



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
09/06/2021	
Date	 Signature

Case no: 13810/19

In the matter between:

DAVID VILAKAZI

Applicant

and

THE MASTER OF THE HIGH COURT

First Respondent

In re:

ESTATE LATE ALMO MORRIS LANGA

(Estate number: 6650/2018)

and

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Second Respondent

JUDGMENT

GOODMAN, AJ:

1. The applicant is the half-brother of the late Almo Morris Langa. Mr Langa died intestate on 6 April 2018. On 15 June 2018, the applicant caused his death to be reported to the office of the first respondent, the Master, and attempted to procure his appointment as executor so that he could wind up the estate.
2. Despite repeated attempts at engagement by the applicant, no letter of executorship was forthcoming. On 27 February 2019, the applicant instituted proceedings in this Court to compel the Master to issue him with the relevant letter. The Master did not oppose the application. Instead, her office initially called for further documents, which the applicant provided to the extent that he was able. Later, the Master, through the State Attorney, tendered to abide the High Court application and to issue a report if the applicant abandoned his prayer for costs of the application. The applicant declined to forego his costs.
3. The matter came before Mr Justice Mabuse on 7 August 2019 where an order was made, by agreement, stipulating time periods on which (a) the Master would identify the further documents she still required to issue the executorship letter, (b) the applicant would furnish those documents, and (c) the Master would issue the letter of executorship. The costs were reserved.
4. The Master adhered to the initial deadline imposed by the order, by sending a letter stipulating the documents that were still required on 12 August 2019. Some of those documents had previously been provided by the applicant, but others were requested for the first time. The applicant submitted the documents approximately 5 weeks later, on 19 September 2019. The Master ultimately issued the letter of executorship appointing the applicant as executor on 7 November 2019 – almost 6 weeks after the applicant had submitted the requisite documents and 1½ years after the death of Mr Langa had been reported.

5. I am called to determine the question of costs. The applicant seeks an order granting costs of the application against the first respondent on the punitive attorney-client scale.¹ His counsel, Ms Erasmus, claims that he is entitled to those costs because he enjoyed substantial success in the application, and because of the unreasonable manner in which the Master's office handled the matter.
6. For the Master, Ms Mboweni submits that not only should costs not be awarded in the applicant's favour, but rather it is the Master who should recover her costs. That, she submitted, was because the application to court was premature, as evidenced by the fact that the relief sought in the notice of motion could not be granted at the hearing of 7 August 2019. Further documents had to be lodged with the Master's office before the appointment could be made and the letter of executorship issued.
7. I do not agree that the application was premature. The uncontested evidence of the applicant's attorney is that they wrote more than 10 letters to the Master's office between August 2018 and August 2019, enquiring from the Master what she required to make the appointment and issue the letter of executorship. That in addition to calling more than 25 times. In September 2018, the Master instructed the applicant to provide security against his anticipated appointment as executor, which was procured (at the applicant's cost) and lodged in December 2018. In February 2019, the Master requested proof that the deceased's parents were themselves deceased. That was furnished in early March. Beyond that, no guidance on what was still required was forthcoming from the Master.
8. Ms Mboweni conceded as much, but submitted that it was for the applicant to ascertain, with reference to the prevailing legislation, what documents were required to be submitted. However, she was unable to identify whether or where the legislation

¹ Although the notice of motion also sought costs against the second respondent, the Minister of Justice and Constitutional Development. In argument, counsel conceded that the Minister had been joined only for such interest as he may have had, and that an adverse costs award against him would be inappropriate.

stipulated the documents that had to be produced. That information was freely available to the Master, but not shared with the applicant – even in the face of the current application. For the applicant's part, the papers suggest that he believed the Master had been provided with all the information that she needed, and that all that remained was the formal appointment. It was only after the matter came to Court that the Master identified the outstanding information that she still required. Once it had been submitted, the appointment followed. In the absence of the court proceedings, it is by no means clear when the Master would have provided the requisite guidance to the applicant to enable him to secure his appointment as executor.

