

KUMBIRAI MADONDO
versus
THE MASTER OF HIGH COURT
and
ESTATE LATE ELIAS DZIMBA MADONDO

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 11 FEBRUARY 2016

Opposed Matter

T Zhuwarara, for the applicant
Miss G. Bwanya, for the respondent

MWAYERA J: The applicant approached the court with an application for condonation of late noting of review of proceedings handled or presided over by the Master, the first respondent. The first respondent did not file opposition, the second respondent filed opposition. The applicant's version being that she notified the Master (the first respondent) of her status as a surviving spouse which status is confirmed by the High Court decision. The High Court sitting as an appellate division whereby divorce proceedings did not sail through leaving the marriage intact. In the case of *Kumbirai Madondo v Elias Dzimba Madondo* A.D12/80 CA 183/791.

She notified the Master upon hearing of registration of her late husband Elias Dzimba Madondo's estate. Her marriage as per the marriage certificate issued on 16 August 1956 remained intact. No further communication to her as regards the administration of the estate which was meaningful was presented to her by the Master thereafter. She got to know that the Master had accepted a will which she was aware had a paragraph wherein she was not to be part of the beneficiaries in the estate of the late Elias Dzimba Madondo. She was notified that the will was accepted and confirmed by the Master and learnt of that position in January 2015.

She then proceeded to file this application for review, given she is six months in delay in respect of the laws in filing. In terms of the law she is supposed to file an application for review within 8 weeks. It is with that background that the second respondent mounted opposition. The argument presented being that the applicant was fully aware of the circumstances of the estate having been registered and that she had been disinherited. That she was supposed to continuously on an unspecified number of occasions check with the Master's office to see if the Master would be processing the estate to her exclusion.

That submission does not make sound and satisfactory sense given the applicant did what is expected, that is to notify the Master of her status. For purposes of administration of the estate it is sufficient to notify of that status then necessary investigative processes would occur by the Master inviting all the relevant and interested parties for purposes of transparency. Proceedings in administration of the estate would then be thereafter by notification to all parties interested by the Master.

It is with that background then that the applicant's explanation for the delay is tendered since she was not notified. She sprouts to action when she got to know of the Master's decision of accepting the will. She sought to get corrective measures by way of review. That explanation is viewed as reasonable explanation in the circumstances.

In an application for condonation once there is good cause given for the delay and explanation for the delay, given the primary consideration is the interest of administration of justice there will be no reason to rigidly apply the time limits at the expense of administration of justice and not give the applicant chance to have a matter fully ventilated. The applicant has prospects of success given she notified the Master of her marital status. The Master proceeded to administer the estate to the exclusion of the applicant. The Master dealt with the estate as if there was no surviving spouse.

Accordingly therefore, good and sufficient cause for condonation has been placed before the court which warrants this court granting the application as prayed for in the draft order.

It is ordered that:

1. Leave be and is hereby granted for the applicant to file an application for review out of time.
2. The applicant shall file the review within five days of granting of this order.

3. The second respondent be and is hereby ordered to pay the costs

Hamunakwadi, Nyandoro & Nyambuya, applicant's legal practitioners
Chihambakwe, Makonese & Ncube, respondent's legal practitioners