

SOUTH AFRICA / JUDGMENT

Louwrens v Mario Coetzee Attorneys (48248/2018) [2018] ZAGPPHC 576 (26 July 2018)

[2018] ZAGPPHC 576

COURT

North Gauteng High Court, Pretoria

BEFORE

C.P. Rabie

CASE / FILE NUMBER

48248/2018

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HIGH

COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

CASE

NO: 48248/2018

In

the matter between:

JOHANNA
SUSANNA LOUWRENS
Applicant
and
MARIO
COETZEE ATTORNEYS
Respondent

JUDGMENT

1. In this application the applicant, a 74-year-old widow, applied on an urgent basis for an order declaring the respondent's mandate as her attorneys of record, to be duly terminated; for an order directing the respondent to hand over her complete file including any and all original documents; and to prepare and submit a bill of costs, if any, to her.

2. The respondent is an attorneys firm in Pretoria. It seems that Mr Mario Coetzee is the sole proprietor of the respondent and in what follows below I shall also refer to Mr Mario Coetzee as the respondent, unless the context shows otherwise. Mr Coetzee was also the deponent to the answering affidavit filed on behalf of the respondent.
3. The background to the matter is, briefly, the following. On 21 February 2017, i.e., approximately one year and 5 months ago, the applicant's husband passed away. On referral by her son, she approached the respondent to assist her in respect of the administration of her husband's estate. According to the applicant she also appointed the respondent as executor in her husband's estate. As will be mentioned again below, the applicant is a lay person and has no knowledge regarding the appointment of an executor or the administration of a deceased estate.
4. The applicant stated that she handed to the respondent and more particularly Mr Mario Coetzee in person, the original will of her late husband together with all the original life insurance policies and some other relevant documents.
5. The applicant has lived alone since the passing of her husband but has since, due to her financial predicament caused by the fact that her financial resources had run out and pension payments had been ceased, moved to her daughter's where she is staying at present.
6. According to the applicant she received no feedback from the respondent since the beginning and tried to contact Mr Coetzee regarding the progress in respect of the administration of the deceased estate. She made numerous attempts to contact Mr Coetzee telephonically but all her attempts were unsuccessful. The persons who answered the telephone always indicated that Mr Coetzee was not available. She left numerous messages for him to phone her but he failed to do so and failed to contact her in any manner or form.
7. The applicant stated that she became suspicious of the respondent's behaviour because of her inability to make telephonic contact with him and also because she had not received any payouts from her husband's estate. All her attempts to make an appointment to see the respondent were met by the response that Mr Coetzee is "unavailable" to speak with her. In a desperate attempt to see Mr Coetzee eye to eye, she travelled to Pretoria in order to speak to him at his office. The respondent's secretary, however, told her that the respondent won't be available for the remainder of the day and she could not tell the applicant when he would be available. At this point the applicant could not afford to go back to her home in the Eastern Cape and decided to reside with her daughter in Vanderbijlpark.
8. In March 2018 the applicant and her daughter attempted to consult with Mr Coetzee and again drove to his offices in Pretoria where they saw him standing in the parking area before walking back into his offices. When they asked the respondent's receptionist to see the respondent, they were told that he was out of the office.

