

SOUTH AFRICA / JUDGMENT

OSZ Tayob Trading Pietersburg (Pty) Ltd t/a EH Hassim v Ramusi and Others (4307/2022) [2025] ZALMPPHC 87 (6 May 2025) [2025] ZALMPPHC 87

COURT

Limpopo High Court, Polokwane

BEFORE

M Mangena

CASE / FILE NUMBER

4307/2022

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REPUBLIC OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE

NO: 4307/2022

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 06 MAY 2025

SIGNATURE

In the matter between:

OSZ
TAYOB TRADING PIETERSBURG (PTY) LTD
t/a
EH HASSIM
APPLICANT
AND
PAULINA
NTEBO RAMUSI
FIRST
RESPONDENT
PAULINA
NTEBO RAMUSI N.O
SECOND
RESPONDENT
STANDARD
BANK OF SOUTH AFRICA LIMITED
THIRD
RESPONDENT
REGISTRAR
OF DEEDS, PRETORIA
FOURTH
RESPONDENT
CITY
OF JOHANNESBURG METROPOLITAN
MUNICIPALITY
FIFTH
RESPONDENT
POLOKWANE
LOCAL MUNICIPALITY
SIXTH
RESPONDENT
REGISTRAR
OF DEEDS, POLOKWANE
SEVENTH
RESPONDENT
OAKFIELD
BODY CORPORATE
EIGHTH
RESPONDENT
FIRSTRAND
BANK LIMITED
NINTH
RESPONDENT

JUDGMENT

MANGENA AJ

- [1] On the 09th June 2020, Applicant obtained monetary judgment of R2 059 872.37 plus interest against the first Respondent Ms Paulina Ntebo Ramusi both in her personal capacity and in her capacity as the executrix of the estate late Isiah Sekweng Ramusi. The sheriff executed a writ against the respondent's movable properties and same was not enough to liquidate the debt.
- [2] The Applicant has now approached this court for an order to declare 2 immovable properties registered in the names of both Ms. Paulina Ntebo Ramusi and Mr. Isaiah Sekweng Ramusi. Consequential to the declaration of executability, the Applicant prays for an order authorising a writ of attachment and directing the sheriff of the court to attach and take into execution the properties and to sell same by public auction.
- [3] The Respondent is opposing the application and has raised three distinct but interrelated points, namely premature proceedings, non-joinder of the Master of the High Court as well as three elderly children of the deceased who are the nominated beneficiaries of the properties in terms of the Will of the late Isaiah Sekweng Ramusi. The argument as I understand it is that the execution of the two immovable properties in fulfilment of the judgment granted by this court will be prejudicial to those who stand to benefit from the estate of late Mr Ramusi. To protect their interests, the applicant should have cited and joined them in this proceedings as according to the respondent they have a direct and substantial interest.
- [4] In support of her contention, the respondent made available to the court a signed copy of the Will of the late Isaiah Sekweng Ramusi. In the Will executed on the 04th June 2019, the deceased bequeathed one immovable property to both his son and his daughter and the other one to the other daughter. The beneficiaries were to be liable for outstanding amounts (if any) to the funding banks. In paragraph 14 of the answering affidavit she stated that "the beneficiaries have already taken over their inheritance and will have the properties transferred to their names once they have settled the outstanding balances with the banks".
- [5] At the hearing of this application, I requested both counsel for the applicant and the respondent to file supplementary heads on the issue of non-joinder of the beneficiaries and both of them have complied. I am indebted to them.
- [6] In the supplementary heads, counsel for the respondent relied further on Section 47 of the Administration of Estates Act 66 of 1965 which requires the written consent/approval of the heirs before the executor can sell the property of the deceased. If the heirs are unable to agree, the executor shall sell the property subject to the conditions and manner approved by the Master. In the absence of the Master's supervision and the consent by the heirs, so the argument went, the court application is defective as the Master has authority over the

administration of the estate. If the court were to grant the orders prayed for by the applicant, this

would amount to the interference with the Master's authority and the administration of the estate.

[7] None of the grounds raised by the respondent in opposition of the relief sought by the applicant is good in law. Whilst it is true that a party with a direct and substantial interest should be joined to the proceedings, the qualification for joinder is that the interest must be a legal interest as opposed to a financial interest. It is also a further requirement that joinder must be necessary as opposed to convenience. The mere fact that a party may have an interest in the outcome of litigation does not warrant a non-joinder plea. *Judicial Services Commission and Another v Cape Bar Council and Another*, 2013

(1) SA 170 SCA @ para 12.

[8] In the context of this case, the executor is responsible for the administration of the estate and the law places a responsibility upon her to take control of the estate and ensure that all assets of the deceased are collected and the debts are paid. In *Segal and Another v Segal and Others*, 1976 (2) SA 531(C) the court put the position as follows:-

"In our law the executor is the person in whom, for administrative purposes, the deceased's estate vests". It is his function to take all such steps as may be necessary to ensure that the heirs in the estate to which he is appointed receive what in law is due to them."

