

**Review and Reform of the Law on Administration of
Estates in Zimbabwe**

Main Report



Legal Resources Foundation

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PREFACE

The Legal Resources Foundation ('the LRF') undertook a research to establish gaps in the legal, policy and practice framework relating to administration of estates. The broad purpose of the research was to understand the challenges presented by the law and practice relating to administration of estates which challenges negatively affect beneficiaries of deceased estates. This report exposes the challenges which are linked to the law, procedure and practice and provides recommendations to address the identified gaps.

The research process entailed extensive consultations and engagements with various stakeholders. We are grateful to those who participated in the research who include Sincere g officials in the justice delivery system such as the Master of the High Court, Assistant Masters and Magistrates, officials and representatives of various civil society organizations, academic institutions, associations in both the private sector and in government, beneficiaries of deceased estates, executors, and all other persons who freely gave information in their personal or professional capacity. The LRF values their contribution, assistance, support, and readiness in sharing important information, articulating views and expressing their opinions when requested to do so. In as much as their contribution is valued in coming up with this Report, the LRF takes direct responsibility for its contents, analysis, conclusions and findings.

A. EXECUTIVE SUMMARY

Since 1980, the procedural aspects relating to winding up of estates of deceased persons through the Office of the Master of the High Court have not received much attention. While the legislature should be commended for the amendment to the Administration of Estates Act [Chapter 6:01] which took effect on 1 November 1997 which protected the rights of women to inherit, not enough attention has been given to procedural aspects relating to administration of estates. Further, gaps in the 1997 amendment have been noted over the years and these have not been addressed. Related to this is the issue of whether or not the fees and taxes levied on deceased estates are reasonable has not been looked at policy level of the fact that a significant number of beneficiaries have faced challenges in raising such fees and taxes to the point where some lost property to raise money to pay the taxes and fees.

This research is driven by the need to protect beneficiaries of deceased estates through ensuring that all gaps and bottlenecks in the law, procedure and practice including the fee structure of the administration of estates system are exposed and addressed. The research entailed a review of the Administration of Estates Act Chapter 6:01, the Deceased Estates Succession Act Chapter 6:02, the Deceased Persons Family Maintenance Act Chapter 6:03 and the Wills Act Chapter 6:06. Judgements which have been handed down by Zimbabwean courts interpreting some of the provisions of the Administration of Estate Act were also examined. The analysis of these laws is contextualised within a discussion of relevant constitutional positions, in view of the relatively new 2013 Constitution.

To ground the research into lived realities, three focus group discussions were conducted in Mutare, Harare and Gweru, representing roughly three provinces.¹ Interviews were conducted with magistrates, judges, academics, legal practitioners, officials from the Office of the Master of the High Court, clerks, civil society, government officials and professional executors. These interviews were

¹¹ It must be noted that these FGDs attracted people from beyond these provinces; for instance, for the Gweru FGD, people from Bulawayo also attended; for the Harare FGD, persons from Mashonaland East also participated.

complemented by questionnaires. All in all, the research done shed light into the impacts and implications of the procedural and financial aspects that characterise Zimbabwe's administration of estates system.

From the research, a number of findings were made. The major findings relevant to this research are listed in Table 1 below.

Table 1: Headline Findings

<p>Legal Awareness and Education: Communities are not aware of the substantive and procedural framework for the administration of estates of deceased persons. This knowledge gap is worrying; it generally means that there is no appreciation of the importance of administration of estates. People end up not registering their estates at all.</p>
<p>Procedural Aspects: Without the very basic appreciation of the relevant legal framework, communities find it difficult to understand some of the procedural aspects relating to administration of estates. The majority of respondents stated that the procedures explained by the Office of the Master or professional executors were highly complex, even for small estates. In some, procedures remain one of the biggest stumbling blocks in expeditious winding of estates of deceased persons and the cooperation of relevant persons. Procedures have also been slated as providing too many opportunities for disputes, quarrels and opportunistic behaviour by relatives.</p>
<p>Fee Structure: Virtually all respondents decried the steep fees charged for administration of estates of deceased persons - being an average of 13% of the estate where professional executors and conveyancing lawyers are involved. This figure can rise if there is serious disputation that ends up in court with the involvement of lawyers. Estate valuation also demands professional fees.</p>
<p>Operation Vhara-file: Despite the Office of the Master stating that they opt to selling the family home as the last resort, all respondents asserted that the Master's strategies to ensure expeditious winding up of estates caused undue hardship, despondency, pain, suffering and desperation. Operation Vhara-file was one such strategy where the Office of the Master was perceived as threatening to sell family homes in those estates that had taken too long (beyond 6 months) to be distributed. Operation Vhara-file was a process where the Master of the High</p>

Court evoked the provisions of the Administration of Estates Act which provide that an estate should be finalised within 6 months of the process being initiated. In estates where the 6 months period was not met the Master appointed professional executors. These executors would end -up requesting for consent to sell immovable property to settle Master's fees and estate duty where family members failed to settle same. The strategy adopted by the Master was perceived as intimidating and threatening by respondents who regarded that it did not take into account the financial, social and economic status of beneficiaries or family members, even children.

Recommendations

In view of the above, the key recommendations are as follows:

Legal Awareness and Education

More effort should be put to raise awareness on the substantive and procedural framework for the administration of estates of deceased persons across the country

Procedural Issues

- i) The law must be amended to establish less complicated stages in the administration of estates of deceased persons. This can be done by amendment of the Administration of Estates Act, or drafting of regulations that introduce a new procedural system that is simpler and more understandable.
- ii) Related to the above point, there is need in the Regulations on procedure to separate the approaches for handling more valuable/ estates of high value and complicated estates from those for simple, straight-forward estates with low value or no immovable property.²

² Currently, section 32 of the Administration of Estates Act allows the Master to act summarily in relation to small estates, but has no exact details of the summary procedures.

- iii) An electronic case management system must be adopted to address challenges associated with a manual system which include missing files, time wasted waiting for a file to be pulled out and tempering with papers filed.

The Fee Structure

The flat 4% Master's fees for all estates of deceased persons must be reviewed with a view to replacing it with a sliding scale system. In essence, the sliding system could incorporate the following key features:

- i. Small estates below a certain threshold value must be exempt from Master's fees.
- ii. Taxation rates applicable to estates should be informed by the value of estates with estates of higher values attracting higher tax rates and vice versa.
- iii. Professional executors' fees must be based on the value of the estate with thresholds being laid out in the law. Accordingly, a sliding system must determine the percentage fee payable.

B. Background, Context and Structure

In April 2019, the Legal Resources Foundation commissioned a research for the review and analysis of the law on administration of estates in Zimbabwe. The research was motivated by anecdotal evidence which suggests that beneficiaries of deceased estates are encountering challenges in winding up of estates arising from procedural and financial requirements laid out in terms of the law. The LRF further noted that there are gaps in the 1997 amendment which gaps are affecting beneficiaries of deceased estates adversely. The terms of reference, in specific terms, called for carrying out of a gap analysis in respect of the law and procedure providing for administration of estates.

This research is motivated by various calls for law and policy reform in this sphere of the law, and is thus deliberately aimed at directly responding to identified gaps, weaknesses, inefficiencies and challenges inherent in the existing institutional and administrative system.

It is accepted that the administration of estates is a critical cog in the machinery for administration of justice in Zimbabwe. It is mainly driven by the Office of the Master of the High Court and subordinate officials and personnel. Despite its importance in the administration of justice, not much has been done in terms of reviewing some of the gaps in the law since 1997 when the Administration of Estates Act was amended substantially. A direct result is that the gaps in both the administrative and substantive framework take time to be attended to and addressed.

It is recognised that estate administration is a source of revenue for the State. However, the fact that estate administration can be a lucrative source of revenue must be balanced with the need to ensure justice, fairness, expeditious winding up of estates and respect for property rights arising out of administration of estates. The quest for revenue generation through collection of various fees should not take precedence over the need to safeguard the interests of beneficiaries who risk being impoverished in the event that they fail to raise the requisite fees and taxes.

In carrying out this task, the Consultant was guided by the TORs, which specifically required the Consultant to:

- (I) Carry out a literature review on policies and the law on administration of estates in Zimbabwe, specifically looking at the procedure for winding up of estates, the fees which are paid at every stage and the role which is played by the office of the master in guiding beneficiaries and executors of the estates.
- (II) Establish the extent to which users are being affected by the current legal and policy framework on estate administration with specific reference to fees to be paid for winding up of estates and the procedures to be followed in winding up of estates.
- (III) Carry out a comparative analysis of the policies and legislation specifically comparing with other jurisdictions, such as South Africa, Namibia, Botswana and Zambia.
- (IV) Recommend policy and legislative provisions which will address challenges which beneficiaries of deceased estates face in winding up estates

C. STRUCTURE

This Report is structured as follows:

- **Section 1** contains the Introductory Context and illustrates the research methods applied in data collection.
- **Section 2** interrogates the national legislative and institutional framework
- **Section 3** presents the general and specific findings using graphs, tables and charts
- **Section 4** contains a list of both general and specific recommendations.

