

SOUTH AFRICA / JUDGMENT

Hariparsad v Hariparsad and Others (2025/27341) [2025]

ZAGPJHC 320 (24 March 2025)

[2025] ZAGPJHC 320

COURT

South Gauteng High Court, Johannesburg

BEFORE

Noko

CASE / FILE NUMBER

2025/27341

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REPUBLIC OF SOUTH
AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG

DIVISION, JOHANNESBURG

Case

Number: 2025-27341

(1)

REPORTABLE: YES / NO

(2) OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: NO

24

March 2025

DATE SIGNATURE

In

the matter between:

SONJA
BIANCA HARIPARSAD
Applicant
and
MAHENDRA
HARIPARSAD
First Respondent
LYDIA
ROSE HARIPARSAD
Second Respondent
TUNES
MOTOR SPARES AND ACCESSORIES CC
Third Respondent
COMPANIES
AND INTELLECTUAL PROPERTY
COMMISSION
Fourth Respondent
MASTER
OF THE HIGH COURT, JOHANNESBURG
Fifth Respondent
CARLIN
PRINCE
Sixth Respondent
SULIMAN
PARUK
Seventh Respondent

JUDGMENT

NOKO J

Introduction

[1]The applicant instituted an urgent application against respondent for the following relief:

- 1.1. Cancellation of the letters of executorship in terms of which second respondent was appointed as executrix in the estate of the Late Nishal Hariparsad, (“the deceased”).
- 1.2. Directing the fifth respondent to appoint the applicant as the executrix in the estate of the Late N Hariparsad, pending the finalisation of the action initiated to determine the validity of the Will,
- 1.3. Setting aside the removal of the applicant as 100% member’s interest of the third respondent and removing the first and second respondents as members with 50% interest in the third respondent

1.4. Directing the fourth respondent to reinstate the applicant as a member with 100% interest in the third respondent pending the finalisation of the action instituted to determine the validity of the deceased last Will and Testament.

Alternatively:

1.5. That the administration of the estate under estate number 026345 be stayed pending the finalisation of the action instituted to determine the validity of the last will and testament.

1.6. That the appointment of the first and second respondents as members holding 50% interest in the third respondent be stayed pending the finalisation of the action instituted to determine the validity of the deceased last Will and Testament.

1.7. That the seventh respondent be permitted to continue with the business operations of the third respondent without the interference of the first and second respondents or any other person, pending the finalisation of the action instituted to determine the validity of the deceased's Last Will and testament.

[2]The application served before Levit AJ on 4 March 2025 and was postponed to 11 March 2025 as the Judge decided that the respondents, who served notice to oppose but absent, were not given enough chance to file opposing papers.

Parties

[3]The parties in this lis are as follows:

3.1. The applicant is Sonja Bianca Hariparsad adult businesswoman residing at Unit 1[...], B[...] Estate, 1[...] C[...] Drive, B[...], Johannesburg.

3.2. The first respondent is Mahendra Hariparsad an adult male residing at 1[...] A[...] S[...], L[...] S[...], Johannesburg.

3.3. The second respondent is Lydia Rose Hariparsad an adult female residing at 6[...] N[...] Street, O[...], Johannesburg, cited in her capacity of the executrix.

3.4. The third respondent is Tunes Motor Spares and Accessories CC, a close corporation incorporated in terms of the laws of the Republic of South Africa carrying business at 108 Side Road, West- Turffontein, Johannesburg.

3.5. The fourth respondent is the Companies and Intellectual Property

Commission, a juristic person established under Section 185 of the Companies' Act, carrying its business at Talis House, 1[...] S[...] street, Johannesburg.

3.6. The 5th respondent is the Master of the High Court, Johannesburg, whose place of business is at 6[...] M[...] S[...], Johannesburg.

3.7. The 6th respondent is Carlin Prince in a major female resident at [...] M[...]

Street, Alberville.

3.8. The 7th respondent is Suliman Paruk, an adult male of c/o C[...] R[...]

D[...] I[...], [...] F[...], C[...] H[...], G[...] O[...] park, Victoria Park.

