

SOUTH AFRICA / JUDGMENT

Stander v Daly and Others (M521/2022) [2024] ZANWHC 225 (6 September 2024)

[2024] ZANWHC 225

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

M521/2022

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Policy

IN THE HIGH COURT OF

SOUTH AFRICA

NORTH WEST DIVISION,

MAHIKENG

CASE

NO: M521/2022

Reportable: YES/NO

Circulate to Judges:

YES/NO

Circulate to Magistrates:

YES/NO

Circulate to Regional

Magistrates: YES/NO

In

the matter between:

FLORINA
JOHANNA STANDER
Applicant
AND
VERNON
THEODORE DALY
1st
Respondent
ANDREW
DORMEHL DALY
2nd
Respondent
SHARON
LOIS PYBURN
3rd
Respondent
PHILIP
MICHAEL PYBURN
4th
Respondent
WILLIAM
RICHARD DALY JNR
5th
Respondent
DENISE
CHARLES KUHN
6th
Respondent
PINEGROVE
RENTALS AND LEASING CC
7th
Respondent
FOR
THE TIME BEING THE TRUSTEES OF
THE
DALY PROPERTY TRUST (NR IT 26624/98)
8th
Respondent

EXECUTOR:

ESTATE LATE RICHARD WILLIAM
DALY
9th
Respondent
THE
MASTER OF THE NORTHWEST HIGH
COURT,
MAFIKENG
10th
Respondent

Heard:

09 MAY 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be 06 SEPTEMBER 2024
ORDER

I

make the following order: 1.
The application is referred for oral evidence to determine the existence of a universal partnership between the deceased and the applicant on a date to be arranged with the office of the Registrar.
2.
The parties shall subpoena all the witnesses necessary for the determination of the existence of the universal partnership.
3.
The costs of the application will be costs in the cause.

JUDGMENT

DJAJE DJP

[1] The applicant brought this application to protect her right to maintenance and support from the estate of her late fiancé and life partner. The respondents oppose the application except for the Master of the High Court. Reference to the respondents in this judgement means the first to ninth respondents. The relief sought is firstly Part A where an interim interdict is sought as follows:

“PART A: INTERIM INTERDICT RELIEF

1. Pending the final determination of the relief sought in Part A of the notice of motion:

1.1 Interdicting and restraining the appointment of one, or more, or all of the sixth respondents, or their agents or representatives

as executors in respect of the Estate Late Richard William Daly;

1.2 Ordering and directing the tenth respondent to suspend the appointment of the ninth respondent in respect of the Estate Late Richard William Daly;

1.3 Interdicting and restraining the ninth respondent from taking any further steps to wind up and finalise the Estate Late Richard William Daly including encumbering, alienating or disposing of any assets or items of property belonging to the Estate Late Richard

William Daly;

1.4 Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representative from taking

any steps to encumber, alienate or dispose of any assets or items of property belonging to the Estate Late Richard Daly;

1.5 Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives from removing from the property at [...] O[...] Street, Presidensie Park, Potchefstroom;

1.6 Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives to unlawfully cause or achieve the eviction of the applicant from the property at [...] O[...] Street, Presidensie Park, Potchefstroom;

1.7 Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives to unlawfully cause or achieve the eviction of any other person residing on the property at [...] O[...] Street, Presidensie Park, Potchefstroom;

1.8 Directing and ordering one, or more, or all of the first to ninth respondents, or their or representatives to maintain the applicant in terms of everyday reasonable living and household expenses, including the service providers in respect of the property at [...] O[...]n Street, Presidensie Park, Potchefstroom;

1.9 Directing and ordering one, or more, or all of the first to ninth respondents, or their agents or representatives to maintain the

applicant in terms of everyday reasonable living and household expenses, including the service providers in respect of the property

at [...] O[...] Street, Presidensie Park, Potchefstroom;

1.9.1 Discovery Medical Aid of the applicant of not less than R4 100 per month;

1.9.2 Domestic and gardening services for the property and Communal Household;

1.9.3 Water, electricity, sewerage, utilities and all other municipal costs flowing from the property and Communal Household; and

1.9.4 R16 000 for household expenses and costs associated with management and running of the property and Communal Household.

2. The first, second, third, fourth, fifth, seventh, eighth and ninth respondents are ordered to pay the costs of this application,

jointly and severally, the one paying the others to be absolved.