SECTION 1: INTRODUCTION AND CONTEXT

1.1 Introductory Context

The administration of estates is a significant function of the justice administration framework in Zimbabwe. It is indeed a system that deserves important focus and particularly since it is a process that entails transference of rights in property and if not handled well can result in the impoverishment of beneficiaries who in most cases will have lost breadwinners. The substantive and procedural aspects of this system play an important role since they need to complement the work of the formal courts and other critical cogs in the justice administration system. Fundamentally, the relevant institutions designed to drive estate administration must promote fair, effective and expeditious outcomes. To serve a useful purpose to beneficiaries, sight must not be lost of the need for the substantive principles of the law to be complemented by easily understandable procedures that are not costly.

Administration of estates is a permanent feature of the justice system - it is driven by a natural event- death. Without doubt, it is a system triggered by loss of life and deprivation of loved ones. For this reason, the impacts of the administrative system must always be studied as the basis for law reform. The legislative framework for estate administration must not add to the pain, deprivation, loss and despondency which accompanies the loss of a loved one. The procedures must enable expeditious winding up of the estate without undue hardship, financial losses or even loss of property which beneficiaries are supposed to benefit from leaving them worse off than they were before the death of their relative.

1.2 Locating estate administration in the social system

Addressing the system for administration of estates requires an understanding of Zimbabwe's social system, especially in relation to inheritance, property rights, marriage systems and gender relations. Without doubt, these systems are directly shaped by the patriarchal nature of Zimbabwean society. Women in Zimbabwe face practical hurdles in the acquisition of property, particularly immovable property.

The origin and major drivers of this hurdle is the cultural system that does not recognise the equality between men and women. Property rights are in general skewed in favour of men. To exacerbate this, both cultural and formal institutions that deal with property rights are mostly controlled by men, and these include institutions for land acquisition and reallocation, cultural dispute resolution mechanisms and family-based conciliation processes. Most importantly, institutions and offices for transfer and registration of property reflect this inequality.³ As a result of the patriarchal nature of our society most properties are registered in the name of men/ husbands. Thus, challenges that are associated with winding up of estates affect more women than men as women have to transfer title upon the death of the spouse.

Deleted: ¶

'In inheritance issues, the law may have gaps and weaknesses, yes, but the real pressure on women is exerted by social norms, customs and culture. In my case, the law was fairly on my side, I had one of the best lawyers in Zimbabwe, but I gave up everything. The problem is with our culture which incessantly attacks women.' Mrs Priscilla Misihairambwi-Mushonga, Member of Parliament.

Another critical social reality is the unequal economic capacity and access to resources between men and women. Access to basic resources for livelihood is mainly dominated by men, with women needing to fight more hurdles to stay at the same level with men. Important for this research, resources relate to jobs, land, livestock and other immovable and movable properties. Accordingly, it is an almost insurmountable task for women to acquire immovable and movable property of note, particularly in rural communities. Upon the death of their husband, women face significant problems in defending the matrimonial property from uncles and other relatives in the extended family. The threats, intimidation and actual physical violence women are exposed to in trying to defend matrimonial property or transfer is exacerbated by the social stigma attached to rebellious women in society.

³ The government has resultantly proceeded to introduce legislation to address institutional inequality in state entities and structures. One such law is the Corporate Governance Public Entities Act and also the General Laws Amendment (Statutory Bodies and Gender Parity Provisions) Bill.

Finally, the issue of cost is one of the biggest problems affecting the ability of widows and beneficiaries of estates to register properties in their name. The applicable estate administration laws make provisions for fees that can rise to 13% of the value of the estate. Adding these costs to the edict meeting fees, advertising costs and conveyancing fees means that a respectful percentage of prospective beneficiaries are unable to see the process through as they cannot afford the attendant costs. These beneficiaries are mostly women who grapple with costs since most immovable property is typically registered in the name of the husband during the subsistence of the marriage.

In view of this background, it is apposite to analyse the applicable constitutional provisions that relate to estate administration and important normative principles in the Constitution that have to be considered in administration of estates.

1.3 The 2013 Constitution and Administration of Estates

The institutional system for administration of estates can be understood in the context of the founding values and principles of the Constitution.⁴ As a judicial institution, the system must respect the principles of rule of law, gender equality and good governance enshrined in section 3 of the Constitution. In terms of the rule of law, procedures and actions of relevant officials must be based on legal principles that apply, and not whimsical decisions of officials that can be arbitrary, illogical or irrational. Since it is an institutional system that is used by both genders and sexes, the rules and procedures must not cause undue hardship, unfairness or inequality to one gender. The system must not directly or indirectly contribute to gender inequality through provisions which cause undue hardships and loss to women. Indeed, the system must be alive to the differentiated needs of and impacts on widowers and widows, female and male children and other prospective beneficiaries. The principle of good governance must also guide estate administration. Thus, the institutional system must conduct its functions transparently and in an accountable manner. The Constitution further requires these institutions to act in a manner that achieves and promotes justice. Finally, institutions and administrative systems must be responsive, meaning that they must

⁴ Section 3 of the Constitution is dedicated to founding values and principles.

address gaps and weaknesses that impact adversely on users such as widows, children, the elderly and other prospective beneficiaries.

It is important to mention that the estate administrative framework must not be designed only with the ordinary person in mind. The Constitution calls for governance systems to recognise the rights of persons with disabilities, women, the elderly, children and the youths. The call here is to ensure that the administration of estates system is guided by the need to cater for the interests of these socially vulnerable groups that need more protection and facilitation. In our view, any integral justice administrative institution must not undermine the rights of vulnerable social groups it is designed to protect.⁵

‘What we have seen is that the problems that emerge from the system of administration of estates are exacerbated in situations involving persons with disabilities, children, the sick and the elderly.’ *Deputy Master of the High Court - Harare.*

Chapter 9 of the Constitution⁶ makes provision for guidelines on how public institutions and agencies of the State must act, behave and conduct themselves. The administration of estates system is a public institution, being an important complement of judicial service provision in Zimbabwe. Under this part, public institutions are required to provide services in an impartial, fair and equitable manner.⁷ In addition, these institutions must be responsive, and are bound to address people’s needs within a reasonable time whilst encouraging public participation in their policy making. Other important considerations for public administrators that are now constitutionally echoed include the need to be guided by transparency, equality between men and women, objectivity and to exercise

⁵ It is important to observe that the principles of good governance are also echoed in Chapter 2 of the Constitution that recognises what is called ‘national objectives. Some of the objectives include, good governance, gender balance, promotion of best interest of children, youths, elderly persons, persons with disabilities and protection of the family.

⁶ The Chapter is dedicated to principles of public administration.

⁷ See section 194 (1) d.

responsibilities of public offices in a manner that promotes public confidence in the system.

Another important constitutional position impacting on administration of estates is the right to administrative justice, entrenched in section 68. Again, it is not in doubt that the estate administrative system, as driven by the Office of the Master of the High Court is an administrative mechanism that provides a public service. In that vein, it is an administrative body bound by the right to administrative justice in section 68 of the Constitution. All administrative bodies are duty-bound to conduct themselves in a manner that is lawful, prompt efficient, reasonable, proportionate, impartial and both substantively and procedurally fair. Users of the estate administration system holds a right to make sure this institutional system acts according to these tenets. There is no doubt that the right to administrative justice is directly connected to the principles of governance and public administration that binds administrative bodies explained above, and the institutional system for the administration of estates is no exception.

1.4 Approach and Methodology

1.4.1 Desk Research: Documentary Review and Legislative Analysis

To locate the estate administration system in the legal system, the research commenced with a desk review of the relevant legislative, administrative and policy framework. This review further encompassed an institutional review, representing a descriptive illustration of relevant institutions with a role in driving and implementing the estate administration system and the positions of international human rights law on administration of estates. An illustration of the mandate of various actors and key stakeholders was also done. Finally, the desk review included the analysis of research on estate administration system in Zimbabwe, and in other jurisdictions. A comparative inquiry was done, with relevant comparators drawn from other jurisdictions.

As clear from the TORs given above, the research called for deliberate research methods that must ensure virtually all the major stakeholders in Zimbabwe's justice administration system are consulted. Accordingly, the Consultant proceeded on the

basis that there was need to interact, discuss, engage, communicate with, and interrogate ordinary members of the public that have used the existing estate administration system, the justice administration departments, including the Office of the Master of the High Court, the courts and judicial officers, registrars, Law Society, members of the Law Society (law firms), legal practitioners, the legal aid directorate, represented litigants, civil society, among others. Casting as wide a net as this through various interactive engagements was seen and accepted as critical in the appreciation of the place of the Estate Administration in the justice administration system and the legislative system in Zimbabwe.

1.4.2 Data Collection

Data was collected from key stakeholders and actors mentioned above through both qualitative and quantitative methods. Under the quantitative method, questionnaires and a range of structured and semi-structured interviews were done. The questionnaires contained a set of questions, and a copy of the questionnaire is attached as Research Tools in the ANNEX. The interviews were conducted with senior members of the Office of the Master of the High Court, starting with the Master of the High Court. Thereafter, consultations were done with members of the judiciary, and judicial service commission, academia, past beneficiaries of the administration of estates system and other key informants and actors identified above.

