

DAMOFALLS INVESTMENTS (PVT) LTD
versus
EASTER MZITE (In her capacity as the Executrix Dative of the
Estate of the Late Chemayi Joseph Mzite)
and
THE MASTER OF THE HIGH COURT

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 12 – 14 October 2015 and 23 December 2015

Civil Trial

Mrs *M Matshiya*, for the plaintiff
Ms *H Tsara*, for the first defendant

MUREMBA J: The plaintiff issued summons out of this court in November 2014 against the first defendant in her capacity as the *executrix dative* of her late husband's estate, Chemayi Joseph Mzite. The second defendant was sued in his official capacity as the Administrator of Deceased Estates.

The plaintiff avers in its declaration that before Chemayi Joseph Mzite died he sold to it stand 2699, Gwelo Township. Consequently, it makes the following claims in its summons.

- “1) An order for the setting aside by the second defendant of the distribution of Stand 2699 Gwelo Township to the beneficiaries of the Estate Late Chemayi Joseph Mzite.
- 2) An order for the transfer of Stand 2699 Gwelo Township from the Estate of the LATE Chemayi Joseph Mzite to the plaintiff, failing which the Deputy Sheriff Gweru be authorised to sign the transfer documents.
- 3) An order for the eviction of the first defendant from Stand 2699 Gwelo Township.
- 4) An order for payment of the sum of US\$2 800-00 together with a further sum of US\$400-00 per month from 1st December 2014 to date of eviction of 1st defendant and all those claiming occupation in her name.
Or alternatively an order for payment to the plaintiff by the 1st defendant of the value of the said property currently US\$60 000-00.

5) An order for payment of legal costs on an attorney client scale.”

On the other hand, the first defendant denies that the late Chemayi Joseph Mzite ever sold stand 2699 Gwelo Township (hereinafter called the property or the house) to the plaintiff.

In their pre-trial conference minute the plaintiff and the first defendant agreed that the following issues will determine the matter.

- 1) Whether or not the late Chemayi Joseph Mzite during his lifetime sold the property in question to the plaintiff.
- 2) Whether the second defendant should set aside the confirmation of the Supplementary Estate Account.
- 3) Whether or not the plaintiff is entitled to the transfer of stand 2699 Gwelo Township or alternatively its value currently at US\$60 000-00.
- 4) Whether the plaintiff is entitled to evict the first defendant.
- 5) Whether the plaintiff is entitled to the payment of the sums of US\$2 800-00 and US\$400-00 per month from 1 December 2014 to date of eviction.

Once the first issue of whether or not the late Chemayi Joseph Mzite sold the property to the plaintiff is determined it will be decisive of the rest of the issues.

The Plaintiff's Evidence

The plaintiff led evidence from four witnesses: Martin Mataranyika, Edmore Samson, Priscilla Marume and Ravheti Kaseke.

Martin Mataranyika's evidence was as follows: He is a pastor with AFM Church and is currently based in Windhoek, Namibia where he has been since December 2010. He was formerly a business consultant with Millennial Insurance Company here in Zimbabwe. He helped found that company. The plaintiff was the principal shareholder of that company. Millennial Insurance Company had 2 executive directors and one of them was the late Chemayi Joseph Mzite. The other one was Mr Chinhamo. Mr Mataranyika said that he was involved in the recruiting of these 2 executive directors. In order to convince them to join the company the two were offered nominal shareholding each of between 2 to 5 per cent.

Mr Mataranyika said that there then came a time around 2005 when it was necessary to inject more capital into the company. He said that as the consultant he was worried that if the plaintiff as the principal shareholder was to inject more capital, the executive directors' shares would be diluted and they would be left with zero per cent shares. He consequently advised the two executive directors about it in a board meeting. In that meeting the late Mr. Mzite who had no money offered to sell his house in Southdowns, Gweru to the plaintiff, Damofalls Investments (Pvt) Ltd in order to raise capital to buy more shares in Millenial Insurance Company. Mr. Mataranyika said that he is not privy to the sale agreement which was later entered into by and between the late Mr. Mzite and the plaintiff. However, he was aware that the late Mr. Mzite and Mr. Samson, the representative of the plaintiff later drove to Gweru for Mr Samson to view the property. After some time the late Mr Mzite deposited funds into Millenial Insurance Company and bought more shares.