3. In the event of opposition to this application by one or more of the sixth and tenth respondents, such opposing respondents are ordered to pay the costs of the application jointly and severally together with the first, second, third, fourth, fifth, seventh,

eighth and ninth respondents, the one paying the others to be absolved.”

[2] The relief in Part B is that:

“PART B: FINAL INTERDICT RELIEF:

5. Interdicting and restraining the appointment of one, or more, or all of the first to sixth and ninth respondents, or their agents

or representatives as executors in respect of the Estate Late Richard William Daly;

6. Ordering and directing the tenth respondent to suspend the appointment of the ninth respondent in respect of the Estate Late Richard William Daly;
7. Ordering and directing the tenth respondent to appoint impartial and capable persons as executors, trustees, curators and liquidators with the purpose to ensure an orderly winding up of the financial affairs of the Estate Late Richard William Daly, the protection of the financial interests of the heirs in terms of the Administration of Estate Act, 66 of 1965;
8. Interdicting and restraining the ninth respondent from taking any further steps to wind up and finalise the Estate Late Richard William Daly, including encumbering, alienating or disposing of any assets or items of property belonging to the Estate Late Richard

William Daly;

9. Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives from taking

any steps to encumber, alienate or dispose of any assets or items of property belonging to the Estate Late Richard William Daly;

10. Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives from removing from the property at [...] O[...] Street, Presidensie Park, Potchefstroom;
11. Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives to unlawfully cause or achieve the eviction of the applicant from the property at [...] O[...] Street, Presidensie Park, Potchefstroom;
12. Interdicting and restraining one, or more, or all of the first to ninth respondents, or their agents or representatives to unlawfully cause or achieve the eviction of any other person residing on the property at [...] O[...]n Street, Presidensie Park,

Potchefstroom;

13. Directing and ordering one, or more, or all of the first to ninth respondents, or their or representatives to maintain the applicant in terms of everyday reasonable living and household expenses, including the service providers in respect of the property at [...] O[...] Street, Presidensie Park, Potchefstroom;
14. Directing and ordering one, or more, or all of the first to ninth respondents, or their agents or representatives to maintain and

fulfil the financial obligations committed to by the Late Richard William Daly prior to 23 May 2022, inter alia, business and household

expenses, service providers and employees, including but not limited to

14.1 Discovery Medical Aid of the applicant of not less than R4 100 per month, duly escalated in accordance with the Discovery Medical

Aid rules;

14.2 Domestic and gardening services for the property and Communal Household;

14.3 Water, electricity, sewerage, utilities and all other municipal costs flowing from the property and Communal Household; and

14.4 R16 000 for household expenses and costs associated with management and running of the property and Communal Household, duly escalated in accordance with reasonable living and household expenses.

15. The first, second, third, fourth, fifth, seventh, eighth and ninth respondents are ordered to pay the costs of this application,

jointly and severally, the one paying the others to be absolved.

16. In the event of opposition to this application by one or more of the sixth and tenth respondents, such opposing respondents are ordered to pay the costs of the application jointly and severally together with the first, second, third, fourth, fifth, seventh,

eighth and ninth respondents, the one paying the others to be absolved.”

[3] The applicant and William Daly (“the deceased”) met in 2016 and were in a love relationship. In April 2017 the deceased proposed marriage to the applicant to which she accepted. In July 2017 the deceased asked the applicant to move in with him after an incident of home invasion at his place. At that time the deceased was staying alone. The two stayed together at the deceased’s house and continued with their romantic relationship. This meant that the applicant had to leave her place to move in full time with the deceased. She cancelled her lease in June 2019 as her rented property was used by her children from time to time. At that time, she moved all her movable items including her furniture to the deceased’s house. Some of her furniture was kept but they agreed to give some of it away to avoid duplication. The rest of the furniture was sold. This was as per agreement between the deceased and the applicant.

