**REPORTABLE (10)**

**ELPHAS MAVUNE MAPHISA**

**v**

1. **CLEVER SIBANDA N. O. (**in his capacity as executor *dative* of the Estate of the late Melusi Sibanda**) (2) NQOBILE MLOYI**

**(3) THE DEPUTY MASTER OF THE HIGH COURT OF ZIMBABWE (4) THE REGISTRAR OF DEEDS (5) ETTAH SIBANDA (6) JOYCE SIBANDA (7) ELPHINA SIBANDA (8) KHEFENI SIBANDA (9) MAXWELL SIBANDA (10) SIYOLISIWE SIBANDA (11) SIBUSISIWE SIBANDA**

**SUPREME COURT OF ZIMBABWE**

**GWAUNZA DCJ, MAKONI JA & CHITAKUNYE JA**

**BULAWAYO: 20 JULY 2023**

The appellant in person

*T. Ndlovu*, for the second respondent

**CHITAKUNYE JA:** This is an appeal against the whole judgment of the High Court (the court *a quo*) handed down on 27 January 2022 dismissing the appellant’s application. After hearing submissions, we dismissed the appeal on 20 July 2023 for lack of merit. We indicated that our reasons will follow. These are they.

**THE FACTS**

The appellant and the first, fifth to eleventh respondents are all surviving children of the late Melusi Sibanda who died on 5 September 2005. On 7 May 2019, Clever Sibanda was appointed executor *dative* of the estate of the late Melusi Sibanda by Letters of Administration issued on that date.

The second respondent purchased an immovable property, being house number 501 Nkulumane, Bulawayo, from the estate of late Melusi Sibanda during its administration by the executor *dative*. Though the appellant alleges that he was named heir in a document purporting to be a Will of the deceased, such assertion did not curry favour with the appointing authority hence the appointment of Clever Sibanda as executor *dative* (executor*)* on 7 May 2019. The appointment has not been challenged and is extant.

At a meeting called by and held before the third respondent (the Master) on 25 June 2019, it was resolved that the late Melusi Sibanda’s immovable property, that is house Number 501 Nkulumane, Bulawayo, registered under a Deed of Transfer number 3478/2001 (“the property”), would be sold with the consent of all the beneficiaries thereto. The meeting was attended by the appellant and some of the cited beneficiaries. The minutes of the above meeting before the Master quote the appellant as having stated as follows in respect of the property:

“Rental was $120 per month to 2019 I have collected the rentals as the heir I was chosen by my father, I am responsible to bring these siblings together. I have archived (*sic*) to take care of my mother, share the cattle, buried my father. I was supposed to take care of my siblings I am surprised that they say they do not know the Will. At law, the house can be sold according to my father legacy, they can share rent if possible. *I agree to let the house be sold*.”

On 12 March 2020, the Master, upon the executor*’s* application, issued a certificate of consent to sell the house otherwise than by public auction in terms of s 120 of the Administration of Estates Act, [*Chapter 6:01*]. On 1 September 2020, the executor duly entered into an agreement of sale of the aforesaid property with the second respondent. He duly received the purchase price and it was submitted that he distributed the proceeds amongst the beneficiaries.

The appellant was aggrieved by the disposal of the immovable property. He alleged that neither himself nor his other siblings, who are also beneficiaries, had been consulted and hence they had not consented to the sale. Accordingly, on 9 March 2021, he approached the third respondent for a meeting. During that meeting, he had an opportunity to peruse the file pertaining to the Estate Late Melusi Sibanda. He noted that a certificate in terms of *s* 120 of the Administration of Estates Act [*Chapter 6:01*] (the Act) had been issued on 12 March 2020. He also noted that the immovable property had been valued at US$15 000.

Armed with this information, the appellant filed a court application “for unlawful disposal of deceased’s immovable property”. That application was essentially a challenge to the issuance of a certificate in terms of s 120 of the Act by the Master, which authorised the executor to sell otherwise than by public auction, the deceased’s only immovable property.

In his founding affidavit, the appellant alleged that no due inquiry was undertaken by the Master before the issuance of the certificate and that not all of the children of the late Melusi Sibanda had given their consent for the disposal of the property. He averred that this was contrary to the agreement of 25 June 2019 that this property would only be sold with the consent of all the beneficiaries.