It is common cause that the original title deeds of the property in question were found in the possession of the plaintiff after the death of Mr. Mzite. Mrs. Easter Mzite, the *executrix dative* made allegations that the plaintiff stole the title deeds from the late Mr Mzite when he was ill. Mr Mataranyika vehemently denied that the title deeds were stolen by the plaintiff. He said that at the time the late Mr. Mzite was ill his office was always locked and he (the late Mr. Mzite) was keeping the keys. No one else at Millenial Insurance Company had access to those keys. If anyone needed anything from that office they had to ask for the keys and Mrs. Mzite would come and open for them. Mr. Mataranyika said that he knew the first defendant as the wife of the first defendant Mr. Mzite. Under cross examination Mr. Mataranyika said the board meeting which resulted in the late Mr. Mzite offering to sell his house was held in the boardroom of Millenial Insurance Company, CABS Centre, Harare. He said that those who were present were Mr. Samson who was the board chairman; the late Mr. Mzite who was the executive director; Mrs. Wabatagore who was a director, Doctor Dhliwayo who was also a director, and Mr. Mataranyika himself who was also a director.

Mr Mataranyika said that he was not involved in the sale agreement because it was a private matter between the plaintiff and the late Mr. Mzite. He had no idea how much the property was sold for and how the agreement of sale was executed or whether it was oral or

written. He said that he assumed that Mr. Mzite had finally sold his property to the plaintiff because after offering his property for sale he was later able to buy more shares.

Edmore Samson's evidence was as follows. He is the Managing Director of the plaintiff. The plaintiff is in the business of buying land in urban areas and developing stands for resale. Mr. Samson said that he is also a shareholder of Millennial Insurance Company wherein the late Mr. Mzite was an executive director and shareholder. He said that in 2005 there was need for the shareholders to increase the capital of Millennial Insurance Company. Each shareholder was supposed to contribute depending on how much they could raise. Just like what Mr. Mataranyika said, Mr. Samson said that since the late Mr. Mzite did not have any money he offered to sell his house in Gweru, No. 5 Cooper Road, Southdowns to the plaintiff. Although the plaintiff was not in the business of property buying it decided to buy the house so as to help the late Mr. Mzite increase his shares. Since the plaintiff was doing a project in Dalesford, Gweru it decided that the house could be used as its office. The parties entered into an agreement of sale. The agreed purchase price was Zimbabwean \$300 000 000.00 (three hundred million dollars) which was to be paid in cash installments starting from May 2005 to August 2005. The sale agreement was reduced to writing and was signed by the parties. After the full purchase price had been paid the late Mr. Mzite handed over the title deeds of the property to the plaintiff. Mr. Mzite then took a copy of the sale agreement and said that he was going to ZIMRA to obtain the capital gains tax exemption certificate since he was above 60 years old.

Mr Samson produced the title deeds as an exhibit. He said that he is the one who had been keeping them from the time they were given to him by the late Mr. Mzite. He said that soon after purchasing the property in 2005 the plaintiff took occupation thereof. It rented out the main house. It bought furniture for the cottage and its employees who were working on the Dalesford project were now using the cottage for accommodation. The plaintiff was selling stands in Dalesford. Mr. Samson said that an Estate agent called Trevor Dollar was managing the property for it from 2005 to 2014. He said that between April and July 2014 the first defendant Easter Mzite went to Trevor Dollar and forcibly took the keys to the property and took occupation of the property. Mr Samson said that when the first defendant took occupation of the property, the plaintiff was getting US\$400-00 per month in rentals.

Mr. Samson vehemently denied that the plaintiff was managing the house on behalf of the late Mr. Mzite because the plaintiff was not into property management. He said that the plaintiff was and is not an estate agent. Mr Samson said that the purchase price was paid to the late Mr. Mzite in the form of cash directly. He would be paid the money at the plaintiff's offices at No. 1 Kwame Nkrumah, Suite 22 and he would sign for the money on the petty cash vouchers. He said that despite paying the full purchase price and receiving the title deeds the plaintiff was unable to effect transfer of ownership because it was waiting for the capital gains clearance certificate from the late Mr. Mzite. He said that in 2012 the plaintiff sold the property to one Mr. Darangwa through his estate managers, Trevor Dollar. However, the plaintiff kept the money for the purchase price in its trust account pending transfer of ownership of the property from the late Mr. Mzite. The agreement of sale between the plaintiff and Mr. Darangwa was produced as an exhibit.

