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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

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| (1) NOT REPORTABLE |
| (2) NOT OF INTEREST TO OTHER JUDGES |

CASE NUMBER: 26645/2021

In the matter between:

LUCKY JOHANNES MNGOMEZULU

Applicant

and

VUKILE MNGOMEZULU

1st Respondent

CAMERON MADODANA FIHLA

2nd Respondent

PENDULWA FIHLA

3rd Respondent

REGISTRAR OF DEEDS

4th Respondent

NEDBANK LIMITED GROUP

5th Respondent

MASTER OF THE HIGH COURT

6th Respondent

Delivered: 13 May 2024 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines*

and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 13 May 2024

Summary: Wills and Estates – forgery – applicant contending that the signature on the Will was forged. Applicant failing to discharge the burden of establishing forgery or fraud. Reliance on a report by handwriting expert inadequate where no affidavit produced by expert and documents relied upon by expert are not proven.

JUDGMENT

Turner AJ

[1] Ms NA Mngomezulu (“Ms Mngomezulu”) owned Erf 6[...] E[...] Township (“the Property”) before she passed away on 13 June 2011.

[2] Ms Mngomezulu had five children, who I will refer to by their first names: Lucky Johannes (the applicant); Goodman; Barnabas; Patrick; Thandi; and Mandla. All of Ms Mngomezulu’s children are deceased except the applicant. Thandi survived her mother and passed away on 24 January 2020 leaving her son, Vukile (the first respondent).

[3] The second and third respondents, who are married in community of property, are currently the registered owners of the Property. They acquired the Property in terms of a Deed of Transfer registered by the Registrar of Deeds at Pretoria dated 29 May 2020. The Deed of Transfer records that the seller was the “*Executor in the Estate Late Ms Nxothwase Alice Mngomezulu*”, represented on the Deed by an attorney Ms Sehlielo Annah Tusso of Tusso Attorneys in Kempton Park. The Deed records that the Property was sold to the second and third respondents on 6 March 2020 for a purchase price of R750,000.

[4] The dispute in this matter centres around a document dated 26 April 2011 which purports to be the Last Will and Testament (the “Will”) of Ms Mngomezulu. The

Will purports to have been signed by Ms Mngomezulu and two witnesses and was lodged with the Master of the High Court; it bears the Master's stamp dated 28 February 2012. The relevant terms of the Will included:

- "4. I bequeath my immovable property 6[...] E[...] Section, T[...] to my daughter-in-law Thandi Mngomezulu (identity number 65[...]) or, failing her, to my grandchild Vukile Mngomezulu.
- 5. I bequeath the residue of my estate to my grandchild Vukile Mngomezulu (born 30 June 1987) or failing him to my daughter-in-law
- 7. I nominate Nedbank Group Limited ... to be the executor of my estate ..."

[5] The applicant contends that the Will is not valid and that the signature of Ms Mngomezulu on the Will is forged. He asks that the Will be declared invalid and set aside. The applicant contends that two further consequences flow from this primary relief, namely: (1) as the only surviving biological child of Ms NA Mngomezulu, he is entitled to benefit from his mother's estate by virtue of being her biological son; and (2) the sale and transfer of the Property to the second and third respondents should be set aside because it was sold on the premise that the Will was valid.¹

[6] The Registrar of Deeds is cited as the fourth respondent; the Master of the High Court, Johannesburg is cited as the fifth respondent; and Nedbank Limited Group is cited as the sixth respondent. None of the first, fourth, fifth or sixth respondents has participated in the proceedings.

[7] In the applicant's heads of argument and in his oral submissions, the applicant relies repeatedly on the oft-stated *maxim* that "*fraud unravels all*"². However, the applicant does not spend any time on the related *dicta* that "*fraud is not likely inferred*".³ In the current matter, the evidence on which the applicant relies falls

¹ Reliance is placed on *Nedbank Limited v Mendelow NO* (686/12) [2013] ZASCA 98 in support of this consequence.

² *Absa Bank Ltd v Moore and Another* 2017 (1) SA 255 (CC)

³ *Loomcraft Fabrics CC v Nedbank Ltd and Another* 1996 (1) SA 812 (A) at 817

woefully short of the standard required to establish fraud or to grant the far-reaching relief claimed by the applicant.

[8] The applicant gives no explanation of what occurred between the time of Ms Mngomezulu's death in June 2011 (or after the Will was lodged in February 2012) and 2017. The applicant would have known that Ms Mngomezulu had passed away, that she had assets in her estate, including the Property, and that the assets in the estate would need to be distributed. The applicant does not explain what he did in 2012, when the Will was lodged with the Master or who he thought had inherited the Property after his mother's death.