The application was opposed by the second respondent who averred that he was an innocent purchaser of the property in question. Further, he denied that the beneficiaries had not been consulted and, in this regard, he attached affidavits from the beneficiaries consenting to the sale. In the second respondent’s view, the executor’s action was *bona fide* as all the beneficiaries had consented to the sale.

At the hearing of the application, the appellant and the second respondent raised preliminary objections which were all dismissed by the court *a quo*.

On the merits, the court *a quo* held that the appellant could not competently challenge the sale because the deceased’s property had been properly sold. It found that at the meeting of 25 June 2019, the appellant is recorded as having unequivocally accepted that the house be sold. In regards to the value of the property, the court *a quo* made a finding that no legal basis had been established for interfering with the decision of the Master in issuing his authority under s 120. Accordingly, the court *a quo* dismissed the appellant’s application with costs.

Aggrieved by the decision of the court *a quo*, the appellant noted the present appeal on four grounds of appeal. These are: -

**GROUNDS OF APPEAL**

1. The court *a quo* grossly erred in making a finding that the “applicant has not made a case for the relief he is seeking” yet the appellant’s Court Application for Unlawful Disposal of the Deceased’s Immovable Property was heard in contravention of peremptory rules of the High Court Rules, 1971 for filing and serving the notice of opposition and peremptory rules of the High Court Rules, 2021 for setting down opposed matters. The court *a quo* misunderstood and/or misinterpreted the appellant’s points *in limine.*

2. The court *a quo* grossly misdirected itself in making a finding that “applicant has not

made a case for the relief he is seeking” yet the court *a quo* conveniently

misinterpreted the resolution of the meeting held on 25 June 2020 *(sic)* and ignored

the executor’s letter.

3. The court *a quo* grossly erred in making a finding that “applicant has not made a

the case for the relief he is seeking” yet the court *a quo* did not apply the law according

to s 5(1)(a) of the Deceased Estates Succession Act [*Chapter* 6:02].

4. The court *a quo* grossly misdirected itself in making a finding that “the applicant has

not made a case for the relief he is seeking” yet the Deputy Master of the High Court

failed to conduct proper due diligence in terms of s 120 of the Administration of

Estates Acts [*Chapt*er 6:01].

The appellant prayed forthe appeal to be allowed and for the setting aside of judgment of the court *a quo*.

He also prayed for:-

1. the setting aside of the certificate issued by the Master in terms of s 120 of the Act;
2. the setting aside of the sale of the immovable property in question,
3. the placement of a caveat on the said property,
4. for the Master to ensure that all beneficiaries consent to the sale before the property can be validly sold; and
5. that the Registrar of Deeds is forbidden from transferring the property to anyone without an order of the court and that if any transfer had occurred it be reversed.

The court holds that only two issues commend themselves for determination and these are-

1. Whether or not the court *a quo* erred in dismissing the appellant’s preliminary points that the application was heard in contravention of r 233 of the High Court Rules, 1971 and r 59 of the High Court Rules, 2021.
2. Whether or not the court *a quo* erred and misdirected itself in finding that the immovable property was sold with the consent of all the beneficiaries and in accordance with the law governing the administration of deceased estates.

**SUBMISSIONS BEFORE THIS COURT**

The appellant submitted, *inter alia*, that the court *a quo* erred in making a finding that he had failed “to make a case for the relief he was seeking” yet his application challenging the unlawful disposal of the deceased’s immovable property was heard in contravention of peremptory rules of the High Court Rules, 1971 for filing and serving the notice of opposition and peremptory rules of High Court Rules, 2021 for setting down opposed matters. He submitted that the court *a quo* misunderstood and/or misinterpreted his points *in limine*.

On the merits, he submitted that the court *a quo* misinterpreted the resolution of the meeting held on 25 June 2019 and ignored the executor’s letter resulting in it holding that the appellant failed to make a case for the relief he sought. He further took issue with the court *a quo*’s alleged failure to apply s 5(1) (a) of the Deceased Estates Succession Act [*Chapter* 6:02]. Lastly, he submitted that the Master failed to conduct due inquiry in terms of s 120 of the Act before issuing the authority to sell.