9. The applicant, accordingly, on 9 April 2018, consulted her present attorney of record, Mr H. Janzen van Rensburg who practices in Vanderbijlpark. Her advice from Mr van Rensburg was to again attend the offices of the respondent and to convey to him that his mandate was terminated and to demand to be placed in possession of her file. She did so on 19 April 2018. She was again informed that the respondent was unavailable and thereupon she handed a letter terminating the respondent's mandate to an employee of the respondent. This person, however, refused to hand the applicant's file to her and said that she could only get the file once she had settled the respondent's account.
10. It is important to note that, according to the applicant, she had since February 2017, when she gave the original mandate to the respondent, never received any statement of account or any demand for payment from the respondent. In fact, there had been no communication whatsoever from the respondent's side, to her.
11. As the applicant's attorney of record, Mr van Rensburg, addressed his first letter to the respondent on 9 April 2018. In this letter it was stated that Mr van Rensburg was acting on behalf of the applicant and that he had been instructed to assist the applicant regarding her late husband's will as well as the finalisation of the estate. The respondent was accordingly requested to hand over the following documents to them: a copy of the executor's letter that was issued; a copy of the inventory that initially accompanied the executor's appointment; a copy of the liquidation and distribution account, be it provisional or not; a copy of the relevant advertisements that were placed regarding the estate; a copy of the bank statements of the estate's bank account which clearly reflects all money received and payments made on behalf of the estate.
12. In the letter Mr van Rensburg also requested the respondent to advise what progress had been made regarding payments in terms of life insurance policies held by the applicant's late husband with specific reference to payments that had already been received in terms of such policies together with the details of policies that are still in the
process of payment.
13. The respondent was also informed that pension monies had earlier been received from a pension fund and in this regard the following was stated in the letter: "please advise whether you have entered into any correspondence with Sasol regarding the payment of the monthly pension monies and also provide us with copies of such correspondence." Response to this letter was requested on an urgent basis and a tender was made for reimbursement of reasonable expenses regarding the copying of documents as requested.
14. It should be mentioned that at the time of writing the aforesaid letter neither the applicant nor Mr van Rensburg knew whether an executor had been appointed.
15. After the applicant's aforesaid last visit to the offices of the respondent, from which she returned empty-handed, Mr van Rensburg wrote a number of letters. In the letter to the respondent dated 7 May 2018 reference was made to the letters of Mr van Rensburg dated 9

April 2018, 16 April 2018, 20 April 2018 and 3 May 2018 and the respondent was informed that he had not had the courtesy to reply to any of those letters. It was further stated that the applicant had been advised that the respondent first has to draft a bill of costs which would be presented to the applicant in due course and that once he had received payment of such amount, the file would be released. Mr van Rensburg then stated that he assumed that the applicant

misinterpreted the conversation but added that should the respondent be of the opinion that he is entitled to fees up to the date of the letter, he was requested to provide his detailed account to Mr van Rensburg in order for him to advise the client accordingly and to take instructions.

16. The respondent was furthermore requested to, in the interim, respond to Mr van Rensburg's letter dated 9 April 2018 before close of business on 8 May 2018, which was the next day. Mr van Rensburg added that in the absence thereof he would have no option but to approach the Law Society for assistance in the matter. The respondent was requested to regard the matter as urgent and to respond thereto urgently. The respondent failed to respond to this letter.
17. In the meantime, Mr van Rensburg made enquiries to the Master's office in relation to whether any steps had been taken by the respondent in respect of the administration of the estate and found that the estate had not been registered. In a letter dated 17 May 2018 addressed to the respondent, Mr van Rensburg again made reference to the previous correspondence and the attempts to make contact with the respondent, and more particularly Mr Coetzee, telephonically. Reference was also made to the fact that all messages that had been left had not been responded to and it was stated that it had become apparent that the respondent did not intend to return phone calls or respond to correspondence.
18. It was also placed on record that the applicant had not received any income whatsoever from the estate and that she is severely prejudiced by it. It was also placed on record that according to the offices of the Master in both Pretoria and Johannesburg, the deceased estate could not be located on their respective systems and neither could the estate number that the respondent had provided to the applicant being 3537/2017, be traced in the Master's offices. Mr van Rensburg added that the refusal of the respondent to correspond with him or to return his telephone calls created the impression that there is a serious problem with the affairs of the estate. It was stated that the matter was being referred to the Law Society in an effort to establish urgent intervention.
19. On 31 May 2018 the matter was reported to the Law Society of the Northern Provinces. Mr van Rensburg again telephoned the respondent and again he was told that the respondent was not available to speak to him. On enquiry Mr van Rensburg was informed by Mr Coetzee's secretary that Mr Coetzee had received Mr van Rensburg's letters and phone messages and that Mr Coetzee was himself dealing with the matter. Mr van Rensburg was informed by the Law Society that an investigation was being conducted but that they were

not in a position to compel the respondent to hand over the applicant's file to the applicant.

