

ENELESS MHLANGA

APPELLANT

VERSUS

MAGGIE MHLANGA

RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
NDOU AND MATHONSI JJ
BULAWAYO 10 OCTOBER 2011 AND 10 NOVEMBER 2011

Mr M. Ndlovu for the appellant
Respondent in person

Civil Appeal

MATHONSI J: At the close of submissions in this matter we dismissed the appeal with each party to bear its own costs and said the reasons for doing so would follow. These are the reasons:

The late Greya Mhlanga was of Malawian origin. He died in 1983 and is survived by his two daughters, the appellant and the respondent as his wife Anna Makwelo is also deceased. He left behind a house namely No. B281 Njube Township which the parties are now fighting over.

The respondent approached the court *a quo* seeking an order that she is entitled to a share of the house left by her parents as the appellant was in occupation of the house and refusing to let her have her share. The appellant contested the action alleging that the respondent is not the child of the late Greya Mhlanga and was not entitled to a share of the house.

The evidence led in the court *a quo* is to the effect that the respondent had a short birth certificate in which her surname was recorded as Mhlanga. It got lost at a time when she had taken a national identity card using her married name of Mugore. She later divorced and when she wanted to renew her passport she learnt that she was required to produce a long birth certificate, her identity card and citizenship certificate. Being of Malawian origin she was required to renounce the Malawian citizenship.

The respondent then took her grandmother and sister, the appellant, to stand as witnesses for her to enable her to obtain a long birth certificate. This was in 1996. It must have dawned to the appellant that she could take advantage of the respondent's problem with her particulars to disinherit her because she refused to stand as a witness for the respondent. It was not until their uncle, one Joseph S. Moyo, was released from prison that the respondent was able to obtain the birth certificate and much later the citizenship certificate.

The respondent produced documents in the form of her birth certificate, which shows that her father is Greya Mhlanga; her certificate of registration as a citizen of Zimbabwe using the name "Maggie Mhlanga" and her national identity card showing the same. In addition, she called Joseph S. Moyo who testified in court that both parties are his nieces born of his sister and the late Greya Mhlanga. The court *a quo* believed this witness and the respondent.

Nothing was advanced on behalf of the appellant as to why the respondent was not the off-spring of the late Greya Mhlanga and why she should be disinherited. Clearly the appellant tried to take advantage of a situation in order to disinherit her sister.

It was for these reasons that we came to the conclusion that the appeal is without merit and dismissed it with no order as to costs in light of the fact that the appellant is indigent and was proceeding on an *in forma pauperis* basis.

Mlweli Ndlovu and associates, appellant's legal practitioners

Ndou J agrees.....