On the claim for payment of US\$400-00 per month from 1 December 2014 Mr. Samson said that \$400-00 is the amount that its tenant used to pay, but when the first defendant forcibly took occupation, she put a tenant who is now paying US\$300-00 per month. Mr. Samson said that as such the plaintiff is comfortable being paid either US\$400-00 or US\$300-00 per month. Under cross examination Mr. Samson said that the relationship that was there between Millennial Insurance Company and the plaintiff was that the owners of the plaintiff were the shareholders in Millennial Insurance Company. He said that when Millennial Insurance Company was formed the late Mr. Mzite was appointed as an executive director while one Mr. Chinama was appointed as the Managing Director. Each was given 5% shares in the company. Mr. Samson said that he allocated those shares to the two in his capacity as the chairman of Millennial Insurance Company. He said that the shareholders of the plaintiff were himself and the now late Mr. Wabatagore.

Mr. Samson said that after the late Mr. Mzite had offered to sell the house, the two of them went to Gweru to view the property before agreeing on the purchase price. He said that they later signed an agreement of sale and in that agreement of sale he signed on behalf of the plaintiff while the late Mr. Mzite signed for the seller. He said that Priscilla Marume signed as the plaintiff's witness. Mr Samson could not recall who signed as a witness for the late Mr. Mzite, but it was somebody from the plaintiff's offices since Mr. Mzite was being treated as part

of the plaintiff in the sense that most of the jobs that were being done by Millennial Insurance Company were from the plaintiff. Mr. Samson said that they misplaced the agreement of sale and they are still looking for it. Mr. Samson said that the appointed conveyancers were Wabatangore and Company, but at the time the sale agreement was entered into, Mr. Wabatagore had passed on. His wife had taken over his shares in the plaintiff, and is now one of the directors of the plaintiff. Mr. Samson said that the late Mr. Mzite died in January 2010. He said from 2005 to 2010 the plaintiff was waiting for the late Mr. Mzite to give it the capital gains clearance certificate but he kept on giving various excuses concerning ZIMRA. Mr Samson said that since they were working together he could not persistently ask for the certificate as no one ever fore saw any problems in future.

Mr. Samson said that the first defendant, Easter Mzite was aware of the sale of the property because when Millenial Insurance Company was then sold in 2012 she complained that the money that she got from the sale was little compared to the house that they had sold in order to inject capital into that company. He denied the allegation than when the late Mr. Mzite fell ill he took advantage and stole the title deeds to the house from his office. When it was put to him that up until his death Mr. Mzite was receiving rentals from the property, Mr. Samson denied it. He said that at the death of Mr. Mzite he did not discuss with Easter Mzite about the property because she already knew that her husband had sold it to the plaintiff. Mr. Samson said that by that time the plaintiff was already receiving rentals from the property. He said that explains why when Easter Mzite prepared the first and final distribution account of the estate in 2010 she left out that Gweru property. He said that when he approached her seeking transfer of the property she was actually surprised to learn that transfer had not been effected. That is when she refused to effect transfer. He said that when Easter Mzite later filed a supplementary distribution account which now included the property in question and advertised it in the newspaper, the plaintiff did not file any objection with the second defendant, the Master of the High Court because it did not see the advertisement.

Mr. Samson insisted that the petty cash vouchers that the late Mr. Mzite signed when he was paid for the property were authentic. He said that they indicate that they were for the purchase of an office because the plaintiff was buying the property for use as an office since it had a project which was running in Dalesford, Gweru.

Priscilla Marume's evidence was as follows. She now runs a boutique in town, but at the time material to this case she was working for the plaintiff as an accountant. Her duties included making monthly reports, supervision of accounts department; cash management, and preparation of financial statements. She said that she knew the late Mr. Mzite during his life time. He used to come to Damofalls Investments to see Mr. Samson. She said that Mr. Samson formally introduced him to her on the day he came in connection with the sale of a property he owned in Gweru which he was now selling to the plaintiff. Mr. Samson brought an agreement of sale which had already been prepared and asked her to sign as a witness which she did. The plaintiff was buying that property for use as its company offices. The purchase price on the agreement of sale was Z\$300 000 000-00. Since there was no enough money the late Mr. Mzite was going to be paid in installments starting on that day. She paid him in cash and signed on the petty cash voucher. He signed to acknowledge receipt thereof. She said that she paid him the full purchase price starting from 13 May 2005 to 22 August 2005. In saying this she was relying on the petty cash vouchers that she said they both signed whenever she paid him. She produced 3 petty cash vouchers as exhibits. She said that after the full purchase price had been paid the plaintiff took occupation of the property. Its employees who were going to Gweru to work on the Dalesford Project were no longer being paid for accommodation, but money for food only. The plaintiff had purchased beds and cooking utensils for the Gweru property.