*Per contra*, Mr *T. Ndlovu*, Counsel for the respondent, submitted that, regarding service of the notice of opposition, the appellant admitted that he was served with the first notice of opposition. He further submitted that the appellant also admitted to receiving the second notice of opposition as well. In this regard, counsel submitted that the court *a quo* was correct in holding that the appellant did not suffer any prejudice. Counsel further contended that rules are made for the benefit of the court and that the court in terms of r 4C of the then applicable High Court Rules, 1971 had the power to condone a departure from the rules as the appellant had been served. The infractions the appellant alluded to in his preliminary points were properly condoned by the court *a quo*.

On the merits, counsel submitted that at a meeting held on 25 June 2019 before the Master, where it was resolved that the immovable property would be sold by consent of all beneficiaries, the appellant consented to the sale of the house. He contended that the minutes of the said meeting were never challenged by the appellant as such he could not approbate and reprobate. He submitted that the court *a quo* correctly found that according to the minutes, the appellant had consented to the sale. Further, Counsel submitted that the other beneficiaries deposed to affidavits in which they consented to the sale of the house. In this light, he averred that the Master did carry out due inquiry as required of him. Counsel, as a result, prayed that the appeal be dismissed with costs.

**ANALYSIS**

1. **Whether or not the court a quo erred in dismissing the appellant’s preliminary point that the application was heard in contravention of r 233 of the High Court Rules, 1971 and r 59 of the High Court Rules, 2021**

The nub of the ground of appeal relating to the preliminary points dismissed by the court *a quo* is that the application *a quo* was heard contrary to the rules of the High Court.

The appellant’s gripe seemed to be that he had not been properly served with the notice of opposition as it was not addressed to him. He thus argued that the matter be treated as unopposed.

However, the court *a quo* made a specific finding of fact that the second respondent’s notice of opposition was filed and served in accordance with the Rules as the appellant had admitted receipt of the Notice of Opposition. On this issue, the court *a quo* stated at pp 4 -5 that:

“Applicant by his own version first found the first copy of a notice of opposition in the letter box, and was again on the 5th November 2021 served with a second copy of the notice. Again, the copy of a notice of opposition in the court file is copied to the applicant. However applicant’s name and address is in long-hand. The notice is clearly copied to the applicant. This is what the rules require.”

It is apposite to note that the second respondent’s notice of opposition was filed on 10 May 2021. On that date, the High Court Rules, of 1971 were still in force. Rule 233(1) of the High Court Rules, 1971 provided that:

“(1) The respondent shall be entitled, within the time given in the court application in accordance with rule 232, to file a notice of opposition in Form No. 29A, together with one or more opposing affidavits.”

The date stamp on the application shows that it was filed on 26 April 2021. It was served on the second respondent on 27 April 2021. The second respondent filed his notice of opposition on 10 May 2021 and subsequently served it at the appellant’s address by placing it in a letter box after a person found at the address refused to accept service.

In terms of r 232, a notice of opposition and affidavit attached thereto is required to be filed in not less than ten days, exclusive of the date of service. The respondent must soon thereafter serve a copy of the notice of opposition on the applicant. A respondent who fails to file a notice of opposition and opposing affidavit within the period specified in the court application shall be barred. In *casu,* the appellant’s contention was not that the second respondent had failed to act within the *dies induciae* but that the notice of opposition filed was not properly addressed to him. The alleged infraction as noted by the court *a quo* was that the applicant’s name and address were hand-written and not in typed form. The appellant having admitted to receiving the notice of opposition, did not allude to any prejudice he suffered as a consequence of his address being handwritten as opposed to being typewritten. It was such an infraction that the court *a quo* held as not fatal and condoned it in the interest of justice. As aptly noted in *Darangwa v Kadungure* SC 126/21 at p 11:

“The rules of court are designed for the benefit of the court and the proper administration of justice. As has been said, they are “not laws of Medes and Persians”. See *Scottish Rhodesian Ltd v Honiball* 1973(2) SA 747 (R) at p 748. The rules are just the court’s tools fashioned for the court’s own use and are not an end in themselves to be observed for their own sake. See *Federated Trust Ltd v Botha* 1978(3) SA 645 at 654.”

This Court will not easily interfere with findings of fact by a lower court or tribunal unless it is satisfied that such findings are contrary to the evidence adduced or so outrageous in their defiance of logic that no reasonable person could have arrived at them. See *Nyahondo v* *Hokonya* *& Ors* 1997(2) ZLR 475 (S) and *Hama v National Railways of Zimbabwe* 1996 (1) ZLR 664 (S).

