

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

Case No: **4480/2021**

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the application between:

HESTER SUSANNA CAMPHER N.O.

Applicant

and

ELRE VAN WYK

First Respondent

**MASTER OF THE HIGH COURT, FREE STATE
DIVISION, BLOEMFONTEIN**

Second Respondent

THE REGISTRAR OF DEEDS, BLOEMFONTEIN

Third Respondent

CORAM: REINDERS,ADJP et ZIETSMAN,AJ

HEARD ON: 25 JULY 2022

JUDGMENT BY: ZIETSMAN, AJ

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 27 July 2022.

[1] This is an application in which the Applicant moves for an order that the decision taken by the Second Respondent in the deceased estate of Cornelius

Lourens Campher (CL Campher, Jnr) in terms of section 35(9) of the Administration of Estates Act, Act 66 of 1965 be reviewed and set aside, together with further declaratory orders.

[2] It is to be noted that the First Respondent, through her attorneys, objected to a liquidation and distribution account compiled by the Applicant in the aforesaid deceased estate. The Applicant acted in her capacity as executrix in compiling the liquidation and distribution account, as well as in her personal capacity as being the heir of the properties collectively referred to as “*the Gideon Farms*” and “*the Murphy Farms*”.

[3] It is further to be noted that the aforesaid objection was filed by the First Respondent before the liquidation and distribution account laid for inspection, and even before it was so advertised to be available for inspection and objections. The aforesaid objection was made in terms of section 35(7) of Act 66 of 1965.

[4] The Applicant, comprehensively, filed an answer to the objection with the Master of the High Court stating the reasons why the objection should not be successful on both the objections as to the Gideon Farms as well as the Murphy Farms, whereafter the Master of the High Court (Second Respondent) made a decision.

[5] The aforesaid decision, it seems to be in terms of section 35(9) of the Administration of Estates Act, Act 66 of 1965, which reads as follows:

“Your objection is not well founded in as section 2C(2) relied upon based on the following:

In terms of the Will dated 26/3/1973, which reads as follows:

*‘Die eiendomme word verbind met fideicommissum vir twee geslagte ...’
This fideicommissum created is for two generations in favour of the two daughters. The daughter of decease (sic) Liesl van Wyk who predeceased her father – who is the first fideicommissary. Therefore her child Elre van Wyk will become the second fideicommissary; in other*

words the death of Liesl van Wyk does not terminate fideicommissum, but brings about the acceleration of the interest to the substitute, paragraph 20 of the judgment Supreme Court of Appeal in Nicolette Erasmus NO v Estate Late Barend Christiaan Booysen, case no. 192/2013 refers.

The account should therefore be amended to include the Gideon farms and be awarded to Elre van Wyk.

Your attention is directed to section 35(10) of the Administrative of Deceased Estate Act, 66/1965.”

[6] The Applicant thereafter filed the present application moving, amongst others, for the reviewing and setting aside of the Second Respondent’s decision in terms of Uniform Court Rule 53. After the application was served upon the Master of the High Court, the Master furnished the following reasons for its decision:

“1.

Reason being that the death of the fideicommissary prior to vesting does not result in the termination of the fideicommissum that brings about the acceleration of interest of the substitute, my attached letter dated 2 September 2021 refers.”

[7] It does not seem that the Applicant has filed a supplementary affidavit after the reasons became available, whereafter the First Respondent indeed filed an opposing affidavit. The Applicant did not reply thereto.

[8] All the farms described as the Gideon Farms as well as the Murphy Farms resorted in the deceased estate of CL Campher (Jnr) and the Applicant in her capacity as executrix of that estate was called upon to administer such an estate and to decide how the different farms (with reference to the two groups of farms) should be allocated by the interpretation of two Wills, firstly the Will of Wessel Jacobus Wessels and Cornelia Johanna Wessels dated 26 March 1973, as well as the Last Will and Testament of Cornelius Lourens Campher dated the 10th of April 1984.

[9]

9.1 In the light of the decision by the Master, annexed as annexure “F” to the founding papers, it is firstly common cause that such a decision was taken also before the liquidation and distribution account laid for inspection or was even advertised to lay for inspection.

9.2 The decision by the Master (with an ostensible date stamp of 2 September 2021) is however unclear and confusing. This much was contended by both Messrs Snellenburg SC and Pohl SC. The Master indicated on the one hand that the objection is not well founded, but on the other hand made a decision that the account should be amended.

9.3 Besides the afore going, the Master of the High Court also only mentions the Gideon Farms and not the Murphy Farms. Both the Gideon Farms as well as the Murphy Farms formed part of the objection and the answer thereto. With reference to the last-mentioned, the Master found that the account should be amended to include the Gideon Farms and be awarded to Elre van Wyk.