Background

[4]The applicant is the surviving spouse of the deceased to whom she was married on 8 March 2024 out of community of property without accrual. The deceased held 100% members' interest in the third respondent as at the time of his passing. The first respondent is the brother to the deceased, the second respondent is the mother to the deceased.

[5]The deceased died on 19 October 2024 and the applicant reported the estate with the fifth respondent. Subsequently the applicant was appointed as the executrix in the estate of the deceased by the fifth respondent on 23 October 2024.

[6]The information furnished by the applicant to the fifth respondent at the time of reporting the estate did not include names of the sixth respondent as the applicant believes that the sixth respondent is not the biological daughter of the deceased. The family members of the deceased were also not mentioned in the reporting documents.

[7]The applicant then approached the fourth respondent and substituted herself as a 100% holder of the members' interest of the third respondent and removed the first respondent and the deceased who were holders of 50% member's interest of the third respondent each. The process through which the first respondent became the holder of the members' is set out below.

[8]Before the deceased passed, he submitted a bid on behalf of the third respondent to the City of Johannesburg Metropolitan Council to refurbish buses. The bid was awarded to the third respondent on 11 October 2024 and was for the value of R53 266 689.00.

[9]The applicant whilst still the executrix, found out that the first respondent was the holder of 50% members' interest in the third respondent. The record at the fourth respondent showed that the fourth respondent was approached with a special resolution signed by the deceased and the first respondent dated 2 September 2024 in terms of which the first respondent was to be registered as a 50% holder of the members' interest in the third respondent. The applicant then proceeded to lodged change of membership with the fifth respondent and appointed herself as the holder of 100% of members' interest of the third respondent. The applicant sold 58% of the members interest to the seventh respondent for the amount of 10 million rand.

[10] The last Will and Testament of the deceased was discovered on 18 January 2025 by the second respondent at her house and was delivered to the fifth respondent. The said Will identified the sixth respondent as the heir of the estate. The fourth respondent sought to appoint the second respondent as the executrix and penned a letter to the applicant requesting that the original letters of executorship to be returned. The fifth respondent proceeded to cancel the letters of executorship issued in favour of the applicant and issued a

new letters of executorship in the name of the second respondent.

- [11] Armed with the letters of executorship the second respondent and first respondent approached the fourth respondent and removed the applicant and the seventh respondents as holders of members' interest of the third respondent and appointed themselves as holders of 50% each of the third respondent's members' interest.
- [12] The applicant seeks to challenge the validity of the Will and the process through which the fourth respondent substituted herself and the seventh respondents as holders of the 100% members' interest of the third respondent.

The parties' versions and submissions

Urgency

- [13] The applicant contends that during the period between 19 and 24 February she was invited by Colonel Naidoo in the employ of SAPS who informed her that she in a suspect in murder case of the deceased and also for fraud in relation to the appointment as the executrix including the changes of the members' interest, she effected at the CIPC. She was also informed that if she sign for the transfer of the members interest the first and second respondent would take care of her. Col Naidoo later on informed her that a Will was discovered and further she has been removed as the executrix and the information at CIPC has been changed.
- [14] She appointed a Forensic Handwriting expert on 20 February 2025 who examined the Will on 25 February 2025 and prepared a preliminary report stating that the signature on the Will appears to have been forged and required a period of seven day to complete his report.
- [15] She then approached an attorney on 25 February 2025 to prepare to launch urgent application to challenge the appointment of the second respondent as the executrix and re-appoint her pending outcome of the challenge of the will. Col. Naidoo having notified her about the change at the CIPC on 26 February 2025.
- [16] She believes that the first and second respondent have no interest in the success of the business and pose a substantial risk of depleting the company's bank account and tarnish the reputation of the company. She is further worried that the first and second respondents would not cooperate with seventh respondents who may ultimately want to sue in accordance with the sale of members' interest. She will also be denied her entitlement to the maintenance by the respondents. To this end she believes that the application is urgent and she will not obtain a substantial redress in the normal course.
- [17] The first and second respondents on the other hand submit that the applicant has failed to demonstrate that she will not obtain substantial redress at a hearing in due course. There is no threat to the business and it shall continue operating as it has been the case in excess of a period of 20 years during which they were involved in running the business.