In *casu*, the facts evident from the record of proceedings show that the second respondent’s notice of opposition was filed within the requisite period and served within time at the appellants’ address of service. The appellant admitted receipt thereof. His only gripe was that the pleadings were not addressed to him in the typed form. He did not refer to any rule to the effect that the address on pleadings must be in typed or printed form. The pleadings filed of record show that the appellant’s name and address were handwritten. That is the ‘infraction’ the court *a quo*, in the exercise of its discretion, condoned. The court holds the view that the court *a quo* cannot be faulted for condoning such an ‘infraction,’ if any, in the interest of justice. There is thus no merit in the appellant’s argument on this aspect of the preliminary point.

On the contention that the matter was set down contrary to peremptory rules of the High Court Rules, 2021 relating to the setting down of opposed applications, the appellant was not clear as to which rule, in particular, he believed had not been complied with. As a self-actor we allowed him to make his submission on the particular aspects he felt had not been properly determined. The appellant submitted that the second respondent should not have filed his heads of argument before the matter had been set down. His understanding of the applicable rules was that a respondent could only file its heads of argument after the court application had been set down. In his view, it is only the applicant who can file heads of argument before the matter is set down. In this regard, the court *a quo* concluded that there was nothing in r 59 of the High Court Rules, 2021 providing that heads of argument could not be filed before an application was issued with a set-down date. At p 5 of its judgment the court *a quo* statedthus:

“Applicant’s complaint is that second respondent’s heads of argument were filed before this matter was provided with a set-down date. I take the view that this is a flimsy and meritless preliminary point. Rule 59(60) (sic) cannot be interpreted to mean that heads of argument cannot be filed before an application has been provided with a set-down date. In fact, rule 65(10) is clear that a matter cannot be set-down if the papers are incomplete, and my view is that if heads of argument have not been filed the papers would be incomplete and the matter would not be ripe to be provided with a set-down date. This preliminary point has no merit and is refused*.”*

The finding of the court *a quo* is beyond reproach. It is pertinent to refer to the applicable sub-rules at the outset. Rule 59 sub-rules 18,19,20, 24 and 25 of the High Court Rules, 2021 provide, *inter alia*, as follows: -

(18) If, at the hearing of an application, exception, or application to strike out, the applicant or excipient, as the case may be, is to be represented by a legal practitioner-

(a) **before the matter is set down for hearing, the legal practitioner shall file with the registrar heads of argument** clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite; and (my emphasis)

(b) immediately after awards*(sic)*, he or she shall deliver a copy of the heads of argument to every other party and file with the registrar proof of such delivery.

(19) An application, exception, or application to strike out shall not be set downfor hearing at the instance of the applicantor excipients, as the case may be, unless—

(a) his or her legal practitioner has filed with the registrar in accordance with sub-rule (18)—

(i) heads of argument; and

(ii) proof that a copy of the heads of argument has been delivered to every other party; and

(b) in the case of an application, the pages have been numbered in accordance with rule 58(1).

(20) Where an application, exception or application to strike out has been set down for hearing in terms of rule 65 and any respondent is to be represented at the hearing by a legal practitioner the legal practitioner shall file with the registrar, heads of argument clearly outlining the submissions relied upon by him or her and setting out the authorities, if any, which he or she intends to cite, and immediately thereafter he or she shall deliver a copy of the heads of argument to every other party.

(21) Heads of argument referred to in sub-rule (20) shall be filed by the respondent’s legal practitioner not more than ten days after heads of argument of the applicant or excipients, as the case may be, were delivered to the respondent*:*

Provided that—

1. no period during which the court is on vacation shall be counted as part of the ten-day period;
2. the respondent’s heads of argument shall be filed at least five days before the hearing as long as the respondent shall not have been barred in terms of sub-rule (22).

(22) Where heads of argument that are required to be filed are not filed within the period specified in sub-rule (21), the respondent concerned shall be barred and the court or judge may deal with the matter as unopposed or direct that it be set down for hearing on the unopposed roll.

(23) ……

(24) **In relation to any application, exception, or application to strike out which has been set down by a respondent, any reference—**

1. **in sub-rule (18) to the applicant or excipient, shall be construed as a reference to the respondent**; (my emphasis)
2. in sub-rules (20), (21), or (22) to a respondent, shall be construed as a reference to the applicant or excipients.

