

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

Case No.: 1784/2015

In the matter of:

DAVID BOTHA BEKKER N.O.

Applicant

and

MATHOTO ADELINE MAZIBUKO

1st Respondent

(Id no:)

MMAMOKETE MARIA MOKOENA

2nd Respondent

JAN MOKOENA

3rd Respondent

MMAMOKETE MARIA MOKOENA NO

4th Respondent

(in her capacity as representative in the estate
Of late BENJAMIN MAZIBUKO)

MOKETE ISAK MAZIBUKO

5th Respondent

MAMOKOENA MARTHA MAZIBUKO

6th Respondent

MASTER OF THE HIGH COURT,

BLOEMFONTEIN

7th Respondent

REGISTRAR OF DEEDS

8th Respondent

JUDGEMENT:

MOKOENA, AJ

HEARD ON:

13 AUGUST 2015

DELIVERED ON:

18 AUGUST 2015

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- [1] The applicant is the executor of the estate of the late Malefane Jacob Mazibuko (“the deceased”) having been appointed by letters of executorship issued on the 3 September 2009 by the Master of the Free State, High Court.

- [2] The applicant seeks an order:
- (a) directing the 1st respondent to sign within seven days from the date of granting the order any and all documents necessary for the transfer of the immovable property more fully described as 796 Phutaditjhaba N, district Harrismith, Free State Province held by TG30511/2000 in terms of the First and Final Liquidation and Distribution Account in the estate of the late Malefane Jacob Mazibuko to the first and sixth respondents.
 - (b) that in the event that the 1st respondent fails to comply with paragraph (a) above the Registrar of the Free State High Court, Bloemfontein, be authorised and directed to sign any and all documents necessary for the transfer of the property on behalf of the 1st respondent.
 - (c) that the eight respondent be authorised to, upon receipt of the documents referred to in paragraphs (a) and (b) above as well as any and all documents required in terms of the Deeds Registries Act, 47 of 1937, transfer the property and/or endorse the deed of grant of the property to give effect to the contents and inheritance in respect of the property as set out in the First and Final Liquidation and Distribution Account, as well as the provision of the Administration of Deceased Estates Act, 66 of 1965 and the Deeds Registries Act, 47 of 1937.
 - (d) that the 1st respondent be ordered to pay the costs of the application and in the event that the application is

opposed by any other respondent that such respondent be ordered to pay the costs of the opposition jointly and severally with the 1st respondent.

- [3] The 1st respondent opposes the application whilst the second, fourth and fifth respondents support the relief sought. The 1st respondent opposes the application on the basis that she has terminated the applicant's mandate and that the applicant refuses to resign as the executor of the estate.

THE FACTUAL BACKGROUND

- [4] The deceased passed away on the 7 May 2006 and the immovable property being the subject matter of this application was and still remains registered in the name of the deceased.
- [5] The deceased did not have a will and his estate had to be administered in terms of the Intestate Succession Act, Act 81 of 1989.
- [6] The deceased was the brother of the first, second and fifth respondents as well as Benjamin Mazibuko who passed away on the 2 February 2008.
- [7] The estate of the late Benjamin Mazibuko is presently being administered by the fourth respondent in terms of a letter of authority issued on the 20th May 2014 by the master of the High Court of the Free State.

- [8] The sixth respondent is married in community of property to the fifth respondent.
- [9] The third respondent is married in community of property to the second respondent.

COMMON CAUSE

The following facts are common cause:

- [10] The applicant was appointed as executor by letter of executorship issued on the 3rd September 2009 by the Master of the Free State High Court.
- [11] The first, second, third, fourth, fifth and sixth respondents are the lawful beneficiaries in terms of the First and Final Liquidation and Distribution Account in the estate of the late Malefane Jacob Mazibuko.
- [12] The First and Last Distribution Account in the estate of the late Malefane Jacob Mazibuko laid for inspection for a period of 21 days from 2 September 2011 to 3 October 2011 at the offices of the Master of the Free State High Court and the Magistrate's Court Phuthaditjhaba where the deceased was resident at the time of his death.
- [13] The first respondent refuses to sign the necessary documents to give effect to the Final Liquidation and Distribution Account and to transfer the property to the

heirs. The other heirs, being the second to sixth respondents have already signed the necessary documents.

THE ISSUES

[14] The issues to be determined is whether or not the applicant's mandate, as a matter of law, has been terminated by the first respondent.

[15] In the event of it being held that the applicant's mandate has not, as a matter of law, been terminated, then the further issue arising is whether, as a matter of law, the applicant as the executor, is obliged to transfer the immovable property to the first to sixth respondents.