20. I now return to the present application. The respondent opposed the application and filed an answering affidavit. He confirmed that the applicant was a beneficiary of the deceased estate that his firm was attending to in order to ensure that the estate was wound up in accordance with section 18 (4) of the Administration of Deceased Estate Act.
21. The respondent also annexed a copy of the letters of executorship which, on the face of it, was issued by the Master of the High Court and which reflected the estate number to be 3537/2017. According to the submissions before this court it appears that the applicant is the sole heir of the deceased.
22. The respondent disputed that the application was urgent and submitted that it should be struck from the roll or even dismissed in its entirety for lack of urgency.
23. The respondent added that the applicant did not take the court into her confidence regarding where she was residing. There is no merit in these allegations and nothing more needs to be said about this issue.
24. The respondent also accused the applicant for failing to inform the court that she is the owner of a Mercedes-Benz motor vehicle and all the furniture of the estate. Again, whether this is so or not, seems to be irrelevant.
25. The respondent then stated that the applicant was ill advised in law as that the duty of the executor as defined by the relevant legislation, is to ensure that the assets of the deceased estate are taken control of and distributed in accordance with the will of the deceased. The relevance of this statement is not known. The present application was not directed against Mr Coetzee as the executor of the estate but against Mr Coetzee as the attorney who undertook a mandate to assist the applicant in respect of the administration of the estate. I shall return to this aspect below.
26. The respondent then further stated that the deceased was a worker at Sasol in Secunda and that he had a pension benefit that was paid monthly to the deceased. Furthermore that since the deceased's passing, the very same pension benefit had been paid monthly to the applicant. The respondent did not support the statement by him with any particulars or proof but instead invited the applicant to prove the contrary. As an aside it may further be mentioned that the deceased worked in Sasolburg and not in Secunda.
27. He furthermore added that the applicant was ill advised in law in that she was mistakenly advised that the pension benefit is an asset in the estate of which he is the executor. He stated that this pension benefit which the applicant is reliant upon to elevate her from her financial dire straits, is specifically excluded by the Act as an asset of the deceased estate. Consequently, so he submitted, the money which the applicant is hoping to receive cannot be claimed by him as executor and that the applicant, in her personal capacity, must do so as being a nominee or a spouse in need of maintenance.

Consequently, so the respondent further stated, she ought to have been informed by her new legal representatives that all that needs to be done is to complete the necessary forms of the pension fund administrator in order to ensure that the monthly payments are paid to her.

28. The respondent admitted that he was placed in possession of the original will of the deceased and that he handed same in at the Master's office in order to be issued with the letters of appointment of executorship of the deceased estate. He however denied that the original life insurance policies were handed over to him.
29. Regarding his failure to respond to the approaches to him, the respondent stated that his office assists clients on an appointment basis only and for that reason the applicant's arrival at his office without an appointment could not be attended to.
30. The respondent furthermore stated that he had taken note of the correspondence received by him but stated that it was trite law that his firm has a right of retention over their file content until such time as his reasonable fees had been paid or, alternatively, security rendered to the satisfaction of his firm. The applicant should therefore first pay his costs before the file content would be handed over to her.
31. The respondent referred to a letter written by himself to Mr van Rensburg on 16 July 2018 which was written approximately one week after the present application had been served on him. This was the only letter he had ever written to the applicant or her representative. In this letter he rather sarcastically states that the applicant had not tendered payment of his fees but expects the file to be handed to her. In order to resolve the matter it was offered that the applicant pays an amount of R7 000,00 to his office in full and final settlement of all the work done on the matter, alternatively, that the applicant pays an amount of R20 000,00 into the respondent's trust account as a form of security until such time as their fees have been taxed by the Law Society of the Northern Provinces whereafter the taxed amount would be deducted from the amount of R20 000,00 and the balance paid back to the applicant. Each party should then pay its own legal costs.
32. The respondent also attached a letter dated 6 July 2018 which he had written to the Law Society of the Northern Provinces. In that letter he stated that the respondent was instructed "to assist our client in the finalisation of the husband's deceased estate". It was further stated that because their mandate had been terminated it

would be appreciated if the respondent could present its file to a member of the Law Society who would be able to determine a fee that was reasonable for the work that had been done in the winding up of the deceased estate.

