

SOUTH AFRICA / JUDGMENT

M.Z.O N.O and Another v S.M and
Others (2372/2024; 5234/2024) [2025]
ZAFSHC 40 (13 February 2025)
[2025] ZAFSHC 40

COURT
Free State High Court, Bloemfontein

BEFORE
Hefer AJ

CASE / FILE NUMBER
2372/2024; 5234/2024

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Policy

IN THE HIGH COURT OF
SOUTH AFRICA
FREE STATE DIVISION,
BLOEMFONTEIN
Reportable Yes/No
Case No: 2372/2024
In

the matter between:

M[...]
Z[...] O[...] N.O.
First
Applicant
CHRISTIAAN
WAGENAAR N.O.
Second
Applicant
(In
their capacities as the trustees for the time-being
of
the Shisha Trust, T70[...])
and
S[...]

M[...]
First
Respondent
ANY
UNKNOWN UNLAWFUL OCCUPIERS RESIDING
AT
1[...] B[...] STREET, DISTRICT LADYBRAND,
FREE
STATE PROVINCE
Second
Respondent
MATSOPA
LOCAL MUNICIPALITY
Third
Respondent
Case
No: 5234/2024
In

the matter between:

S[...]
K[...] M[...]
First
Applicant.
N[...]
N[...] M[...]
Second
Applicant
and
N[...]
M[...] M[...]
First
Respondent
M[...]
Z[...] O[...] N.O.[...]Second
Respondent
CHRISTIAAN
WAGENAAR N.O.
Third
Respondent
(In
their capacity as trustees for the time-being of the
Shisha
Trust, T70[...])
DANIEL
JOHANNES RUDOLPH SCHUTTE N.O.
Fourth
Respondent
(In
his capacity as trustee of the K[...]
T[...]
M[...]

Testamentary Trust, MT1[...])
MASTER
OF THE HIGH COURT, FREE STATE
Fifth
Respondent
REGISTRAR
OF DEEDS, BLOEMFONTEIN
Sixth
Respondent

CORAM: Hefer AJ

Heard: 21 November 2024

Delivered: 13 February 2025

ORDER

1.
Application number 2372/2024 is dismissed
with costs.
2.
Application number 5234/2024 is dismissed
with costs.

JUDGMENT

Hefer AJ

- [1] In terms of an order of Court, dated 24 October 2024, the two applications under the above case numbers, had been consolidated.

Background:

- [2] K[...] T[...] M[...] (the deceased) passed away on 22 May 2000.
- [3] On 14 May 1997, a will was passed by the deceased. This will was accepted by the Master of the High Court.
- [4] Subsequent to this will, the deceased has passed a further not less than thirteen codicils to his original will. It appears that the Master has accepted nine of these codicils. Four of them had been rejected for not complying with the provisions of the Wills Act 7 of 1953.
- [5] The relevance of some of these codicils (both accepted as well as rejected), will be dealt with herein.
- [6] In his will the deceased bequeathed Erf 5[...], Ladybrand as follows:

‘8.1 I bequeath to the Memorial Trust –

8.1.1 My residential property situate (sic) at Erf Nr 5[...] Ladybrand, RSA, which property is to be transferred in full ownership to my granddaughter N[...] M[...] M[...] when she turns 21 (TWENTY ONE) years.

8.2 The bequest in clause 8.1 is subject to the following conditions –

8.2.1 The usufruct of my wife M[...] G[...] M[...] as provided for in clause 4.5;

8.2.2 The property contemplated in clause 8.1.1 is to be leased, preferably to any suitable male offspring of the M[...] FAMILY.’

[7] In the will of the deceased he further recorded as follows:

‘I record that I have decided to treat my granddaughter N[...] M[...] M[...] more favourably than my other grandchildren since she, unlike my other grandchildren, had the misfortune of losing her father at a very young age.’

[8] The property referred to is also known as 1[...] B[...] Street, Ladybrand and Ms M[...] referred to is the first respondent in case number 5234/2024 (“the second application”).

[9] In terms of a separate clause of the deceased’s will, the deceased’s late wife M[...] G[...] M[...] was awarded usufruct over inter alia ‘my residential property situate (sic) at Erf Nr 5[...] Ladybrand, RSA’.

[10] In his codicil dated 15 October 1998 the deceased provided as follows:

‘1[...] B[...] Street, Ladybrand FS

I the undersigned do hereby amend that part of my will that specifically refers to the property I own and is situated at Plot Nr 1[...] B[...] Street, Ladybrand.

At 21 years my granddaughter M[...] N[...] M[...] born of late son N[...] L[...] M[...] be assisted by ‘the Trust Committee, its successors, established to conduct the affairs of the Trust Fund to full ownership of the said property and is further charged to initiate to fully appreciate the norms and values such property i.e. to exercise parental control as we all called upon to do ...’

[11] This codicil was however rejected by the Master due to not complying with the provisions of the Wills Act.

[1] King and Others NNO v De Jager and Others 2021 (4) SA 1 (CC) at par. [34], p. 18;

Robertson v Robertson’s Executors 1914 AD 503 at 507.

[2] 1992

(1) SA 629 (A)

[3] 1977

(4) SA 440 (W)

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- [4] p. 443 C – E.
- [5] 1932 CPD 202 at 205.
- [6] Reyneke v Incorporated General Insurances Ltd 1974 (2) SA 84 (A); South African Mutual Life Assurance Society v Anglo Transvaal Collieries Ltd 1977 (3) SA 642 (A).
- [7] Ex Parte Nell 1963 (1) SA 754 (A); Mohammed v Mohammed 1976 (3) SA 151 (T).
- [8] 2005
- (1) SA 217 (CC)
- [9] p. 232 B – D.
- [10] p. 232 F – G.
- [11] p. 242, par. [48]
- [12] p. 232, par. [26].
- [13] p. 237, par. [36]
- [14] p. 244, par. [53].
- [15] 2017
- (5) SA 346 (CC)
- [16] p. 361 D – E.
- [17] Par. [32].
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