

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

Case no.: 4909/2020

In the matter between:

TIMAC AGRO SOUTH AFRICA (PTY) LTD

Applicant

[Reg. no. 2011[...]]

and

DARIA BOTES N.O.

Respondent

[In her capacity as Executrix of the deceased estate of
Dawie Grobbelaar (Id. no. 9[...])]

CORAM: VAN ZYL, J

HEARD ON: 15 JUNE 2023

DELIVERED ON: 13 NOVEMBER 2023

[1] The applicant approached court for an order in the following terms:

“1. That the settlement agreement concluded between the applicant and the respondent parties on 13 October 2022 be made an order of court in terms of Rule 41 ...

2. That a Writ of Execution be authorised against the moveable goods of the deceased estate.

3. Costs of the Application.”

Background:

- [2] The applicant sold and delivered fertilizer to the late Mr Dawie Grobbelaar (“Mr Grobbelaar”) during 2019. Mr Grobbelaar failed to pay the purchase price to the applicant, whereupon the applicant instituted action against Mr Grobbelaar on 11 December 2020 for payment of the outstanding balance, with interest and costs. Mr Grobbelaar defended the action and filed a Special Plea and Plea, whereupon the applicant filed a replication.
- [3] On 24 October 2021 Mr Grobbelaar passed away. On 20 January 2022 the respondent was duly appointed as the executrix of the deceased estate of Mr Grobbelaar by the Master of the High Court, Bloemfontein. In terms of the Will of Mr Grobbelaar the respondent was appointed as the sole beneficiary and heir of Mr Grobbelaar’s estate.
- [4] On or about 13 October 2022 the applicant and the respondent concluded a settlement agreement in respect of the aforesaid action. In terms of the settlement agreement, attached to the founding affidavit as annexure “TS1”, the parties, *inter alia*, agreed as follows:
1. That the respondent makes payment to the applicant in the amount of R920 879.00 in full and final settlement of the aforesaid action.

2. That the respondent undertakes to pay the settlement amount on or before 23 January 2023.
3. That the applicant will be entitled to approach court to have the settlement agreement made an order of court in terms of Rule 41.

[5] The respondent failed to make payment of the settlement amount by 23 January 2023, whereupon the applicant issued the present application. The respondent opposed the application, whereupon an answering affidavit and replying affidavit were duly filed.

The hearing of the application:

[6] At the commencement of the hearing Mr Zietsman, appearing on behalf of the applicant, indicated that the applicant is not persisting with prayer 2 of the notice of motion and is only seeking an order in terms of prayers 1 and 3 of the notice of motion.

[7] Although the respondent initially averred that she signed the settlement agreement under undue influence and also questioned the authority of the deponent to the founding affidavit to have deposed to the said affidavit, Mr Ploos van Amstel, appearing on behalf of the respondent, indicated at the commencement of the hearing that the respondent is not persisting with these two points of opposition.

The Master of the High Court, Bloemfontein:

- [8] In the answering affidavit, read with the heads of argument of the respondent, the respondent, *inter alia*, raised the point that the applicant should either have cited the Master as a party to the application or served the application on the Master since has a direct interest in the subject matter of the application.
- [9] The essence of the present dispute between the parties involve the administration of the estate of the late Mr Grobbelaar and the respondent's duties and obligations in respect thereof. The provisions of section 35 of the Administration of Estate Act, 66 of 1965, also read with section 102 thereof, are central to the adjudication of the application.
- [10] Although Mr Zietsman contended the contrary, I have to agree with the contention of Mr Ploos van Amstel that the Master has a direct and substantial interest in this application. The Master should indeed either have been cited as a party to the application or the application papers should have been served on the Master.
- [11] In my view it would be improper to adjudicate this application without it having been served upon the Master. In addition, considering the nature and facts of the present disputes between the parties, it would be incumbent upon the Master to file a report in this application.

Additional relief and costs:

[12] In my view it may become necessary for the parties to file supplementary affidavits and/or supplementary heads of argument after having obtained the Master's report. I consequently deem it apposite that leave be granted to the parties to do so, should one or both of them deem it necessary.

[13] Since it is presently uncertain when the Master's report will be filed and whether the parties will be filing supplementary papers, I consider it apt that the application in the meantime be removed from the roll instead of it being postponed. The parties will then be entitled to re-enrol the application for hearing once the application is ripe for hearing.

[14] With regard to the wasted costs of 15 June 2023, Mr Ploos van Amstel submitted that the applicant should be ordered to pay same, since the applicant is *dominus litis* and consequently had the obligation to have either cited the Master or to have served the application upon the Master. Mr Zietsman, on the other hand, submitted that the wasted costs should stand over for later adjudication, since the contents of the Master's report may have an influence when considering an appropriate costs order. I agree with the submission of Mr Zietsman.

Order:

[15] I consequently make the following order:

1. The application is removed from the roll.

2. The applicant is ordered to serve a copy of the application papers and the parties' respective heads of argument on the Master.
3. The Master is requested to file a report in respect of the application.
4. Leave is granted to the parties to file supplementary affidavits and/or supplementary heads of argument after receipt of the Master's report, should one or both of the parties deem it necessary.
5. The wasted costs of 15 June 2023 stand over for later adjudication.

C. VAN ZYL, J

On behalf of the applicant:	Adv. P Zietsman SC <u>Instructed by:</u> Horn & Van Rensburg Attorneys BLOEMFONTEIN
On behalf of the respondent:	Adv. PC Ploos van Amstel <u>Instructed by:</u> Honey Attorneys BLOEMFONTEIN