[4] The applicant resigned from her work as the deceased made an undertaking to take care of her and ensure that she always has a roof over her head. In addition, the deceased committed to pay Discovery Medical Aid for the applicant in the amount of R4 100 .00 per month, domestic and gardening service for the property, water, electricity and all utilities including municipal costs and an amount of R10 000-00 from October 2019 for household expenses which increased to R16 000-00 in 2022. The deceased and the applicant lived

together, and the applicant was supported financially by the deceased. The applicant managed the household for their benefit and was given free reins to decorate and re-design the house. She used her retirement fund towards the household costs and expenses. The deceased bought her a Land Rover Discovery vehicle as a gift on her 65th birthday. However, the said vehicle was taken back after the deceased learnt that Land Rover Discovery and Jaguar would terminate their contractual arrangements with Potchefstroom Daly garages. The deceased then replaced it with a Ford Ecko Sport. The Land Rover was returned to the applicant by the deceased after some time. In 2021 the deceased made an investment in the amount of R300 000-00 in favour of the applicant and in the following year the amount of R80 000-00. According to the applicant, the deceased made an undertaking to invest an amount of R300 000-00 every year in her favour. Sadly, the deceased passed away on 23 May 2022.

[5] A few days after the passing of the deceased, the third respondent, who is the deceased's daughter arrived at the deceased's house and removed a Lladro Weary Ballerina figurine which the deceased had gifted to the applicant. Thereafter, the first and second respondents, who are the deceased's sons, removed items for the house including a Ford Ranger vehicle, several firearms, cash, collection of Kruger coins, two Rolex watches that belonged to the deceased and a classic Land Rover defender. This was all done without consulting or informing the applicant. The events that followed the passing of the deceased between the respondents and the applicant were not pleasant. There was no cooperation in relation to the assets of the deceased and the reporting of the estate. The applicant was excluded from the taking of the inventory of the assets including the household furniture, including the applicant's furniture from her previous house.

[6] The applicant was presented with a settlement by the respondents which proposed as follows:

"IMMOVABLE PROPERTY OF THE ESTATE

It is agreed between the parties that Florina may continue to reside at the property situated at nr [...] Presidensie Park O[...] Street Potchefstroom for a period of three months from date of signature hereof.

Alternatively, should Florina vacate the premises before 31 October 2022 Florina shall be compensated a pro rata amount from date of departure until 31 October 2022, based on a monthly rental amount of R18 000.00.

Florina will be liable for all running expenses and utility accounts related to the premises until she vacates it.

MOTOR VEHICLES

It is agreed between the parties that Florina will return the Landrover Discovery Sport currently in her possession and will sign documents to give effect to the transfer of ownership of the vehicle to Pinegrove Rentals (Pty) Ltd within seven days from date of signature hereof.

Florina shall receive a Ford Eco Sport on the same date of delivery of the Landrover Discovery and the signature of the documents. The Eco Sport shall be registered and transferred into her name.

FINANCIAL AID AND SUPPORT

It is agreed between the parties that Florina shall receive an amount of R360 000 from Pinegorve Rentals, payable as follows:

R20 000.00 upon signature of this agreement and the balance shall be paid on the delivery of the vehicle and documents referred to in paragraph 2 above.”

- [7] The applicant did not sign the settlement agreement. The respondents halted all payments towards domestic services of the property and the applicant could not pay for the helper. The medical aid payments have also been stopped by the respondents. They have distributed the assets of the estate and threatened to evict the applicant from the house that she shared with the deceased for five years. The applicant’s case is that she was in a universal partnership with the deceased and is therefore entitled to inherit from the deceased’s estate and to the relief as claimed in Part A of the notice of motion.
- [8] In contention the respondents submitted that the applicant did not establish the conclusion of a universal partnership with the deceased. It was argued that the deceased and the respondents’ late mother had appointed each other as sole heir of their respective estates, making it impossible for the deceased to have intended the applicant to be entitled to half of his estate. The respondents further submitted that the deceased never intended to marry the applicant as he was unhappy in the relationship and felt “captured” but never agreed to a universal partnership with the applicant. The respondents’ case is that the applicant never contributed to the deceased’s estate and is therefore not entitled to any inheritance.

Condonation

- [9] The applicant brought an application for condonation of the late filing of the replying affidavit which was filed six months out of time. This application was opposed by the respondents. The replying affidavit was filed on 28 July 2023 when the matter was set down for hearing on 18 August 2023. The contents of the replying affidavit were not dealt with by the respondents in their heads which were delivered on 2 August 2023 together with a Rule 30 notice. The complaint in terms of Rule 30 was that the applicant filed a replying affidavit without a condonation

application. However, the applicant argued that the head of argument for the respondents are dated 30 July 2023 which simply means they were prepared with the respondents’ knowledge of the irregularity. This means that the respondents despite being aware of the irregularity, took a further step by preparing their heads of argument which rendered the Rule 30 challenge defective.

