

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, BHISHO)**

Case No. 567/2021

In the matter between:

NTOMBOMZI RENET NGXUMALI - THOMAS First Applicant

NTOMBOMZI RENET NGXUMALI – THOMAS N.O

(in her capacity duly appointed as the executrix

in the estate late Mr MBULELO THOMAS) Second Applicant

and

NOMPHELO COKWANA

First Respondent

MASTER OF THE HIGH COURT

Second Respondent

**JUDGMENT IN RESPECT OF
APPLICATION FOR POSTPONEMENT**

HARTLE J

[1] The applicant, both in her personal capacity as well as in her capacity as Master's representative appointed pursuant to the provisions of section 18 (3) of

the Administration of Estates Act, No. 66 of 1965, brought an urgent application in which she seeks to interdict the respondents from “unlawfully nullifying” her civil marriage to the late Mbulelo Thomas (“the deceased”); declaring that the first respondent’s claimed customary law marriage to the deceased be nullified; that the letters of authority issued to her by the second respondent on 21 February 2021 pursuant to which she was authorized to take control of the assets of the deceased be confirmed as valid; that the first respondent be interdicted from interfering with her proper administration of the estate; and that an unsigned will of the deceased (that has recently come to the fore and in which she has ostensibly been nominated by the deceased as executor) be “condoned” and deemed to be the intended last will of the deceased.

[2] The applicant also seeks a costs order “in the event of opposition”.

[3] At the hearing of the matter, it appeared that the Master’s report required in terms of the provisions of rule 6 (9) in “every application to court in connection with the estate of any person deceased” was not provided, whereas he was served with a copy of the application on 22 July 2021.

[4] Although the applicant appears on the face of it to be seeking far-reaching relief concerning matters of status and a declarator regarding the unsigned copy of the deceased’s will, the real essence of the applicants’ complaint and the immediate urgency contended for in the application stem from an informal email from an estate controller of the Master’s office dated 12 July 2021 which provides that:

“You are kindly requested to return the original letters of Executorship that were issued to Ntombomzi Renet Thomas. The marriage between the deceased and your client is null and void because at the time he contracted the second marriage he was still married to the first wife and their marriage is in community of property.

We are expecting to receive those letters within 7 days. Should you fail to comply with our lawful request we will have no other option but to issue fresh Letters of Executorship to the first wife.”

[5] It is not hard to see why this should have caused the applicants concern, especially since the Master has accepted the allegation of a competitor for the office of executor that the first applicant’s marriage to the deceased on 28 March 2013, vouched for by acceptable proof issued by the Department of Home Affairs, is “null and void” and that the first respondent’s claimed customary law marriage to the deceased should instead prevail.

[6] Even assuming a valid ground, it is not apparent that the Master has followed the prescribed procedures outlined in section 54 of the Administration of Estates Act for the first applicant’s removal from office or for the revocation of his authority for her to take control of the deceased’s estate on the basis provided for in section 18 (3), or on what information his estate controller has based her “lawful request” to the applicant to return the letters of authority to him.

[7] Mr. Nomvete, who appeared for the applicants, recognized that the Master’s report was vital to get to the bottom of the matter and requested this court, instead of determining the application finally on the papers as they presently stand, to instead postpone the matter and direct the Master to furnish his report.

[8] Ms. Van Vuuren, who appeared for the first respondent, vociferously opposed the application for postponement (which was made from the bar) and submitted that I should instead strike the application from the roll with a

punitive costs order against the first applicant for want of urgency, alternatively dismiss the application as being without merit.

[9] The first respondent claims that she was married to the deceased by customary law and that this marriage was not dissolved by a decree of divorce. Notably she has not alleged that the marriage was registered under the Recognition of Customary Marriages Act, No. 120 of 1998, but that is neither here nor there as she can still do so. Confusingly the parties have put up a copy of an abridged marriage certificate recording the first respondent's marriage to the deceased at the Magistrate's Court, Mdantsane (under the then Republic of Ciskei) on 8 February 1985.

[10] That such a civil marriage appears on the face of the document to have been concluded (as opposed to a customary marriage) is confounded by the fact that the Department of Home Affairs found no record of an existing marriage when the first applicant married the deceased in 2013. Further, it appears from a deeds search concerning the immovable property forming part of the deceased's estate, that when he acquired this, before his marriage to the first applicant, that he did so as an "unmarried" person.

[11] Self-evidently competing claims to a marriage with the deceased have been made. This in itself is a significant event with its own consequences. There are also children involved and a suggestion by both the first applicant and the first respondent that the estate of the deceased might be subject to customary law. This may require the devolvement of the deceased's estate in accordance with the provisions of the Reform of Customary Law of Succession and Regulation of Related Matters Act, No. 11 of 2009, read together with the Intestate Succession Act, No 81 of 1987.

[12] All of this demonstrates overwhelmingly the need to obtain a proper report from the Master so that the competing claims of the spouses can be properly assessed and appropriately dealt with. No doubt a proper investigation will reveal what further review or declaratory relief may be necessary for the proper administration of justice. I am therefore not inclined to dismiss the main application but to accede to the applicants' request for a postponement to direct the Master to furnish the necessary report.

[13] Since it is uncertain whether the second applicant's letters of authority have in fact been revoked or replaced by the "fresh letters of executorship to the first wife", it appears unnecessary at this time to issue any interdictory relief.

[14] In the result I issue the following order:

1. The application is postponed *sine die*.
2. The Master is directed pursuant to the provisions of Uniform Rule 6 (9) to furnish a report to the court for its assistance within fifteen (15) days.
3. A copy of this judgment and order is to be served on the Master together with a copy of the first respondent's opposing papers.
4. The costs are reserved.

B HARTLE

JUDGE OF THE HIGH COURT

DATE OF HEARING: 5 August 2021

DATE OF JUDGMENT: 6 August 2021*

*Judgement delivered electronically to the parties by email on this date.

APPEARANCES:

For the applicants: Mr. Nomvete of Nomvete Luwaca Inc., East London (ref. Mr. Nomvete).

For the first respondent: Ms. Van Vuuren instructed by Stirk Yazbek, East London (ref. A James).