- [18] The contention that the first and second respondents have no interest in the success of the business is unfounded. The accusation that she will be frustrated in not getting her maintenance is also without any basis and to this end the applicant has failed to make up a case for urgency.
- [19] I had regard to the submissions made by both parties and concluded that the application deserves the audience of the urgent court and condone non-compliance with forms as envisaged in Rule 6(12) of the Uniform Rules of Court.

Merits

The Will and appointment of the executrix.

- [20] The appellant contends that she does not believe that the deceased had a Will hence she referred the Will to a signature expert who as set above prepared a preliminary report stating that there are reasonable grounds to suspect that the signature of the testator on the Will was forged. The applicant sought to submit a further comprehensive report later which is a final report also confirming that signature on the Will is not that of the deceased.
- [21] She has further noted that the sixth respondent is the nominated heir in the Will. The applicant avers that the deceased has informed her whilst still alive that he is not the biological father of the sixth respondent and she then challenged her to prove that she is the biological daughter of the deceased and she has failed to produce evidence to support that assertion. The sixth respondent conveyed through her attorneys that she was not able to do DNA tests as there was no blood taken from the deceased before his passing. However, she has furnished the applicant with evidence in the form of photographs which were taken since she was young from which it can be deduced that the deceased was her father. This was presented by her counsel during argument.
- [22] The applicant contends that if the Will is successfully challenged, she will stand first in the line for consideration for appointment by the Master as an executrix by virtue of her position as the surviving spouse. However, she acknowledges that the fifth respondent has a discretion to appoint whomsoever is eligible to be appointed as an executrix. The fact that the expert had already submitted a report that the signature on the Will is forged[1] and if the Court ultimately decide in her favour, she will therefore be the sole heir in the estate since the sixth respondent failed to prove her that she is biological daughter of the deceased. To this end she then has a prima facie right which underlies the foundation for her to launch the proceedings for an interim relief. Further that as set out in *Webster v Mitchell* 1948 (1) SA 1186 (W) it is sufficient if the facts "... show that the right exists even though it is open to some doubt because of the respondent's denial".[2] And the application should be decided on the applicant's version unless the respondent raises a fact that seriously doubt the applicant's case.[3] (Sic).

- [23] The applicant contends further that she has a reasonable apprehension of harm regard had to the posture adopted by the respondents who do not seem keen to see to the success of the business of the deceased. She may suffer irreparable harm if the winding up process is undertaken and finalised to her exclusion. The final resolution on the challenge of the Will may become academic if the estate is finally wound up at that time. The balance of convenience is in her favour and the potential prejudice has been laid out and no prejudice will visit the first, second and even the sixth respondents if the relief sought is granted.
- [23] The respondents on the other hand contended that the process adopted by the applicant is an attempt to review the decisions of the Master of the High Court and CIPC which cannot competently be pursued through the interdict. She should have instead adopted a review process. In addition, interdicts cannot apply to an action which has already taken place. Reference was made of *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (60 SA 223 (CC) to support this submission.
- [24] In addition, the applicant failed to prove a prima facie right to be appointed as a executrix as she is still required to prove that the estate should be administered as an intestate estate, counsel for respondent argued. She is just a contender to be appointed as an executrix and a beneficiary to the estate. There is no evidence presented to impugn the ability of the second respondent to carry out her obligations within the law. To this end there is no basis for her to be removed. That notwithstanding a tender was made that the executrix may be substituted by an independent person as executor or executrix, e.g. an advocate, which tender was rejected by the applicant out of hand.
- [25] The respondent further contended that the applicant has failed to demonstrate that she has no other alternative redress which she can exploit and to this end the requirements for an interim interdict have not been met. The application should be dismissed.

Changes at CIPC.