[10] The explanation proffered by the applicant for the lateness of the replying affidavit was that as a pensioner with no income, she relies on her attorneys and advocate who represent her pro bono. Consequently, she is not at liberty to keep a close eye on their efforts and demand updates from them. Due to her lack of experience,

she was not aware that the replying affidavit was late. After the respondents had filed their answering affidavit in November 2023, her advocate took ill and not able to attend to work. There was a request for an extension from the respondents' attorneys to file the replying affidavit and they agreed. It was only in the two months of 2023 that her attorneys and counsel met to discuss the answering affidavit filed by the respondents. The applicant's counsel was also involved in other important and high-profile matters that resulted in this matter not getting the full attention.

[11] It was argued that the lateness of the replying affidavit did not prejudice the respondents, and that the condonation application was bona fide. When the matter came before court on 18 August 2023 the applicant was ready to argue but due to the insistence of the respondents to have a condonation application filed, the matter was postponed. It is for that reason that the applicant argued that it was never her intention to cause any delays in the matter.

[12] In opposing the condonation application the respondents argued that the applicant does not explain the full period of the delay which does not show good cause. The respondents argued that the application for condonation contains inadmissible hearsay evidence and does not give a reasonable explanation for the inordinate delay. In addition, the respondents' contention was that the applicant only brought the condonation application when pressed for it after the court appearance of 18 August 2023 and not when the legal team realised that the replying affidavit was late.

[13] The Constitutional Court in *Grootboom v National Prosecuting Authority* [2013] ZACC 37;2014(2) SA 68 (CC) the following in relation to condonation:

"It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default."

[14] The explanation for the delay in filing the replying affidavit is satisfactory and the applicant has shown good cause. The condonation for the late filing of the replying affidavit was granted.

Main Application

[15] At the centre of this matter is whether there existed a universal partnership between the applicant and the deceased to entitle her to the relief sought. The applicant submitted that there was an engagement between her and the deceased but that did not lead to marriage. It is not clear from the papers what the reasons were for the two not to get married. The respondents on the other hand dispute the existence of a universal partnership between the

applicant and the deceased. The applicant's claim is based on the existence of a universal partnership with the deceased.

- [16] The respondents argued that there is a serious dispute of fact and the applicant's application should be dismissed as it is an application for a final relief. It was submitted that the applicant has failed to establish the requirements for a universal partnership, and it is not clear what type of relief is sought by the applicant. The respondents argued that the applicant claims that there was a universal partnership, she also claims for inheritance and for maintenance.
- [17] The applicant's version that there was a universal partnership with the deceased is denied by the respondents. The existence of a universal partnership goes to the heart of this matter. The two conflicting versions create a material dispute of fact. In dealing with the issue of a genuine dispute of fact the following was said in *Wightman t/a JW Construction v Headfour (Pty) Ltd and another* [2008] ZASCA 6; 2008

(3) SA 371 (SCA):

"[12] Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must, in the event of conflict, accept the version set up by his opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984 (3)SA 623(A) at 634E-635C..

- [13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say "generally" because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision."

- [18] Rule 6(5)(g) of the Uniform Rules of Court provides that:

"6 APPLICATION

(1)...

(5)...

(9) Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as to it seems meet with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing, it may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for him or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.”

[19] It is clear in this matter that the dispute of fact is not capable of being resolved on the papers. The applicant approached this court on the basis that a universal partnership existed with the deceased when the deceased’s children, the respondents dispute that. There was no application brought by the applicant to declare that a universal partnership existed. On that basis, the matter should be referred for oral evidence to determine if indeed there was a universal partnership between the deceased and the applicant. This matter is not one that calls for the dismissal of the application based on the dispute of facts. The determination of the existence of a universal partnership will address all the issue between the parties including a claim for maintenance and or inheritance.

Order

[20] Consequently, I make the following order:

J T DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST HIGH COURT, MAHIKENG

APPEARANCES

DATE OF HEARING

: 9 MAY 2024

DATE OF REASONS

: 06 SEPTEMBER 2024

COUNSEL FOR THE APPLICANTS : ADV JANSE VAN VUUREN

COUNSEL FOR THE RESPONDENTS : ADV WILLIAMS SC

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