It is clear from the questionnaire that the nature of data collected was important for statistical analysis and to enable a qualitative analysis. Apart from questionnaires and interviews, the study used qualitative research approaches to augment the data that was collected through quantitative research approach. Qualitative data collection techniques that were used in this study are Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs). The Consultant adopted FGDs as they encourage dialogue through listening, reflection and clarification of issues. During focus group discussions, participants can listen and reflect on the opinions of others.

Fig 2: Focus Group Discussions



Discussions centred on the procedural challenges and costs involved in winding up of estates.

Moreover, the use of qualitative data collection techniques accorded the researcher opportunities to explore issues that were not comprehensively covered during one on one interviews with users of the administration of justice system. The researcher also used qualitative data collection techniques to verify information and check the completeness of the accounts gathered through the interviews.

The use of qualitative data collection techniques such as FGDs and KIIs accorded the Consultant opportunities to explore participants' understanding of process and substance and institutional frameworks. This allowed the researcher to compare cases and triangulate data with the qualitative interviews during analysis.

In light of the above, the data collection map is reflected in the Table below.

Table 2: Data Collection Map

Research Method	Target Respondents	Provinces/District	Targeted No. of Respondents	Actual Number Interviewed
Questionnaires ⁸	Magistrates/Assistant Masters/Clerks/Estate Administrators/legal aid directorates/CSOs	Bulawayo, Masvingo, Bindura, Mutoko	25	16
Key Informant Interviews	Master of the High Court/ Assistant Master/Chief Magistrate/JSC secretariat/CSOs	Harare, Manicaland, Midlands, Mash Central, Mash West, Bulawayo	25	13
Face to Face Interview	Judges of the High Court	Harare	3	3
Focus Group Discussions	Widows, widowers, affected children/relatives/CSOs	Mutare, Harare & Gweru.	90	80
Telephone Interviews	Clerks/Estate Administrators/law firms/CSOs	Bulawayo/Mat North/Mat South	25	14

⁸ Sampling by Consultant

SECTION 2: KEY ASPECTS OF THE NATIONAL LEGAL FRAMEWORK

2.1 Introduction

Administration of estates fundamentally deals with the winding up of the estate of a deceased person and consequent inheritance or transfer of property rights. The most common problems for Zimbabwe, and useful to this research emerge from procedural requirements that must lead to the inheritance of immovable property to beneficiaries. The winding up of estates of deceased persons is governed under both the Administration of Estates Act Chapter 6:01 (as amended) and the Deceased Estates Succession Act Chapter 6:02.

This research analyses the procedural and financial impacts and implications of the system for administration of estates of deceased persons. However, to understand the procedural and financial position, it is necessary to highlight the major legal positions in the current laws. The most important positions are as follows:

- (i) In terms of section 3A of the Deceased Estates Succession Act, the surviving spouse of every person who dies wholly or partially intestate shall be entitled to receive from the free residue of the estate, the house or other domestic premises in which the surviving spouse lived immediately before the person's death."
- (ii) In terms of the Administration of Estates Act, in the context of a polygamous marriage, and where the wives lived in separate houses, each wife gets ownership of, or if that is impracticable, a usufruct over, the house she lived in at the time of the deceased's person's death, together with all household goods in that house.⁹
- (iii) Where the wives lived together in one house at the time of the deceased person's death, they are entitled to joint ownership of or; if that is impracticable, a joint usufruct over, the house and the household goods in that house.¹⁰

⁹ Section 68 F (2) (C) (i).

¹⁰ Section 68 F (2) (C) (ii).

- (iv) If a deceased person had one wife then she will be entitled to the ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person's death, together with all household goods in that house.¹¹
- (v) In terms of section 3 of the Customary Marriages Act Chapter 5:07, a customary law marriage is invalid unless it has been solemnized. However, a marriage contracted according to customary law which is not a valid marriage shall for the purposes of customary law and custom relating to status, guardianship, custody and rights of succession of the children of such marriage, be regarded as a valid marriage." This recognition of unregistered otherwise invalid marriages is also done by the Administration of Estates Act which recognises them for purposes of inheritance.¹²

It has to be stated these positions are at the centre of debates, contentions and controversies in Zimbabwe's succession law. They however remain beyond the scope of this research. The problems engendered by these legal positions connect into the system for administration of estates of deceased persons. The reason is simple; the administration of estates system seeks the transfer or distribution of property rights created by the above legal positions.

Respondent's Views

'Upon the death of my husband, his ex-girlfriend ganged with my late husband's brothers against me, claiming to be the surviving spouse. They said I was a prostitute who was not even living at the matrimonial home. Because they knew I had a Chapter 5:11 marriage (civil marriage), they rushed to courts for confirmation of a customary marriage that was never there in the first place. I was forced to hire lawyers and fight vigorously for my property rights who told me that for purposes of inheritance, the customary marriage is valid. I began having long and sleepless nights. They lost the court cases in the High Court a year

¹¹ Section 68 (d)(i).

¹² Section 68 (3) provides as follows; 'A marriage contracted according to customary law shall be regarded as a valid marriage for the purposes of this part notwithstanding that it has not been solemnized in terms of the Customary Marriages Act (Chapter 5:07) and any reference in this part to a spouse shall be construed accordingly'

ago, but filed an appeal a year later. The sleepless nights are back again!’
Respondent in Harare FGD.

Provisions of the Deceased Persons Family Maintenance Act protects widows/widowers and dependants from eviction and property grabbing by persons and relatives with interest in property. Section 10 of this Act provides that notwithstanding any law including customary law to the contrary, surviving spouses have a right to occupy any immovable property that the deceased person was occupying before death, as well as the right to use household goods and effects, implements, tools, vehicles, the right to use and employ any animals and the right to any crops growing on the property for sustenance purposes. These provisions make it a criminal offence to violate these rights, and the punishment thereof is imprisonment, a fine or both. The provisions further provide for restitution or an order for the restoration of property under spoliation. However, these provisions are not known particularly where the executor is not well informed of the law. The result is that beneficiaries plunder the property of the estate and there is nothing for distribution at the end.

Respondent’s View on Estate Property

My father was a chief and had 28 children and nine wives. He had divorced six wives and only three wives were still married when he passed on. All the estate and property was in the rural areas on communal land so there was no title deed or cession documents. The 28 children rushed to claim the property for themselves and ignored the advice of the court officials who were called upon to advise on winding up of the estate. Initially, the property was gathered from all the family members but each person who had surrendered father’s property came back to claim it back when the winding up took too long. I suggest that in the rural areas, property must be surrendered to the Magistrate Court so that it is not damaged or lost during the process of estate administration.” Respondent from Mutoko.

2.2 Procedures of Administration of Estates in Zimbabwe

It must be reiterated that apart from substantive concepts and principles of the law seeking to ensure and achieve justice, the challenges remain in the procedures of the law. Injustice can be created in the procedures even where such injustice is absent in the application of apparently neutral principles of substantive law. Procedures must not be unduly sophisticated and cumbersome; neither should they extend the duration of time taken to achieve desired outcomes beyond reasonable limits. To what extent does the Zimbabwean procedural fiat for administration of estates ensure justice and other equitable outcomes? This part illustrates the major procedures in the Administration of Estates through the office of the Master of the High Court and subordinate offices.

2.2.1 Preliminary Stages

The registration of a deceased estate is done by completion and filing of the death notice form with either the Master's office (Harare), the Deputy Master's office (Bulawayo and other High Court stations) or the Magistrate's courts, depending on the place where the deceased person died and the law applicable to the deceased person (i.e. whether customary law or general law).¹³ It must be stated that, in practise, the person registering the estate is required to complete and file an inventory form, together with a copy of the death certificate, marriage certificate (if any) and the original will (if any) at the time of registration of the estate.¹⁴

'At times, we encounter persons who cannot write or read. We usually counsel them to bring their relatives and in this part of the country, widows usually come

¹³ There are factors that determine where the estates should be registered, namely

- (i) whether the deceased left a will or not - If the deceased left a will the estate should be registered either with the Master of High Court, Harare, or the Deputy Master of High Court, Bulawayo. If the deceased did not leave a will, you consider the type of law applicable to the deceased.
- (ii) If customary law is applicable to the deceased, the estate should be registered with the nearest magistrate court. However, the estate may still be administered by the Master or the Deputy Master.
- (iii) If general law is applicable, the estate should be registered either with the Master of High Court, Harare, or the Deputy Master of High Court, Bulawayo. Magistrates cannot handle such estates.

¹⁴ Under section 5 of the Administration of Estates Act, the estate should be registered within fourteen (14) days of the death of the deceased.

with uncles and aunts so we do not have much problems.’ Office of the Assistant Master of the High Court, Mutare.

It must be stated that upon the death of a person, his/her property custodial rights vests in a list of persons temporarily. This generally means that the physical custody of his/her estate will vest in such persons until the appointment of an executor or curator *bonis*. These persons in whom the custody vests are, firstly, the surviving spouse; or, if in default the child or children of the deceased; or, if in default, the next of kin of the deceased; or, if in default, the person who at or immediately after the death has the chief charge of the house in which the death occurs. However, once a curator *bonis* or executor is appointed, custody of the estate automatically vests in them; for a curator *bonis*, custody is assumed only to the extent that no executor has been appointed. Once an executor is appointed, s/he is divested of custody and it vests in the executor.

