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**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

APEAL CASE NO: A178/2022

CASE NO: 66520/2018

(1) REPORTABLE: YES / ~~NO~~

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED.

DATE: 7 March 2024

SIGNATURE

In the matter between:

JOCELYN DE BRUYN

Appellant

and

THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent

**MARTHA JOHANNA PRINSLOO N.O. (in her capacity
as the Executor of the LATE ESTATE OF JOHANNES
JACOB PRINSLOO (ID No 5[...])
[MASTER'S REF: 0[...]]**

Second Respondent

MARTHA JOHANNA PRINSLOO

Third Respondent

MARCO KOTZE

Fourth Respondent

MARIUS KOTZE

Fifth Respondent

MARELIE VAN ROOYEN

Sixth Respondent

JUDGMENT

MKHABELA AJ (with KOOVERJIE J and MAZIBUKO AJ concurring):

[1] This is an appeal against the decision of the court *a quo* which dismissed the application instituted by the appellant. The appellant herein seeks that the decision of the Master dated 24 January 2019 be set aside and replaced with an order to the effect that the appellant 's objection to the second respondent 's provisional first and final liquidation and distribution account and the second amended first and final liquidation and distribution account is sustained.

[2] The appellant further sought an order that her objection regarding the maintenance claim in favour of the third respondent, in her personal capacity should be sustained and that the court should direct that the third respondent will have no claim for maintenance as envisaged in the Maintenance of Surviving Spouses Act against the Estate of Johannes Jacob Prinsloo (the deceased).

[3] In addition to the above orders, the appellant also sought the removal of the second respondent as the executrix of the deceased estate. The application was not opposed by the first respondent (the Master) but was resisted by the third respondent in her personal capacity.

[4] The facts can be summarised as follows. The deceased passed away on 29 January 2015 and his estate was registered with the Master under Reference number: 0[...]. The deceased was survived by the appellant who is the deceased 's biological daughter as well as by the third responded as the surviving spouse. The third respondent and the appellant are not related as the appellant was born from a previous marriage.

[5] The deceased executed a last will and testament, directing how his estate should be wound up and nominated the second respondent as executrix of the estate. The executrix is also a beneficiary in terms of the will. Hence her citation in her personal capacity as the third respondent.

[6] Of particular importance, is that the deceased bequeathed the immovable property known as Erf 1[...] W[...] Extension 01 (the property) to the appellant but also bequeathed the third respondent a lifelong usufruct in respect of the property.

[7] On 13 June 2017, the second respondent published a provisional liquidation and distribution account, which was later followed by an amended first and final liquidation and distribution account (collectively referred hereto as the L& D accounts).

[8] The L& D accounts reflect the third respondent 's maintenance claim in the terms of the Maintenance of Survival Spouses Act, 27 of 1990 (the Surviving Spouses Act).

[9] The second respondent appointed a third party to assist her in the winding up of the estate, namely Pretoria Estate Administrators (Pty) Ltd and also appointed an actuary who assisted in the calculations of her maintenance needs.

[10] Aggrieved by the contents of the liquidation and distribution account, the appellant lodged a formal objection against the accounts in terms of Section 35(7) of the Administration of Estates Act, 66 of 1965¹, to the Master.

[11] In her objection, the appellant has taken issue with the maintenance claim, inter alia, on the grounds that it is excessive and exceeds the value of the deceased 's estate and consequently there are no assets available to the deceased 's heirs.

[12] Furthermore the appellant's other reason for objecting to the L&D accounts is that the second respondent, in settlement of her maintenance claim, awarded the property to herself. In respect of the second respondent 's reliance on the actuary's report in calculating her maintenance needs, the appellant

¹ Section 35(7) of the Act provides that

argued that the report should not be accorded any probative value because the actuarial report was based on information obtained from the second respondent.

[13] On 24 January 2019², the Master rejected the appellant's objection and provided reasons to the appellant's objection. Of importance is that the Master was satisfied with the provisions of section 2 of the Surviving Spouses Act had been complied with.

[14] The Master invited the parties in terms of section 2 (3) (d) of the Surviving Spouses Act to consider settling their issues. However, the Master recorded that the appellant refused to meet with the third respondent to resolve the objection.

[15] In considering the objection, the Master considered the L& D accounts dated 13 June 2017 which were revised on 28 July 2018 as well as the amended one dated 29 October 2018 which had amended all the previous accounts.

