

SOUTH AFRICA / JUDGMENT

# Lethoko and Another v Master of the High Court Johannesburg (2022/22404) [2025] ZAGPJHC 106 (8 January 2025)

[2025] ZAGPJHC 106

## COURT

South Gauteng High Court, Johannesburg

## BEFORE

F. Bezuidenhout

## CASE / FILE NUMBER

2022/22404

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2022/22404

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED: YES. DATE: 8 January 2024

In the matter between: -

MAKI ESTHER LETHOKO N.O.

First applicant

(in her capacity as the appointed executrix in the estate of the late SABATA ELIAS MOILOA)

MAKI ESTHER LETHOKO Second applicant

(in her capacity as beneficiary in the  
and

MASTER OF THE HIGH COURT, JOHANNESBURG Respondent

## JUDGMENT

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e mail and publication on CaseLines. The date and time for hand-down is deemed to be 16h00 on 8 January 2024.

F. BEZUIDENHOUT AJ:

## INTRODUCTION

- [1] The applicants seek to review and set aside a decision taken by the respondent (“the Master”) on 29 April 2021 to transfer an amount of R38 771.76 (“the funds”) held in the name of the late Sabata Elias Moiloa (“the deceased”) into the Guardians Fund.
- [2] Once the decision has been set aside, the applicants seek an order that the Guardians Fund transfer the funds to the bank account of the second applicant (“the beneficiary”) and/or trust account of the beneficiary’s attorneys of record within thirty
- (30) days of service of the order. A costs order is also sought against the Master.
- [3] The Master opposes the application on several grounds: -
- [3.1] It avers that the first applicant’s appointment (“the executrix”) was not proper and therefore disputes the locus standi of the executrix to institute the present proceedings.
- [3.2] It alleges that the next of kin affidavit submitted by the applicants to the Master and the one attached to the founding papers contain material discrepancies and is fraudulent.
- [4] The Master therefore seeks a dismissal of the application on a punitive costs scale.

## THE APPLICANTS’ CASE

- [5] The executrix informed the court that she was appointed in her nomino officio capacity upon the issuing of letters of authority on the 12th of August 2020. A copy of the letters of authority is attached to the founding papers and reflects one asset only, namely funds to the tune of R38 771.76 held in a First National Bank account.
- [6] The deceased died intestate.
- [7] The beneficiary alleged that she is the only surviving kin and therefore the only beneficiary, of the deceased estate. In support she attached a next of kin affidavit deposed to by her on the 26th of January 2022. A copy of this affidavit was attached to the founding papers (“the 26 January affidavit”).
- [8] The 26 January affidavit contained the following information: -
- [8.1] It states there is no surviving spouse of the deceased;
- [8.2] The deceased had no children;
- [8.3] The parents of the deceased are identified, but are both deceased;
- [8.4] The beneficiary is listed as the only full blood sibling of the deceased;
- [8.5] Other than the beneficiary, there are no other brothers and sisters.