Respondent’s View

‘The biggest problem at this stage is that when people walk in for help, they do not have adequate documents. We advise them of the list of required documents but in the process, we realise that the process of transfer of property to the deceased was never finalised. Thus, we begin assisting the family executor on the process of transferring the property first. Lost documents and other records make this quite a difficult task. In some cases, we come up with a lot of irregular processes that need to be regularised first. This means that the process of winding up an estate takes longer than usual, and the Master of the High Court must condone delays caused by these practical realities’. *Manager, Legal Resources Foundation, Masvingo.*

2.2.2 Appointing the Executor

There are various scenarios under the law. First scenario is where the deceased left a valid will. Secondly, the existing will may not appoint an executor. Thirdly, the will may appoint an executor, but s/he is unable to take up appointment for some reason. In the first scenario, the executor is appointed in terms of the will. In all

the other scenarios, the Master proceeds to convene an edict meeting¹⁵ and appoints an executor dative.

In these processes, there is a requirement for the notice for the edict meeting to be published in the Government Gazette. The same advertising requirement also applies to meetings convened by the Master at magistrates' courts. This is different from those meetings specifically convened by magistrates; these are not advertised since they are specifically provided for in the Administration of Estates Act.¹⁶

2.2.3 The Edict Meeting

The Master, the deputy Master, or the magistrate or their respective appointees are responsible for presiding over the edict meetings. At the meeting, the Master or his appointee gives persons present an opportunity to agree on the choice of an executor. Their choice is normally accepted by, and binds the Master, on condition that they choose a member of their family who is not in the business of estate administration. If a person in the business of estate administration is selected, the registration details of that persons must be with the Council of Estate Administrators. However, if s/he is the surviving spouse or next of kin of the deceased person concerned and is not taking up the appointment for financial gain, he need not be on the register of the Council.

'We hold the edict meeting in one of the Court rooms in this High Court. Most people, especially women, are overawed by the formal surroundings, and are quick to refuse appointment as executors out of fear of the unknown. We however counsel everyone to feel free as the edict meeting is not a court session'. *Office of the Master, Mutare.*

If there is no agreement among the persons present at the edict meeting on the person to be appointed as an executor, reference is made to a priority order, which

¹⁵ The following may attend the edict meeting: the surviving spouse, if any; the next of kin; legatees; and creditors of the deceased.

¹⁶ See section 68B.

may be referred to as a “priority ladder’ in the Administration of Estates Act.¹⁷ In practise, and from an administrative perspective, if there is no surviving spouse, other heirs, or next of kin, the Master considers appointing an independent executor who would investigate the circumstances of the estate from a neutral point of view before considering appointing a creditor.

“In the event that the family fails to agree on whom to appoint as the executor, in cases where the deceased left no will, the Master appoints a neutral executor. Once an executor is appointed, it is very difficult to remove him’. *Master of the High Court, Mr Mutasa.*

The Master is also allowed to bypass the requirement of following the priority ladder in section 26. In these circumstances, the same provision allows the Master to bypass the priority order set by the ladder. Once s/he follows this route, the Master can appoint some other “fit and proper person” as executor. One of the grounds upon which the Master may appoint an independent executor may also include circumstances where, in an edict meeting the presiding officer establishes that an appointment in terms of the ladder would be contrary to the best interests of the estate, and circumstances where the person with the highest priority has intentionally killed the deceased.¹⁸

“There are many problems when there is disagreement among family members on who must be appointed the executor. In many instances, there is no choice but to appoint a professional executor. However, this is quite difficult because you would see that this estate is generally not well endowed and fees for professional executors will cause difficulties and affect the speedy winding up of the estate. But what then can be done, these people are unable to come up with a neutral person because they cannot agree over anything!” *Respondent, Mutoko.*

¹⁷ Section 26 of the Act. In terms of that ladder, the order is as follows: the surviving spouse, whether or not she is a beneficiary. other heirs of the deceased; or the next of kin or, if he is a minor, his duly appointed tutor/guardian, whether or not that guardian is a beneficiary; or a creditor(s) or, if he is a minor, his duly appointed tutor/guardian; or a legatee(s) or, if he is a minor, his duly appointed tutor/guardian.

¹⁸ This is envisaged as covered on the common law principle that states that ‘no one can benefit from his own wrong’ (*commodum ex injuria sua nemo habere debet*)

Deleted: noone

2.2.4 Duties of Executor

Upon his nomination to be the executor or the acceptance of the will appointing him as executor, the nominated executor should, within a reasonable time, find security to the satisfaction of the Master for the issuance of letters of administration. Once issued with letters of administration, the executor should take charge of all the assets of the estate and all its affairs. He should advertise for debtors and creditors within 30 days of his appointment. At the expiration of 30 days period for lodging claims, the executor should -

- (i) Rank all claims against the estate in their legal order of preference, including those not lodged but of which he is aware;
- (ii) pay off and discharge the claims as soon as the funds necessary for that purpose have been realized out of the estate.¹⁹

Within 6 months from the date of his appointment, the executor should lodge a liquidation and distribution account with the Master, who proceeds to audit the account and give such directions to the executor as he deems necessary, including authorising the executor to advertise the account as lying open for inspection.

2.2.5 Objections

Any person interested in the estate may at any time within the 21-day period when the account will be lying open for inspection, object to any part of the account. The objection should state the reasons thereof. The Master will consider the objection and decide on the objection, thereby determining the way forward. The Master's decision may affect the person making the objection, the beneficiaries, the executor, or any other person having an interest in the estate. Any person aggrieved by the Master's decision may, within thirty days after the date of the decision, make an application for review before the High Court.

'As soon as the Master makes a decision, he is *functus officio*. We have a case where the beneficiaries approach the Master after a while, trying to persuade him to change the executor, and suggesting a replacement. The Master usually throws

¹⁹ In practice, however, the executor would wait for the confirmation of the account by the Master.

these cases away and refuses to budge. Dissatisfied, these people sue the Master by way of summons instead of an application for review. Such cases have been dismissed easily by the Courts - the Master is an administrative official undertaking an administrative function, thus is subject to the Administrative Justice Act'.
Respondent, Legal Practitioner, Harare.

When the Master's ruling affects the interests of a person who has not lodged an objection, the account should be re-advertised as lying open for inspection, unless the person so affected consents in writing to the account being acted upon without being re-advertised. Confirmation of the account takes place following the objection stage. The Master may confirm the account when: the account has finished lying for inspection; and no objection has been lodged; or if any objection has been lodged, it has not been sustained; or the objection has been withdrawn; or the person objecting has not applied to the High Court within the 30 days' time prescribed.

2.3 Financial Aspects

The financial aspects of administration of estates are central to this research. Indeed, these issues are at the heart of complaints and sentiments of injustice expressed by the majority of respondents and interviewees. Prospective beneficiaries also complained bitterly about the troubles created by the legal position.

Before a beneficiary can inherit property, it must be transferred to him/her from the estate. In order for this transfer to proceed, an administration and taxing fees (Registration and Examination) (Amendment) Rules, 2017 (No. 3) Statutory Instrument 50/2017, this amounts to 4% of the gross assets. Under this Instrument, the minimum fees payable to the Master should be US\$1 000-00. This translates to a situation where if the 4% is equivalent to less than the value of \$1 000-00, then beneficiaries are obliged to pay the \$1 00-00, which is a value higher than the 4%.

'The 4% Master's fees is just too steep, especially for estates where there is only a family home and a number of beneficiaries. The percentage must be revisited so that these small estates do not pay anything above 1% of the value of their

estate. Indeed, the best situation would be exempting them totally from any fee since this is akin to punishing the poor.’ *Director, Women’s Law Centre.*

The use of United States currency stem from the multi-currency reality in Zimbabwe, with the American dollar being used as the main reference currency. In February 2019, the government gazetted a statutory instrument recognising the parity between the United States dollar, known at time of writing as the RTGS\$. This then meant that the minimum fee of US\$1000-00 payable to the Master was now the amount of RTGS\$1000-00. In reality, this amount was of a lesser value than a real US\$1000-00; this meant that the hardship of obtaining the original United States was reduced to an extent.

In May 2019, the government ‘devalued’ the RTGS\$ to respond to real values characterising the parallel money market. The Reserve Bank of Zimbabwe Governor announced that the rate between the US dollar and the RTGS dollar would be determined by an ever-shifting interbank rate. On the day this was announced, the rate was 1US\$ - 2,5 RTGS dollars.²⁰ This amounts to a minimum fee of RTGS\$2,500-00, a very high amount for the average citizen. At the time of writing, the interbank rate was RTGS610-00, still, translating to a very high figure in terms of Master’s fees.²¹

‘There must be a way of identifying estates below a certain figure - let’s say RTGS\$50 000-00 and exempt them from the 4% Master’s fees altogether. Most estates are not liquid, and beneficiaries are unable to contribute to the Master’s fees. Estates in the high-density suburbs usually have this problem, and something must be done to levy the Master’s fees from estates above a certain threshold only.’ *Practising lawyer and registered professional executor.*

Apart from these fixed fees, it must be observed that some estates are liable to Estate Duty which is provided in terms of the Estate Duty Act Chapter 23.03. This duty is currently pegged at 5% of the dutiable amount of the estate.

