when he was still alive. Whilst the applicant managed to prove that she is a surviving spouse of the late Sekeramayi since she produced the marriage certificate, she however did not show that she was living at the property in dispute at the time of the husband’s death.

20. In view of the foregoing the application had no merit at all. The decision to withdraw by the applicant's counsel was a wise one.

Tadiwa & Associates, applicant's legal practitioners
Mafongoya & Matapura, 1st respondent's legal practitioners.