

SOUTH AFRICA / JUDGMENT

Phalala and Another v Mashamaite and Another (87755/2190) [2021] ZAGPPHC 242 (26 April 2021)

[2021] ZAGPPHC 242

COURT

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

87755/2190

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

PROVINCIAL DIVISION, PRETORIA

CASE

NO: 87755/2190

REPORTABLE:NO

OF INTEREST TO OTHER

JUDGES:NO

REVISED

Date

of hearing: 01 March 2021

In the matter between: PHALALA;
CHRISTINA
MATLAE
1ST APPLICANT
PHALALA;
VICTOR
2ND
APPLICANT
And
MASHAMAITE;
MAUPYE RIBSON
1ST RESPONDENT
MASTER OF THE HIGH
COURT : PRETORIA
2ND RESPONDENT

JUDGMENT

NYATHI AJ

INTRODUCTION

[1] The First and Second Applicants filed an Application for review against the Respondents in which they are seeking an order in the following terms:

1.1 That the decision of the Second Respondent of appointing the First Respondent as the executor of the estate of the late Mmeselane Mackvellen Phalala be set aside.

1.2 Alternatively, that the First Applicant be appointed as co -executor in the estate of the late Mmeselane Mackvellen Phalala under estate number [...].

1.3 That the liquidation and distribution account be amended and ordered the insertion of full properties registered under the name of the deceased together with the business interests held under the names of the deceased.

1.4 The costs occasioned by the opposition of this application for review. 1.5 Further and/ alternative relief as seems appropriate to this Court.

FACTUAL POSITION

[2] The First Respondent was appointed to be an executor of the deceased estate on the 4th September 2017, after being nominated by the mothers of the deceased children. The fact that the deceased had died

intestate, was unmarried and is survived by children borne by the various mothers who nominated the First Respondent for executorship

is common cause between the Applicants and the First Respondent. It is a fact that is underplayed by the Applicants and emphasised by the First Respondent, which is unsurprising in any event.

- [3] In 2018, an application under case number 16868/18 was launched against the Applicants by the First Respondent, interdicting the Applicants from interfering with the administration of the estate of the deceased. The application was struck off the roll for lack of urgency and has not been re-enrolled to date.
- [4] The First and Second Applicants, who are the deceased's mother and brother respectively, then filed the present application, for the review and setting aside of the decision of the second respondent.
- [5] The First Respondent requests in his answering affidavit that the court should dismiss the application, based on the points in limine of lack of locus standi, irregular proceedings and non-joinder. The Applicants sought condonation for the late filing of this review application. The First Respondent opposes the application, while the Second Respondent does not.
- [6] Having regard to the importance of the matter at issue, I granted the condonation application and went on to hear submissions by Counsel for both sides.

THE POINTS IN LIMINE

- [7] The First Respondent raised three points in limine, the first of which is that the Applicants lacked the requisite locus standi to bring this application. In his answering affidavit, the First Respondent states that the Applicants do not have a direct and vested interest in the relief that they seek.
- [8] The second point in limine was an allegation by the First Respondent that the Applicants have brought the application in an irregular fashion. Namely, that the Applicants have brought the review application in terms of section 95 of the Administration of Estates Act 66 of 1965 which states that

8.1 "Every appointment by the Master, of an executor, tutor, 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."

8.2 The Promotion of Administrative Justice Act (hereinafter referred to as "PAJA") entitles a party to bring a review of an administrative decision. More specifically section 3 of PAJA stipulates that, a person can review an administrative action which materially and adversely affects the rights or legitimate expectations of any person if such decision is procedurally unfair.

- [9] The First Respondent contends that the Applicant should rather have complied with Rule 53 of the High Court Rules. I will curtail my analysis of this point of objection at this stage for reasons that will appear later in this judgment.
- [10] The third point in limine relates to non -joinder . The First Respondent submits that the Applicants have cited the First Respondent in his personal capacity instead of in his official capacity as executor of the deceased estate.

THE APPLICABLE LAW

- [11] The estate of a person who dies without leaving a valid will is distributed in terms of the provisions of the Intestate Succession Act 81 of 1987. This Act came into operation on the 18 March 1988.
- [12] Section 1 (1) (b) provides that: "If after the commencement of this Act a person (herein referred to as the "deceased")
- dies intestate, either wholly or in part, and ...is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;"
- [13] Section 1 (2) of the same Act states that "Notwithstanding the provision of any law or the common law, but subject to the provisions of this Act and section 5 (2) of the Children's Status Act, 1987, illegitimacy shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation."
- [14] The primary rule of statutory interpretation is that if the meaning of the words is clear, it should be put into effect, and, indeed, equated with the legislature's intention (Principal Immigration Officer v Hawabu 1936 AD 26)[1]
- [15] This traditional plain meaning approach to statutory interpretation is still firmly entrenched in our law with courts reluctant to challenge it needlessly.[2]
- [16] The law governing locus standi is long established but was revisited by the Supreme Court of Appeal (SCA) in recent times. In Four Wheel Drive Accessory Distributors CC v Leshni Rattan NO 2018 JDR 2203 (SCA), the SCA considered the requirements for locus standi, being that the appellant must have an adequate interest in the subject matter of the litigation; the interest must not be too remote; the interest must be actual; and the interest must be current (not hypothetical) and concluded that the court a quo rightly found that the appellant had failed to establish locus standi. This was dispositive of the matter in this case. [3]

CONCLUSION

[17] The First and Second Applicants in this application are the deceased's mother and brother, respectively. It is common cause that the deceased was not married at the time of his demise. And that he is survived by several children. The provisions of the Intestate Succession Act have been summarised above and are explicit on who should succeed the deceased

[18] Whilst the Applicants make allegations that the assets that constitute the estate were part of a family business, they remain mere assertions with no evidence that is probative of the existence of such a family business.

[19] The evidence presented in this application, considered holistically, leads me to a conclusion that the First Respondent has persuaded me that the First and Second Applicants have no direct and substantial interest in the matter to qualify to apply for the remedy they are seeking.

[20] In the circumstances, it is unnecessary to traverse the merits of the remaining points in limine, having sustained the submission that the two Applicants lack the requisite locus standi.

The application is dismissed with costs jointly and severally, the one paying the other to be absolved.

J.S. NYATHI

Acting Judge of the High Court

Gauteng Division, Pretoria

Date judgment delivered: 26 April 2021.

On behalf of the Applicant: Adv Mabotsane Nteso

Instructed by Kgoshishi A. Mamabolo Attorneys Inc.

Ref: KAM/EST/016/2019

Tel: 015 297 7430

Fax: 086 2269 210

C/O AL. Maree Inc

79 Bronkhorst Street.

Groenkloof, PRETORIA

Tel: 012 346 0049

Fax: 0866 201 202

E-mail: info@almlaw.co.za

Ref: Ms AL Maree/JS Mahlangu/KS3

On behalf of the Respondent: Adv Nyiko Mhlongo

Instructed by: Mashamaite MR Attorneys Inc, Pretoria

206 Sophie de Bruyn Street.

Olivetti House

Tel:

(012) 3211152

Email: mrmashamaiteattorneys@gmail.com

Ref: MMR/146/2017

- [1] Referred with approval by Christo Botha - Statutory Interpretation 4th Edition 2007.
- [2] Public Carriers Association v Toll Road concessionaries (Pty) Ltd 1990 (1) SA 925 (A) at 934J, Swanepoel v Johannesburg City Council [1994] ZASCA 80; 1994 (3) SA 789 (A) at 794B
- [3] Jonathan Witts-Hewinson - Cliffe Dekker Hofmeyr 27 February 2019.

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