

SOUTH AFRICA / JUDGMENT

Khammissa v Tselana N.O and Others (2025/025127) [2025] ZAGPPHC 702 (4 July 2025) [2025] ZAGPPHC 702

COURT

North Gauteng High Court, Pretoria

BEFORE

Mbongwe

CASE / FILE NUMBER

2025/025127

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 2025-025127

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE:

04/07/2025

SIGNATURE

In

the matter between:

SUMAIYA
ABDOOL GAFFAR KHAMMISSA
Applicant
And
MCCLEAN
TSELANA N.O.
First
Respondent
THEODOR
WILHELM VAN DER HEEVER N.O.
Second
Respondent
DEBORAH
LYNN KHAN N.O.
Third
Respondent
THE
MASTER OF THE HIGH COURT, PRETORIA
Fourth
Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] The challenge of the jurisdiction of the Office of the Master, Pretoria in the insolvent estate of Nel, who was resident in the Mpumalanga Province, is in the heart of this urgent application serving before me.
- [2] A final order for the final sequestration of the estate of Mr Nel was granted by the Mpumalanga Local Division of the High Court, Middelburg on 6 May 202, prior to establishment of the Master's Office, Middelburg or prior same becoming fully functional. In that period and earlier, insolvent estate matters in that province, including the present, fell under the jurisdiction of and were dealt with by the Pretoria Office of the Master which appointed the Applicant as a co- Trustee of the insolvent estate of Nel.

PAUSE

- [3] I pause to state that the Master's office in Pretoria was involved and assisted in the establishment of the Office of the Master, Middelburg. In particular, Mr Serumola, an Assistant Master in the Pretoria office, presided over the first meeting of the creditors of the insolvent estate of Nel which was held at the Magistrate's Court in Middelburg. It was in this meeting that Mr Serumola had, inter alia, rejected a claim by First Rand Bank, a major creditor in the estate of Nel. That rejection had resulted in FRB launching an application in this court for the review and setting of Mr Serumola's decision. The application served

before Potterill J whose judgment and orders are of significance in the consideration of the present application. Potterill J's judgment and orders did not only review and set aside Mr Serumole's decision, but had also ordered; the removal of the Applicant and her co-trustee as trustees of the insolvent estate of Nel; that new trustees be appointed and further that a first meeting of the creditors be convened and held de novo. New Trustees, the second and third respondents, were subsequently appointed as replacements for the Applicant and her co-trustee.

- [4] Importantly and of much relevance to the application before me was Potterill J's explicit pronouncement in the review application that the Master's Office in Middelburg, Mpumalanga, did not function independently of the office of the Master, Pretoria. The gravamen of the Applicant purported case in this application flies in the face of this pronouncement by Potterill J. An appeal against the judgment and orders of Potterill was dismissed by the Supreme Court of Appeal.
- [5] Despite her removal as a trustee, the Applicant has subsequently made a payment out of the funds in the insolvent estate account with the 'consent of the Master', Pretoria, and is persistently refusing to account to the Master and current trustees of the insolvent Nel estate for the balance of the funds in the insolvent's estate account and to handover to the appointed Trustees the assets in the estate. The second respondent has alleged in the answering affidavit that some assets in the insolvent estate, including those that had been attached by the Sheriff in terms of section 19 of the Insolvency Act, were questionably released / dissipated and remain unaccounted for.
- [6] The Applicant's persistent refusal to account for and handover the assets in the insolvent estate resulted in the Master, Pretoria taking the decision in September 2023 to conduct an enquiry/ interrogation in terms of section 152 of the Insolvency Act. The Applicant, through her attorneys, has challenged the authority of the Master to institute such an interrogation citing a directive issued by the Master's office, Middelburg, Directive 6 of 2023, in terms whereof the Middelburg Master's office terminated the mandates of other Masters' Offices to deal with estates/ insolvent estates falling under its jurisdiction.
- [7] It is, in my view, curious that the Applicant has not cited the Master, Middelburg, whose jurisdiction the Applicant purports to assert, as a party in this application. Clearly the Master, Middelburg, has a substantial interest in this matter. Statutory provisions referred to later hereunder in para 15 do not preclude the office of the fourth respondent from continuing with the estate matter concerned herein.
- [8] The Applicant is under a subpoena to attend and give evidence in the interrogation in terms of section 152 constituted by the Master, Pretoria.