(25) Where an applicant, excipient, or respondent is not to be represented at the hearing by a legal practitioner**,** he or she may, if he or she so wishes, file heads ofargument***,*** in which event he or she shall comply with sub-rules (18) or (20) as the case may be.”

It is apparent from the above that where an applicant is to be represented by a legal practitioner at the hearing, the mandatory requirement is upon the applicant’s counsel to file heads of argument and seek the setting down of the matter. The respondent, who is to be represented by a legal practitioner will then be required to file his heads of argument within ten days from when they are served with the applicant’s heads of argument, and not from the date of set down. On the other hand, where the applicant or excipient is not to be represented by a legal practitioner, there is no mandatory requirement for him to file heads of argument. He is, however, given the discretion to file heads of argument if he so wishes. (See sub-rule 25). The mandatory requirement to file heads of argument is upon a party who is legally represented and not a self-actor. Where the applicant is not legally represented but the respondent is legally represented the mandatory requirement is upon the respondent’s legal practitioner to file heads of argument before he seeks the setting down of the matter. Sub-rule 24 specifically provides this when it states that any reference to the applicant in sub-rule 18 shall be construed as a reference to the respondent and any reference to the respondent in sub rr 20, 21 and 22 shall be construed as a reference to the applicant. Once that reversal of responsibilities is understood it invariably entails that the second respondent’s legal practitioner was mandated to file heads of argument before he could seek the setting down of the application. It is the filing of the heads of argument, as he did, which made the application ripe for setting down. A recast sub-rule 18 would thus read: -

“(18) If, at the hearing of an application, exception or application to strike out, the **respondent, as the case may be, is to be represented by a legal practitioner—**

**(a) before the matter is set down for hearing, the legal practitioner shall file with the registrar heads of argument** clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite; and (my emphasis)

(b) immediately afterwards, he or she shall deliver a copy of the heads of argument to every other party and file with the registrar proof of such delivery.”

It is common cause that it is the second respondent’s legal practitioner who applied for the setting down of the application. Had he not filed the heads of argument; the matter would not have been set down. He therefore had to file the heads of argument.

The court holds that the court *a quo* was correct in dismissing this leg of the appellant’s preliminary point on the issue of non-compliance with rules of the High Court Rules, 2021 relating to the setting down of opposed applications.

The first ground of appeal has no merit.

**2. Whether or not the court *a quo* erred in dismissing the appellant’s application upon finding that the immovable property was sold with the consent of all the beneficiaries and in accordance with the Administration of Estates Act**.

This issue arises from the second to the fourth grounds of appeal. These grounds of appeal are essentially an attack on the court *a quo’s* finding that the appellant did not prove his case for the relief he sought. On the other hand, the second respondent averred that the court *a quo* correctly found that the appellant’s case had no merit as all beneficiaries had consented to the sale.

It is trite that this court can only interfere with the findings of the court *a quo* on limited grounds. An appellate court will not lightly interfere with an exercise of discretion by a lower court unless it is shown, *inter alia*, that some error was made in exercising the discretion, such as that it acted upon a wrong principle; that it allowed extraneous or irrelevant matters to guide it or affect it; that it mistook the facts or failed to take into account some relevant consideration. See *Barros & Anor* v *Chimphonda 1999* (1) ZLR 58(S) *Halwick Investments v Nyamwanza* 2009 (2) ZLR 400(S).

The nub of the appellant’s case was that the Master had not conducted a due inquiry before issuing a *s* 120 certificate. He submitted that had the Master conducted such an inquiry he would have noted that not all beneficiaries had consented to the sale of the property as had been agreed to in the meeting of 25 June 2019. It is that agreement he said was binding on the Master and the Executor in terms of *s* 5 (1) (a) of the Deceased Estates Succession Act [*Chapter* *6:02*).

Section 120 of the Act pertains to the power granted to the Master to authorise the sale of property otherwise than by public auction. The section provides: -

“If, after due inquiry, the Master is of (the) opinion that it would be to the advantage of persons interested in the estate to sell any property belonging to such estate otherwise than by public auction he may, if the will of the deceased contains no provisions to the contrary, grant the necessary authority to the executor so to act.”