[16] It is necessary to reproduce the salient part of the Master's report which informed the Master's decision which provides as follows:

"The total gross assets according to the second amended, first and final Liquidation and Distribution account is R 4,831,500.00. The total liabilities are R 1,460,646.74 and the balance for distribution is R 3,493,221,01 without the maintenance claim. The amended maintenance claim calculated by the actuary is for the amount of R 5,114,144.00 which is reduced to the balance available for distribution, hence the claim was reduced to the amount of R 1, 620,923 in order not to render the estate insolvent".

[17] Moreover, the third respondent as the surviving spouse also considered the objections and requested a round table meeting with the appellant however the appellant was not amenable to attend such a meeting. The Master further

² The stamped date is 24 January 2019, however, the printed date on the report is 24 January 2018.

considered the documents requested by the appellant which the third respondent furnished. In addition the Master considered an amended actuary's report.

[18] Having considered the amended L& D accounts concomitant with the amended actuary's report, the Master was satisfied with that the maintenance claim complies with the Surviving of Spouses Act and thereby allowed surviving spouse claim.

[19] The appellant approached the court *a quo* and her application was premised on section 35(10) of the Administration of Estates Act³ by way of motion proceedings seeking the relief as alluded to in the preceding paragraphs. The court *a quo* dismissed the application and held that it was not persuaded that the appellant had made a case for her relief but granted the appellant leave to appeal before a full court of this Division.

[20] As I see it, the issue in this appeal is whether the court *a quo* was correct in refusing to set aside the Master's decision in rejecting the appellant's objection as well as in refusing to remove the second respondent as executrix of the deceased estate. Central to this is whether the Master was correct in recognising and accepting the third respondent's maintenance claim in terms of section 2 of the Spouses Act. The issue involves the consideration of the grounds of the objection and the reasons given by the Master in rejecting the objections.

[21] It is therefore necessary to consider briefly the nature and grounds for the objection as well as the Master's reasons in refusing to uphold them and the ultimate decision to accept the maintenance's claim.

³ The section as follows: 35 (10) " Any person aggrieved by such direction of the Master or by refusal of the Master to sustain an objection so lodged, may apply to the Court within thirty days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit."

[22] Before this Court, the appellant contended, inter alia, that in respect of the second respondent 's maintenance, the report ignored the value of the second respondent 's investments and the income derived from such investment. Consequently, the contention continues, the second respondent failed to demonstrate that she is unable to maintain herself.

[23] In addition, the appellant reiterated its contention that the actuary 's report was flawed because of the following reasons:

- 23.1 the report was compiled in the absence of any proof of the third respondent's needs;
- 23.2 the standard of living of the third respondent was not properly assessed;
- 23.3 the fact that the third respondent was not totally dependent on the deceased for maintenance;
- 23.4 the report further ignores the third respondent's monthly income of R 9 000.00.

[24] The third respondent, on the other hand countered the appellant 's objection and brought the following factors to the court's attention, namely that:

- 24.1 the third respondent is 78 years old and would not be able to earn a further income or even a higher income;
- 24.2 the deceased, in fact supported the third respondent during the duration of their marriage and made provision for the maintenance needs of his wife;
- 24.3 the parties have been married for 29 years and the third respondent currently does not have any earning capacity because of her experience, qualification and her age;

24.4 the third respondent is not able to derive any income from the immovable property in accordance with her usufruct as the appellant and extended family are currently occupying same;

24.5 the third respondent, stated that she assisted her husband in his business, Prinsloo Elektries, and most of the living expenses were paid from the business and she was supported throughout the marriage by her husband.

[25] As already pointed out the Master provided comprehensive reasons in refusing to uphold the objections and reasons for accepting the maintenance claim and relied on the third respondent 's actuary report. In short the Master was satisfied that the provisions of section 2 of the Surviving Spouses Act was complied with.

[26] Turning to the applicable law, section 2 of the Spouses Act stipulates that if a marriage is dissolved by death after the commencement of the said Act, the survivor shall have the claim against the estate of the deceased spouse for the provision of her reasonable maintenance needs until her death or remarriage in the event she is not able to upkeep herself from her own means and earnings.