THE ARGUMENTS

[16] Counsel for the applicant disputed the contention that the applicant delayed the finalisation of the estate and argued that the first respondent does not have a defence against the relief sought. He argued further that although the first respondent takes issue with the fact that the applicant did not resign as an executor, (a) the applicant is duly appointed as executor by the Master of the High Court, (b) there are no lawful grounds advanced by the first respondent for the applicant's resignation or substitution as executor, (c) it is not for the first respondent to terminate the applicant's "mandate" as executor as the applicant was appointed by the Master of the High Court and can only be removed and substituted by the said Master. Counsel for

the applicant submitted that the first respondent does not deny or take issue with the fact that:

- (a) the applicant was appointed as executor to administer the deceased's estate;
- (b) the deceased's estate has to be administered in terms of the Intestate Succession Act, Act 81 of 1987;
- (c) the first, second and fifth respondents are to inherit, in equal shares, the assets of the deceased's estate;
- (d) the First and Final Liquidation and Distribution Account was drafted and prepared by the applicant during May 2011;
- (e) the applicant is, in terms of the provisions of section 35(1) of the Administration of Estates Act, Act 66 of 1965 ("the Act") obliged to pay the creditors in the estate and distribute the estate amongst the heirs in accordance with the account;
- (f) the applicant is obliged to, in terms of section 39 of the Administration of Estates Act, cause the property to which the heirs, being the first, second, fourth and fifth respondents are entitled to, be registered in their names.

[17] Counsel for the first respondent argued that the applicant's mandate was terminated due to undue delays in administering the estate and that the applicant is not entitled to register the transfer of the immovable property on behalf of first respondent to the sixth respondent.

- [18] Counsel for the first respondent also submitted that the fifth respondent suffers from mental illness and is not in a position to comprehend the nature of these proceedings. This allegation was not supported by medical evidence and will not be taken any further for purposes of this judgment.

ANALYSIS OF THE ISSUES

- [19] In determining the first issue whether or not the applicant's mandate, as a matter of law, has been terminated by the first respondent, it is apposite to mention the statutory provision relevant to the removal of an executor. Section 54 of the Administration of Estates Act, Act 66 of 1965 ("the Act") read as follows:

“(1) An executor may at any time be removed from his office –

(a) by the court –

(i) – (v)...

(b) by the Master -

(i) – (vi) ...

(2) ...

(3) ...

(4) ...

(5) Any person who ceases to be an executor shall forthwith return his letters of executorship to the Master.”

- [20] In *casu*, the applicant has not been removed as an executor in terms of section 54 of the Administration of Estates Act by either the court or the Master and thus he remains the executor of the estate.

[21] Accordingly, the first respondent's purported cancellation of the applicant's mandate as the executor is of no legal effect and her assertion that the applicant is not entitled to the relief sought is rejected.

[22] Having reached the conclusion that the applicant's mandate has not been terminated, it follows that the applicant, as the executor, is obliged to transfer the immovable property to the first to sixth respondents in terms of section 39(1) of the Administration of Estates Act, Act 66 of 1965 ("the Act") which reads as follows:

"(1) An executor shall, subject to the provisions of subsections (2) and (3), the Deeds Registries Act, 1937 (Act 47 of 1937) cause immovable property (including, in the case of a massed estate, any such property forming) part of the share of the survivor or survivors of the estate) to which an heir is entitled according to a distribution account, to be registered in the name of the heir, subject to any rights and conditions affecting such property."

[23] I accordingly make the following order:

1. The first respondent is ordered to sign within seven days from the date of granting this order any and all documents necessary for the transfer of the immovable property more fully described as 796 Phuthadjithaba N, district Harrismith, Free State Province held by TG30511/2000 in terms of the First and Final Liquidation and Distribution Account in the estate of the late

Malefane Jacob Mazibuko to the first to sixth respondents.

2. In the event that the first respondent fails to comply with paragraph (1) above, the Registrar of the Free State, High Court, Bloemfontein is authorised and directed to sign any and all documents necessary for the transfer of the property on behalf of the first respondent.
3. The eight respondent is authorised to, upon receipt of the documents referred to in paragraphs (1) and (2) above as well as any and all documents required in terms of the Deeds Registries Act, 47 of 1937 to transfer the property and/or endorse the deed of grant of the property to give effect to the contents and inheritance in respect of the property as set out in the First and Final Liquidation and Distribution Account, as well as the provisions of the Administration of Deceased Estates Act, 66 of 1965 and the Deeds Registries Act, 47 of 1937.
4. The first respondent is to pay the costs of this application.

R. MOKOENA, AJ

On behalf of the applicant: Adv. C. D. Pienaar
Instructed by:
Phatshoane Henney Inc.
BLOEMFONTEIN

On behalf of the respondents: Mnr. M. J. Ponoane
Instructed by:
Ponoane Attorneys
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