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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2020/7625

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES
25 AUGUST 2021

In the matter between:

CZOYE CROSSMAN

Applicant

and

THE MASTER OF THE HIGH COURT, JOHANNESBURG

First Respondent

GARETH BEZUIDENHOUT

Second Respondent

TREVOR BOUWER N.O.

Third Respondent

SUSAN STEPHNY PERINGUEY

Fourth Respondent

STEVEN BEZUIDENHOUT

Fifth Respondent

JUDGMENT

DE WET AJ:

1. Trevor Bouwer, N.O. is referred to as the third respondent in the notice of motion whilst in the founding affidavit he is referred to as the second respondent. Gareth Bezuidenhout is referred to as the second respondent in the notice of motion whilst in the founding affidavit he is referred to as the third respondent. In this judgment, Trevor Bouwer, N.O. will be referred to as the second respondent and Gareth Bezuidenhout will be referred to as the third respondent.
2. In this application the applicant approaches the court for an order that:
 - 2.1 the first respondent be ordered to accept the document purporting to be the last Will and Testament of the late Gregory Bezuidenhout (identity number: [...]), who died on 6 July 2019 (“the deceased”), and which was signed on 24 January 2014, of which a copy is annexed to the founding affidavit as “FA2”, as his will for purposes of the Administration of Estates Act, 66 of 1965 (“the Administration of Estates Act”), although it does not comply with all the prescripts of section 4(1) of the Wills Act, 7 of 1953 (“the Wills Act”);
 - 2.2 in terms of section 4A(2) of the Wills Act, the applicant is declared competent to receive a benefit from the will of the deceased;
 - 2.3 the second respondent be removed as executor of the deceased’s estate;
 - 2.4 certain relief in respect of the costs of the application.

3. The third respondent is the deceased's brother, the fourth respondent his mother and the fifth respondent his father.

FACTUAL BACKGROUND

4. The applicant was the deceased's life partner who permanently resided with him from 2009 until the time of his passing on 6 July 2019.
5. The deceased executed a will on or about 24 January 2014.
6. On the day following the deceased's passing the applicant produced a document headed "LAST WILL AND TESTAMENT OF Gregory Bezuidenhout", which document consisted of two numbered pages and which is signed on the second page by the deceased, *qua* testator, the third respondent, Mr Roger William Crossman ("Mr Crossman"), the applicant's father, and the applicant as witnesses. The first page of this document is not signed by any of the persons who signed the second page. A copy of this document is annexed to the founding affidavit as "FA1".
7. On 15 September 2019, the first respondent rejected "FA1" as a consequence of the absence of the required signatures on page 1 thereof, as he was entitled to do, as the document did not comply with the provisions of section 4(1) the Wills Act. I shall refer to "FA1" as the rejected will.
8. On 18 December 2019, the second respondent was appointed as executor of the deceased's estate in terms of Letters of Executorship issued to him under sections 13 and 14 of the Administration of Estates Act.
9. The following issues are to be determined:

- 9.1 Did the deceased intend the rejected will to be his Last Will and Testament;
 - 9.2 In the event that the court finds that the deceased intended the rejected will to be his Last Will and Testament, is the applicant competent to receive benefit from such will;
 - 9.3 Should the second respondent be removed as executor in the estate of the deceased;
 - 9.4 Which party/parties should be liable for the costs of the application.
10. The third to fifth respondents gave notice of their intention to oppose the application and filed answering affidavits in support of such opposition. The second respondent delivered a notice to abide by the decision of the court.
11. The third to fifth respondents raised two points *in limine*:
 - 11.1 The first point *in limine* being that the applicant's founding affidavit did not comply with statutory requirements for a valid affidavit. This point *in limine* was not proceeded with as *inter alia* the applicant delivered a New Signed Founding Affidavit dated 26 August 2020, which cured any possible non-compliance by the applicant of the statutory requirements.
 - 11.2 As second point *in limine* the respondent raised that the applicant brought the application prematurely as the applicant was obliged to take the first respondent's decision to reject the will on review, the first respondent having committed a reviewable irregularity. The respondents did not in their heads of argument nor in argument persist with such point *in limine*. It is accordingly not necessary to consider or

decide the second point *in limine*. In any event, it seems unlikely that the first respondent's decision, which seems to have been arrived at by a simple and correct application of the Wills Act, amounted to a reviewable irregularity.