9.4 The liquidation and distribution account, annexed as annexure “C” to the founding papers however specifically indicated under the heading fiduciary asset account that: *“There are no fiduciary assets to account for”*. According to the distribution account, all the farms referred to as the Gideon Farms as well as the farms referred to as the Murphy Farms will have to be distributed to the Applicant in her personal capacity. It is unclear to me whether the liquidation and distribution account is signed, insofar as the page referring to the signatures is illegible.

9.5 The Master therefore applied its mind, it seems, firstly as far as section 2C(2) of the Law of Succession Amendment Act, Act 43 of 1992 is concerned, which section places a restriction on the acceleration of a fideicommissum after argument was heard from Mr Pohl SC in this regard. It seems that the Master’s decision should be understood, according to him, that the objection is not well founded as far as section 2C(2) is concerned, but otherwise well founded in and because of the decision by the SCA in

Erasmus NO v Estate Late Barend Christiaan Booysen. In other words, according to Mr Pohl SC, that the decision effectively means that an acceleration indeed should take place as far as the fideicommissum is concerned and that (according to the Master's decision) the Gideon Farms need to be allocated to Elre van Wyk (First Respondent).

9.6 The Applicant, as represented by Mr Pohl SC, is of the opinion that the last-mentioned decision by the Second Respondent is clearly wrong insofar as the facts of the present matter are distinguishable to the facts in the **Erasmus NO**-matter *supra*.

[10] What is still unclear, even if the aforesaid interpretation of the Master's decision is followed, is the outcome in respect of the Murphy Farms. The aforesaid specifically in the light thereof that the one set of farms should be dealt with as a fideicommissum multiplex (the Gideon Farms) and the other as a fideicommissum simplex (the Murphy Farms).

[11] The fideicommissum multiplex has indeed two sets of fideicommissaries, whilst a fideicommissum simplex is a fideicommissum with only one fideicommissary. What is clear, is that both the Last Wills and Testaments of Mr and Mrs Wessels on the one hand and that of Mr Campher (Jnr) on the other hand needed to be interpreted to come to a conclusion and eventually to a decision. Be that as it may, it is doubtful whether the Master of the High Court properly applied its mind to all the issues at stake, firstly, and secondly, is unclear whether the objection is upheld, and/or whether the objection failed. If it is upheld, why only the Gideon Farms are referred to and not the Murphy Farms.

[12] Although there is no prohibition upon this Court to reconsider all the facts afresh and to come to the conclusion or decision which the Master should have come to, the Court will only come to such an assistance if it is clear to the Court what the Master considered in applying its mind, and more specifically which factors are to be considered in the circumstances, to have come to the conclusion and decision.

[13] It is also noteworthy in the circumstances of this matter, that the objection initially was filed with the Master of the High Court before the liquidation and distribution account laid for inspection, the objection was answered before such a date and the Master made a decision in terms of section 35(9) of the Administration of Estates Act before such a date. In the decision of **Götz v The Master and Others NNO 1986 (1) SA 499 (N) at p. 503**, it was found by the KwaZulu-Natal High Court that provided that an objection is in proper form, then, notwithstanding that it is lodged with the Master prior to the period for the liquidation and distribution account in the deceased estate to lie open for inspection, the objection will be one as envisaged in section 35(7). *“The Master’s ruling thereon will, however, only be given after the account has lain open for inspection and after the procedure laid down in ss 35(7), 35(8) and 35(9) has been followed”*.

[14] I am therefore of the view that the aforesaid matter should be referred back to the Master of the High Court, Free State Provincial Division in order to consider the objection properly together with the answer thereto. This should be done and dealt with by the Master of the High Court after the liquidation and distribution account has lain for inspection for the prescribed period. It might be that there are some other objections as well, which can then be dealt with by the Master simultaneously with the present objection. If the objection is successful, the Master should make a decision regarding such success, fully, and not only in respect of the Gideon Farms.

[15] In the aforesaid circumstances I do not think that in the present matter the Court should exercise the function of the Master in the circumstances, and therefore the application including the objection and the answer thereto are referred back to the Master of the High Court to properly consider the objection and/or other objections on the basis as set out in **Götz v The Master and Others NNO supra**.

[16] In the circumstances of the matter, I think it is also fair that the costs of this application should be borne by the deceased estate of CL Campher (Jnr).

I THEREFORE MAKE THE FOLLOWING FINDINGS:

1. The objection in terms of Section 35(7) together with the answer thereto, which form part of the papers in case number **4480/2021**, are referred back to the Second Respondent for reconsideration at the appropriate time;

2. The costs of this application to be borne by the deceased estate of CL Campher Jnr.

P ZIETSMAN, AJ

I concur.

REINDERS, ADJP

On behalf of the Applicants:

Instructed by:

Adv Pohl SC

Mr L Strating

Symington & De Kok

169B Nelson Mandela Drive

Bloemfontein

E-mail: lstrating@symok.co.za

On behalf of the Respondents:

Instructed by:

Adv N Snellenburgh SC

Mr M Mdhluli

Rossouws Attorneys

119 President Reitz Avenue

Bloemfontein

E-mail: marvin@rossouws.com