[9] One further aspect which requires consideration is that heirs in the deceased estate do not have an automatic right to inherit in the estate of the deceased. The right to claim (which is personal) only arises after the liquidation and distribution account of the estate has been confirmed and this right lies against the executor and no any other person. See *W v Williams-Ashman NO and Others v 2023* (4) SA 113 (SCA) at paragraph 13. This position is supported by authors in Wille's Principles of South African Law, 9th edition where it is stated as follows:-

"However in the light of modern system of administration of estates that replaced the common law system of universal succession, the right to the beneficiaries to inherit is no longer absolute nor an assured one. If the deceased estate, after confirmation of the liquidation and distribution account, is found to be insolvent, none of the beneficiaries will obtain any property or assets at all. In the case of a legacy, the legatee will only obtain the property bequeathed to him if, first the property belonged to the testator, for the Will of one person cannot confer a real right in favour of another person over property belonging to a third person, and if secondly, the assets of the deceased not left as legacies are sufficient to pay his debts. In any event, an heir cannot vindicate from a third person property which the heir alleges form part of the deceased estate, only the executor has power. It follows from the above considerations that an heir does not upon the death of the testator acquire the ownership of the assets of the deceased, but merely has a vested claim against the executor for payment, delivery or transfer of the property comprising the inheritance, and this claim is enforceable only when the liquidation and distribution account has been confirmed. The heir in fact becomes owner of movable property only on the delivery of

it, or of immovable property upon registration..... The modern position is therefore that a beneficiary has merely a personal right against the executor and does not acquire ownership by virtue of a Will”.

- [10] The respondent has not argued and/or presented any facts to prove that the liquidation and distribution account has been approved by the Master and that registration has taken place in the deeds office. In the absence of these two requirements, the mere allegation in the answering affidavit that the beneficiaries have already taken over their inheritance is insufficient to disturb the applicant’s entitlement to the relief he seeks.
- [11] Regarding the provisions of section 47 of the Administration of the Estate Act 66 of 1965, the short answer is that the section is irrelevant in that it applies to the sale of immovable property by the executors and relates to the manner and conditions of sale. In the event of disagreement with the heirs, the executor will approach the Master for approval. This is not the case here. See *Essack v Buchner No & Others*, 1987 (4) SA 53 N @ page 57. This was followed recently in *Bester N.O v Master of the High Court and Another*, 2023 (6) SA 199 (WCC) @ para 26.
- .
- [12] With the preliminary points out of the way, I return to consider whether the applicant has met the requirements set out in Rule 46A of the Uniform Rules of court. On the papers before me, the applicant contends that there is a valid judgment obtained against the respondents. A warrant of execution issued against the movable assets of the respondents yielded insufficient amount to satisfy the debt. The respondents are the owners of two immovable properties with a combined market value of R7 400.000.00.
- [13] Proper notices have been given to the entities listed on rule 46(5)(a) and only the Oakfield Body Corporate has placed information before the court regarding the outstanding balance owed for the levies in respect of Unit 2[...].
- [14] In the view I take on this matter, the applicant has satisfied the requirements stipulated in Rule 46A and having considered the relevant factors regarding the properties including their market value I am satisfied that the applicant is entitled to the order for the declaration of executability against the two immovable properties. The respondent will not be rendered homeless by the sale of all or the property in Limpopo as the proceeds realised out of the sale will be enough to settle the debt and leave her with sufficient funds to find an alternative accommodation.
- [15] In the circumstances, it is ordered that:-
- 15.1. The first and second respondents, immovable property better known as Unit 2[...] Oaklands Sectional Title Scheme, scheme number 1/1991 in the province of Gauteng and situated at 2[...] D[...] Road, Bucclench is hereby declared specially executable.

15.2. The first and second respondents immovable property better known as Portion 230, Farm 915 Tweefontein, Registration Division LS Limpopo Province is hereby declared specially executable.

15.3. The Applicant is authorised to cause to be issued a writ of attachment against the above properties and direct the respective sheriffs to attach and take them into execution and sell them by public auction.

15.4. The sale in execution in respect of each of the properties shall be subject to the reserve price as follows:-

15.4.1. Unit 2[...] Oaklands Sectional Title Scheme-R1 650 000.00.

15.4.2. Portion 230, Fram Tweefontein, Broadlands Polokwane R8 500.000.00.

15.5. The first and second respondent are ordered to pay costs of this application on a party and party scale B of the High Court.

M. MANGENA AJ

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR APPLICANT

: Adv. M Karolia

Shaheed Dollie Inc

FOR RESPONDENTS

: Adv. N Tshingidimisa

Ramusi Attorneys

HEARD ON

: 17 APRIL 2025

DELIVERED ON

: 06 MAY 2025

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Prepared on 11 October 2026 · Esheria