12. The first issue should be determined with reference to the provisions of the Wills Act. I replicate the relevant sections of the act:

"2 Formalities required in the execution of a will

(1) Subject to the provisions of section 3bis-

(a) no will executed on or after the first day of January, 1954, shall be valid unless-

(i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other person, in the presence also of such other person; and

(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person anywhere on the page;

.....

(3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).”

(own underlining)

13. The applicant contends in her founding affidavit that the deceased informed her that he had decided to prepare a will. She testifies that the deceased came to such decision after the passing of the fourth respondent's life partner during December 2013.
14. The deceased and the applicant had a brief debate about the deceased's proposed will during which he enquired whether she would have any objection should he, the deceased, leave his motorcycle and motorcycling related goods to his brother, the third respondent, who shared his passion for motor cycling. The deceased informed the applicant that the remainder of his estate will be left to her. He further informed that, as he trusted her father, Mr Crossman, he wished to appoint him as the executor of his estate.
15. The deceased told Mr Crossman that he wished him, Mr Crossman, to be the executor of his estate, whereupon it was arranged that the deceased and the applicant would visit her parents' home in Krugersdorp on Friday 24 January 2014 in order to sign the deceased's will.

16. Shortly thereafter the deceased prepared the will, by typing it on his computer. The applicant contended that neither she nor the deceased have formal legal training and that they at the time did not know of or understand the formalities that are required for a will. She suspects that the deceased may have obtained a template of a will from the internet, hence the unusual format of the will.
17. On 24 January 2014, the deceased and the applicant attended at her parents' home. He presented the rejected will, which he had brought with him and requested the applicant and her father to sign it.
18. The applicant and her father signed as witnesses on page 2 of the rejected will in the presence of each other and in the presence of the deceased. These events pertaining to the creation and signing of the rejected will were confirmed by Mr Crossman and not disputed by the respondents.
19. It is common cause that the third respondent appended his signature to page 2 of the rejected will. The applicant cannot recall whether the third respondent was present on 24 January 2014 when she and her father attested to the rejected will or when he appended his signature to the rejected will. The third respondent, notwithstanding having delivered an answering affidavit, inexplicably fails to address this aspect. Nothing turns on it as section 2(1) of the Wills Act requires the signature of the testator and at least two competent witnesses.
20. On page 1 of the rejected will, in paragraph 4 (headed article iii), the deceased bequeaths his motor cycles, motor cycle equipment, tools, protective clothing and other paraphernalia to the third respondent. In paragraph 5 on page 1 (headed article iv) the following appears:

“I devise, bequeath and give all the rest and remainder of my residuary estate as follows:

a 100% to Czoje Crossman.”

21. On the day following the deceased's death, the applicant produced the original rejected will, which was handed to the second respondent on 16 July 2021, and submitted by him to the first respondent who is still in possession thereof.
22. As a consequence of the will being rejected by the first respondent, the applicant approaches this court for the relief sought in paragraph 2 above.
23. The third, fourth and fifth respondents contend that:
 - 23.1 The deceased did not draft the rejected will, particularly page 1 thereof, and neither did he intend it to be his last will and testament. The respondents allege that the first page of the rejected will, being the unsigned page, does not reflect the deceased's wishes and that it was created by the applicant after the deceased had passed away;
 - 23.2 The applicant deleted “SB1” from the deceased's computer with the intention to suppress the deceased's last wishes and in so doing unlawfully benefit from the rejected will thereby defrauding and depriving the third respondent (and ultimately the fourth respondent) of the benefit to which he, and or she, was entitled. “SB1” is the first annexure to the fifth respondent's answering affidavit, a document in terms whereof the deceased bequeathed 100% of the remainder of his estate to the third respondent and which document the third to the fifth respondents contend contains the last wishes of the deceased.

24. As a consequence of the above, the third to fifth respondents argue, the court cannot be satisfied that the rejected will was drafted or executed by the deceased and according the applicant cannot succeed with the relief claimed.