33. Having regard to the facts placed before this court it is clear that the applicant approached the respondent to act as her attorneys of record in assisting her in regard to her husband's deceased estate. The applicant is clearly a lay person and required assistance. She was a career housewife and all their finances and related matters were handled by her late husband. The respondent accepted this mandate yet it seemed clear that nothing had been

done since February 2017 when the mandate was received. There was no contact with the applicant and attempts from her side to speak to the respondent were simply avoided and messages left by her, were similarly simply ignored. He also did not respond to telephone calls and letters by Mr van Rensburg and ignored the numerous requests for a response. The applicant was not even informed that an executor had been appointed.

34. From the opposing affidavit of the respondent it is clear that Mr Coetzee fails to differentiate between his mandate as an attorney to assist the applicant and his position as executor of the deceased estate of the applicant's late husband. It might very well be that the applicant would in future act against the respondent in his capacity as executor but the present application is directed against the respondent in his capacity as attorney of the applicant.
35. As attorney of the applicant, and mandated as he had been on his own admission, one would have expected the respondent to keep the applicant informed of all relevant processes and of the relevant events regarding the administration of the estate by the executor. So, for example, one would have expected the respondent to have informed the applicant of the appointment of the executor, and of all steps that the executor subsequently had to take in the administration process as well as whether such steps had been timeously taken or not. Generally, according to his mandate, he would have had to revert to her regarding the progress made with the administration of the estate. This he failed to do. Needless to say, he also failed to do so as executor.
36. One would further have expected the respondent in the execution of his mandate as an attorney, to have realised that the pension fund payments which she desperately needed to survive, had to be claimed by her, if it were so, and to assist her in that regard. Instead, the respondent rather arrogantly accused her of receiving bad legal advice. This is an amazing response from an attorney who was briefed to assist the applicant in respect of the process. It was for him to have advised the applicant that she had to approach the pension fund and, in fact, to have assisted her in doing so. This he failed to do since March 2017. It appears from the replying affidavit that matters are in any event not as simple as the respondent would have it. The pension fund in fact requires the letters of executorship. This the respondent should have established and he should have made sure that same was sent to the fund.
37. The same may be said of the medical aid fund which, according to the replying affidavit, was cancelled due to non-payment of the medical aid fees. Luckily the applicant's medical aid membership was reinstated but this happened through the intervention of the applicant's daughter. The respondent, should have advised the applicant on such matters as they all pertained to the consequences of her husband's passing, which, after all, is the reason why she went to the respondent as an attorney in the first place.

38. The applicant also mentioned that during their initial consultation with the respondent Mr Coetzee informed her that he would open a bank account where all pension monies would be paid into. It was for this reason that she handed him all the policy documents relating to her late husband, be it in the nature of pension, annuity or life insurance. She has not received any notification from the respondent of the opening of the bank account in this regard.
39. The respondent also denied that he received copies of life insurance policies from the applicant. It is not necessary to decide the truth or otherwise of this statement. However, it remains an amazing statement. As her attorney briefed to assist her, he should have enquired from her whether such policies existed and, if so, requested her to bring it to him.
40. It is clear from the papers that the respondent failed to revert to the applicant regarding the administration of her late husband's estate and in that sense he failed dismally to execute his mandate and to assist her in that very regard. Her numerous telephone calls and visits to his office were shunned and so were the letters written by the attorney she turned to namely Mr van Rensburg. The respondent did not even in his answering affidavit allude to the progress that had been made in the administration of the deceased estate.
41. During argument it was submitted on behalf of the respondent that he was assisting her as executor of the estate since the day of his appointment. That, according to the respondent, occurred by way of letters of executorship dated 29 March 2017. This submission cannot be correct. In the letter dated 6 July 2018 which the respondent wrote to the Law Society he stated that the respondent was instructed to assist the applicant in the finalisation of her husband's deceased estate and then further stated that his mandate had been terminated "last month". The respondent's mandate could therefore not have been terminated when he was appointed as the executor to the deceased estate. In any event, the reference to "last month",
- being the month of June 2018, is also not correct. His mandate had already been terminated during April 2018 by way of the applicant's
- letter dated 19 April 2018.
42. It must have been clear to the respondent that the applicant and her new attorney was completely in the dark regarding the progress in respect of the process of administration of her husband's deceased estate, and he must similarly have realised that their attempts to get hold of him was in order to establish what had happened in that regard. To keep the applicant informed was inherent in the mandate which he had accepted during March 2017, yet he refused to execute his mandate despite the numerous attempts by the applicant and her new attorney.
43. The respondent hides behind the excuse that he could not see the applicant when she attended his offices because it is his policy not to see anybody without an appointment. In the circumstances this attitude is inexcusable. Furthermore, the respondent did not even

