

SOUTH AFRICA / JUDGMENT

Lentsoane v Mokoena N.O and Others (2024/012066) [2025]

ZAGPJHC 251 (7 March 2025)

[2025] ZAGPJHC 251

COURT

South Gauteng High Court, Johannesburg

BEFORE

A J D'Oliveira

CASE / FILE NUMBER

2024/012066

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

LOCAL DIVISION, JOHANNESBURG)

Case No. 2024-012066

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER

JUDGES: NO

(3) REVISED.

SIGNATURE

DATE: 7 March 2025

In the matter between:

EULANDER

MATHAPELO LENTSOANE

Applicant

and

MAHLAPE

KHASIANE MOKOENA N.O.

First

Respondent

THE

MASTER OF THE HIGH COURT,

JOHANNESBURG

Second

Respondent

KHOMOTSANA

PETRUS NYAPOTSE

Third
Respondent
NYAPOTSE
INCORPORATED
Fourth
Respondent

JUDGMENT

D'OLIVEIRA AJ:

1 This is an application for a mandamus directing the first respondent to comply with her obligations as executrix of the estate of Mamonyane Clara Mokoena (the deceased).

2 The deceased passed away on 25 November 2021.

3 The applicant was a friend of the deceased. She claims that she contributed R80 000.00 towards the costs of the deceased's funeral. It is in that capacity, as an alleged creditor of the deceased estate, that the applicant has brought the application.

4 The first respondent is Mahlape Khasiane Mokoena, who is the daughter of the deceased. She was nominated by the deceased to be the executrix of her deceased estate.

5 The second respondent is the Master of the High Court, Johannesburg, who plays no active role in these proceedings.

6 The third respondent is Khomotsana Petrus Nyapotse, who is the sole director of the fourth respondent.

7 The fourth respondent is Nyapotse Incorporated, the firm of attorneys that was appointed by the first respondent on 20 February 2022 to be her attorney and agent to act on her behalf in all matters pertaining to the administration of the deceased estate. I will refer to the third and fourth respondents as the "first respondent's attorneys".

8 The first respondent's attorneys been joined in the application because the applicant seeks costs de bonis propriis against them.

9 The applicant has brought the application because she and her attorney's efforts to lodge her claim and have it dealt with in accordance with the provisions of the Administration of Estates Act 66 of 1965 (the Act) have been consistently and unreasonably ignored by the first respondent and her attorneys.

10 The facts in this regard, summarised, are that, between 21 October 2022 and 23 September 2023, the applicant's attorney addressed no less than eleven letters, in which they, inter alia:

12.1. sought a copy of the first respondent's letters of executorship (until the time she was appointed in June 2023);

12.2. asked when the estate would be advertised in terms of section 29 of the Act;

12.3. informed the respondents of her status as a creditor and her intention to lodge a claim; and later

12.4. attempted to lodge the applicant's claim against the deceased estate.

13. The first ten letters were written to the first respondent's

attorneys. The last letter was written to the first respondent, and copied to the first respondent's attorneys.

14. The last letter, dated 23 September 2023, specified that all the applicant's attorney's requests, notices and demands had been ignored and warned that, should no response be received within five days, legal proceedings would be instituted. This letter, too, prompted no reaction from either the first respondent or her attorneys.

15. The first respondent's attorneys not only ignored all of the applicant's attorney's attempts to obtain information concerning the deceased estate, the section 29 publication and the anticipated date of the lodging of a liquidation and distribution account, the first respondent's attorneys treated one of the applicant's attorneys' employees, who was given the task of delivering one of the letters by hand, in a manner that can fairly be described as abusive.

16. The first respondent's attorneys do not oppose the application.

The application is only opposed by the first respondent.

17. The first respondent's answering affidavit, however, is superficial and unsatisfactory.

18. The first respondent says that the applicant's attorney has not been responded to because she has needed time to grieve the passing of her mother and of her brother.