25. The third to fifth respondents, in their answering affidavits, as well as Mr Pottas in argument, relied heavily on *inter alia* the undermentioned facts in support of their contentions that the rejected will does not contain the deceased's last wishes and is not his Last Will and Testament:

25.1 The deceased confided in *inter alia* the fifth respondent and expressed his intense unhappiness at the state of the relationship with the applicant;

25.2 The relationship between the applicant and the deceased was fractious and had deteriorated long before the deceased's passing;

25.3 The applicant's relationship with the deceased could not have been as serious or as committed, as was contended by the applicant, in that:

25.3.1 the applicant was not aware that the deceased and the fourth respondent were the registered owners of the Little Falls property in which they, the applicant and the deceased, resided;

25.3.2 the deceased, contrary to the contentions by the applicant, had no intention of marrying the applicant as he had been disillusioned by the institution of marriage when his marriage failed;

- 25.4 The deceased informed the fourth respondent during April 2015 that the applicant wished death upon him while racing his motorbike;
- 25.5 The deceased often voiced to the third to fifth respondents, his wish to leave the applicant;
- 25.6 The deceased changed the nominated beneficiaries on his Old Mutual Retirement Annuity during January 2019 and his Capital Alliance life insurance policy as well as his Sanlam Provident Fund during approximately May 2020.
26. The deceased, during January 2014 had appointed the applicant as his beneficiary on all three the forementioned. The deceased however did not change the beneficiaries on all his policies and the applicant remained his beneficiary in terms of the Capital Alliance insurance policy, an Old Mutual life policy and 50% of the proceeds of the Old Mutual retirement annuity.
27. In substantiation of the allegations upon which the third to fifth respondents found their opposition, the fifth respondent presented expert evidence to the court in the form of an affidavit by Mr Craig du Plooy ("Mr Du Plooy"), a computer expert.
28. Mr Du Plooy's evidence is as follows:
- 28.1 On or about 30 August 2019 the fifth respondent handed the deceased's computer to Mr Du Plooy, whereafter he conducted a forensic search of the deceased's desktop computer;
- 28.2 Two relevant documents in Microsoft Word format were found on the computer namely:

28.2.1 The rejected will;

28.2.2 a document headed “LAST WILL AND TESTAMENT OF Gregory Bezuidenhout”, of which a copy was annexed as annexure “SB1” to the fifth respondent’s affidavit;

28.3 “SB1” has essentially the same format as the rejected will and is similar in many respects save as set out hereunder. It further runs over to a third page on which provision has been made for the signatures of the deceased *qua* testator and the third respondent, the applicant and Mr Crossman as witnesses. It is not dated. On page 1 in paragraph 4 (headed article iii), the deceased bequeaths his motor cycles, motor cycle equipment, tools, protective clothing and other paraphernalia to the third respondent. However, in paragraph 5 on page 1 (headed article iv) the following appears:

“I devise, bequeath and give all the rest and remainder of my residuary estate as follows:

a 100% to Gareth Bezuidenhout.

b In the event that Gareth Bezuidenhout refuses any of the above, the refused items will be distributed to Czoze Crossman.”

28.4 The meta data pertaining to the rejected will, meta data being information about a particular set of data which can include technical information which is normally hidden from a common computer user, and may include when a document was “Created”, “Last Written” and “Last Accessed”, indicates:

- 28.4.1 The rejected will was found in the recycle bin, which means that the rejected will was deleted;
- 28.4.2 The rejected will was Created in the recycle bin on 10/07/2019 being 7 October 2019 at 11h50 AM. The Created date indicates the date upon which the rejected will was deleted;
- 28.4.3 The rejected will was Last Accessed (or when the document was last opened) on 10/29/2019 being 29 October 2019 at 10:51 AM;
- 28.4.4 The rejected will was Last Written (or when the document was last amended or changed) on 7/11/2018 being 11 July 2018 21:30 PM.
- 28.5 The document path for the rejected will is "D:\\$RECYCLE.BIN\S-1-5-21-2894948493-1492537945-3481837875-1003\RDZ9W7X.docx".
- 28.6 The meta data pertaining to "SB1", indicates:
 - 28.6.1 "SB1" was found in the Recycle Bin, which means that "SB1" had been deleted;
 - 28.6.2 "SB1" was Created in the recycle bin on 06/21/2019 being 21 June 2019 at 19h51 PM. The Created date in this instance records the date upon which "SB1" was deleted. However, on a proper reading of the printout of the meta data which was attached to Mr Du Plooy's affidavit, the date is 14 June 2019 and not 21 June 2019. Nothing turns on this discrepancy;

28.6.3 “SB1” was Last Accessed (or when the document was last opened) on 06/10/2019 being 10 June 2019 at 11:38 AM;

28.6.4 “SB1” was Last Written (or when the document was last amended or changed) on 06/10/2019 being 10 June 2019 at 11:38 AM.