The due inquiry the Master is enjoined to conduct is an interrogation of the reasons why the executor would like to sell the property otherwise than by public auction and whether such would be in the interests of those interested in the estate, such as beneficiaries. The Master must satisfy himself/herself that such a manner of sale would be to the advantage of persons interested in the estate. In the process, the Master may take such steps as he/she deems fit, including engaging the beneficiaries, in order to arrive at an appropriate opinion. See *Katsande v Katsande & Ors* 2010(2) ZLR 82(H).

In *casu*, the appellant and other beneficiaries held a meeting with the Master on 25 June 2019. At that meeting, it was resolved that the immovable property of the deceased would be sold by consent of all the beneficiaries. The appellant is quoted as having stated, *inter alia*, that:

“At law, the house can be sold according to my father legacy they can share rent if possible. I agree to let the house be sold.”

The minutes of the meeting were in fact provided by the appellant. It is clear that at that meeting the appellant gave his consent to the sale. It was in light of this that the court *a quo* made a finding that the resolution requiring consent from all beneficiaries applied to those beneficiaries who did not attend the meeting or who had not given their consent thereat, since the appellant had given his consent in the meeting. The court *a quo* further noted that the other beneficiaries had given their consent through the affidavits filed of record. In the circumstances it could not be said that some of the beneficiaries had not given their consent.

The court is of the view that the finding by the court *a quo* that given the obtaining circumstances the term “all beneficiaries” that were to still give consent as per minutes of 25 June 2019 meeting applied to those beneficiaries who did not attend the meeting or consent thereat, is not unreasonable or irrational so as to warrant this court’s interference. Surely, if there were some beneficiaries who attended the meeting on 25 June 2019 and had expressed their consent to the sale of the property, it was not unreasonable to conclude that the reference to “all” beneficiaries was intended to cover those beneficiaries who were not part of the meeting or were yet to give their consent. The finding of the court *a quo* cannot be faulted in this regard.

The other leg of the appellant’s attack of the court *a quo’s* decision was that it had failed to appreciate that the Master did not apply the law according to s 5 (1) (a) of the Deceased Estates Succession Act [*Chapter 6:02*]. That section provides:

“5 (1) Where as a result of a distribution in intestacy any property devolves upon any

heirs in undivided shares—

1. the heirs may agree upon an alternative division of the property, and such agreement shall be binding on the executor.”

In his view, the aforesaid s 5 (1) (a) mandated the Master and the Executor to ensure that the consent of all the beneficiaries was obtained before the property was disposed of. This is what he apparently considered as an alternative division or direction to sell the property. This argument is again premised on his assertion that not all beneficiaries had consented to the sale. He was, however, unable to refute the existence of affidavits from all other beneficiaries consenting to the sale. It was in this respect that the court *a quo* alluded to the fact that he had no authority to speak on behalf of the other beneficiaries in the light of the affidavits filed of record. The other beneficiaries had in fact been cited as respondents in the application but had opted not to participate. It was apparent to all and sundry that it was only the appellant who had had a change of mind after his initial consent before the Master. In dealing with this change of mind the court *a quo* aptly remarked at p 8 that:

“Applicant’s contention that he did not consent to sale of the property cannot withstand scrutiny. Applicant attended a meeting held on the 25th June 2019. At the meeting he unequivocally agreed that the house be sold. Applicant cannot be permitted to play double standards, that when it suits him, he agrees to the sale of the property, and when it does not suit him to make a turn and allege that he did not consent to such sale. This is impermissible.”

The Master cannot, in the circumstances, be faulted for issuing the *s* 120 certificates as he had been favoured with the necessary information to form an opinion in terms of the law. In any case given the circumstances of this case, the Master was enjoined to exercise his discretion in determining whether to grant the s 120 certificate or not.

The appellant’s effort at relying on *s* 5 (1) (a) of the Deceased Persons Succession Act, was misplaced and inapplicable.

In *casu*, the appellant lamentably failed to establish that the court *a quo* erred in holding that the Master had properly exercised his power in issuing the *s* 120 certificate. There is indeed nothing to show that the Master may have injudiciously exercised his discretion. On the contrary, the Master sanctioned the sale of the immovable property in accordance with the law after due inquiry. Accordingly, the appeal has no merit.

**DISPOSITION**

It was for the above reasons that the appeal was dismissed with costs.

**GWAUNZA DCJ :** I agree

**MAKONI JA :** I agree

*Sansole & Senda,* 2nd respondent’s legal practitioners.