attempt to offer a reason for not responding to telephone messages and correspondence specifically requesting him to respond thereto by the applicant and Mr van Rensburg respectively. Again, I regard this failure as inexcusable, not only in regard to the failure to execute his mandate but also from a professional point of view.

44. There is also the issue of fees on which the respondent insists upon before giving the requested documents to the applicant. He does not deny the applicant's statement that she had never received any request for payment from him. Furthermore, despite the letters from Mr van Rensburg, the respondent has up to now and even in his answering affidavit, failed to mention what is allegedly due to him for his services as an attorney and to support such an amount. All that the respondent had done was to mention in his letter of 16 July 2018, which was written approximately one week before the matter was due to be heard by this court, the arbitrary round figure of R7000,00 which should be paid to him in full and final settlement. Yet, he then goes on and says that as an alternative an amount of R20 000,00 should be paid to him as security. There is hardly, on the face of it, a relation between these two amounts. But what is clear, is that the respondent had up to now not even attempted to draw up a bill of costs which would support any amount due to him. In the circumstances the respondent can hardly be heard to say that he should be "paid" before the documents would be handed over to the applicant. He knows that the matter is urgent and he knows that he cannot be paid unless and until he had supplied an amount to the applicant yet he refuses to do so. His statement that he has referred the matter to the Law Society to tax a bill of costs, is unheard of, and, in any event, unnecessary. During argument it was submitted on behalf of the respondent that this court should order the applicant to pay an amount of R5 000,00 to the respondent before she could get the required file. This submission reflect even more negatively against the respondent for the reasons mentioned above and especially in light of the fact that it had been submitted on behalf of the respondent that he had only acted as the applicants attorney from somewhere in March 2017 until his appointment as executor on 29 March 2017.
45. The respondent has clearly failed to execute the mandate given to him by the applicant. He was mandated to assist the applicant yet, for almost a year and a half, he had not spoken to her and, what is more, he had avoided her and deliberately refused to speak to her or to correspond with her or another attorney, despite their desperate attempts. In doing so the respondent failed to assist the applicant, as adviser and attorney, because to assist the applicant would have entailed that he had to speak to her and have contact with her and to advise her and also in reality to be the "middleman" between her and the executor.
46. As an aside I may mention that it does not appear that Mr Coetzee, in his capacity as executor of the deceased estate, had done anything except to have himself appointed as executor. He did not mention one thing that he had done as

executor But even if he had, one would have expected of him to have reported same to the applicant as the surviving spouse and heir to the estate. One would not have expected him to avoid her telephone calls and, what is more, her personal visits to his offices. As far as remuneration for his services as executor is concerned, Mr Coetzee would only be entitled to his fee once the estate had been finalised. His claim would be against the estate and not against the applicant.

47. Instead of responding positively after Mr van Rensburg came on the scene and especially after the present application had been served on him, the respondent reacted with arrogance and dismissed the applicant's endeavours in a high-handed manner. I regard this as shocking and inexcusable from a practitioner.
48. At this point it may be mentioned that it was submitted on behalf of the applicant that a question mark exists regarding the question whether Mr Coetzee had in fact been duly appointed as executor of the deceased estate. According to the information received by Mr van Rensburg from the Master's office, as supported by the letters this court was referred to, there is no record of the registration of the estate or of the appointment of Mr Coetzee as executor. It is not

necessary to delve further into this issue at this stage.