28.7 The document path for “SB1” is “C:\\$RECYCLE.BIN\S-1-5-21-2894948493-1492537945-3481837875-1003\Greg\Last Will and Testament.docx”.

29. Mr Du Plooy records that there was an attempt to permanently delete the files from the recycle bin between 08:38 am and 10:53 am on 29 October 2019, being one day prior to the fifth respondent collecting the deceased’s computer from the applicant.
30. The fifth respondent, in his answering affidavit contends that the first page of the rejected will does not reflect the deceased’s last wishes, it was not drafted by the deceased and neither signed by him.
31. It is common cause that the deceased did not sign the first page of the rejected will. As a consequence of the deceased’s failure to sign page 1 of the rejected will the first respondent rejected the will on 15 September 2020 and the applicant approached the court for the relief herein.
32. However, the evidence of the fifth respondent goes further and contends that the first page of the rejected will was fraudulently created by the applicant on 10 July 2019, after the deceased passed away. He is supported in this contention by the third and fourth respondents.

33. This contention is not supported by the evidence of Mr Du Plooy or any other evidence. On a correct reading and understanding of the expert's evidence, and particularly the manner in which he noted the relevant dates in his report, the rejected will was Last Accessed, meaning last opened on 29 October 2019, Last Written, thus amended, on 11 July 2018, being almost a year prior to the deceased's death, and was Created in the recycle bin, thus deleted, on 7 October 2019. I pause to state that a document that has been created in the recycle bin, thus deleted, may notwithstanding it having been deleted, still be opened in the recycle bin.
34. The finding of Mr Du Plooy that the second copy of the will, to wit Appendix _B to his report was last amended on 11 July 2018, almost a year prior to the deceased's passing, and deleted on 7 October 2019, after the passing of the deceased, is significant. Appendix _B is identical to the rejected will save for the spacing of the words SELF-PROVING AFFIDAVIT. On the rejected will the words appear at the top of the second page whilst on Appendix _B the words appear at the foot of the first page. The uncontested evidence of Mr Du Plooy thus confirms that the rejected will appeared on the deceased's computer and was last amended almost a year prior to his passing.
35. Save for the allegations of the third to fifth respondents, which are not supported by their expert witness, there is no evidence before the court on which it could be found that the applicant had fraudulently created page 1 of the rejected will as contended by the third to fifth respondents.
36. It is common cause that "SB1" was Last Accessed, meaning last opened, on 10 June 2019, Last Written, being last amended, on 10 June 2019, almost four full weeks prior to the deceased's death, and shortly thereafter deleted.
37. Mr Pottas, for the third to fifth respondents, argued that the application should fail as a consequence of the numerous disputes of fact. Relying on the

principles enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* and *Airports Company South Africa Ltd v Airport Book Shops t/a Exclusive Books*¹ he submitted that the court should accept the third to fifth respondents' versions insofar as a dispute of fact exists, and determine the application on the admitted facts placed before the court by the third to fifth respondents; provided that such versions are not farfetched, not credible or implausible, which he contended was not the case.

38. Mindful of the dicta in the authorities referred to above, the issues herein are determined by taking into account the facts that are common cause on the papers.

39. Mr Pottas urged the court to find that "SB1" contained the last wishes of the deceased. He submitted that the deceased had saved "SB1" in such a manner as to enable any person who would, upon his death, access his computer to readily find the document by following a very clear document path that in itself guided such person to "SB1". The document path was, as appears from the printout of the meta data, annexed to Mr Du Plooy's report as follows:

"C:\Users\Office\OneDrive\Documents\Greg\Personal Details in Case of Death\Greg\Last Will and Testament.docx".

40. Mr Pottas argued that it was accordingly clear that the "SB1" records the deceased's last wishes, it having at some stage been saved on his computer in a file named "Personal Details in Case of Death".