19. This is not a credible explanation for why the first respondent or first respondent's attorney failed to react at all to any of the letters of the applicant's attorney. The deceased passed away on 25 November 2021, and the first respondent's brother passed away on 13 December 2022. The enquiries and attempts made on behalf of the applicant to lodge her claim against the deceased estate started 11 months after the deceased had passed away, and two months before the brother passed away. They continued for another eleven months.

20. The first respondent also states that she was completely unaware of the letters from the applicant's attorney, his attempts on behalf of the applicant to obtain information about the estate, and his attempts to lodge the applicant's claim. She effectively places the blame for the lack of response on her attorneys, indicating that her attorneys should account for their conduct. This response is not acceptable for two reasons.

First, the first respondent was written to directly by the applicant's attorney, and ignored the letter herself. Secondly, it is the first respondent who is the executrix of the estate. She ultimately bears responsibility for the conduct of the attorney and agent she has chosen to administer the estate on her behalf.

21. In the meantime, the first respondent admits that she continues to reside in the immovable property that was owned by the deceased. It is apparent that she is in possession of the deceased's movable property and is enjoying the benefit of such property. There is much to be said for the case made out by the applicant that the consistent failure of the first respondent and her attorneys to react to the applicant's attempts to assert her claim in the estate was a deliberate stratagem to avoid and thereby stifle any claims against the deceased estate.
22. Section 35 of the Act prescribes that an executor shall, as soon as may be after the last day of the period specified in terms of the notice referred to in section 29(1), but within six months after the letters of executorship have been granted, lodge the liquidation and distribution account of the estate with the Master.
23. The Legislature has limited the period in which the liquidation and distribution account should be lodged for good reason. The limited time period compels those charged with the administration of a deceased estate to wind up the estate within a reasonable time, protecting against abuse and the dissipation of the assets to the prejudice of creditors and heirs.
24. The letters of executorship were issued by the Master in favour of the first respondent on 23 June 2023. The first respondent's answering affidavit, delivered on 9 April 2024, disclosed for the first time that advertisement in terms of section 29 of the Act had taken place in the Star newspaper and the Government Gazette in October 2023.

25. The first respondent and her attorneys failed to lodge the liquidation and distribution account within six months of the issue of the letters of executorship. The liquidation and distribution

account had not been lodged by the time the applicant launched the application on 5 February 2024. It had still not been lodged by the date of the hearing of this application on 28 January 2025.

26. Section 36 of the Act provides:

"36 Failure by executor to lodge account or to perform duties

- (1) If any executor fails to lodge any account with the Master as and when required by this Act, ... or to perform any other duty imposed upon him by this Act ... the Master or any person having an interest in the liquidation and distribution of the estate may, after giving the executor not less than one month's notice, apply to the Court for an order directing the executor to lodge such account ... or to perform such duty or to comply with such demand."

27. Although the applicant did not make express reference to section 36 in her application, a proper case has been made out for relief under this section, and under common law.
28. The applicant has also made out a proper case for the order that the first respondent and the first respondent's attorneys pay costs on a punitive scale. Their conduct is unacceptable and is deserving of the court's censure.
29. The following order is made:
 1. The first respondent is directed to provide the applicant's attorney with a written acknowledgement of the lodgement of the applicant's claim in the amount of R80 000.00 in the deceased estate of the late Mamonyane Clara Mokoena within 10 days of the date of this order.
 2. The first respondent shall respond to and deal with the applicant's claim in accordance with the provisions of the Administration of Estates Act 66 of 1965 within 5 days of confirming the lodgement of the claim in terms of paragraph 1 of this order.
 3. The first respondent shall lodge the liquidation and distribution account of the deceased estate of the late Mamonyane Clara Mokoena with the Master within 30 days of the date of this order.
 4. The first, third and fourth respondents are liable, jointly and severally, to pay the costs of this application on an attorney and client scale.

A J D'OLIVEIRA

Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 7 March 2025.

HEARD ON:

28 January 2025

DECIDED ON:

7 March 2025

For the Applicants:

M R Webbstock

Heads prepared by J C Van der Merwe of J C Van Der Merwe Attorneys

For the Respondent

Z Bingwa

Instructed by Nyapotse Incorporated

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