ISABEL CHIKUDZA

versus

COSMAS CHIKUDZA

and

MASTER OF THE HIGH COURT

and

THE REGISTRAR OF DEEDS

HIGH COURT OF ZIMBABWE

CHITAKUNYE J

HARARE 25 October, 2011 and 1 March, 2012

Applicant in person

1st respondent in person

2nd and 3rd respondents not in attendance

CHITAKUNYE J: The applicant was married to the late Edward Matambanadzo Chikudza in terms of the Marriages Act, [*Cap* 5:11]. The late Edward M Chikudza died intestate on 15 February 2008. His estate was duly registered in terms of the Administration of Estates Act [*Cap* *6*:*01*] as DR309/08.

The first respondent who is the applicant’s stepson was appointed executor.

A dispute apparently arose on the manner of distribution of the estate. As a result in 2009, the parties approached the second respondent’s offices for guidance.

In his letter dated 2 March 2010, the second respondent advised the first respondent that, in terms of s 3A of the Deceased Estates Succession Act [*Cap* *6*:*02*], he was supposed to award the matrimonial house (Immovable property) to the applicant.

In his report dated 8 June 2010 in terms of r 248 of the High Court Rules, 1971, the second respondent reiterated this point. That report was issued in terms of Rule 248 of the High Court Rules, 1971 in response to the first respondent’s application against the applicant. The second respondent made it clear in his report that Isabel as the surviving spouse who was residing at the property immediately before the deceased’s death should be awarded the house in accordance with the provisions of s 3A of the Deceased Estates Succession Act. The first respondent apparently did not pay heed to that advice and directive.

As a consequence the applicant has now approached this court seeking an order compelling the first respondent to award her the house.

The first respondent opposed the application. In his opposition he alluded to the fact that the estate is now surrounded by a lot of litigations before courts. He however did not provide case or referral numbers for those cases which he said must be resolved before he can finalize the administration of the estate.

He also contended that there is another person called Linah Chikudza who is also claiming the house. He however did not state who this Linah is in relation to the estate late Edward M Chikudza or even attach a copy of Linah’s claim to his opposing papers.

The applicant in her answering affidavit refuted that Linah Chikudza was still claiming the house. She indicated that the issue of Linah was dealt with before the respondent and finalized. Linah was not a surviving spouse at the time of Edward M Chikudza’s death. Linah’s claim was dismissed by the second respondent since Linah had long divorced the deceased at the time the immovable property in question was acquired. I did not hear the first respondent to refute this. In fact in his oral submissions he confirmed that Linah was his mother and that she had separated with his father long before his death. He also confirmed that the applicant was the one staying at the property in question at the time of the deceased’s death.

The tenor of the first respondent’s response to the application gave the impression that he was of the view that the question of who should be awarded the house was to be decided by the Chikudza family.

Unfortunately that is not so. As this was the only matrimonial immovable property and since the applicant and the late Edward M Chikudza were married in terms of the Marriages Act [*Cap* *5*:*11*], the provisions of the Deceased Estates Succession Act 6:02 apply.

Section 3A of that Act states that:

“The surviving spouse of every person who, on or after 1 November 1997, dies wholly or partly intestate shall be entitled to receive from the free residue of the estate-

1. the house or other domestic premises in which the spouses or the surviving spouse, as the case maybe, lived immediately before the person’s death; and
2. the household goods and effects which, immediately before the person’s death, were used in relation to the house or domestic premises referred to in paragraph (a);

where such house, premises, goods and effects form part of the deceased person’s estate.”

In *casu* it is common cause that the applicant was living in the house in question with the deceased person up to the time of his death. So in terms of the above section she is entitled to receive the house. That is the legal position the first respondent must comply with. The first respondent must therefore expeditiously complete the administration of the estate and award the house in question to the applicant in terms of the said section 3A. If he is unable to do so it may be appropriate for the second respondent to take appropriate measures to remove the first respondent from the office of executor and appoint an independent executor in terms of the law. The first respondent would have shown his inability to fairly distribute the estate in terms of the Law.

Accordingly, it is hereby ordered that-

1. The first respondent is hereby directed to award house number 15489 Sunningdale 2, Harare to the applicant in terms of s 3A of the Deceased Estates Succession Act [*Cap* *6*:*02*].
2. Should the first respondent refuse or fail to comply with the law in this regard within 30 days from the date of this order, the second respondent be and is hereby directed to take appropriate steps for the removal of the first respondent from the office of Executor and proceed to appoint an independent executor with directives to expeditiously complete the administration of this estate in terms of the law.

NB

Second respondent: for your attention.