- [9] After some engagements and disagreements on the jurisdiction issue, the Pretoria Master's office took the decision on 13 February 2025 that it has the necessary jurisdiction on this matter and that the enquiry in terms of section 152 will proceed. The Applicant has alleged to have launched an application for the review and setting aside of this 13 February 2025 decision.
- [10] The enquiry in terms of section 152(2) has progressed and witnesses, including the Applicant's erstwhile co-trustee, have given evidence. Curious in this regard is that the Applicant's erstwhile co-trustee, according to unchallenged evidence in the second respondent's answering affidavit, has testified, inter alia, that she did not give consent for the Applicant to make the payment made after their removal as Trustees. Importantly, the Applicant and/or her attorney or counsel have been attending the proceedings in the enquiry without meaningful participation nor the Applicant testifying.
- [11] In March 2025 the inquiry was postponed to 10 April 2025. This prompted the Applicant to bring the present application on urgency in terms of Rule 6 (12) to interdict the first respondent from continuing with the inquiry on the said date ostensibly pending the determination of the review of the decision of 13 February 2025. This application is opposed by all the four respondents, including the Master, Pretoria.

THE LIS

- [12] From the Applicant's perspective, the real issue appears to be the contention that the office of the Master, Pretoria, has no jurisdiction over the insolvent estate of Nel and ostensibly that the enquiry to which the Applicant has been subpoenaed to give evidence falls outside the authority of the Master, Pretoria.
- [13] The second issue raised by the Applicant pertains to the respondents' alleged unexplained late filing of their opposition papers. With regard to this issue, the Applicant seeks that this court rejects or not consider the respondents' answering affidavits or that, in the event that the court admits and considers the evidence in these affidavits, the evidence in the Applicant's belated replying affidavits also be admitted and considered.

OPPOSITION

- [14] The respondents' opposition to the applicant's application is premised on various grounds which can be summarised as follows;
- 14.1 that the matter is not urgent, alternatively, that urgency was self-created by the Applicant;
- 14.2 that the applicant lacks legal standing to bring this application;
- 14.3 the applicant is not entitled to the relief it seeks;
- 14.4 the application has been brought for a sinister motive to evade accountability by the applicant;

[15] The fourth respondent and, by extension, the first respondent, may statutorily exercise jurisdiction as follows; in terms of the Administration of Estates Act 66 of 1965:

15.1 a single Master can exercise jurisdiction in two different High Court jurisdictions and a jurisdictional point would not competently be taken against such Master;

15.2 a Master may assume jurisdiction in a matter where another Master should exercise jurisdiction and a jurisdictional point may also not be competently be taken against that Master;

15.3 decisions taken by the Master in the bona fide belief the he/she had jurisdiction cannot be invalidated merely on it being established that another Master had jurisdiction on the matter concerned. Provisions similar to the above are contained in the Trust Property Control Act 57 of 1988.

DISCUSSION AND ANALYSIS

[16] It is not in dispute that the Applicant is not a party to the main proceedings in this matter – the sequestration of the insolvent estate of Mr Nel. While her appointment as a co-trustee had ordinarily clothed her with the authority to act on behalf of the estate, her removal as a Trustee by an order of this court disqualified her from representing the estate in any capacity. Further and, in any event, the Applicant is not representing the Master, Middelburg, whose jurisdiction the Applicant purports to assert in this application.

[17] The Applicant, however, remains obligated to account to the Master of the high Court, Pretoria, who had appointed her for the management of the insolvent Nel estate and incidental processes in the sequestration thereof and to hand over these duties to her duly appointed replacement successors.

[18] Other than her short-lived appointment as a co-trustee of the insolvent Nel estate, the applicant has no interest in this matter and, therefore, no legal standing to bring this application to purportedly challenge the jurisdiction of the Master, Pretoria. As already pointed out earlier, the Applicant has not cited as a party the office of the Master, Middelburg, which has an interest in this case and whose jurisdiction the Applicant purports to assert. This is fatal to the Applicant's case.

