

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED: 12/9/2023
12/9/2023 [REDACTED]
DATE SIGNATURE

CASE NO: 053543/2023

In the matter between:

WILLEM FRANCOIS BOUWER N O

Applicant

(As the executor in the estate late C A Masinga)

and

MASTER OF THE PRETORIA HIGH COURT

1st Respondent

NOLOYISO MBIZWENI-DYANI

2nd Respondent

JUDGMENT: REASONS SECTION 18(3) ADMINISTRATION OF ESTATES ACT

BEFORE: HOLLAND-MUTER J:

[1]The matter came before the court as an urgent application for an interdict against the respondents ("the Master") to prevent the Master from removing the applicant as executor in the estate of late C A Masinga. The matter was enrolled on 13 June 2023 but postponed until 27 June 2023 to enable the Master to deliver its answering affidavit and heads of arguments.

[2] The salient facts of the matter are that summons was issued against the Road Accident Fund ("RAF") on behalf of the deceased Collen Africa Masinga, the death of the deceased resulting from injuries sustained in a motor vehicle collision which occurred on 4 October 2018. The deceased was a passenger in the vehicle.

[3] The applicant was appointed by the Master as executor in the matter on 27 March 2019 to liquidate the estate in the interest of the minor children of the deceased. At the time of the appointment the estate was valued at R 1 416 200-00 (the claim instituted against the Fund), but the matter was later settled in the amount of R 223 514-00. There was a curator ad litem who acted in the litigation.

[4] The Master has the authority in terms of section 14 of the Administration of Estates Act, 66 of 1965 ("the Act"), to appoint nominated persons as executors by any deceased person in a will which has been accepted by the Master and to issue letters of executorship to such a persons.

[5] Section 18(1) of the Act deals with the Master's authority to appoint executors in proceedings where a deceased person failed to nominate any person in his will to be his executor.

[6] Section 18(3) deals with where the value of an estate does not exceed the amount determined by the Minister by notice in the Gazette, authorising the

Master to dispense with the appointment of an executor and give directions as to the manner in which such estate shall be liquidated and distributed. The Minister determined the amount referred to in section 18(3) of the Act in Gazette No 38238 dated 24 November 2014 in the amount of R 250 000-00.

[5] Counsel for the parties addressed the court on the issue, which became moot after a taxed party and party costs amount of R 178 979-00 was received from the RAF during late 2022 after the final liquidation and distribution account was submitted to the Master by the applicant. This increased the value of the deceased estate to R 402 493-96. The adjusted amount was now higher than R 250 000-00, the threshold amount set out in section 18(3) of the

[7] The dispute was that the applicant refused to adhere to the request of the Master to return his letter of executorship to be replaced and furnished with a letter authority. This dispute was later abandoned after the taxed costs were added to the estate, the amount exceeded the threshold of R 250 000-00.

[8] The parties are *ad idem* that the Master may dispense with the appointment of an executor where the value of the estate is below the threshold of R 250 000-00, but the issue was whether such change from executorship to replace it with appointees from the Legal Aid Board, was in the interest of the process. Fortunately the issue was resolved and the parties requested guidelines from the court in similar future matters.

[9] Section 18(3) clothes the Master with authority to dispense with the appointment of an executor if the value of the estate does not exceed the threshold and that the Master may direct the future manner to liquidate the estate. Section 18(3) is however silent whether the Master may terminate previously granted executorship to replace it with a letter of authorisation when the value of the estate drops below the threshold of R 250 000-00. If the Master may act in this regard, what should be considered by the Master before exchanging executorship with a letter of authority?

[10] In **Cool Ideas 1186 CC v Hubbard and Another 2014(4) SA 474 (CC)** at para [25] it was held that *"A fundamental tenet of statutory interpretation is that words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity"*. When applied to section 18(3) of the Act, in particular the word **"may"** implies that the Master, when deciding to act in terms of section 18(3) may appoint an executor if not nominated by the deceased and should exercise a discretion in appointing such executor. It follows that when doing so, the Master should consider all relevant aspects applicable before taking a decision. The section does not in my view authorise the Master to revoke an existing appointment save where section 54 applies.

[11] A similar approach was followed in **Independent Institute for Education (Pty) Ltd v KwaZulu- Natal Law Society and Others 2020(2) SA 325 CC in PARA [13]**.

[12] When applied in this instance, the following be noted:

12.1 There is nothing in section 18(3) that prohibits the appointment of an executor when the value of the estate is below the threshold of R 250 000-00;

12.2 The Master is not precluded from examining a liquidation and distribution account where the value is below the threshold; and

12.3 The Master may, **before** appointing an executor, dispense with the appointment of an executor and issue a letter of authority instead of a letter of executorship when the value is below the threshold.

[13] I could not find any authority in section 18(3) authorising the Master to revoke a letter of executorship and replace it with a letter of authority for no

sound reason. There is also no indication that the Master considered the work already done by the applicant as appointed executor before trying to revoke his appointment. Such revoking may have adverse financial implications for the meagre estate and to appoint an outsider from the legal aid board to continue with an almost finalised process by the applicant will not be in the interest of the beneficiaries of the estate.

[14] The applicant explained the reason for the delay to finalise the estate due to the long drawn out litigation by the Road Accident Fund ('RAF') before he could finalise the matter. It is well known that RAF matters are unnecessary drawn out before it is finalised. To blame the applicant for not adhering with certain time frames is unfair.

[15] I am not convinced that there was any reason as set out in section 54 (1)(b) of the Act for the Master to revoke the executorship of the applicant but for the delay beyond his control. The Master did not forward any post setting out the reasons for such removal, and the applicant was not afforded the opportunity to respond thereto.

[16] The argument on behalf of the Master in para 21 of the written heads of arguments holds no water. There is no indication that by allowing the applicant to finalise the matter would inadvertently leave the heirs of the estate with little inheritance and that poor black people will bear the brunt. There are no facts supporting this notion. The liquidation process was almost complete and very little further costs would accrue should the applicant continue the finalization of the estate.

[17] I am of the view that the Master, when resolving to section 18(3) and section 54 of the Act, should conduct a proper investigation and consider all relevant issues applicable on the specific matter under scrutiny. A mere shot in the dark is not sufficient.

[18] As indicate above, the parties resolved the issues and this is a mere guideline for future conduct and no formal further judgment is necessary in view of the existing draft order dated 29 June 2023. No further cost order will follow these reasons.

Signed at Pretoria on 12 September 2023


J HOLLAND-MUTER 12/9/2023

Judge of the Pretoria High Court

Date heard: 29 JUNE 2023

Reasons given wrt Section 18(3) OF Administration of Estates Act: 12
September 2023

TO: ON BEHALF OF THE APPLICANT

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