[9] The applicant also does not provide evidence of any investigation into the preparation of the Will, the identity of the witnesses or even allege who he thinks was involved in the alleged fraud. The applicant says that he only discovered that there was a forged signature in April 2017. He does not indicate what he believed the position to be before April 2017 or whether he had in fact seen the Will before that date, but had not challenged it. The applicant also does not explain why he took two years to react after his alleged 2017 discovery; he says that he only appointed Mr Cecil Greenfield (a handwriting expert) and laid a charge with the SAPS during 2019. Further and notably, none of the documents related to the charge are included in the papers and so none of the details of the alleged fraud are included.

[10] The applicant's entire case is based on a written report, which is attached to the founding affidavit. The document is headed "Forensic Report" and it purports to have been signed by "Cecil Greenfield Questioned Document Examiner" in Johannesburg on 13 July 2019. No affidavit from Mr Greenfield is included to confirm that the document is his report. In the absence of an affidavit, this document is merely hearsay of an opinion expressed in a third party's document. Consequently, as argued by the respondent, Mr Greenfield's report does not constitute admissible evidence in these proceedings.

[11] In any event, and even if the court were to accept that this is a report by Mr Greenfield, it can bear no evidentiary weight. None of the documents on which Mr Greenfield relied in drawing his conclusions has been proved. For example, no

evidence has been led to confirm the legitimacy of the allegedly “known” documents relied on for the comparison undertaken by Mr Greenfield. The legitimacy of his conclusions could only be accepted if the “known” antecedent documents were proved. Proof of those documents would have included the date on which they were signed and the circumstances under which they were signed.

[12] In the circumstances, no reliance can be placed on the purported report of Mr Greenfield. Having rejected the evidence of the written report, there is nothing left to support the applicant’s allegations of fraud.

[13] For all of the above reasons, I come to the conclusion that the applicant has not proved the existence of a fraud and has not proven that the Will was forged. Consequently, the application falls to be dismissed.

[14] There is an additional reason why the relief claimed in paragraph 2 of the notice of motion (setting aside of the sale and transfer) cannot succeed.

[15] In all respects, the sale to the second and third respondents appears to have been a valid arms-length transaction for the sale of the immovable property and there is nothing to suggest that the proceeds of that sale did not accrue to the deceased estate. There is also no allegation that the second and third respondents had knowledge of the applicant’s allegations of fraud before taking transfer of the property and or any allegation that the price paid for the property was below market value. The purchase price would have been paid to the conveyancer acting for the estate, transfer of the property to the second and third respondents has been registered in the Deeds Office and the second and third respondents have a real right over that property.⁴

[16] Consequently, even if the applicant had set aside the Will and established that Ms Mngomezulu died intestate (which he has failed to do), he could not succeed with the second prayer in the notice of motion. At best, if the applicant was a beneficiary

⁴ Legator McKenna v Shea & others 2010 (1) SA 35 (SCA) at para 22; Meridian Bay Restaurant (Pty) Ltd And Others V Mitchell NO 2011 (4) SA 1 (SCA)

of the estate, he would have had a claim against the estate but he would have no right over the Property.

[17] It should also be highlighted that if Ms Mngomezulu had died intestate (which I have found she did not) the applicant would not have been the sole beneficiary in the estate. Both Thandi and her son survived Ms Mngomezulu and consequently at least one of them (and any children of the deceased siblings) would have been a beneficiary when the assets of the estate were distributed.⁵ Each of the beneficiaries would have had a personal claim as beneficiary and would not have enjoyed any real right over the property. Such a personal right to claim as a beneficiary against the estate would not displace the real right exercised over the property by the second and third respondents in the current circumstances.

[18] For all of these reasons, I find that the applicant cannot succeed. There is no reason why the costs of the application should not follow the result.

[19] In the circumstances, I make the following order:

- a. The application is dismissed.
- b. The applicant is to pay the respondents' costs.

DA TURNER AJ

Gauteng Division, Johannesburg

HEARD ON:	22 January 2024
JUDGMENT DATE:	13 May 2024
FOR THE APPLICANT:	Adv S Mchasa
INSTRUCTED BY:	Segala Seshibe Attorneys
FOR THE RESPONDENT:	Adv VJ Chabane
INSTRUCTED BY:	Msemeki Attorneys

⁵ Intestate Succession Act 81 of 1987; LAWSA Volume 44 - Third Edition; Wills and Succession para 263