Priscilla Marume said that when she left employment with the plaintiff in February 2010, the plaintiff was still in occupation of the property. She said that the plaintiff never managed the property in question on behalf of the late Mr. Mzite. She said no rentals were ever remitted to the late Mr. Mzite. She said that after the full purchase price had been paid she filed away the agreement of sale and the payment vouchers which were attached to it. She maintained that the signatures on the vouchers were the late Mr. Mzite's. She said that she was sure about this because she was the one who was in full control of the office, and whenever the late Mr. Mzite came to collect the money he would sign for it and the signatures are the same. She said it is difficult to forge a signature in a consistent manner.

The 3 petty cash vouchers which she produced show that a total payment of \$300 000 000.00 was made between 13 May 2005 and 24 August 2005 on 11 different occasions. On

those 11 occasions the purported signatures of the late Mr. Mzite were affixed. The signatures look the same through and through. On details it is indicated, “purchase of offices.”

The vouchers are all described as ‘Folio May 143’. Priscilla Marume explained that she gave the vouchers that description because she had opened the voucher in May and she had to stick to that voucher reference until full payment of the purchase price was made. She said this was done in order to keep track of all the payments in order to avoid underpayment or overpayment to the late Mr. Mzite. She explained that the vouchers do not fully describe what the payment was being made for except saying “purchase of offices” because these vouchers were attached to the agreement of sale. She said the signatures of the late Mr. Mzite represented him. She said that the vouchers say “purchase of offices” because the property in question was being bought for use as offices by the plaintiff. She said that she does not know when the vouchers were separated from the agreement of sale, but when she left employment with the plaintiff in 2010 everything was intact. She said that the staff at the plaintiff’s offices changed. She said only one file pertaining to the sale was being kept in her office.

Raveti Kaseke testified as follows. He has been employed by the plaintiff as a driver since 2003. He said that the plaintiff used to run a project in Dalesford, Gweru from around 2006 to 2008. He said that on 28 February 2008 he was asked by Mr. Chivhinge who was head of projects to drive him, Mrs. Wabatagore and the late Mr. Mzite to Gweru. The late Mr. Mzite wanted to go and show Mrs. Wabatagore the house that he had sold to the plaintiff. Mrs. Wabatagore also wanted to visit the Dalesford project. He said that when they got to Gweru, he drove to No.5 Cooper Road, Southdowns where the late Mr. Mzite told Mrs. Wabatagore that this was the house he had sold to the plaintiff. From there they proceeded to Dalesford to see the project. Raveti Kaseke said that from the time that house was bought from the late Mr. Mzite by the plaintiff, its employees who were going to Gweru for the Dalesford project would use the house for accommodation. They would only be given money for food. He said that he was one of those employees.

During cross examination Mr. Kaseke said that he did not know anything about the sale agreement between the plaintiff and the late Mr. Mzite. He said that all he knew was the trip he embarked on, on 28 February 2008. He said that he did not even know why it was necessary for the late Mr. Mzite to go and show Mrs. Wabatagore the house.

The First Defendant's Evidence

The first defendant Easter Mzite was the sole witness and her testimony was as follows. She is the wife of the late Joseph Mzite who died on 31 January 2010. At the time of his death they were staying at No.5 Woodcote, Marlborough, Harare, but they had 2 other immovable properties: no. 5 Cooper Road, Southdowns, Gweru and 6487 Glen Norah A, Harare. She was appointed the executrix dative of her late husband's estate.

She said that two months after the death of her husband she asked Mr. Samson about the rentals of the Gweru house which he was not remitting to her from the time her husband died. She said that she asked him in March 2010 because in the month of February no rentals had been given to her by the plaintiff who was managing that property for them. She said that her late husband never sold the property to the plaintiff. She said that from 2002 to 2006 she was out of the country in the United Kingdom. So when she asked for the rentals from Mr. Samson he said that he had personally bought the house from her late husband. She said that she asked Mr. Samson to produce the agreement of sale and proof of payment of the purchase price, but he refused to furnish them saying that it was now pointless as he had already effected transfer of the property into his name. She said that she was surprised that her late husband had never told her that he had sold the property.