[27] Section 3 of the said Act list certain factors which have to be considered when determining whether the maintenance is reasonable which are as follows:

27.1 the amount in the estate of the deceased 's spouse available for distribution to the heirs and legatees;

27.2 the existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage;

27.3 the standard of living of the survivor during the subsistence of the marriage and the age at the death of the deceased 's spouse;

27.4 a surviving spouse has no claim against the marriage against the estate of the deceased merely by reason of the marriage.

[28] Against the above summation of the applicable law and the grounds of the objection read with the Master 's decision in refusing to uphold the objection concomitant with the court *a quo*'s finding that the appellant s' application has no merit, I turn now to the analysis of the case as a whole.

[29] It is crucial to appreciate that the third respondent was afforded life- long usufruct right over the property which would assisted the third respondent to maintain herself from rental income. Furthermore, the third respondent was bequeathed to be employed by the company of the deceased.

[30] It is not in dispute that the business had been liquidated by the appellant and her husband and a new business was subsequently formed which does not involve the third respondent at all. The third respondent is currently maintained (albeit partially) by her son, Marco, the fourth respondent who has no obligation to do so.

[31] Notwithstanding her employment by her son, Marco, there is still a shortfall in her maintenance given her monthly expenses of which some are attributed to maintaining the property. In particular, the appellant does not dispute that the she does not contribute towards the water, electricity and rates, let alone in maintaining the property.

[32] Of significance, the appellant was not able to contest the actuary 's report in the absence of her own actuary. It was submitted in oral argument on behalf of the appellant that her own actuary would have reached the same conclusion as the third respondent given the fact that it was the second respondent who would have provided the same information pertaining to her maintenance.

[33] The appellant's contentions are devoid of merit by virtue of the following reasons. In the first instance, the appellant's own actuary would have provided

contrary calculations which the Master would have been obliged to consider in determining the objection. It is therefore incorrect that the appellant 's own actuary would have played no value in the scheme of things.

[34] Second, the appellant fails to appreciate the consequences of denying the third respondent her bequeathed right of usufruct in respect of the property which would have gone a long way in calculating a possible income which may have prevented the awarding of the property to herself in settlement of her maintenance claim.

[35] The appellant refused to meet with the Master and the third respondent when she was requested to hold a round table meeting with the third respondent. There is no doubt in my mind that the appellant lost a golden opportunity to have her objections addressed. Perhaps an amicable solution would have been carved by both parties.

[36] For all these reasons I am constrained to agree with the Court a quo that the appellant 's application has no merit. The Master applied his or her mind and addressed all the objections that the appellant made. There is therefore no reason to disturb the decision and findings of the court a quo pertaining to the decision of the Master 's refusal to uphold the objection.

[37] Turning to the other relief for the removal of the second respondent⁴, inter alia, on the grounds of dishonesty and incompetence, I am of the view that this relief should suffer the same fate as the one of overturning the Master decision pertaining to the objection. This must be so since the appellant has provided no factual basis for the unjustified conclusion that the second respondent was dishonest or incompetent in the handling of the estate.

[38] On the contrary, the third respondent engaged a third party who specialises in the business of administering deceased estates. This is an

⁴ It is trite that Section 54(1) of the Administration of Deceased Estates Act makes provision for an executor to be removed from his or her office by the Court if for any reason the Court is satisfied that it is undesirable that she should act as executrix of the estate concerned.

indication of an awareness that is in congruent with a competent executrix whose objective is to perform her duties legally and professionally.

[39] The attack on the integrity of the second respondent on the basis of dishonesty is also not borne by the objective evidence before court. For an example, it cannot be disputed the sale of the property known as Prabaljama Property Holdings (Pty) Ltd was executed with the consent of the appellant as shown by her signature in signing the company resolution. In the circumstances, the appeal is susceptible for a dismissal.

[40] In respect of costs nothing militates against the principle that costs should follow the cause, in the result, the following order is made:

1. The appeal is dismissed with costs.

R B MKHABELA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA
I concur

H KOOVERJIE J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA
I concur

MAZIBUKO AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the

Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **7 March 2024**.

Appearances:

Counsel for the appellant:

Adv NG Louw

Instructed by:

Strydom & Bredenkamp Inc.

Counsel for the second and third respondents:

Adv K Fitzroy

Instructed by:

Couzyn, Hertzog & Horak

Date of hearing:

7 February 2024

Date of Judgment:

7 March 2024