¹ 1984 (3) SA 624 (A) and 2017 (3) SA 128 (SCA) respectively

41. This contention, however, is not supported by the evidence of Mr Du Plooy. It is undisputed that “SB1” was deleted from the computer during June 2019, irrespective of whether it was deleted on 14 June 2019 or 21 June 2019, as both dates predate the passing of the deceased by a couple of weeks.
42. The applicant denies the third to fifth respondents’ allegations of wrongdoing. The applicant in reply admits that she had deleted documents from the deceased’s computer and explains that she did so in an attempt to better organise the contents thereof, as files, which were lost as a consequence of a virus, were restored by a computer expert, one Brett, resulting in duplication of numerous such files. The applicant further admits that she deleted “SB1” on 29 October 2020.
43. Mr Vorster, for the applicant, submitted that it is clear from the uncontested evidence that the deceased created a will during January 2014, which he printed, signed on page 2 and presented to the applicant and her father to sign as witnesses in his presence, which they did whist together at Mr Crossman’s home.
44. Mr Vorster further submitted that the conduct of the deceased in January 2014 regarding his will is in stark contrast with his conduct in relation to “SB1”. The deceased, having previously made and executed a will, albeit not in full compliance with all the formal requirements of section 2(1) of the Wills Act, created a document, “SB1”, on his computer, failed to print such document and further failed to sign it and have his signature witnessed by two witnesses in his presence and the simultaneous presence of the witnesses. On 14 June 2019, the deceased deleted the document. There is no acceptable evidence before the court to suggest any person other than the deceased deleted “SB1”.
45. The third to fifth respondents urged the court to find that the conduct of the deceased in changing the beneficiary on his life policy, his Provident Fund and

his retirement annuity during January 2019 and May 2019, unequivocally demonstrates that the deceased had the intention to amend his will, disinherit the applicant and nominate the third respondent as his sole heir. The third respondent stated that to his knowledge, the deceased wished to leave his entire estate to him, the third respondent, so as to enable him to look after their mother, the fourth respondent. He disclosed that the deceased intended to do so rather than to appoint the fourth respondent as sole beneficiary of his estate as she has a son from a subsequent marriage who is a drug addict. In so doing, the deceased would protect the fourth respondent from being deceived into giving this son funds. There is no explanation in the papers before court to suggest why the deceased implemented the changes to his life policy, Provident Fund and retirement annuity, but failed to execute “SB1” as his Last Will and Testament, had it been his intention to do so.

46. Significantly, the third to fifth respondents do not seek to have “SB1” declared the Last Will and Testament of the deceased. On the evidence before me, this is not surprising.
47. “SB1” provides for the signature of the document by the deceased, *qua* testator, as well as the witnesses, still identified as the applicant, Mr Crossman and the third respondent. “SB1”, in the format in which it was on the computer prior to it being deleted during June 2019, was nothing other than a document on a computer which had not been finalised, printed, signed or attested to as is required by section 2(1) of the Wills Act.² It is not suggested that the deceased had a full understanding of all the requirements of the Wills Act, but the deceased had created the rejected will during 2014 and he thus knew, as is demonstrated by his conduct at the time, that a will must be signed by the testator and witnesses.

² See *Kotze v Die Meester & Andere* 1998 (3) SA 523 (NC) at p 319

48. The third to fifth respondents submit that the applicant bears the onus to satisfy the court on a balance of probabilities that the deceased intended the rejected will to be his last wishes. For this submission Mr Pottas relies on the Full Bench decision in *Ex Parte Williams: In re Williams' Estate* ³. In that matter the court held that section 2(3) of the Wills Act was promulgated to ameliorate the hardships and injustice occasioned when there was not compliance with all the requirements of section 2(1) of the Wills Act. The court reaffirmed the sanctity of the testator's last wishes. It held that this purpose had to be served within the framework of three requirements of section 2(3) of the Wills Act, being the existence of a document, drafted or executed by a person who had died since the drafting or execution of the document and that the deceased intended the document to be his will.
49. This test was confirmed by the Supreme Court of Appeal in *Van Wetten & Another v Bosch & Others*. ⁴
50. Both parties referred to and relied on the principles enunciated in *Van Wetten supra* in support of their respective cases. In that matter the Supreme Court of Appeal held:
- "Section 2(3) of the Wills Act is clear: the court must direct the Master to accept the document in issue as a will once certain requirements are satisfied. First, the document must have been drafted or executed by a person who has subsequently died. Second, the document must have been intended by the deceased to have been his or her will."*
51. The court herein must determine whether the rejected will was the Last Will and Testament of the deceased. It is not called upon to make any determination on the status of the deleted "SB1". Accordingly, the authority upon which the third

³ 2000(4) SA 168 (T) at 179 A

⁴ 2004 (1) SA 348 (SCA)

to fifth respondents rely, being *Macdonald and Others v The Master and Others*⁵ does not find application, notwithstanding that “SB1” is a document found on the deceased’s computer.

