

SOUTH AFRICA / JUDGMENT

Le Grange v Barkhuizen and Others (2620/2020) [2021] ZAFSHC 12 (4 February 2021) [2021] ZAFSHC 12

COURT

Free State High Court, Bloemfontein

BEFORE

Mathebula

CASE / FILE NUMBER

2620/2020

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case number: 2620/2020

In the matter between:

ERENSKIA LE GRANGE

Applicant

and

ADOLF EUGENE BARKHUIZEN

1st Respondent

ADRIAAN BARKHUIZEN

2nd Respondent

WILLIAM LA GRANGE

3rd Respondent

MEGAN LA GRANGE

4th Respondent

ADOLF LLEWELLYN BARKHUIZEN

5th Respondent

THE MASTER OF THE HIGH COURT

FREE STATE DIVISION

6th Respondent

HEARD ON: 19 NOVEMBER 2020

CORAM:

MATHEBULA, J

DELIVERED ON: 4 FEBRUARY 2021

- [1] The main issue of contention between the parties in both the main application and counter-application revolves around which of the two
- (2) wills executed by the testator is his last will. The applicant avers that the last will was executed on 2 April 2018 at Three Rivers, Vereeniging. It is the case of the fifth respondent that the joint will of the testator and his wife (who predeceased him) executed on 15 September 2010 is the last will. The applicant also seek an order declaring her competent to inherit and be appointed as executrix in terms of section 4A(2) of the Wills Act 7 of 1953.[1]
- [2] The facts do not present any difficulty to adjudicate this matter. The applicant and fifth respondent are the sole surviving daughter and grandson of the testator respectively. The second to fourth respondents are also grandchildren of the testator. They have also been nominated as beneficiaries in the two (2) wills that are subject of the dispute. It must be mentioned that the third and fourth respondent are children of the applicant. All four respondents support the application brought by the applicant.
- [3] The problem as I perceive it, stems from the bequest made by the testator in respect of the immovable property known as 1 Mouton Street, Frankfort. The immovable property was bequeathed to the fifth respondent in accordance with the joint will of the testator and his wife. Specifically, this was to be the case in the event of the simultaneous death of the testator and testatrix. The other immovable property at 8 Frankfort Street, Frankfort, cash and part of the residue of the estate were bequeathed to the applicant
- [4] It is common cause that the testator was inflicted by a debilitating illness requiring surgery and hospitalisation in the Intensive Care Unit of the hospital. The applicant avers that the testator insisted despite sound advice to approach his broker that she write his will. She proceeded to do so in long hand and it was signed before two witnesses. Once more the applicant was appointed as the executrix. The main difference in the second will is that the entire estate with the exception of the immovable properties and the firearm is bequeathed to the applicant. The provision is that the two (2) immovable properties must be sold and the nett proceeds be divided equally among the first to fifth respondents.
- [5] Section 4A(1) of Act 7 of 1953 provides as follows:-

“1) Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.”

- [6] The court can declare such person to be competent to receive a benefit from a will if the court is satisfied that he did not defraud or unduly influence the testator in the execution of the will.
- [7] Comparing the two (2) wills it will be noted that the immovable property situated at 8 Frankfort, First National Bank investment and the residue of the estate were bequeathed to the fifth respondent in the will dated 15 September 2015. In the will dated 2 April 2018, the applicant lost her inheritance to the immovable property. It is inconceivable that on what basis can it be claimed that she gained more benefits as a result of the latter will. There is no evidence to sustain such an allegation.
- [8] On the same breath, the fifth respondent simply carried out the request of the testator. There is corroborating evidence that the testator was persistent that the applicant writes out the will for him. Despite advise, he was adamant. There is no indication that there was an element of undue influence or fraud on the part of the applicant. I say so because all the beneficiaries in the wills are the same persons whose benefits do not differ materially as provided in the documents. The will dated 2 April 2018 complies with the formalities required in the execution of a will. This leads me to the conclusion that the application is meritorious.
- [9] Having made findings that I did in the preceding paragraphs, it stands to reason that the counter application is based on unsustainable evidence and must be dismissed with costs.
- [10] In the result I make the following order: -
- 10.1 The Master is directed to accept the will of Adolf Barkhuizen [ID 321015 5034 08 7] executed on 2 April 2018 at Three Rivers.
- 10.2 It is declared that the Applicant is a competent person as envisaged in Section 4A of the Wills Act 7 of 1953 to receive the bequests stipulated in the said will and to be appointed as the Executrix thereof.
- 10.3 The costs of the application to be paid by the deceased estate of Adolf Barkhuizen.
- 10.4 The counter-application is dismissed.
- 10.5 The fifth respondent is ordered to pay the costs of the counter-application.

M. A. MATHEBULA, J

On behalf of applicant:

Adv. P.R. Cronje

Instructed by:

Lovius Block

BLOEMFONTEIN

On behalf of 5th respondent: Adv. A.P. Berry

Instructed by:

Jan Hugo Attorneys

/roosthuizen

[1] (2) Notwithstanding the provisions of subsection (1) a) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will; (b) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession; (c) a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the will concerned.

[1] (2) Notwithstanding the provisions of subsection (1)

- a) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;
- (b) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;
- (c) a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the will concerned.

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Prepared on 10 October 2026 · Esheria