- [9] The beneficiary informed the court that she is the older sister of the deceased who passed away on the 15th of February 2020. She alleged further that she and the deceased resided with one another during his lifetime. She advised that the deceased did not acquire any immovable and/or movable property during his lifetime, save for the funds which he held in his First National Bank account.
- [10] During the funeral arrangements the executrix (then not yet appointed) elected to intend to the administration of the deceased estate but she was concerned that she would not be able to do so as she and the deceased have different surnames. She sought advice from a certain Mr Seanego Josiah ("Mr Josiah"), who introduced her to a gentleman by the name of Mr Sakie ("Mr Sakie").
- [11] On the 3rd of March 2020 Mr Sakie and Mr Josiah visited the executrix at her home where she was informed by Mr Sakie that he would be able to assist her in obtaining letters of authority. Believing Mr Sakie's offer to be legitimate, the second applicant accepted his assistance at a charge of R4 500.00. She duly paid the fee to Mr Sakie and provided him with the required documentation for the issuing of letters of authority, which inter alia included the deceased's death certificate.
- [12] On the 5th of March 2020 Mr Sakie returned to the executrix's home with issued letters of authority, handed it to the second applicant and left, never to be seen again.
- [13] On the 6th of March 2020 the executrix attended at the Lakeside Mall branch of First National Bank and submitted the required documents to enable the financial institution to pay the funds over to her. She was assisted by one Mr Isaac Lemeka ("Mr Lemeka").
- [14] During August 2020 the executrix returned to the First National Bank branch and enquired about the progress of the payout. She was once again assisted by Mr Lemeka, who informed her that upon checking his system, the account had been flagged for fraudulent activity. Mr Lemeka advised her to approach the Master and to seek legal assistance as the financial institution's hands were tied. It was then that Mr Josiah informed the executrix that the letters of authority provided by Mr Sakie were fraudulent.
- [15] In the days that followed, the executrix attended at the offices of the respondent and personally applied for the issuing of legitimate letters of authority, whereupon the Master issued the executrix with such letters of authority.
- [16] The executrix mentions that criminal proceedings were instituted against her as a result of the flagged bank account, but that the charges were withdrawn with a finding of nolle prosequi by the prosecuting authority.

- [17] The executrix then consulted her present attorneys of record, who addressed correspondence to First National Bank wherein a certificate of balance of the deceased's bank account was requested, a copy of the legitimate letters of authority was provided as well as an explanatory affidavit setting out how the second applicant had come about the fraudulent letters of authority.
- [18] On the 19th of April 2021 the Assistant Master, Mr Angelo Hendricks ("Mr Hendricks"), addressed a letter to First National Bank directing them not to allow any transactions on any and all accounts held by the deceased and to transfer the funds over to the Guardians Fund. First National Bank complied and the funds were so transferred.
- [19] On the 26th of November 2021 the executrix caused a letter to be addressed to Mr Hendricks wherein he was informed that the criminal case against her had been withdrawn, that she had been exonerated of all wrongdoing, that she was the duly appointed executrix of the deceased estate and the only beneficiary. On this basis, the beneficiary sought to claim funds held by the Guardians Fund.
- [20] In response, Mr Hendricks on the 30th of November 2021, requested that the relevant and particular section of the Intestate Succession Act, 81 of 1987 be complied with, together with particulars of the next of kin affidavit to demonstrate the beneficiary's entitlement to inherit, whereafter the matter would be reviewed.
- [21] On the 20th of January 2022 a letter was duly addressed to Mr Hendricks wherein it was set out that the beneficiary is the intestate heir of the deceased estate by virtue of the provisions of section 1(1)(e)(i)(bb) of the Intestate Succession Act.
- [23] On the 2nd of March 2022 a follow-up email was addressed to Mr Hendricks enquiring about progress.
- [24] On the 3rd of March 2022 Mr Hendricks replied and informed the beneficiary that notwithstanding the withdrawal of the criminal proceedings, the Master was not satisfied that she was entitled to inherit from the deceased's intestate estate.
- [25] Understandably, the beneficiary was dissatisfied with this outcome and implored the Master to reconsider all the information before it and to attempt to resolve her claim amicably without approaching this court. No details of the attempt made or process followed is provided in the founding papers.
- [26] The applicants accordingly brought the present proceedings in terms of section 95 of the AE of Deceased Estates Act, 66 of 1965 ("ADE"), which provides as follows: -

*"Every appointment by the Master of an executor, curator or interim curator, and every decision, ruling, order, direction or taxation by the Master under this Act shall be subject to appeal to or review by the court upon motion at the instance of any person aggrieved thereby, and the court may on any such appeal or review confirm, set aside or vary the appointment, decision, ruling, order, direction or taxation, as the case may be."*

