

SOUTH AFRICA / JUDGMENT

Sass v Magistrate Malmesbury (A117/2008) [2008] ZAWCHC 236 (8 August 2008) [2008] ZAWCHC 236

COURT

Western Cape High Court, Cape Town

BEFORE

Velhuizen, E J S Steyn

CASE / FILE NUMBER

A117/2008

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA(CAPE OF GOOD HOPE PROVINCIAL
DIVISION)CASE NO: A117/2008

DATE: 8

AUGUST 2008

In

the matter between:

SARAH
SASS APPELLANT
and
THE
MAGISTRATE MALMESBURY RESPONDENT

JUDGMENT

VELOHUIZEN. J

The appellant appeals to this Court against the magistrate's judgment of 6 December 2007 refusing to grant the appellant's unopposed

application for an administration order in terms of section 74(1) of the Magistrate's Court Act 32 of 1944 (the Act).

The applicant applied for the appointment of a non-practising attorney to be appointed as administrator. The magistrate took the view that because a non-practising attorney is not required to give security, his appointment "defeats the purpose of section 74 of the Act". Relying on *African Bank Limited v*

Mefwyn Weiner, 2005(4) SA 363 (SCA). the magistrate held:-

"However, regard must be had to the fact that such an attorney, when appointed as an administrator, must act in such a capacity (as an attorney) throughout: he or she does not dispense with professional functions or duties at any point in the administration."

I do not agree with the magistrate's reasoning. In my view his reliance on the *Africa Bank Limited v Melwyn Weiner* judgment of the Supreme Court of Appeal is misplaced. The judgment did not decide the question of the posting of security in terms of section 74E of the Act by a non-practising attorney in administration orders. Section 74E(3) of the Act reads:-

"An administrator who is not an officer of the court or a practitioner shall, before a copy of the administration order is handed or sent to him by registered post, give security to the satisfaction of the Court and thereafter, as required by the Court, for the due and prompt payment by him to the parties entitled thereto of all monies which come into his possession by virtue of his appointment as an administrator."

This sub-section was analysed in *Werner NO v Broekhuvzen*. 2001(2) SA 716 (C). Van Reenen J (Reveias A J concurring) decided on pages 725H to 726H:-

"Section 74E (3) provides that any administrator who is not an "officer of the court" or a "practitioner" shall give security to the satisfaction of the Court as required by the Court for the due and prompt payment by him or her to the parties entitled thereto of all monies which come into his or her possession by virtue of his or her appointment as administrator." Unlike the concept "officer of the court", the concept "practitioner" is defined in section 1 of the Act as

meaning an advocate, an attorney, an articled clerk and an agent such as referred to therein. This definition appears to have amplified the ordinary meaning of practitioner which is "one engaged in the practice of any art, profession or occupation, especially in medicine, surgery or law (The Shorter Oxford English Dictionary), so as to encompass practising as well as non-practising attorneys. We say so because when the legislature employs that concept in the narrower sense, for example practising attorney, it specifically

states so (see section 74J(7)). In our view the concept attorney in the definition of practitioner means an attorney admitted to practise as such (see section 1 of the Attorneys Act 53 of 1979). The magistrate in his judgment accepted that it was common cause that the appellant is an admitted attorney. On the basis of that finding, in our view, he could not have held that the appellant was obliged to provide security."

We are obliged to follow this decision unless we are convinced that it is wrong. I am not so convinced, in fact \ agree with the reasoning of Van Reenen J and more particularly his finding that an attorney admitted to practise as such, but at the time of his appointment as an administrator is not practising, is not obliged to provide security in applications like the present. That being the position, I fail to see how the appointment of a non-practising attorney who is not required to give security will lead to the circumvention of the provisions of section 74 of the Act. It follows that the magistrate's judgment falls to be set aside.

The appeal is according UPHELD. HIS JUDGMENT SET ASIDE and replaced with the following order:-

1. The applicant's estate is placed under administration in terms of the provisions of section 74 of Act 32 of 1944.

Normal Woolf Shargey of ADMS Building Solutions (Pty) Limited is appointed as administrator of the applicant's estate.

The said Norman Woolf Shargey is absolved from giving security for the administration of the applicant's estate.

VELDHUIZEN, J

E J S STEYN, A J

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2008/236.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/sass-v-magistrate-unknown-topic-awchc-2008--6a3ea5133b1caa912980b2e8>

Prepared on 9 October 2026 · Esheria