

SOUTH AFRICA / JUDGMENT

Master of the High Court, Gauteng Division (132182/2023), Ex parte [2024] ZAGPPHC 797 (13 August 2024)

[2024] ZAGPPHC 797

COURT

North Gauteng High Court, Pretoria

BEFORE

Neukircher

CASE / FILE NUMBER

132182/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO: 132182/2023

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVISED: YES

DATE:

13 August 2024

SIGNATURE

In

the Ex Parte application
of:

THE

MASTER OF THE HIGH COURT, GAUTENG DIVISION

APPLICANT

In

re:

NS

OBO RN

JUDGMENT

NEUKIRCHER J:

1] This is an in chambers application brought by the Assistant Master of the High Court, Pretoria for permission to exceed the statutory cap[1] determined by the Minister of Justice vis-à-vis the payments made to a minor child for her maintenance and education out of monies standing to her benefit in the Guardian's Fund. The application is brought in terms of the provisions of s96(2), as read with s90(1), of the Administration of Estates Act 66 of 1965 (the Act).

2] These provisions state the following:

- a) "s96(2) Whenever in the course of his duties the Master finds it necessary to lay any facts before the Court otherwise than upon formal application or motion, he may do so by a report in writing: Provided that the Court may refer any such report back to the Master and direct him to proceed by way of formal application or motion."
- b) "s90(1) The Master may, where any person has a right as usufructuary or fiduciary to money which was paid into the guardian's fund, pay such money to that person or, if that person is a minor or a person under curatorship, to his tutor or curator, on condition that such person or his tutor or curator, as the case may be, has given security to the satisfaction of the Master for the refund of such money on the termination of his right or of his tutorship or curatorship, as the case may be."

3] The application is founded on the fact that the Master received R950 000.00 on 30 September 2013 from Discovery Holdings Ltd.

The monies were paid into the Guardian's Fund and interest of 8,25% is calculated daily and credited monthly on this amount and are credited to the minor child, RN[2] who is presently 12 years old.

4] These funds have been utilised for the minor child's school fees, stationery, uniforms, clothing, swim training, extra classes, transport and allowance, at the request of her mother and guardian (NS).

5] Thus far, the Master has paid out an amount of R246 259.78 from the capital and R629 838.92 from the interest – a total amount of R876 198.70 - since 2013.

6] NS has now sought payment of an amount of R108 444.00 for school fees for RN. The account from the school has been attached and it is clear that it is in respect of the 2024 school year.

7] In terms of s90(1) of the Act, the amount disbursed in regard of the child's needs may not exceed R250 000.00 above the R950 000.00 paid into the Guardian's Fund by Discovery. Thus far the Master has:

- a) disbursed R876 198.79;

b) will disburse R108 444.00

R984 642.70

8] Whilst this amount has not yet exceeded the R250 000.00

threshold set by the Minister in 2014, it will soon do so:

a) the minor child is presently in grade 7 and thus, in addition to the 2024 year, school fees for the next 5 years' (of at least R108 444.00 per annum)[3] will be R650 664.00 for 2024 to 2029;

b) the child's monthly maintenance requirement[4] is R23 200.00. Thus, for 2024 alone:

R23 200.00 x 12 = R278 400.00.

9] Thus, for 2024, the minor child's maintenance is:

School : R108 444.00

Maintenance : R278 400.00

R386 844.00

This amount far exceeds the R250 000.00 cap.

10] According to the Master, the outstanding balance to the credit of the minor child in the Guardian's Fund is R746 465.66, calculated as follows:

Capital : R703 640.22

Interest : R 42 825.44

R746 465.66

11] The Master states at paragraph 11 of her report:

"It is almost impossible to predict how much I would need to pay for the expenses of the minor in future. She is currently in grade

6. The minor requires an allowance, money for all his school needs, as well as other expenses which need to be covered. There can be no rough estimation of these funds as they differ from year to year. From this the Honourable Court will note that the minor will require further assistance with the funds still in the Guardian's Fund in the future."

12] In *In Re Estate Goodricke*[5] the Court granted condonation for the Master's overspending and stated:

“If those circumstances render necessary the application of amounts in excess of the interest earned on each minor's deposit, sec. 96 (1) of the Act enables the Master to pay out any sums if the Court's sanction is obtained, and that sanction would be necessary because in each case the amount paid out has already reached and exceeded £300 in all.

The sanction would be granted if a proper case were made for it. It might be said that administrative or practical difficulties exist in that the Court would be inundated with applications for its sanction because the need for funds arises frequently. But that need not be so, for the reasonable needs of each minor for a period extending into the future could be estimated as accurately as circumstances allow by the person or persons having control of the minors. After that period, or during it if the estimate were too low, a further estimate for a further period could be made and a further application made for the Court's sanction.