Easter Mzite said that when she registered the estate of her late husband she excluded the Gweru house in light of Mr Samson's averments that he had bought it. She said that she wanted to carry out her own investigation about the property. She said that at the Deeds Office in Bulawayo she discovered that the house was still registered in her late husband's name. She said that she consequently filed a supplementary distribution account including the Gweru house with the Master of the High Court. This was after she had applied for a copy of the title deeds from the Deeds Office.

Easter Mzite said that she disputes that her late husband sold the house because the plaintiff failed to produce proof that it had purchased the house. She said that Mr. Samson said that the agreement of sale had been lost. She said that Mr. Samson wrote to her on 16 November 2012 for the first time asking her to assist in the transfer of the property. A letter to that effect

was produced by consent. Easter Mzite said that when this request was made, the plaintiff had sold the house to Mr. Darangwa Raymond.

Easter Mzite said that after the Master of the High Court had approved the final distribution account she served the plaintiff's tenants who were at the Gweru house with a three months' notice to vacate. A copy of the letter dated 1 June 2014 giving the tenants notice was produced as an exhibit. She said that these tenants, instead of vacating, started paying rentals to her in the month of July 2014. She said that her late husband was a good husband and would not have sold the house without informing her. She said that she doubted that petty cash would be used to pay for a house. She said that she suspected that that money that was paid to her husband by the plaintiff was for something else other than the purchase of the house since the plaintiff used to give jobs to Millenial Insurance Company. She also said that she doubts the authenticity of the signatures which are said to be her late husband's.

During cross examination Easter Mzite said that the property in question was registered in the name of her late husband alone. She said that her husband was keeping the title deeds of all their 3 houses at his office in the brief case. Asked about the commission that they (herself and her late husband) were paying to the plaintiff for managing their house, Easter Mzite initially said 15 % of Z\$325-00 which they were receiving in rentals per month. When it was put to her that Z\$325.00 per month as rentals would have been insignificant in 2005 seeing that the plaintiff was claiming to have bought the property for Z\$300 000 000.00 at that time, she changed her story and said that \$325-00 is the amount that she is currently receiving per month as rent in United States dollars. She said that she had not understood the question clearly earlier on.

When she was asked how much commission they were paying to the plaintiff out of the US\$325-00 per month she again changed her story and said that she did not know since it was her husband who used to deal with the plaintiff without her involvement. She said that she only learnt from her husband in 2008 that the plaintiff was now managing their Gweru house, but she did not know if there was a management agreement which was signed by the plaintiff and her late husband. She said that her late husband did not tell her the terms and conditions of the management agreement. She said that her late husband did not tell her how much was being remitted to them by the plaintiff. She conceded that there were issues that her husband dealt with without involving her. Easter Mzite said that she was first shown the payment vouchers by Mr.

Samson in August 2010 but she never raised the defence in her plea that the signatures which were alleged to be her late husband's signatures were forged. She said that she doubts the sale because the payment vouchers did not describe what the money was for; they do not bear the name of her late husband and the description of the property that was being sold. She said that she did not seek to have the signatures examined because she did not have the time to do so. She said that she cannot say exactly if the signatures were forged or not unless they are examined by an expert.

Analysis of Evidence

The problem with this case is that the person who is said to have entered into the contract or sale agreement with the plaintiff is now late. The first defendant who is saying that no agreement of sale was entered into is said not to have been a party to the agreement. It is not in dispute that the property in question is registered in the names of the late Mr. Mzite. At law there was nothing that could stop him from disposing of the property if he so wished. He could even do so without the consent and knowledge of his wife, the first defendant. Only his signature was required for the purpose of selling the property. The argument by the first defendant, Easter Mzite that there is no way her late husband could have sold the property without informing her because he was a good husband is without substance. I say so because Easter Mzite later made admissions that the same good late husband of hers entered into a management agreement with the plaintiff for the same property without informing her. She said when he later told her about it he did not even tell her its terms and conditions. He did not even tell her how much rent they were getting from it. He is said to have kept quiet about it up to the time of his death. If this is what really transpired what it means is that the late husband of the first defendant was capable of selling the property without informing her.