²⁰ See <https://www.herald.co.zw/fuel-procurement-now-via-interbank-rate/> accessed on 27 May 2019.

²¹ This rate has fluctuated massively in a very volatile economy.

In terms of section 5 of the Estate Duty Act, the dutiable amount is derived from the following formula:

Total Assets less Exemptions²²

The exemptions are as appear in the table below.

Table 3: Exemptions

An abatement of US\$50 000 - 00
The value of the principal residence of the deceased
The value of one family motor vehicle
The value of property donated by the deceased to a public benefit organisation which does not have to pay Income Tax, or to the state. The public benefit organisation should be of a charitable, educational or ecclesiastical nature and should be within Zimbabwe.

Source: *Office of the Master.*

It must be noted that estates that will not have any assets after using the above formula are exempt from Estate Duty but remain liable to pay Master's Fees. The percentages are levied at the rate fixed by the Finance Act. Under the Stamp Duties Act Chapter 23.09, the Registrar of Deeds also charges a fee known as Stamp Duty which is compulsory for every estate.

The conclusion of an estate through procedures and processes superintended by the Office of the Master leads to a situation where beneficiaries are allocated their share from the free residue of the estate. In cases where immovable property forms the free residue, conveyancing fees are activated. In Zimbabwe, and under the Law

²² See table below.

Society of Zimbabwe Conveyancing Fees By-Laws, 2013, conveyancing fees constitute a charge of 4% of the immovable property. Conveyancing is only done by qualified legal practitioners who are registered as conveyancers. In practise, the prospective beneficiaries must approach private and practising legal practitioners for transfer of property. Consequently, and in addition to the actual conveyancing fees, the beneficiaries are liable to other legal fees associated with registering deceased estates, and these are high as well.

2.4 Aspects in relation to Professional Executors

'Please do not recommend the decrease of professional executors' fees - we need to earn a living - but you can recommend a massive reduction in the Master's fees. They are too steep!!' Remarks by a senior attorney - Harare.

Apart from the scenario where the executor is chosen from relatives at the edict meeting, a professional executor can also be appointed by the Master in case of disagreement. Once appointed, the professional executor is entitled to remuneration in terms of section 56 of the Administration of Estates Act. This varies and can be a value to the maximum of 5 % of the estate. Again, this is a high figure to the average person.

Under an informal strategy dubbed Operation Vhara-File by the Office of the Master, seeking to expeditiously finalise hanging estates, professional executors were given files for administration. These executors advised beneficiaries or family members that the Master was considering the sale of family homes or existing immovable property to recover the Master's fees and the executor's fees. This informal strategy worked; affected families and beneficiaries rushed to find the required funds to finalise the winding up of the estates. However, this caused a lot of hardships, desperation and pain to these families. The Master's Office got the fees at great pain and cost to beneficiaries and families. In addition, these affected persons and beneficiaries also met fees charged by professional executors.

In determining what is due to an executor the following ratio is applied: -

For the first \$5 000 of the estate =1%
\$5 001 to \$10 000 = 2%
\$10 001 to \$35 000 =3%
\$35 001 to \$100 000=4%
\$100 001 and above =5%

The long and short of this is clear; the more valuable an estate is the more fees that are paid to professional executors. The lack of agreement on a relative to be executor and unwillingness to engage a professional executor creates the real risk and likelihood that the estate will be left unregistered.

'Due to the high fees charged by professional executors, the Council for Estate Administrators must devise a system for professional executors to undertake *pro bono* services as lawyers do under the supervision of the Law Society. This can go a long way in assisting poorer members of society and enabling the executors to meet their social responsibility' - *official from Ogram Trust Company, a registered estate administration firm in Mutare.*

SECTION 3: PRESENTATION OF FINDINGS

3.1 Introduction

As highlighted Section 1 above, data was collected from key stakeholders and actors through both qualitative and quantitative methods. This included the use of questionnaires and a range of structured and semi-structured interviews. The Consultant conducted interviews with senior members of the Office of the Master of the High Court, and undertook consultations with members of the judiciary, judicial service commission, academia, past beneficiaries of the administration of estates system and other key informants and actors identified above.

Qualitative research approaches were used to augment the data that was collected through quantitative research approach. Qualitative data collection techniques that were used in this study are Focus Group Discussions (FGDs) and Key Informant Interviews (KIs).

3.2 Sampling

The sampling method utilised to select interviewees for the research was the purposive sampling technique. Purposive sampling belongs to the category of non-probability sampling techniques, wherein sample members are selected based on their knowledge, relationships and expertise regarding a research subject.

In relation to locations for interviews and FGDs, the Consultant selected provincial capitals (Harare, Mutare and Gweru) as generally representative. To cover the gap caused by the perceived urban outlook, the Consultant selected respondents from peri-urban and rural areas surrounding these areas. Interviews with court officials from rural areas also covered the gap induced by the urban orientation of the FGDs.

Sampling for key informants holding positions in government departments was based on their rank and position in the area under research and the closeness of their day to day activities to the subject matter of research. Respondents and discussants for focus group discussions in Mutare, Gweru and Harare were drawn from persons who have come into contact with the institutional and legal system for administration of

estate in Zimbabwe, either as beneficiaries, executors, family members, widows, widows' associations and surviving spouses.

Telephone calls and questionnaires were distributed to court officials and personnel from all provinces, namely Mashonaland (East, West and Central), Matabeleland (North and South), Bulawayo, Manicaland, Masvingo and Midlands. The Consultant was guided by the need to conduct research that is representative of all provinces. This would mean that the research is national in outlook, and not only based on findings from one specific location.

3.2.1 Questionnaires

In general, a questionnaire is a tool, mainly made up of a list of questions and clear instructions, among others, which is used for collecting and recording information about a particular issue of interest. Questionnaires enable the easier reach of people spread across a wide geographical region and are a cost and time effective means of collecting data from a wide array of respondents. For this research, questionnaires were distributed in accordance with the Data Collection Map in Table 3. All questionnaires were distributed through email. The template of questionnaires distributed is attached in the ANNEX. The questionnaire contained mostly open-ended questions, which have greater precision, uniformity, are easier to recall on the part of the respondent, as well as easier to code and analyse.

3.2.2 Data Analysis

In order to analyse the data collected during the interview and research process, the researcher made use of content analysis. Content analysis categorises data into themes and sub-themes, which has the effect of simplifying the data and produces outputs that are measurable using quantitative techniques. The Consultant is however conscious of the fact that content analysis is prone to human error as the researcher can run the risk of misinterpreting gathered data, which can lead to the generation of false or unreliable conclusions. However, this method was preferred as it provides the most accurate conclusions and interpretations as compared to other approaches.

3.3 Ethical Considerations

Interviewees and respondents were fully informed regarding the objectives of the study, while they were reassured that their input and responses would be treated with the utmost confidence and used only for academic purposes. Further, the consent of respondents was obtained before pictures were taken. No minors or persons under the age of 18 years were involved in the research as respondents or interviewees.

3.4 Research Findings

3.4.1 General Challenges in the System

The analysis of the legal framework illustrates one clear point; there are costs involved in both the distribution and transfer of estate to the intended beneficiaries which are above the reach of many, especially the poor and indigent. Payment challenges means that those who fail to raise the required funds end up abandoning the process and those who are aware of the challenges do not initiate the process such that many estates are not registered and remain in the names of the deceased. This is undesirable as it hinders the beneficiaries from transacting using immovable properties as security.

‘The inability to pay 4% fees creates an injustice because the property may never be transferred to the living. They will not be able to sell or mortgage the property and benefit as they should’. *Practising lawyer and estate administrator.*

Where the edict meeting process is conducted at the Magistrates Court, the fee to hold such a meeting is provided for under section 7 of the Administration of Estates Act. The edict meetings are either held at the Magistrates Courts which are decentralised or the High Courts which are now only found in Harare, Bulawayo, Mutare and Masvingo. For those in Civil Marriages, it is only the High Court with the jurisdiction to preside over them. This gives rise to indirect costs associated with the edict meetings such as the transport and accommodation costs for the family

and relatives of the deceased. At least four (4) relatives of the deceased are required to attend the edict meeting along with the beneficiaries of the deceased who are usually the immediate family of the deceased. Considering that much of the population in Zimbabwe is based in the rural areas, the ever-rising transport and accommodation costs are usually above the reach of many.²³

Related to this are the advertising costs provided for under section 43 of the Administration of Estates. This provision requires an advertisement to be published by the executor as soon as he has entered on the administration of the estate, and such notice has to be published in the Gazette and in some newspaper published or circulating in the district in which the deceased ordinarily resided. Further, the advertisement must call upon all persons having claims due, or not yet due, as creditors against the deceased or his estate, to lodge the same with such executor within such period from the date of publication of the advertisement. Clearly, these are significant costs.

