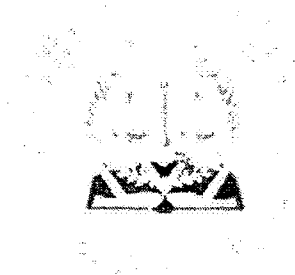


(Inlexso Innovative Legal Services) fvs



10

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 7921/2022

DATE: 2022.03.28

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED <i>AC</i>
--

In the matter between

20 THEMBA MABENA

Applicant

and

MATJIE THANDI RAMONAKA

First Respondent

PETER RAMONAKA

Second Respondent

MASTER OF THE HIGH COURT

Third Respondent

J U D G M E N T

CRUTCHFIELD, J: The applicant, Themba Mabena, was allegedly married to the deceased by customary marriage.

The first respondent, Matjie Thandi Ramonaka, was duly appointed as the representative of the Master to the deceased's estate.

10 The applicant sought urgent relief in the following terms:

1. That the matter be dealt with as an urgent application;
2. That the letters of authority issued by the Master of the High Court, Polokwane, in favour of the first respondent be declared invalid and the applicant be appointed as the executor of the deceased's estate in terms of section 18(1) of the Administration of Estate Act 66 of 1965 and relief ancillary thereto.

The relief claimed by the applicant was framed as final relief although the applicant claimed an interim interdict in
20 the alternative preventing the first respondent from acting upon the letters of authority pending finalisation of proceedings for the recognition of his alleged customary marriage to the deceased, to be heard in this court in about July 2022.

The first respondent opposed the application both in

respect of urgency and the merits of the application.

At the outset, the applicant did not attach any of the documents submitted by the first respondent to the third respondent in support of her application for letters of authority, although she states that she merely approached the office of the third respondent in order to seek assistance and guidance. Nor did the applicant disclose full details of the assets and liabilities comprising the estate.

In respect of the urgency of the application, Rule 6(12)
10 of the uniform rules of court requires that in order for an application to be declared urgent and dealt with accordingly, two requirements must be fulfilled; an applicant must set forth explicitly the circumstances that render the matter urgent, and, secondly, state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course.

In effect, the two requirements crystallise into the question of what irreparable harm the applicant will suffer if relief is not given in the week for which the matter is set down as opposed to any other week.

20 The application was set down for the week of 22 March 2022. The applicant alleged that he became aware of the first respondent's letters of authority on 25 February 2022. He contacted his legal costs insurers who instructed attorneys on the 8th of March 2022, and the application was issued on approximately the 11th of March 2022.

The applicant contended that if the matter was heard in the normal course he would suffer “immense harm and prejudice” in that the first respondent was collecting the assets in the estate and allocating them to her personal benefit (CaseLines page 001-20 paragraph 47).

The applicant relied in respect of the “immense harm” alleged by him, upon annexure “TM4” (CaseLines page 001-47), a letter from Sanlam to First National Bank authorising the payment of certain monies to the first respondent. Annexure
10 TM4 was dated 16 February 2022 and authorised payment of the amount of R700 148.82 to the first respondent, which amount was stated to be available in the relevant account on 17 February 2022.

The first respondent, however, dealt with the allegations, contending that the policy referred to in the letter from Sanlam, annexure “TM4”, was a funeral policy and that the applicant instructed her to cash in the policy in order to assist with the costs of the funeral. In addition, the first respondent alleged that she was the beneficiary under the
20 policy.

In this regard it must be noted that the applicant himself stated that the first respondent was the beneficiary of various of the policies previously held by the deceased prior to her passing.

These being urgent proceedings in which the applicant

sought final relief in the first instance, the first respondent's averments must prevail.

Furthermore, the respondent denied allocating assets or the proceeds thereof for her personal benefit and denied the allegations of alienation or disposal of the assets of the estate. Policies that the first respondent had claimed were those under which she was the beneficiary and the proceeds had been paid by her into the deceased estate's banking account. The first respondent stated under oath in her
10 answering affidavit in addition that she was willing to account to the applicant in respect thereof.

Thus, the first respondent denied that there was harm to the estate and demonstrated that there would not be prejudice to the applicant or the estate's beneficiaries if the matter was dealt with in the ordinary course as it ought to have been.

Other than annexure "TM4", the applicant's allegations of harm if the application was not heard during the week of the 22nd of March 2022, amounted to vague conclusions without facts underpinning and substantiating those vague assertions.

20 In the circumstances, the applicant did not discharge the onus in respect of the urgency of the application justifying it being heard in the week of 22 March 2022.

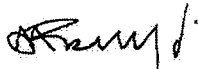
The applicant did not demonstrate that the matter was urgent and that substantial redress would not be achieved by a hearing of the application in due course.

I refer in this regard to the judgment In Re: Several Matters On The Urgent Court Roll, 18 September 2012 reported at 2013 (1) SA 549 GLD.

In the circumstances, this application is struck off the roll for lack of urgency and the applicant is ordered to pay the costs of the application.

I hand down the judgment.

10



.....
CRUTCHFIELD J

JUDGE OF THE HIGH COURT

DATE OF THE JUDGMENT:

28 March 2022.

DATE OF THE HEARING:

21 March 2022.