Looking at the evidence led before the court I am inclined to find in favour of the plaintiff that there was indeed a sale agreement involving the late Mr. Mzite's property in Gweru between the plaintiff and the late Mr. Mzite. I am convinced because the plaintiff's witnesses gave their evidence very well and impressed the court as credible witnesses. They were truthful and did not exaggerate their testimonies. Mr. Mataranyika and Mr. Samson corroborated each other on the circumstances which caused the late Mr. Mzite to offer his property for sale to the

plaintiff in a board meeting which was held in the boardroom of Millennial offices at CABS Centre, Harare. What shows that the two witnesses were truthful is that Mr. Mataranyika never sought to exaggerate in his testimony by saying that he then witnessed the signing of the agreement of sale. He even said that he did not know the terms and conditions of the sale agreement or how the purchase price was paid.

The issue of the sale agreement which Mr. Samson knew about was corroborated by Priscilla Marume who said that she saw the agreement of sale and even signed as a witness thereto. She said she personally kept the agreement of sale in a file in her office and attached the payment vouchers to it. Priscilla Marume's evidence is confirmation of the existence of the sale agreement at the time payment of the purchase price was made to Mr. Mzite. I find no reason for disbelieving the two when they say the agreement of sale later got lost or misplaced.

Both Mr. Samson and Priscilla corroborated each other on the purchase price of the property which they said was Z\$300 000 000-00. Payment vouchers showing that amount were produced. Both witnesses said that payment was being made for the purchase of the house in question. Other than making bold averments that payment could have been for something else, the first defendant did not adduce any evidence to prove that. Firstly, she could not say what that something else was. Secondly, she was saying that she was not sure if the signatures which were said to belong to her late husband were authentic. She was not saying the signatures were not her late husband's. That was not enough challenge of the evidence of Mr. Samson and Priscilla Marume who were saying the signatures were that of the late Mr. Mzite. Priscilla Marume said that the late Mr. Mzite would affix his signature on the vouchers in her presence each time he received payment.

The absence of full details on the payment vouchers as regards the names of the late Mr. Mzite, and the description of the property which was being bought was explained away by Priscilla Marume who was responsible for payments. She said it was because the payment vouchers were attached to the agreement of sale which bore the full details of the agreement. I find that explanation plausible and convincing. If the signatures on the vouchers were forged as Easter Mzite suggests, the simple question that may be asked is what stopped the plaintiff from simply forging an agreement of sale and lie that this was the agreement of sale that it entered into with the late Mr Mzite? Would it not have been easy under the circumstances to forge an

agreement of sale in order for the plaintiff to strengthen its case? I believe that it would have been very easy had the plaintiff been dishonest.

The fact that the original title deeds of the property are in the possession of the plaintiff is further confirmation of the sale agreement. Mr. Samson said that after the full purchase price had been paid to the late Mr. Mzite, the late Mr. Mzite handed over the title deeds to him and gave the plaintiff occupation. The plaintiff having furnished proof that the purchase price was paid, I find the testimony of Mr. Samson on the title deeds believable. The averment by Easter Mzite that Mr. Samson could have stolen the title deeds from the late Mr. Mzite's office at the time he was ill is without evidence.

On the other hand, the first defendant did not impress as a truthful witness. She claimed that the house was under the management of the plaintiff but that averment cannot be correct because firstly, the plaintiff was not and is still not into estate or property management. Its business is to buy land which it then develops into stands for sale. Easter Mzite could not explain on what basis the plaintiff was managing their property. Secondly, she failed to adduce any evidence of the management contract which was entered into by the plaintiff and her late husband. Other than making averments by word of mouth, she did not furnish any proof that the plaintiff was remitting rentals from the property to her late husband from 2008 up to the time of his death on 31 January 2010. Thirdly, it is unbelievable that from 2008, the time which she claims her late husband told her about the management contract or agreement, she never got to know the terms and conditions thereof, let alone the rentals which were being paid to them monthly. Fourthly, initially she sought to mislead the court by lying that for managing the property, the plaintiff was being paid 15 % of Z\$325.00 in 2005. When she was told that Z\$325-00 would have been very insignificant as rentals in 2005 she then changed her story and said that she was not aware of the amount of commission which was payable to the plaintiff. She sought to hide behind a finger by saying that she had misunderstood the question. This exposed her lies about the management agreement that she was talking about. In order to protect herself from further damaging questions, she then resorted to saying that her late husband had not told her the terms and conditions of the management contract.

