

SILVER ZHUWAKI

v

1. TAZVITYA MUTANDWA 2. BRENDER CAROL LEEPER
3. THE DEPUTY SHERIFF-HARARE 4. THE REGISTRAR
OF DEEDS 5. CLEVER MANDIZVIDZA N.O

**SUPREME COURT OF ZIMBABWE
GWAUNZA JA, GOWORA JA & PATEL JA
HARARE, 7 FEBRUARY 2014**

L. Uriri, for the appellant

O. Hute, for the 1st respondent

PATEL JA: This appeal involves a dispute over the ownership and occupation of Stand No. 381 Goodhope Township. The court *a quo* found that the first respondent was the lawful owner of the stand and granted him vacant possession thereof, failing which the appellant was to be evicted therefrom. The appellant's counterclaim was dismissed in its entirety and he was ordered to pay the costs of suit on a legal practitioner and client scale. He now appeals against that judgment.

The first respondent purchased Stand No. 331 in the same Township from the beneficiary of the estate of the late Johanna Logan in August 2003. Because that stand had already been sold to a third party, the beneficiary and the executrix of the estate substituted Stand No. 331 with Stand No. 381. The first respondent had fully paid for the property and the Master subsequently consented to the transaction as a whole, resulting in the transfer of title in Stand No. 381 to the first respondent in September 2007. He then approached the court *a quo* seeking vacant possession or the eviction of the appellant.

The appellant claimed the right to occupy the property through a purported donation from the deceased, Johanna Logan, to his late father, Lovemore Zhuwaki, who in turn purported to bequeath the stand to the appellant through his will, executed on 2 November 2011, in anticipation of an employment gratuity to be received from the beneficiary of the Logan estate. As was correctly held by the court *a quo*, the bequest and disposition in terms of the will, and the subsequent inclusion of the property in the distribution account of the Zhuwaki estate, were both null and void *ab initio*. This was because the stand had never in fact been donated to the appellant's father and the latter could not lawfully bequeath what he did not himself own. The appellant therefore had no lawful right or claim whatsoever to occupy the property.

In the result, it is the unanimous view of this Court that the decision of the court *a quo* cannot be faulted on any ground. The appeal is accordingly dismissed with costs.

GWAUNZA JA: I agree.

GOWORA JA: I agree.

Mbidzo, Muchadehama & Makoni, appellant's legal practitioners
Hute & Partners, 1st respondent's legal practitioners