

SOUTH AFRICA / JUDGMENT

Lenyai and Another v Rooth and Wessels Inc and Others (84265/2014) [2015] ZAGPPHC 123 (3 March 2015)

[2015] ZAGPPHC 123**COURT**

North Gauteng High Court, Pretoria

BEFORE

G. Webster

CASE / FILE NUMBER

84265/2014

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REPUBLIC
OF SOUTH AFRICA
IN THE HIGH COURT
OF SOUTH AFRICA
(NORTH GAUTENG,
PRETORIA)

CASE NO:

84265/2014
DATE: 3 MARCH
2015
NOT REPORTABLE
NOT OF INTEREST
TO OTHER JUDGES
In the matter

between:

ONKGOPOTSE
LENYAI.....FIRST
APPLICANT
KEITUMETSE
TOKOLOGO
MOTSEPE.....SECOND
APPLICANT
And
ROOTH AND WESSELS
INC.....FIRST
RESPONDENT
MASTER OF THE
HIGH COURT,
PRETORIA.....SECOND

RESPONDENT
PAUL
VRANAS.....THIRD
RESPONDENT
CORINE
VRANAS.....FOURTH
RESPONDENT
MAMOGOLO
MATUBATSE.....FIFTH
RESPONDENT
ROSINA
MOTUBATSE.....SIXTH
RESPONDENT
THANALEI
LENEMAKULA.....SEVENTH
RESPONDENT
FIRST NATIONAL
BANK.....EIGHTH
RESPONDENT

JUDGMENT

1. The applicants issued an application pertaining to the last will and testament of their late father, Jacob Koos Pali Motubatse who passed away on 15 September 2008. They seek an order in the following terms:

“1. An order setting aside and declaring null and void the purported fraudulent Will of the late Jacob Koos Pali Motubatse signed and dated the 29th August 2008;

2. That the Second Respondent be directed to withdraw and cancel letters of executorship granted in favour of the First Respondent in the estate of the late Jacob Koos Pali Motubatse and that such letters be set aside and declared of no force with immediate effect;
3. An order declaring that the “First” will of the late Jacob Koos Pali Motubatse dated and signed on the 28th February 1987 be effective immediately;
4. Costs of suit;
5. Further or alternative relief. ”
2. Annexed to the papers are documents purporting to be the Last Will and Testament of Jacob Koos Pali Matubatse dated 29 August 2008 and 28 February 1987 respectively. The first applicant contends that the Last Will and Testament dated 28 February 1987 of which the original was kept with First National Bank and a copy with the mother of the applicants to this application.

3. It appears to the naked eye that the testator's signatures on the two respective documents dated 28 February 1987 and 29 August 2008 differ remarkably. The "first" will and testament appearing at pages 21 and 22 is identical to the one appearing at page 30 and 31 which was in safekeeping at First National Bank. It appears that the original that was kept by the bank had been signed and the one which was in the possession of the applicants' mother, Louisa Motsepe has the names of the witnesses and the testator written in where their signatures appear on the original.
4. Furthermore, at pages 39 and 40 of the papers appears a confirmatory affidavit deposed to by Dr JF Benson who was treating the late Jacob Koos Pali Motubatse "...from 18 August 2008 until he passed away on 15 September 2008." He further states under oath that "...I confirm that the patient (sic) mental state from the 21st August 2008 developed a delirium due to severe pneumonia and was (sic) intubated and ventilated until his death on the 15th of September 2008." At paragraph 4 of his affidavit he states "...The patient was not of sound mind between the periods mentioned at paragraph 3 above. He could not be able to make proper (sic) decision."
5. A case of fraud has been opened under CAS 877/05/2011 and is still under investigation.
6. The application was served on the third and fourth respondents by Sheriff by "...affixing a copy thereof to the PRINCIPAL GATE of the residence...which is kept locked and thus prevents alternative service...". There was no opposition to this application and no opposing papers were filed. The first and second respondents wrote letters stating in essence that they abide by the court's decision.
7. In light of the foregoing, an order is granted in the following terms:

IT IS ORDERED:

7.1 THAT the will of the late Jacob Koos Pali Motubatse ("the testator") dated 29 August 2008 be and is hereby set aside and declared null and void.

7.2 THAT the Second Respondent be and is hereby directed to withdraw and cancel all the Letters of Executorship issued pursuant to the testator's will dated 29 August 2008.

7.3 THAT the will of the testator signed and dated 28 February 1987 be and is hereby declared to be his last valid will and testament.

7.4 THAT the costs of the application be paid from the estate of the testator.

G. WEBSTER

JUDGE IN THE HIGH COURT

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/lenyai-and-another-v-rooth-unknown-topic-agpphc-2015>

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