9. In the circumstances, I am satisfied that the application was appropriately brought and that, through it, the applicant secured the outcome that he sought. I can see no reason why he should be deprived of the costs of the application.
10. The question is then whether punitive costs are warranted, based on the Master's conduct in the litigation.
11. As I have noted above, the application was instituted on 27 February 2019. On 30 July 2019, the State Attorney, acting on behalf of the Master, wrote a letter to the applicant's attorneys in the following pertinent terms:
 - “2. *We note that you intend approaching the court on 7 August 2019 without complying with the dies applicable to motion proceedings.*
 3. *Be that as it may, my client does not wish to oppose this application, save for the issue of costs.*
 4. *My client further advises that the delay in issuing the letter of executorship was due to the delays by the applicant for failing to address queries raised by the Minister timeously.*
 5. *Should your client abandon the costs order being sought against the respondents, the first respondent will abide the decision of the court and file a masters report.”*
12. On the face of it, the Master (through the State Attorney) offered to issue a report and not to oppose this application if the applicant agreed to forego any costs order

against her office. It appears that the Master was bartering performance of her statutory duties in exchange for a litigation advantage. It was, in my view, not proper for the Master to seek to leverage her powers in this way. Once the Master was satisfied that the application should not be opposed, then she should immediately have taken the necessary steps to procure the applicant's appointment and authorisation as executor. She could not withhold those steps, in the hope of negotiating a better outcome for her office in these proceedings.

13. Ms Mboweni submitted that I should not penalise the Master for the content of the letter because, according to her, the letter was plainly sent without instruction. She drew that inference from the fact that the proffered report could not have been issued even if the applicant had accepted the offer because, as set out above, the Master still required additional documents to secure the applicant's appointment.
14. I do not think that I can draw the inference that Ms Mboweni urges me to make. She asks me to assume serious misconduct on the part of the State Attorney. That is not a conclusion I can lightly reach. Nor is there anything on the papers to suggest that the State Attorney was acting on a frolic of his own. The letter clearly records that the State Attorney had been in contact with the Master and had been given instructions in respect of the matter, and the Master does not claim otherwise in the answering affidavit. There is no factual basis for me to find that the State Attorney was acting without a mandate.
15. But even if the Master did not instruct the State Attorney to offer the bargain that he did, the Master's handling of the matter was delinquent. She was plainly aware of the pending proceedings. A perusal of her files would have revealed that the applicant was incurring the ongoing cost of security, and was thus suffering prejudice as a result of her delayed performance. And it should have been apparent to the Master that she required further documents to finalise the appointment. In those circumstances, the Master ought proactively to have called for the necessary

information from the applicant. It was not reasonable for her to allow the matter to proceed to court on 7 August 2019, to agree on an order on the day (once the applicant had incurred the legal costs for the hearing), and then steadfastly to persist in seeking costs against the applicant as a penalty for exercising his rights.

16. Added to this, I note that even in the face of Mabuse J's order, the Master delayed in the applicant's appointment and in issuing the letter of executorship. Indeed, it was only the applicant's threat of further legal proceedings, made on 31 October 2019, that appears to have triggered the issue of the relevant letter a week later.
17. The Master's litigation conduct has, in my view, been unreasonable and caused the applicant to incur unnecessary costs. It warrants censure by this Court.
18. The Master's counsel finally urged me to consider the administrative load of the Master's office as an explanation for the Master's delays. No evidence in this regard is provided in the Master's affidavit. But, perhaps more importantly, it cannot excuse the Master's failure to adhere to a court order – particularly one that imposed deadlines to which she had agreed.
19. I am satisfied that an award of punitive costs is justified in this case.
20. I consequently make the following order:
 - (a) The first respondent is ordered to pay the costs of the application (including the costs of counsel) on an attorney-client scale.
 - (b) Such costs are to include the reserved costs of the hearing of 7 August 2019, on an unopposed scale.


I GOODMAN, AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Appearances

Counsel for the Applicant:	Adv N Erasmus
Instructing Attorneys:	Laubscher Attorneys
Counsel for the First Respondent:	Adv L Mboweni
Instructing Attorneys	State Attorney, Pretoria
Date of hearing	8 June 2021
Date of judgment	9 June 2021