If amounts standing to the credit of each minor are in fact required in the future in terms of sec. 96 (1) of the Act, it seems to me that this is the only course which will enable the Court to exercise the duty of supervision which, I think, should not be surrendered and will ensure that proper regard is had to the interests of the minors.”

The court authorised the overspending and also approved specific expenses.

13] In *Ex Parte The Master: In re van Onselen*[6] the court stated:

“We have come to the conclusion that sec. 96 is not intended to fetter the discretion of the Court in an application for its sanction. Each case will be treated on its own merits and in the light of its surrounding circumstances, and in a fitting case the Court can, without any limitation of the amount but with an indication of the objects for which the money is to be used, leave the matter to the discretion of the Master. The Master after all is appointed in a position of great trust and importance. He is chosen for his experience in dealing with these matters, and the Court will indicate its confidence in the Master and the exercise of his functions by allowing him a certain amount of discretion. The Court is not surrendering its supervision if it sanctions the withdrawal of excess amounts for particular purposes. I can think of a case where the minor may ask the Master to release money in order to enable him to buy a racing or a sports car. If the Master were to approach the Court for money for that purpose the Court may very well say that that is not an object for which it will allow the Master to apply excess money, but where the application is for money necessary for the proper maintenance and education of the minor, then the Master, who is enjoined to exercise his functions after careful enquiry, is the man on the spot and best suited to decide how much money should be spent.

In the instant case, therefore, we authorise the Master to use for the proper maintenance and education of the minor so much of the moneys standing to his credit in the Guardian's Fund as may exceed £300.” (my emphasis)

14] In *In re Estate Simmonds*[7] the court granted condonation to the Master, and stated:

“On the other hand, it seems to me that, as the Master says, it would cause great administrative difficulties in a case like this, where the limit of R4,000 has already been reached, to require the Master to obtain the Court's sanction for each individual payment which in his opinion it is necessary for him

to make. Furthermore, I think that it would unnecessarily interfere with the Master's discretion if, in making an order for payments in excess of R4,000 in the future, the Court were to attempt to specify the amounts to be paid, by, for example, limiting the allowance to this patient's wife to R60 per month, which is what she is presently being paid. It will, I think, suffice if I adopt the Master's suggested alternative, and sanction further payments up to a fixed sum, leaving it to the Master to come back to the Court for authority to go beyond that sum if and when it becomes necessary. When he does that he will, as he has done now, no doubt report to the Court upon how and for what purposes he has paid out the further amount now sanctioned."

The court, in that instance, sanctioned payments up to a fixed sum and left it to the Master to come back to the Court for authority to go beyond that.

15] The master, in casu, states:

"It is my humble submission that the approach in the Van Onselen and Simmonds cases be preferred as it would cause administrative disarray if I were to approach the Honourable Court each time that I may be

requested to make further payments from the capital amount as is envisaged in the Goodricke case."

16] I am of the view that the approach adopted in Van Onselen and Simmonds, is appropriate I have perused the past disbursements made and have had regard to the school fees and monthly maintenance needs of the minor child. I find that they are all reasonable and necessary. Furthermore, it has taken months for the Master's application dated 11 December 2023 to reach my table in the week of 22 July 2024. The result is that the Master's hands have been tied and the potential prejudice to the child enormous.

17] Thus the administrative difficulties set out in Simmonds in paragraph 14 supra have been actualised. This goes against the entire ethos of s28 of the Constitution.

18] The Master is, and has been, clearly acting in the best interest of the child, and in order to ensure that the child suffers no further prejudice, I am of the view that the approach adopted in Van Onselen and Simmonds is, in this case, the appropriate one.

Order

19] The order is:

The Master is authorised to use for the proper maintenance and education for the minor, RN, so much of the funds standing to the minor's credit in the Guardian's Fund as may exceed R250 000.00.

NEUKIRCHER J

JUDGE OF THE HIGH COURT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 13 August 2024.

Date of Judgment : 13 August 2024

- [1] R250 000 – GN R920 in GG 38238 of 24 April 2014.
- [2] Born on 30 December 2011.
- [3] And probably more with inflationary yearly increases
- [4] According to the expense list provided to the Master by her mother on 13 April 2023.
- [5] 1959
- (3) SA 139 (N) at 141 A-D.
- [6] 1961
- (3) SA 182 (E) at 184 A-D.
- [7] 1969 (1) SA 43 (N) at page 45 A-E.

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