It appears to me that the first defendant knew very well about the sale of the property by her husband to the plaintiff, but she sought to deny it taking advantage of the fact that the

plaintiff had lost the agreement of sale and the fact that transfer had not been effected in favour of the plaintiff at the time her husband died. This explains why she initially excluded this property when she compiled the first and final distribution account of her late husband's estate. She knew that the property had been sold to the plaintiff. At that time she did not know that the plaintiff had not yet effected transfer into its name. The moment she realised that transfer had not been effected she then compiled a supplementary distribution account to include the property in question. She then went to the deeds office and applied for a copy of the title deeds despite the fact that Mr. Samson had advised her by way of a letter dated 16 November 2012 that the plaintiff had original title deeds to the property. Going to the deeds office to obtain a copy of the title deeds when she knew pretty well that the original title deeds were in the possession of the plaintiff is a sign that Easter Mzite is a dishonest person who lied in order to obtain a copy of the title deeds. This shows that she wanted to ensure that the property in question would be treated as part of her late husband's estate for the benefit of the estate's beneficiaries. She did not care about the prejudice that the plaintiff which had bought the property would suffer. When she purportedly advertised the supplementary distribution account in the newspapers she did not even alert the plaintiff of it despite being aware that the plaintiff was claiming to have bought the property from her late husband. No one lodged an objection and consequently the second defendant confirmed the distribution of the property to the beneficiaries of the late Mr. Mzite. She then went on to take occupation of the property from the plaintiff in July 2014.

I am convinced that the plaintiff managed to prove on a balance of probabilities that the late Joseph Chemayi Mzite, during his lifetime, sold his Gweru property for the following reasons.

- 1) There is no evidence that shows that the plaintiff was managing the property on behalf of the late Mr. Mzite. In any case that averment is without substance because the plaintiff was not into property management.
- 2) The plaintiff has the original title deeds of the property. This confirms Mr. Samson's evidence which was to the effect that upon payment of the purchase price the late Mr. Mzite handed over the title deeds to the plaintiff.

- 3) From 2005 to July 2014 the plaintiff was in occupation of the property. This again is confirmation of what Mr. Samson said about the late Mr. Mzite having given the plaintiff vacant possession of the property to the plaintiff upon payment of the full purchase price.
- 4) The plaintiff's witnesses produced payment vouchers showing that the purchase price was paid for the property.

The plaintiff is therefore entitled to the transfer of the property into its name. The first defendant is entitled to be evicted from the property. For depriving the plaintiff of rentals starting from July 2014 which is the time Easter Mzite dispossessed it of the property, to November 2014 when plaintiff issued summons, the plaintiff is entitled to damages in the sum of US\$1500-00 which are calculated as follows: US\$300-00 per month x 5months. This is because although the plaintiff was initially claiming US\$400-00 per month which is the rent it used to receive, it indicated that it was willing to settle for US\$300-00 per month after the first defendant had indicated that from the time she took occupation of the property she has been receiving rentals of \$325-00 per month. Over and above that the plaintiff is entitled to damages at the rate of US\$300-00 per month starting from 1 December 2014 up to the date the first defendant vacates the premises.

The issue of costs was not canvassed during trial despite the fact that the plaintiff was claiming costs on a higher scale. I will therefore award costs on the ordinary scale.

In the result, it be and is hereby ordered that;

- 1) The order by the second defendant of the distribution of stand 2699, Gwelo Township to the beneficiaries of the Estate, Late Chemayi Joseph Mzite is set aside.
- 2) The first defendant transfers stand 2699 Gwelo Township from the Estate of the Late Chemayi Joseph Mzite to the plaintiff failing which the Deputy Sheriff Gweru is hereby authorised to sign the transfer documents.
- 3) The first defendant and all those claiming occupation through her are evicted from stand 2699, Gwelo Township.
- 4) The first defendant pays to the plaintiff damages in the sum of US\$1500.00 together with a sum of US\$300-00 per month from 1 December 2014 to the date of vacation.
- 5) The first defendant pays costs of suit.

Mtewa & Nyambirai, plaintiff's legal practitioners
Tsara & Associates, first defendant's legal practitioners