

SOUTH AFRICA / JUDGMENT

# N.M v Z.M and Another (2023/017986) [2023] ZAGPJHC 247 (22 March 2023)

**[2023] ZAGPJHC 247****COURT**

South Gauteng High Court, Johannesburg

**BEFORE**

S D J Wilson

**CASE / FILE NUMBER**

2023/017986

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**Source record****IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****LOCAL DIVISION, JOHANNESBURG)****Case No. 2023/017986****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED.****DATE:**

22 March 2023

In

**the matter between:**

NM

on behalf of the children: MM, LM and BM Applicant

and

ZM First

Respondent

THE

MINEWORKER'S PROVIDENT FUND Second

Respondent

**JUDGMENT****WILSON J:**

1 On 28 February 2023, the applicant, NM, applied urgently to me for an order directing the second respondent, the Fund, to “freeze”

and “preserve” a pension fund death benefit held on behalf of a deceased mineworker, to whom I shall refer as BM. The

benefit would ordinarily be payable to the first respondent, ZM, who was BM’s spouse. However, NM also sought orders restraining ZM from seeking to draw on the benefit pending the outcome of a police investigation into the circumstances surrounding BM’s death.

2 Neither ZM nor the Fund opposed the application, but I nonetheless refused the relief, and directed that each party pay their own costs. I indicated that my reasons for making that order would be provided in due course. These are my reasons.

3 NM is one of BM’s siblings. NM said the application was brought primarily for the benefit of BM’s three children, over

whom NM claims guardianship. The three children are not biologically related to ZM.

4 BM died on 6 January 2023. BM’s death certificate states that BM died of “unnatural causes”. A medical certificate

attached to the death certificate states that the immediate cause of death was “consistent with alcohol poisoning”. NM claims that ZM likely poisoned BM, and that ZM is a suspect in an ongoing police investigation into BM’s death. Citing the common law maxim “de bloedige hand erft niet” (which translates, very roughly, as “the bloody hand does not inherit”), NM seeks the preservation of BM’s pension fund death benefit, and an order directing that the Fund place whatever money is due to be paid out as a consequence of BM’s death in trust for the benefit of the children, at least until the police investigation into BM’s death has concluded.

5 The problem with all of this is that there are no facts in the founding papers that link ZM to BM’s death. What appears to

have aroused NM’s suspicions is the use of the words “unnatural causes” and “poisoning” in the death certificate and the medical certificate. These are plainly matters of concern, and an investigation of BM’s death is no doubt warranted. However, no facts were placed before me to suggest that ZM was involved in BM’s death, or even that BM’s death was the result of any voluntary or culpable act of any other person. The fact of the police investigation was alluded to in NM’s founding affidavit, but the nature and progress of that investigation were not set out.

6 NM stated that ZM is a “suspect” in the investigation, but that allegation is not supported by any primary facts. Much less is it confirmed by the police officers responsible for the investigation.

7 In these circumstances, however far the “bloedige hand” principle stretches, there was simply no case made out that ZM had any role at all in BM’s death.

8 Mr. H Singo , who appeared for NM before me, was constrained to accept that NM’s papers did not support the relief claimed. He was unable to make any meaningful submissions when I put to him that, because of this, the application had to be dismissed. Given that there was no opposition to the application, a costs order was not necessary.

S D J WILSON

Judge of the High Court

This judgment was prepared and authored by Judge Wilson. It is handed down electronically by circulation to the parties or 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 22 March 2023.

HEARD ON: 28 February 2023

DECIDED ON: 28 February 2023

### REASONS:

22 March 2023

For the Applicant: H

Singo

Instructed by: Njuze

Attorneys

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