The costs of advertising as envisaged vary from newspaper to newspaper. For instance, the Government Gazette charges RTGS\$34.30 for such an advert while the newspapers circulating in the area where the deceased ordinarily resided have different rates. *The Herald* which circulates in most of Mashonaland Provinces and others charge a minimum of RTGS\$50 depending on the length of the advert. The charges are similar to that of *The Chronicle* which circulates in Matabeleland Provinces. In Manicaland, *The Manica Post* which circulates in the province charges \$RTGS34.30 for the advert.²⁴

Section 38 of the Administration of Estates Act mandates executors of deceased estates to make an inventory showing the value of all property, goods and effects, movable and immovable, of whatever kind belonging to the estate which he has been appointed to administer and transmit it to the Master. This is referred to as the gross assets of an estate which include the revenue, of the estate of a deceased person. Gross assets also include the value of a joint estate of a deceased and surviving spouse. This means that assets jointly acquired are regarded as gross assets

²³ In an interview with an official at the Master's office, the researcher heard that the number of persons seeking assistance had massively dwindled in the week that saw huge hikes in fuel and transport costs to Harare CBD.

²⁴ These costs have fluctuated due to the inflationary environment of the Zimbabwean RTGS dollar.

of an estate albeit to the extent of the deceased share. Thus if the immovable property was jointly owned, only the share relating to the deceased will be considered in the estate.

The majority of Respondents raised a number of concerns over the estate administration system. Some of the major bottlenecks of the system can be expressed in the Table below:

Table 4: Major Procedural Challenges

<p>The procedures are cumbersome and consequently time-consuming. In general, consultations with estate administrators, legal practitioners and officials at the Master's Office reveals that the processes take a minimum of 5 months to be concluded, barring disputation and other problematic circumstances. However, most estates take more than a year. Virtually all interviewed beneficiaries pointed to failing to understand the stages, or admitted to just partially understanding them.</p>
<p>The Master's fees and the professional executors' fees are very high and remain the biggest stumbling block in the finalisation of estates. Whilst these costs can be regarded as affordable by the better financed, they remain high and beyond reach of the poorer families.</p>
<p>Lack of awareness on the steps to be taken. The sophisticated procedures coupled with a lack of appreciation of the law means there is fertile grounds for disputes, dissatisfaction, suspicions and further extension of the process of winding up of estates. There are very limited awareness programmes being conducted to alleviate this gap.</p>
<p>The high costs means there is a very high probability for abandonment of processes as families fear losing family homes. This deepens despondency, deprivation and perceived injustices by affected beneficiaries. The abandonment is however temporary - the Master's office have devised strategies of dealing with 'abandoned' estates that have not been finalised within six months. In essence, the law permits the Master to appoint an executor to finalise the winding up, and this actually increases the costs as executors need to be paid. Most of these executors have recommended the selling of the family home.</p>
<p>The lack of an exemption system for poor beneficiaries is concerning. Most beneficiaries decried the lack of exemption from paying Master's fees, and the unavailability of a sliding system that could charge different percentages depending on value of estates.</p>

View from a Key Informant

'The 4% is too astronomical a figure in a country where a greater majority of our people are reeling under the effects of an economic morass. Most of our people particularly in the rural areas live on less than US1\$ dollar a day. Levying 4% is unacceptable. It is proper to have a mechanism where some people for good reasons shown should be exempted from the 4% Master's fees. To avoid abuse a thorough assessment should be done. Social welfare reports could be compiled on the socio-economic status of the widow/ widower or beneficiaries. Informed by that and own assessment the Master will then make a decision to waive the payment of 4%.' *A former Magistrate, now practising lawyer in Beitbridge.*

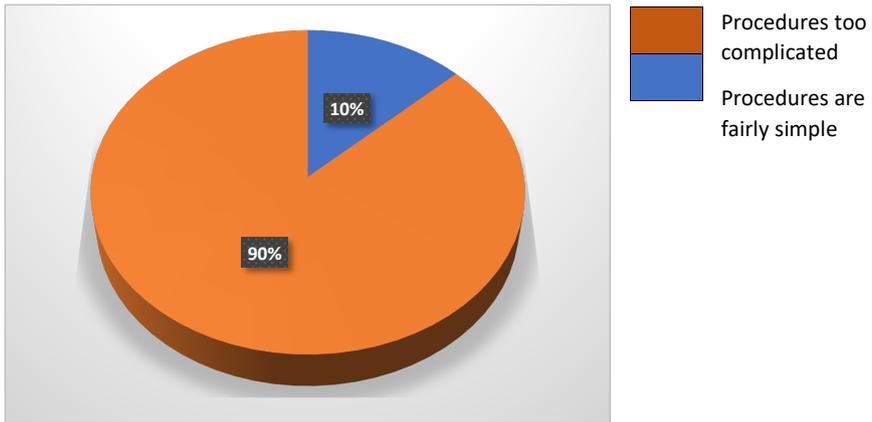
3.4.2 Findings on Procedure

Overall, the majority of interviewees and respondents stated that the procedures were too sophisticated for the ordinary person to follow. In fact, most interviewed beneficiaries did not understand the stages they were advised to follow, or the importance of such procedures. The drawing up of the final distribution account was the hardest part of the procedures and the assistance offered by the office of the Master did little to assist.

Respondents' Views

"The main areas where the Magistrate works with beneficiaries are during (i) appointment of executor (ii) approval of inheritance plan (iii) dispute resolution over inheritance plan (iv) removal of executor from office." *Respondent, Magistrate, Midlands Province.*

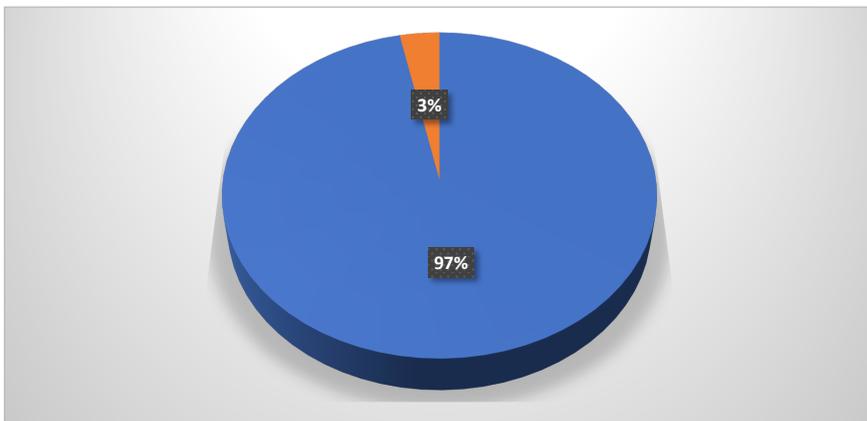
Source: Survey Responses



3.4.3 Findings on Master's Fees

The majority (97%) of respondents and interviewees stated that the Master's fees were too high. A meagre 3% said it is reasonable.

Fig 4: Survey Responses Chart



Source: Survey Responses

3.4.4 The role of the Master in guiding beneficiaries and executors

Most beneficiaries and other persons who were involved in varying capacities in estate administration had important views in relation to the role of the Master. The views represented below were based on whether the Master's office was adequately educational, informative and provided adequate procedural guidance and payment advice.

Table 5: Beneficiaries Responses

Educational role	Information Dissemination	Procedural Guidance	Dispute Prevention/Resolution	Fee Payment Advice
Not adequate	Not adequate	Adequate	Fairly adequate	Not adequate

Table 6: Professional Executors' Responses

Educational role	Information Dissemination	Procedural Guidance	Dispute Prevention/Resolution	Fee Payment Advice
Adequate	Adequate	Adequate	Fairly adequate	Fairly adequate

Table 7: Beneficiaries Responses on Master’s Role in context of Operation Vhara-file

There is need for dissemination of more information and education by the office of the Master in relation to procedures for winding up of estates of deceased estates.
Strategies and measures employed by the Master in administration of estates, such as Operation Vhara-file must take into account various family circumstances, which include needs of surviving spouses, children, dependants and vulnerable persons in the family.

Table 8. Responses in Relation to Master’s Fees (4% of estate value)

RESPONDENTS	Too High	Fairly High	Reasonable	Low
Beneficiaries	Yes			
Officials in the Office of Master (nationally)		Yes		
Master of the High Court			Yes	
Estate Administrators		Yes		

Source: Survey Responses

Most respondents had mixed feelings concerning the original justification for the Master’s fees, apart from the ‘it is meant to raise revenue for government’ reason. Most respondents concluded that the Master’s fees were just a tax, and could be justified on the same basis as any other tax.