- [26] The applicant contends that the resolution submitted to the fourth respondent to add the first respondent as a holder of 50% members' interest was submitted after the death of her husband and was back dated to 2 September 2024. Further that the first respondent has fraudulently signed as the deceased when lodging the CK2 member amendments which was lodged with the fourth respondent on 25 October
2024. She also discovered that the funds to the tune of R160 000.00 was withdrawn from the Standard Bank overdraft facility of the third respondent and has not been accounted for.
- [27] The applicant states that she had to sell[4] 58% of members' interest as the third respondent encountered financial difficulties which included a threat by the landlord to cancel lease agreement entered into with the third respondent.

- [28] The attorneys for the first and second respondents further informed the applicant that the second respondent hold 50% of the shares whereas the deceased and first respondent had 25% each.
- [29] In the premises she submit that the in view of the outcome of the investigation she stands a chance that there she would be the sole beneficiary and the assets may dissipate in the hands of the first and second respondent. She would also be deprived of maintenance against the estate and the contract entered into with City of Johannesburg Metropolitan Municipality may be terminated. She further submits that she will suffer irreparable harm; that there is no alternative relief available to her and the balance of convenience favours the granting of the order. There is no proper elaboration for the harm and no alternative relief arguments in the founding papers except what is set out in the Heads of Argument where reference was made of *Bramford v Minister of Community Development and Sate Auxiliary* 1981 (3) SA 1054 (C) at 1061 illustrating that “harm must not be absolutely irreparable or unfixable, but rather difficult or impossible to restore with emphasis placed on the word difficult rather than impossible”.^[5]
- [30] The first respondent in retort set out the background on the formation of the third respondent. He stated that the third respondent was registered by the deceased, their father and him in
2003. They were all holders of members interest, the deceased with 50% members’ interest and the first respondent and their father being holders of the remaining 50% members’ interest equally. It was discovered in February 2024 that the deceased had fraudulently removed them from the company. There was meeting held before his passing with the accountant at which a resolution was signed by the deceased that they will be re-instated as holders of members’ interest in the company. The said resolution was to be actioned once the deceased placed the accountant in funds. This was not done as the deceased did not have funds then. The accountant proceeded to execute the mandate after the deceased’s death without any funds being paid.
- [31] It is further contended that the accusation that the funds would be depleted has not been substantiated and if anything, it must be mentioned that she opened a new account and helped herself with the amount of R367 178.60 on 13 February 2025 and R970 485.00 on 20 February 2025 without proper accounting to any one including the fourth respondent.
- [32] The prima facie right has not been proven by the applicant, as contended by the respondent. She had categorically conceded that the Will excludes her as a beneficiary and her belief that she could be first in line for the purposes of appointment does not guarantee her for the appointment as the executrix.

- [33] The argument on apprehension of harm is predicated on the saying that the first and second respondent do not intend to continue with the business and this is unfounded, so argue the respondents. The alleged threat that the respondents would renege on the sale agreement she entered into with the seventh respondent is of no moment as that agreement is unlawful and susceptible to rescission by the court of law.' In any event the members' interest has already been transferred.
- [34] The respondents further contended that there are no facts, either primary or secondary, laid by the applicant to establish any harm and or reasonable apprehension of harm occurring. With regard to the balance of convenience the test is whether which party will suffer greater prejudice if the relief is not granted. In this instance no evidence was presented to prove that the applicant will suffer any prejudice of the order is not granted. On the other hand, the beneficiaries would unnecessarily be delayed to get their benefit from the estate.
- [35] The alternative, the respondents argued, and a proper remedy is to approach the Master of the High Court alternatively the CIPC for a relief sought and they have mechanism as regulatory bodies to provide remedy to the applicant unlike opting to obtain a review outcome but seeking an interdict in court.

Issues

- [36] Issue for determination is whether the applicant has successfully made up a case for interim relief she is seeking in accordance with the notice of motion.

Legal

analysis

Interim Interdicts

- [37] The requirements for interim interdict are settled in our jurisprudence and were clearly delineated a century ago in

Setlogelo[6]. The applicant has to present evidence of prima facie right even if opened to some doubt; that there is imminent and irreparable harm, that there is no alternative remedy and that the

balance of convenience tilt in favour of the applicant. The judgment referred to should be read together with Webster v Mitchel in relation to interim interdicts.