52. The third to fifth respondents in referring to the existence and contents of the deleted “SB1” to persuade the court that the rejected will was not the deceased Last Will and Testament, are not mindful of the test clarified by the Supreme Court of Appeal in paragraph [21] of the Van Wetten judgement.
53. In order to determine the question as to whether the rejected will was the deceased’s Last Will and Testament the following two requirements need to be met:
 - 53.1 The document must have been drafted or executed by the deceased;
 - 53.2 The document must have been intended by the deceased to be his will at the time when it was drafted.
54. The evidence of the applicant is that the parties started to cohabit in 2009 and during or about October 2009 they moved into a home which was purchased by the deceased *inter alia* with the financial assistance of the applicant’s father.
55. The applicant’s uncontested evidence is that the deceased decided to execute a will subsequent to the life partner of the fourth respondent passing away during December 2013, that she and the deceased debated the intended will, whereafter the deceased prepared the rejected will by typing it on his computer, probably by using a template from the internet, which explains the format of both the rejected will and “SB1”. On 24 January 2014, the deceased and the applicant attended at the home of her parents with the purpose of having the

⁵ 2002 (5) SA 64 (O)

rejected will signed. The applicant's version of the events is confirmed by Mr Crossman.

56. In accepting the evidence of Mr Du Plooy I find that the allegations of fraud by the third to fifth respondents are unfounded and that the rejected will was not created by the applicant, as contended by them, on 10 July 2019, some four days after the passing of the deceased.
57. The third to fifth respondents counsel submitted that on considering the facts and circumstances that existed towards the latter part of the deceased's life, much of which is disputed, and which include *inter alia* the fractious and unhappy relationship between the applicant and the deceased, the fact that the deceased during 2019 changed the beneficiary on his life policy, retirement annuity and Provident Fund, the specific layout and wording of the rejected will and the existence of "SB1" it is clear that the deceased had changed his mind and that he intended leaving his entire estate to the third respondent.
58. In *Van Wetten supra*, the Supreme Court of Appeal held that such factors as those upon which the third to fifth respondents seek to rely for the submission that the deceased had changed his mind and intended, as is recorded in "SB1", that the third respondent should be the sole beneficiary of his estate are not relevant in determining what the deceased's intention was at the time of writing the rejected will. Subsequent conduct, such as what is relied upon by the respondents herein is only relevant in so far as it throws light on what was in the mind of the deceased at the time of writing the rejected will.⁶
59. I am accordingly not persuaded that the events and facts which took place a considerable time after the rejected will was executed, as well as the existence of "SB1" on the deceased's computer, have any relevance in determining

⁶ *Van Wetten supra* at par 21 and the authorities referred to therein.

whether the deceased, during January 2014 when he created the rejected will, intended the rejected will to be his will.

60. The test as enunciated by the Supreme Court of Appeal in matters of this nature is clear and is twofold:

60.1 The document must have been drafted or executed by the deceased;

60.2 the document must have been intended by the deceased to have been his will.

61. The court in *Van Wetten supra* confirmed the meaning of the phrase “*drafted or executed*” as clarified in *Bekker v Naude & Andere* ⁷ in which the court held that the document must have been created by the deceased personally.

62. I am, on having examined the rejected will and its contents, and in taking all the evidence into account, satisfied that the rejected will, both pages 1 and 2, was created by the deceased during January 2014 and that he in doing so intended the rejected will to be his will.⁸

63. The second issue that must be determined is whether the applicant, having attested to and signed the rejected will as witness, is competent to receive any benefit from the will.

64. In this regard, section 4A of the Wills Act is relevant:

“4A. Competency of persons involved in execution of will

⁷ 2003 (5) SA 173 (SCA)

⁸ See *Westerhuis and Another v Westerhuis and Others* 2018 ZAWCHC 84 at [50].