49. During argument it was submitted on behalf of counsel for the respondent that Mr Coetzee no longer wishes to be the executor in the deceased estate as the relationship between him and the applicant has soured. In this regard it was submitted on behalf of the respondent and on behalf of Mr Coetzee in person, that if this court is disposed to make an order against the respondent in terms of the notice of motion, an order could also be made by this court that he should also

hand over the executor's file relating to the deceased estate as well as a letter by Mr Coetzee as executor wherein he tenders his resignation as executor of the deceased estate.

50. In my view the applicant had made out a case for the relief prayed for. There is furthermore no prejudice for the respondent if the order prayed for in the notice of motion is granted as he would remain entitled to his fees if he can show that he is entitled thereto. The amount mentioned by the respondent is also not such that there should be any danger in him not being able to recoup such amount.
51. I agree with the submission on behalf of the applicant and the concession on behalf of Mr Coetzee in this regard, that an order should be made which would also pertain to the executor's file in the possession of Mr Coetzee, as well as for a letter of resignation as executor to be handed over. From the evidence before this court, and especially the manner in which the respondent reacted to the application against it, it seems that Mr Coetzee does not appreciate the difference between his brief as an attorney to assist the applicant and his duty as an executor of the deceased estate of the applicant's husband. The question accordingly arises as to whether there really exist two files, one in respect of the applicant as

client, and another in respect of the executors, or whether there is simply one file relating to both matters. In order to avoid future difficulties an order should be made relating to all and every document relating to the applicant and the deceased estate. The respondent and Mr Coetzee are entitled to make copies of any document to be handed over.

52. As far as costs are concerned there is no doubt that the respondent should pay the costs of this application on a punitive scale. In this regard I refer to what I have said above and there is furthermore no reason why the applicant should in any way be out-of-pocket. In her affidavit the applicant indicated that her attorney, Mr van Rensburg,

was prepared to act pro bono for her. The effect of this, if any, is for the Taxing Master to decide, but I reiterate that the conduct of the respondent and more particularly Mr Coetzee, in this matter was such that a special punitive order for costs should be made.

53. Lastly, I may add that since this matter had already been reported to the Law Society of the Northern Provinces, it is not necessary for me to do so as well.

54. In the result, the following order is made:

1. It is declared that the respondent's mandate to act for and on behalf of the applicant has been duly terminated.
2. The respondent is directed and ordered to immediately upon service of this order on the respondent, hand over to the applicant, alternatively, a duly authorised representative of the applicant, the applicant's complete file (including any and all original documents of the applicant and/or documents relating to the applicant and/or the applicant's deceased husband and/or his deceased estate).
3. The respondent is authorised to make and retain copies of the documents referred to in paragraph 2 above.
4. To the extent that the respondent wishes to render an invoice in relation to services allegedly rendered, the respondent is directed to prepare a bill of costs and to present same for taxation, before any amounts may become due and payable by the applicant to the respondent.
5. Mr Mario Coetzee is directed and ordered to immediately upon service of this order on him, hand over to the applicant, alternatively, a duly authorised representative of the applicant, the executor's

complete file as well as any other file relating to the estate of the late Sarel Gerhardus Louwrens, ID [...], (including any and all original documents relating to the applicant and/or the late Sarel Gerhardus Louwrens and/or his estate).

6. Mr Mario Coetzee is authorised to make and retain copies of the documents referred to in paragraph 5 above.

7. Should the respondent and/or Mr Mario Coetzee fail to respectively comply with the order in paragraph 2 and 5 above, the applicant is granted leave to approach this Court, on the same papers, duly supplemented and/or amended, for such relief as the applicant may deem necessary in the circumstances.
8. The respondent is ordered to pay the costs of this application which costs shall be on an attorney and own client scale as allowed by the Taxing Master of this court.

C.P. RABIE

JUDGE OF THE HIGH COURT

26th day of July 2018

Case heard:

24 July 2018

Applicant's Attorneys: HJ van Rensburg INC

Respondent's Attorneys: Mario Coetzee Attorneys

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Prepared on 12 October 2026 · Esheria