## THE RESPONDENT'S CASE

- [27] Mr Hendricks deposed to the answering papers on behalf of the respondent. He informed the court that there are a number of discrepancies between the next of kin affidavit attached to the founding papers and the one provided to him, which he attached to the answering papers. The next of kin affidavit provided to him was dated the 20th of January 2022 (“the 20 January affidavit”) and preceded the 26 January affidavit.
- [28] Firstly, Mr Hendricks points out that the two affidavits bear different dates, namely the one is dated the 20th of January 2022 and the other the 26th of January 2022. The signatures of the Commissioners of Oaths differ. The area and position of the Commissioners differ. The 20 January affidavit provides no details regarding the status of the deceased’s parents. All that was stated was “N/A” (not applicable), as opposed to the 26 January affidavit where the names of the deceased’s parents appear. Mr Hendricks concludes that the 26 January affidavit is either fraudulent or was deposed to in order to cure all of the defects existing in the 20 January affidavit.
- [29] Mr Hendricks advised the court that the beneficiary omitted to state in her founding papers that when she attended at the offices of the Master and met with Mr Hendricks to relay to him the story regarding the fraudulent letters of authority, she informed Mr Hendricks that she and the deceased were involved in a romantic relationship at the time of his death and further that the deceased did not have any parents, children and siblings. However, I interject to observe that if one has regard to both next of kin affidavits, the beneficiary consistently recorded her status as the only sister of the deceased.
- [30] Mr Hendricks confirms the version of the beneficiary that she advised him that she paid Mr Sakie and another individual to assist her with the letters of authority. Mr Hendricks does however express some concern about the letters of authority issued on the 5th of March 2020 in that it reflects his name but he did not issue this particular letter of authority. Mr Hendricks further pointed out that the manner in which the assets were described was also suspicious. Mr Hendricks more importantly states that according to the ICMS system, there was and still is no record of a letter of authority issued on the 5th of March 2020 under number 003882/2020. This, in my view, confirms the beneficiary’s version that the first letters of authority dated the 5th of March 2020 were issued fraudulently.
- [31] Mr Hendricks explained in detail the process to be followed when reporting an intestate estate. He informed the court that after the executrix had relayed to him her encounter with Mr Sakie and the fraudulent letters of authority, Mr Hendricks confiscated the fraudulent letters of authority and let the executrix go with a warning not to use any copies thereof as in doing so, she would be committing a crime.

[32] It was not Mr Hendricks who issued the legitimate letters of authority. He assumes that the executrix managed to have the legitimate letters of authority issued by another colleague on another floor. There is no suggestion by Mr Hendricks, however, that the second letters of authority is not legitimate. In fact, at paragraph 37.1 of the answering affidavit he states that legitimate letters of authority was issued to the executrix after she had been to another colleague.

[33] However, Mr Hendricks contends that the beneficiary has not fulfilled all the requirements to satisfy the Master that she is a beneficiary of the deceased estate. He explains that in matters such as these, a deceased must be linked to a common ancestor, preferably parents or a parent by blood or the law through adoption and where that is still insufficient, with corroborating evidence from other family members. He concludes therefore that the beneficiary has failed to provide the corroboratory evidence as required by the Master and the provisions of the Intestate Succession Act.

[1]

The Law and Practice of Administration of Estates and their Taxation, paragraph 8.2, 2nd edition, Meyerowitz D.

[2]

Section 1(1)(f) of the Intestate Succession Act.

[5]

Logan v Morris N.O. and Others 1990 (3) SA 620 (ZH) at 624D-E.

[6]

1921 AD 403 at 407.

[7]

1980 (1) SA 662 (T).

[8]

Ncelelezi v Master of the High Court Mthatha and Others 2023 JDR 3510 (ECM).

[9]

Four Wheel Drive Accessory Distributors CC v Leshni Rattan N.O. 2019 (3) SA 451 (SCA).

[10]

2012 (2) SA 38 (GSJ).

[11]

Nel and Another N.N.O. v The Master (Absa Bank Ltd and others intervening) 2005 (1) SA 276 (SCA) at paragraphs [22] and [23].

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