(1) *Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.*"

(2) *Notwithstanding the provisions of subsection (1)—*

(a) *a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will.*"

(own underlining)

65. There is, considering the evidence of Mr Du Plooy, no merit in the contention of the third to fifth respondents that the applicant committed fraud by creating the first page of the contested will after the deceased passed away.
66. There is further no evidence of any nature before the court, and neither is it the third to fifth respondents' case, that the deceased was unduly influenced by the applicant when he created the rejected will during January 2014.⁹
67. The evidence of the applicant is that the rejected will was created by the deceased after debate between them. The deceased then contacted Mr Crossman and informed him that he wanted him, Mr Crossman, to be the executor of his estate. Thereafter he, the deceased, typed the rejected will on his computer. The deceased, in accordance with an arrangement with the

⁹ Blom & Another v Brown & others 2011 (3) All SA 223 (SCA)

applicant's parents attended at their home where the rejected will was signed. There is nothing before the court to suggest that the applicant unduly influenced the deceased when he, the deceased, created the rejected will.

68. The court is accordingly satisfied that the applicant did not defraud or unduly influence the deceased in the execution of the rejected will.
69. The final issue to be considered is the applicant's quest to remove the second respondent as executor. In terms of section 54(1)(a) of the Administration of Estates Act, an executor may at any time be removed from his office for any reason other than the reasons contained in section 51(1)(a)(i) to 51(1)(a)(iii), if the court is satisfied that it is undesirable that the executor should act as such in the estate concerned.
70. The applicant will, in terms of the rejected will, be the principle beneficiary in the estate of the deceased.
71. Subsequent to the deceased's passing away his family nominated the second respondent to assist with the deceased's estate and arranged a consultation for such purpose. The consultation was held on 16 July 2019 and was *inter alia* attended by the second respondent, the applicant, Mr Crossman and the third to fifth respondents. Mr Crossman handed the original rejected will to the second respondent during this consultation. The applicant understood, at the time, that the second respondent would assist Mr Crossman in administering the estate of the deceased.
72. A second meeting was held between the second respondent and Mr Crossman on 25 July 2020 during which meeting information and certain documents were handed to the second respondent.

73. A third meeting was held on 20 September 2019, which meeting was attended by the second respondent, the applicant and Mr Crossman. The second respondent informed the applicant and Mr Crossman that, as a consequence of the rejected will being invalid, the estate was intestate and the family could nominate an executor.
74. The second respondent provided guidance and advice to the applicant during the meetings on 16 July 2019, 25 July 2019 and 20 September 2019. The applicant feels aggrieved that the second applicant at no stage advised her that she could approach the court for an order declaring the rejected will valid.
75. The second respondent further only informed the applicant of his appointment as executor on 17 February 2021 after two letters had been addressed to him by the applicant's former attorney, seeking information and clarity on matters pertaining to the administration of the deceased's estate
76. The applicant states that she has no trust in the second respondent. The applicant's distrust of the second respondent is understandable.
77. The applicant brought this application for the relief herein on or about 4 March 2020. The third to fifth respondents appointed Bouwer Cardona Incorporated as their attorneys of record, in which firm the second respondent has a direct interest.
78. On 26 March 2021 Bouwer Cardona Incorporated delivered the second respondent's notice to abide. There is no opposition from the second respondent to the relief sought in respect of his removal as executor in the estate of the deceased.

79. The third to fifth respondents oppose the removal of the second respondent as executor.
80. On considering the development of the matter and the fact that the third to fifth respondents are represented herein by Bouwer Cardona Incorporated, the court is satisfied that it is undesirable that the second respondent should act as executor in the estate of the deceased.
81. Consequently, I make the following order:
1. The Master of the High Court, Johannesburg is ordered to accept the document, headed the “Last Will and Testament of the Late Gregory Bezuidenhout (Identity number: [...]) who died on 6 July 2019, and which was signed on 24 January 2014, of which a copy is annexed to the founding affidavit as “FA1”, as his will for the purpose of the Administration of Estates Act, 66 of 1965, estate number [...] with the Master of the High Court, Johannesburg;
 2. The applicant is declared, in terms of section 4A(2) of the Wills Act, 7 of 1953, to be competent to receive a benefit from the will of the late Gregory Bezuidenhout;
 3. Trevor Bouwer is removed as executor of the deceased estate of Gregory Bezuidenhout;
 4. The third respondent, fourth respondent and fifth respondent shall pay the costs of the application, jointly and severally with the deceased estate of Gregory Bezuidenhout.

A. DE WET

*Acting Judge of the High Court
Gauteng Local Division, Johannesburg*

Heard:	17 August 2021
Judgment:	26 August 2021
Applicant's Counsel:	Adv. J Vorster
Instructed by:	Magda Kets Attorneys
Respondent's Counsel:	Adv. R Pottas
Instructed by:	Bouwer Cardona Incorporated Attorneys