



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

CASE NO: 66445/2020

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: YES/NO

25 July 2024
DATE


SIGNATURE

In the matter between:

V A JENNINGS

Applicant

and

J B JENNINGS

Respondent

JUDGMENT

VAN DER MERWE AJ

Introduction

1. In the matter of the late Ms Jennings, who sadly passed away a few days ago, the application is this morning before this court in the absence of the first respondent who had filed papers to oppose the application. What happened is that before the matter came to court this morning and only relatively recently, the first respondent launched an application for the postponement of this particular application on the basis that he still wants time to properly prepare for the matter and liaise with his attorney. Whilst that application was pending, another event intervened. It is namely that the applicant passed away.
2. After the applicant passed away, the attorney for the respondent wrote a letter to the applicant's attorney and suggested that, in view of the passing away of the applicant, the matter cannot proceed and ought to be removed from the roll and there was even an indication that the Court be informed accordingly. The applicant then responded in accordance with that indication and in fact filed a notice to remove the matter from the roll. Shortly before the applicant filed such a notice, there was further correspondence forthcoming from the first respondent's attorney, in which the first respondent made a 180-degree turnaround. In the further correspondence it was now suddenly suggested, by the same first respondent who applied for a postponement previously, that the matter must proceed.
3. The contention was advanced that the applicant's attorneys do not have a mandate to even remove the matter from the roll, and the letter even suggested that the first

respondent would now ask for the application to be dismissed with costs, even punitive costs. That necessitated that the attorneys representing the late applicant had to file papers in the form of a substantive application in which they sought relief to have the matter removed from the roll. It was mentioned in that application, in a thorough affidavit deposed to by Mr Strydom who is, as I understand it the testamentary nominated executor, that he is still awaiting a death certificate of the applicant, that under those circumstances he has not yet procured from the Master the letters of authority, or a certificate of appointment for him as executor, and that in the prevailing circumstances the matter cannot proceed.

4. From what I could gather with reference to the rules and the authorities, it is clear that Rule 15(1) provides that the passing away of a litigant will not have the effect that the proceedings terminate as a result thereof, but it depends on the kind of proceedings.
5. In this particular matter it is not the kind of proceedings which will terminate as a result of the demise of the applicant. Although, the rules, the Uniform Rules that is, do not specifically state that legal proceedings are suspended until the appointment of an executor, as is the case, for example with reference to section 359 of the Companies Act 61 of 1973, which provides that if a company is liquidated, the proceedings shall be suspended until the appointment of the liquidator. I think it must follow that in proceedings in which a natural person is a party and that person dies, a similar result should follow.

6. It seems as if the position in common law is that there is such a suspension of the proceedings, so the proceedings cannot proceed on the merits, for very obvious reasons. Ms van Niekerk who appeared for the applicant this morning, informed me that this morning the attorney for the first respondent wrote a letter indicating that the first respondent is apparently now amenable to have the matter removed from the roll and under those circumstances, Ms van Niekerk asked me to grant a punitive cost order against the first respondent and his attorney.
7. She made that submission whilst at the same time she informed me that she has a concern about the fact that the proceedings have been suspended. I then debated with her whether the solution to the matter is not rather that I reserve the costs, so that the nominated executor can get the required appointment and have himself substituted on the papers as the applicant, and thereafter the matter can take its course. I indicated to her that I am prepared to give short reasons to explain why I reserve the costs and perhaps to also state what my prima facie view would have been if I had considered myself to be in a position to make any costs order on the matter.
8. I have articulated the facts above and it is clear that the first respondent launched first an application for a postponement. But he then latches onto the opportunity presented by the demise of the applicant. Firstly, his attorney says the matter can be removed from the roll. Thereafter, he changes his mind and suddenly wants the application dismissed, which, of course, results in unnecessary costs having been

incurred and which necessitated the bringing of the substantive application to have the matter removed from the roll. Then, at the last minute the first respondent through his attorney, again changes his mind and agrees at the eleventh hour that the matter be removed from the roll.

9. So, under these circumstances, and if the proceedings had not been suspended, I would indeed have been inclined to order the first respondent to pay the wasted costs occasioned on an attorney and client scale. As far as the first respondent's attorney is concerned, I leave the matter open. I am not going to make any comments as far as that is concerned because I think the attorney would have to be given at least proper notice and an opportunity to file an affidavit to explain his position as far as the costs are concerned. But the aforementioned conduct, in my view, would have prompted me to make a punitive cost order against the first respondent.

The following order is made:

1. The matter be removed from the roll and costs are reserved.



M P VAN DER MERWE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant: Ms Van Niekerk instructed by J I Van Niekerk Inc

Counsel for Respondent: No Appearance.

Date heard: 7 March 2024

Date of Judgment: 7 March 2024