Table 9. Responses in Relation to Professional Executors' Fees (5% of estate value)

RESPONDENTS	Too High	Fairly High	Reasonable	Low
Beneficiaries	Yes			
Office of the Master		Yes		
Magistrates and Judges		Yes		
Estate Administrators			Yes	

Source: Survey Findings

Table 10. Responses in Relation to other Costs

RESPONDENTS	Valuation Costs	Advertising	Meetings and Travelling	Litigation
Beneficiaries	Very High	Reasonable	High	Very High
Office of the Master	High	Low	Depends with distance	High
Magistrates & Judges	High	Low	Depends with distance	High
Estate Administrators	Reasonable	Low	Depends with Distance	High

Source: Survey Findings

Table 11: Comparison with Other Jurisdictions

Jurisdiction	Nature of System	Structure of System
South Africa ²⁵	Sliding System	Estates with a value up to R250,000 are not liable for a Master's Fee. Between R250, 000 and R400, 000, the fee will be R600.00 and from there onwards an Above R250, 000, a fee of R200 will be levied for every R100, 000 of estate value.
Namibia	Threshold system	An Executor is appointed by the Master in estates with a value above N\$ 100 000 (or other amount determined in the Government Gazette) to administer the estate of the deceased person. The executor's fee amounts to 3, 5 % of the total value of the estate. The executor has the authority to sell assets (including immovable property) to recover the above remuneration.
Botswana ²⁶	Nominal fee system	A nominal fee of P22 (22 pula) is charged as the Master's fee. There are other charges involved in advertising for debtors and creditors and in issuing notices in a national paper and the Government Gazette for the liquidation and distribution account, which must be carried by the estate. If paid by the Master's Office they will be deducted from the estate account.

²⁵ Obtained from a government website http://www.justice.gov.za/master/m_docs/1965-066%20admin%20estates_regulations_master-fees.pdf accessed on 30 May 2019. See also information on <http://www.justice.gov.za/master/index.html> accessed on 20 May 2019.

²⁶This information was obtained from a government of Botswana departmental website, being <http://www.gov.bw/en/Ministries--Authorities/Ministries/Administration-of-Justice-AOJ/Tools--Services/Services--Forms/DECEASED-ESTATE-MASTERS-OFFICE/> accessed on 30 May 2019.

SECTION 4: RECOMMENDATIONS

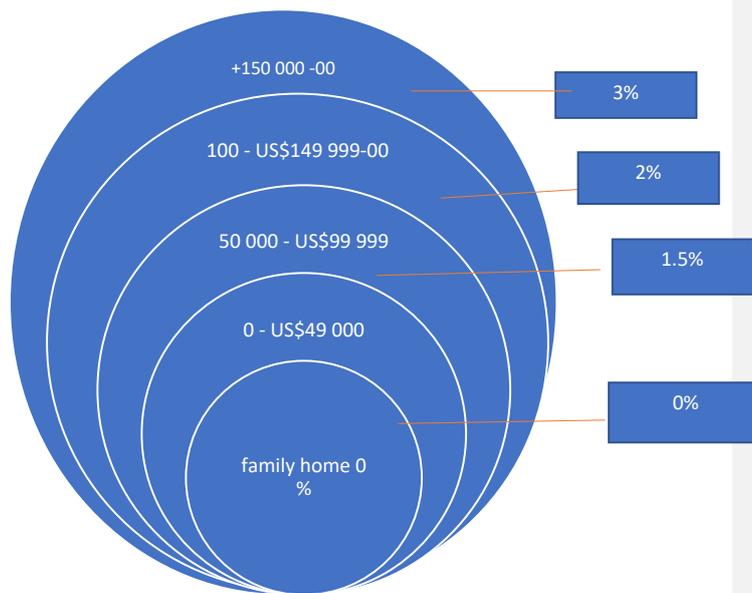
4.1 General

A number of recommendations can be made in order to enhance the efficiency and effectiveness of the system for administration of justice in Zimbabwe. These recommendations can be categorised and separated into sub-themes as illustrated below.

Table 12: Financial Recommendations

Reforming the level of Master's fees. The Master's fees are too steep and almost all respondents confirmed this. Below are some of the recommendations:

- (i) Putting in place of a sliding system for the Master's fees with estates below a particular value exempt from the fees. Estates with only one family home must also be exempt. Alternatively, such estates must pay a nominal fee that must be affordable for beneficiaries.
- (ii) The law must introduce a system where fees are largely determined by the value of the estate the higher the value of the estate, the more the fees it attracts and vice versa. This is a basic principle of taxation. However, there must be a cap on the maximum fees (in percentage terms) an estate can pay to the Master's fees.
- (iii) The power of the Master to compel the sale of family house to obtain Master's fees must be greatly curtailed. The law must establish two distinct systems of estate administration - a summary administrative procedure for a simple estate and a full administrative procedure for sophisticated estates. For all estates with only the family house or home, the Master must activate a simple summary procedure for winding up the estate with minimal costs, if any, to beneficiaries.

Fig. 5: Recommended Sliding System for Master's Fees

The Master's fees will only be considered for values apart from the family home. This essentially means that the family home must be exempt from the Master's fees matrix. The values that must attract the Master's fees are those that are additional to the family home. This approach protects and safeguards the property rights of beneficiaries and ensures that the spectre of sale of a family home to meet the Master's fees does not materialize.

4. 2 Recommendations in relation to Office of the Master

Table 13: Office of the Master

A review of the operations of the Master's Office and a revamp must relate to the following:

Education - an information dissemination and awareness campaign must be integrated in the duties and responsibilities of the Office of the Master. Respondents reported on their ignorance of the process and the fact that this exacerbates their problems or circumstances. Such an educational awareness campaign must be done at district level, ward level, church levels, village levels and operationalised through Magistrates Court offices all over the country.

Enhancing Efficiency

To enhance efficiency and effectiveness, simple and less sophisticated estates must be wound up through a summary procedure at the level of Magistrates Court. The Master must only undertake monitoring, supervisory and policy decision making at this stage. More valuable and sophisticated estates must be finalised at the Office of the Assistant Master in provincial High Courts. In this vein, the move by the JSC to establish courts in each province is to be welcomed.

Supervision and Monitoring of Professional Executors

At all times, the Master must regularly monitor the operations of professional executors. This arises out of various complaints from respondents about possible unprofessional conduct from professional executors. This may include verifying their registration and professional credentials with the Council for Estate Administrators. The Master must use with a verified list of professional executors. This monitoring must be complemented by a supervisory role over the activities of these executors.

Electronic Case Management System

A number of complaints centred on lost files, or files tampered with by unknown but interested persons whilst in the possession of the Office of the Master. This must be addressed and a clear and secure case management system be put in place. The Office of the Master must take advantage of the developments by the courts in this respect. Related to this, the transfer of cases or records from Harare to newly-established provincial offices (Masvingo and Mutare) must be handled carefully to prevent losing files and delaying the processes.

4.3 Legislative Reforms

A number of amendments can be suggested to provisions of relevant law. The law currently has some gaps that exacerbate the problems suffered by beneficiaries, widows and widowers. The major amendments must relate to the following:

4.3.1 Inheritance of matrimonial home

It is recommended that the phrases pertaining to 'living in the house at the time of death or immediately before death' be removed and substituted with the words "matrimonial home". This means revisiting the definition of matrimonial home to envisage the building or part of a building in which the husband and wife ordinarily reside together.

4.3.2 Selling of immovable property

Another source of concern was that, where the executor is the surviving spouse, she assumes too much powers that include the power to sell the family home much to the detriment of the children. There is no adequate protections for children in these circumstances, and the guarantees in the Deceased Persons Family Maintenance Act that calls for maintenance of children from the estate are not water -tight.

Under Zimbabwean law, the High Court is considered the upper guardian of children. In this context, the Master must be constrained in his power to sell family homes, or the power granted to executors to sell the family home. In this vein, section 120 of the Administration of Estates Act must be revisited so that it provides that the High Court must approve all sales of immovable property acquired from a deceased estate. This means that the executor cannot proceed to sell without the High Court green light. The Master must be bound to issue a certificate of consent to sell immovable property. In considering the request to sell the family home, the Master must consider all relevant factors including the interests of children, their security, well-being and right to a home.

4.3.3 Transferring criminal provisions to the Criminal Code

There is more readiness by law enforcement authorities to pursue a criminal case where the criminal offence is provided for in the Criminal Code (that is, the Criminal Law (Codification and Reform) Act). The police have tended to downplay criminality created under other laws. Accordingly, criminal provisions that target property grabbing, forcible ejection of widows, destruction of property or other unlawful conduct against the interests of administration of estates must be given importance by transferring them into the criminal code. These provisions must protect the following rights:

- (i) Right to occupy any immovable property that the deceased person was occupying before death
- (ii) Right to use household goods and effects, implements, tools, vehicles
- (iii) Right to use and employ any animals
- (iv) Right to any crops growing on the property for sustenance purposes²⁷

4.3.4 Procedures in small estates

Section 32 grant the Master with powers to act summarily in relation to estates of small value. However, there are no guidelines or regulations to guide the Master on how to act summarily. The amendments called for above regarding procedures must also address this gap.

4.3.5 Procedures in Estates of Persons Subject to Customary Law

The whole of section 68 of the Administration of Estates Act is dedicated to estates of persons subject to customary law. Despite the seemingly comprehensive nature of this part, there is no guidance on the procedure for confirmation of a customary law marriage, or the procedure on circulation of an inheritance plan. The lack of a

²⁷ See section 10 of the Deceased Persons Family Maintenance Act Chapter 6:03.

procedural fiat generates opportunities for disputes and can delay the whole process if a dispute arises and there is no guidance for the Master to follow. This must be addressed to enhance expeditious winding up and also shed clarity.