Winding up of estates.

- [38] Once a person has passed his or her assets are frozen until the appointment of an executor by the fifth respondent. The Master exercises her discretion in deciding who must be appointed as an executor/trix. Section 11 of the Administration of Estate Act ("Estate Act") enjoins whoever could be in possession of the deceased books or documents to immediately report the particulars of such property to the Master of the High Court. In this regard the

first respondent conceded that the changes which were effected at the offices of the fourth respondent were effected after the deceased's passing by allocating himself 50% of the third respondent's member's interest. This was improper and inconsistent with the provisions of section 11 as alluded to above and alleged resolution should be reported to the fourth respondent.

- [39] The foregoing was altered by the applicant who allocated to herself 100% members' interest and subsequently sold 58% to the seventh respondent. The impression created is that she believed the members' interest to be her property. This would not be correct either as the assets of the deceased have to be liquidated and then pay the creditors and only then distribute the residue to the beneficiaries including her if she is ultimately found to be the right beneficiary. It was held by Adam J in *Le Roux*[7] that registration of members' interest after the death of the holder is unlawful unless dealt with in terms of the Estate Act.
- [40] It appears that the second respondent proceeded and allocated herself 50% of the members' interest and the balance to the first respondent. The registration of the 50% to the first respondent would also be incorrect as the first respondent need to lodge a claim against the estate and become a creditors and to be dealt with in the liquidation and distribution account which must be approved by the fifth respondent in terms of section 35 of the Estate Act. Though the executrix is empowered to dispose of assets during liquidation process the said powers should be exercised in the interest of the estate and the registration of the members' interest was pursuant to the alleged resolution which was taken prior the passing of the deceased.
- [41] The appointment of executors is also informed by the discretion of the Master who may decide to appoint any other qualifying person notwithstanding a nomination by the beneficiaries in the estate. This may be an instance where there is conflict between the parties, as was held in *Brimble Henneth*[8]. Section 19 of the Estate Act provides that where there is competition for the office of executor the Master shall when making an appointment give preference to the surviving spouse. It then follows that in the event that the Will is declared invalid then the applicant would stand a better chance of being appointed as an executrix. But until the Will is set aside the appointment by the Master remains intact. Noting however that the executor may still be removed in terms of section 54 of the Estate Act.
- [42] The applicant has a right to ask for the paternity of the sixth respondent which could not have been asked if the sixth respondent was born within the marriage. The contention that since no blood was taken from the deceased before his passing hence DNA testing is impossible has no foundation in law or fact. The DNA can still be taken from the parents and or siblings of the deceased. That notwithstanding photographs and material shared by the sixth respondent with the applicant's attorney may possibly weigh in favour of the sixth respondent if needs be.[9]

Conclusion.

[43] I conclude that whilst the liquidation process in itself will not prejudice the applicant prejudice may still visit her if the distribution of the residue is embarked upon before final adjudication on the validity of the Will. To this end an order

directing that the residue should not be distributed pending the adjudication of the dispute regarding the Will is finalised would be competent.

[44] The registration of the members' interest by the executrix prior the approval of the liquidation and distribution account is premature. To this end the registration should be set aside and the members' interest should remain with the executrix held on behalf of the estate and distribution shall await the decision of the adjudication of the Will.

[45] The appointment of the second respondent as the executrix is in accordance with the Will which was accepted by the fifth respondent. The removal of the executrix should be properly motivated and launched in accordance with section 54 of the Estate Act. No evidence has been presented to justify invoking the provisions of section 54 of the Estate Act to remove the executrix. To this end the relief sought that the applicant should be appointed as an executrix pending challenge of the Will is unsustainable. This will also follow in respect of the relief sought that the members' interest in the third respondent should be registered in the names of the applicant pending adjudication of the dispute about the validity of the Will.

[46] There is accusation of embezzlement of the estates monies by both the applicant and the respondents without concrete evidence in support thereof no decision can be made on its impact regarding the appointment made. That notwithstanding the offer by the respondent that an independent executor be appointed was more sensible but regrettably rejected by the applicant.