[19] By virtue of the findings in the two preceding paragraphs, the applicant does not meet the barest of the requirements for entitlement to the interdict she seeks in this application. Amongst the requirements the applicant has to establish are:

19.1 that she has a clear right which;

19.2 may be harmed or she has a reasonable apprehension that it may be harmed. This applicant is in no position to demonstrate her possession of these minimal imperatives and, therefore, not entitled to the interdictory relief sought.

[20] It is pertinent that the Applicant does not seek the setting aside of the subpoena that was served on her, but seeks the setting aside of the decision of the Master to conduct the interrogation. In effect the Applicant seeks the vitiation of the process the Master has commenced with, notwithstanding that the Applicant lacks legal standing and grounding for entitlement to that relief. This is undoubtedly a sinister effort by the Applicant to thwart the already running interrogation and to render worthless the evidence that the Master, Pretoria, has gathered, The Applicant is in possession of material that is the subject matter of the interrogation she has been subpoenaed to give evidence in. She consequently has no right to seeks to evade her obligation to account fully for her handling of the affairs of the Nel estate by seeking the review of the decision of the Master and the present interdictory relief.[1]

[21] The Applicant relies on the supporting affidavit of Mr Ngako Jan Serumola, an Assistant Master whose decision to reject a claim by First Rand Bank, an major creditor in the insolvent estate, was reviewed and set aside in the same hearing and judgment and orders of Potterill J in this division. It is also pertinent that Mr Serumola was cited as a party in the review application and was a party in the failed appeal against the judgment and orders of Potterill J and that, despite all this Mr Serumola has deposed to an affidavit supporting the Applicant's misplaced grounding in this application. Furthermore, convenience and the interests of justice gravitate in favour of the office of the Master, Pretoria, continuing with the interrogation and to get to the bottom of the problems that the Applicant, whom the Master had appointed, has caused and for

which the Applicant refuses to account.

[22] With regard to the Applicant's prayer that the respondents' answering affidavits not be accepted, I find that the Applicant's failure to serve the application on the State Attorney's office within five days of service thereof on the office of the head of the department concerned at the head office of his department as required

by the provisions of section 2 of the State Liability Act 20 of 1957, as amended by the Judicial Matters Amendment Act 8 of 2017, was the cause of the delayed response by the first and the fourth

respondents. In any event, the interests of justice would command, in my view of the circumstances of this case, that the delay be condoned. There will also be no prejudice whatsoever that may be caused to the Applicant as her own further supplementary replying

affidavit will also be considered, as requested by her. This will be considered once the court find that there is reason to consider this application to that stage.

[23] I am satisfied, on the preliminary issues and findings thereon thus far, particularly that the Applicant lack locus standi and is not entitled to the interdictory relief sought, that these findings alone are dispositive of the Applicant's case and that a further consideration of the matter is unwarranted.

CONCLUSION

[24] Litigation constitutes an abuse of court process if it was not brought to vindicate a legitimate right, was used to achieve an improper end such as financial gain, prejudice and, as in casu, a strategy to evade accountability, inter alia.[2] There are funds and assets that were under the control of the Applicant that have not been accounted for to the respondents and handed over to the second and the third respondents. The Applicant has not denied that she has repeatedly been called upon in vain to render the relevant accounts to the Master. Worse still, despite her removal as a Trustee, the Applicant refuses to render the closing account and hand over the continuation of the management of the affairs of the estate to the second and the third respondents. The prejudice to the creditors of the insolvent Nel estate continues unabated. This application by the Applicant, in my view, bears the hallmarks of an abuse of the process of the court. This conclusion holds equally in respect of the Applicant's application for the review of the Master's decision of 13 February 2025.

COSTS

[25] An award of punitive costs against the Applicant is appropriate in this case.

ORDER

[26] Premised on the findings and conclusion in this judgment, the following order is made:

1. This Application is dismissed.
2. The Applicant is ordered to pay the costs on the attorney and client scale C, including the costs consequent upon the employment two counsel one of whom is senior counsel, where applicable.

MPN MBONGWE

JUDGE OF THE HIGH COURT

DATE OF HEARING:

25 March 2025

JUDGMENT

HANDED DOWN: 04 July 2025

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[1] see Webster v Mitchell 1948

(1) SA 1186 (W)

[2] see Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others [2022 ZACC 37

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