4.3.6 Other Recommendations

- 4.3.6.1** There is need for a comprehensive legislative reform approach that must ensure the simultaneous reform of rules and procedures for estate administration and the reform of relevant provisions of marriage laws, inheritance and succession laws.
- 4.3.6.2** There is need for regular capacity building of officials and personnel in the office of the Master for purpose of efficient and effective delivery of services and performance of functions.
- 4.3.6.3** Concerted educational and information dissemination activities must be conducted by the office of the Master to communities and organisation. This can be done through awareness campaigns by simple fliers, pamphlets and booklets on procedures and rules applicable in administration of estates. These must be in all relevant languages.
- 4.3.6.4** The office of the Master must aim at improving its communication and information dissemination strategies, and in particular, in relation to correspondence with family executors, professional executors, and other family members that trigger the process of registration of estates.
- 4.3.6.5** A fund must be created to assist persons unable to meet the costs and fees involved in administration of estates.

4.4 CONCLUSION

This research is critical in highlighting challenges and gaps in estate administration the improvement of the justice system in Zimbabwe. The findings are practical and rooted in lived realities; a justice system that ignores the impacts and implications

of its procedures, processes, outputs and operations is likely to engender injustice. The plight of surviving spouses and beneficiaries in relation to family homes or property of an estate is well documented. The Master's office is aware of the problems and challenges faced by all affected parties.

The law must always be reviewed and reconsidered especially where there is just cause for its own improvement. Such gradual improvement of the legal and institutional frameworks leads to quality in the delivery of justice. As Bentham proposes, the law can only be justified if it achieves maximum happiness to the maximum number of people in a particular society - similarly, the system for the administration of estates in Zimbabwe must seek to achieve justice and protection, not engender more pain, loss, depravity or despondency. The implementation of the recommendations listed herein can go a long way not only in ensuring justice for the bereaved and surviving persons, but also in achieving an institutional system that speaks to lived realities and resonates with society's expectations.

ANNEXES

Research Tools for Council of Estate Administrators

1. How and to what extent does your members work with beneficiaries (guidance, support)?
2. How does your members go about providing guidance, support, and education on procedures?
3. How have you been responding to complaints by family members/beneficiaries against the performance of your members in the exercise of their duties? (nature of complaints, solutions)
4. What options or payment systems have your members adopted to assist family members meet costs involved from registration to winding up of deceased estates?
5. To what extent are beneficiaries affected by the current fee structure? (affordability, available alternatives to paying fees, proposed solutions if any)
6. What measures do you suggest need to be considered to address the problems caused by the fee structures, procedural ambiguities and complexities and dispute resolution system in estate administration?
7. Are there any gaps in the law and procedures on estate administration that might motivate amendments to the law? (Legislative provisions, institutional mechanisms, penalties, distribution parameters, dispute resolution, time limits etc.)?
8. As an organisation, what recommendations do you suggest must be embraced to address these challenges?

FGD GUIDE FOR KEY OFFICIALS IN THE OFFICE OF THE MASTER OF THE HIGH COURT

Introduction

We are conducting a research on the administration of estates in Zimbabwe commissioned by LRF. We kindly request your maximum cooperation and openness during the discussion. This discussion can take at most 1hr 30mins. We kindly seek permission to record, write notes or take pictures during the FGD.

1. Describe your role in the administration of deceased estates? (what do you do, support, guidance, education, payment plans, advisory etc)
2. How and to what extent do you work with beneficiaries in relation to estates under both a family executor and a professional executor (guidance, support, information sharing, education etc.)?
3. Explain the structure of the Office of the Master, including all magistrates' offices, provincial high courts, circuit courts etc?
4. What degree of control and supervision do you have over both family executors and professional executors? (guidance, support, education on understanding procedures, monitoring, supervisory, reporting system? etc)
5. What are the costs involved from registration to winding up of a deceased estate? (indicate stage and cost; family and professional executor scenario, poor estates, sophisticated estates)
6. In your experiences, to what extent are beneficiaries affected by the current fee structure? (affordability, available alternatives to paying fees, proposed solutions if any)
7. Kindly share specific cases (and how they were attended to) where beneficiaries were facing challenges with the fee structure and how did you assist? Rich and poor alike?
8. What provisions of the law do you consider problematic in application and implementation? and why do you say so?
9. What impacts have these provisions had on beneficiaries, executors and the whole process of estate administration?

10. What information dissemination or educational campaigns do you undertake and who are the beneficiaries/ target population groups? What about internal capacity building programmes for your staff?
11. What procedural hurdles do you think can be addressed through amendment of the law or change of practical approach in the process of winding up estates?
12. Overall what recommendations do you have to improve the services you provide as the Office of the Master of High Court?

FGD GUIDE FOR BENEFICIARIES

1. What role did you play in the administration of the deceased estate of your loved one? (executor, attend meetings, paid fees)
2. If executor please share your experience from appointment to winding up of the estate? (challenges, timeframe, handling disputes)
3. If you were assisted by a professional executor, how was that experience? (challenges, timeframe)
4. Comment on the assistance the court officials provided to you? (satisfaction levels, attendance to complaints)
5. What is your opinion on the fees requested for estate administration? (affordability, alternative solutions)
6. Comment on the procedures and stages and all other processes you were involved in during the administration? (complex, simple, easy, hard, time consuming, laborious, unclear, long drawn?)
7. Are there gaps in the procedures that cause delays and opportunities for disputes and more costs?
8. Are you aware of any legal provisions that are unsatisfactory in relation to administration of estates, as you experienced it?
9. What must be re considered in terms of costs of the whole process?

10. What other aspects do you think need to be improved in terms of law and practise?

Research Questionnaire for Members of the Judiciary

No. of the Questionnaire.....

Enumerator's Name.....

Interview starting time.....

Interview starting Date.....

Guidance for introducing yourself and the purpose of the interview

- My name is..... and I work for.....
- You have been selected by chance to participate in this interview. The purpose of the interview is to obtain information about Administration of Deceased Estates
- The survey is voluntary and you can choose not to take part. The information that you give will be confidential. The information will be used to prepare reports, but will not include any specific names.
- Could you please spare some time (around 15 minutes for this interview)?

NB. The enumerator should not in any way suggest that any programme entitlements could depend on the outcome of this interview, as this will prejudice answers

PART 1. SOCIO-DEMOGRAPHIC CHARACTERISTICS OF RESPONDENTS

No	Question	Response
Q1	Province	

Q2	Magistrate Court District	
Q3	Location of Court	1=rural 2=urban
Q4	Age of Respondent	1=18- 25 2= 26-40 3= 40 and above
Q5	Sex	1= male 2= female
Q6	Marital status	1= single 2=married 3= divorced 4=widow/widower
Q7	Highest Education level Attained	1= O level 2= A level 3= Diploma 4=Degree 5=Masters 6=PHD
Q8	Position in the Judiciary	1=Clerk 2=Magistrate 3=Assistant Master 4=Additional Assistant Master
Q9	No of years working in that position above	1= 1-5 2=6-10 3= 11-15 4=16-20

PART 11. ADMINISTRATION OF DECEASED ESTATES

No	Questions	Responses
Q16	How many estates are registered at your court in a week	1=1-5 2=6-10 3=11-15 4=16=20
Q17	Who often comes in to register	1=Widows 2=Widowers 3=Children of deceased 4=Relatives of deceased 5=Other

Q18	On average of the estates registered what properties are often on the inventory(choose 1)	1= matrimonial home 2=residential stand 3=family car 4= more than 3 assets
Q18	At edict meetings who is often appointed Executor	1= Widows 2=Widowers 3=Eldest Son 4=Male Relative 5=Neutral Executors
Q19	Does the court explain the role of the executor once a family member is appointed	1=Yes 2=No 3=Sometimes 4=Don't Know
Q20	Does the court monitor the performance of these executors	1=Yes 2=No 3=Sometimes 4=Don't Know
Q21	Does the court provide guidance for the executors	1=Yes 2=No 3=Sometimes 4=Don't Know
If Yes explain?		
Q22	What challenges do family executors mostly face (select top 2)	1=access to court information 2=lack of legal knowledge 3=raising estate fees 4=handling disputes
Q23	Comment on the fees involved in administration of estates?	1=low 2= high 3=very high 4=not sure
Comment on your response?		
Q24	Which particular fee do clients face challenges in paying?	1=Adverts 2=Masters fee 3=Executors fee 4=Other estate liabilities

Q25		
How has the court dealt with clients who fail to pay estate fees?		
Q26	In your opinion, should the fee structure be reviewed downwards?	1=Yes 2=No 3=Maybe 4=Don't Know
Q27	Are the laws and policies governing estate administration adequately helping clients/beneficiaries	1=Yes 2=No 3=Maybe 4=Don't Know
Explain your answer? Specify the law?		
What suggestions do you have for law reform?		