[47] The members' interest record with the fourth respondent should be endorsed to the effect that they should not be transferred without the approval of the Master of the High Court.

[48] The relief sought by the applicant that the business operations be left to the seventh respondent would amount to taking away the powers of the executrix to attend to the winding up of the estate as prescribed by the Estate Act. In any event the seventh respondent failed to present a case before the Court that he is the only capable person who can to the exclusion of any other person, to operate the business of the third respondent. this should not be construed as decision that the seventh respondent should be removed as an employee of the third respondent. he must be dealt with in terms of the law.

[49] I am therefore persuaded that the requirements of the interim interdict were met in respect of some of orders sought which I have concluded that they are sustainable.

Costs

[50] The question of costs is within the discretion of the court. I had regard to the submission by all the parties and believe that the costs should be reserved shall be properly interrogated at the end of the challenge mounted by the applicant.

Order

[51] I therefore order as follows:

51.1. The application for the cancellation of the letters of executorship in terms of which second respondent was appointed as executrix in the Estate of the Late Nishal Hariparsad, is dismissed.

51.2. The application for an order directing the fifth respondent to appoint the applicant as the executrix in the estate of the Late N Hariparsad, pending the finalisation of the action initiated to determine the validity of the Will is dismissed,

51.3. The application for an order setting aside the removal of the applicant as 100% member's interest of the third respondent and removing the second respondents as member in the third respondent is dismissed.

51.4. It is ordered that the registration of the 50% of members' interest held by the first respondent is set aside and shall be registered in the name of the executrix on behalf of the Estate including the 50% members interest registered in the executrix name remain held on behalf of the estate.

51.5. The application for an order directing the fourth respondent to reinstate the applicant as a member with 100% interest in the third respondent pending the finalisation of the action instituted to determine the validity of the deceased last Will and Testament is dismissed.

51.6. The application that the seventh respondent be permitted to continue with the business operations of the third respondent without the interference of the first and second respondents or any other person, pending the finalisation of the action instituted to determine the validity of the deceased's Last Will and testament is dismissed.

51.7. Costs reserved.

M V NOKO

Judge of the High Court,

Gauteng Division, Johannesburg.

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Dates:

Hearing: 11 March 2025.

Judgment:

24 March 2025

Appearances:

For the Applicant: Carten JC

Instructed by: A Van Der Merwe Attorneys.

For the first and Second Respondent: LCM Morland

Instructed by: Mamba Attorneys

For the Sixth respondent : MR Bloem

Instructed by: Wendel Bloem Attorneys

For the seventh Respondent: M Voster (watching brief).

Instructed by c/o Cuzen Randeree Dysai Inc.

- [1] The applicant's challenge of Will is based on section 2(3) of the Wills Act read with Van Wetten and Another v Bosch and Others 2004 (1) SA 348 SCA and De Reszke v Marais and Others 2006
- (2) SA 277 SCA in terms of which the Will must have been executed by the testator to be accepted by the Master.
- [2] See para 5 of the Applicant's Heads of Argument at CL 19-4.
- [3] Id at para 6.
- [4] See para 37 of the Applicant's Founding Affidavit at CL02-16.
- [5] See para 25 of the Applicant's Heads of Argument CL 19-10.
- [6] Setlogelo v Setlogelo 1914 AD 221.
- [7] Le Roux v Estate Late Le Roux and Others (2024-070995) ZAGPJHC (3 December 2024).
- [8] Brimble Henneth v Henneth and Others (3239/2021)[2021] ZAWCHC 102 (25 May 2021). This lis was concerned with an executor presiding over a claim and becoming conflicted and had to be removed and was referred to only on the basis of parity of reasoning.
- [9] Even if it could be found that the DNA results are not in her favour she may be assumed to have been adopted. Reference can be made of Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009 (Reform of Customary Law of Succession Act) . This Act defined a descendant to "include a person who is not a descendant in terms of Intestate Succession Act, but who, during the lifetime of the deceased person was accepted by the deceased person in accordance with customary law as his or her own child". It may have to be determined if the sixth respondent is catered for in terms of the said legislation.

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