

**REPUBLIC OF SOUTH AFRICA**



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

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

**18 JULY 2024**

DATE

SIGNATURE

**Case No: 62377/2021**

In the matter between:

**MICHAEL NKOANE**

Applicant

and

**THE MASTER OF THE HIGH COURT, PRETORIA**

First Respondent

**NATSJA MELINDA ROODT N.O.**

Second Respondent

*Late estate Mafanato Sara Nkuna*

**BEN BENJAMIN MASHELE**

Third Respondent

**JUBULISILE DELTA MASHELE N.O.**

Fourth Respondent

*Late estate Chabani Abram Mashele*

**Delivered.** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 14h00 on 18 July 2024.

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## **JUDGMENT**

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**DM LEATHERN, AJ:**

[1] The applicant has instituted a review application against a number of parties, the first respondent being the Master of the High Court, Pretoria, the second respondent being the appointed executor in the estate of the late Mafanato Sara Nkuna and the third and fourth respondents being interested parties as beneficiaries in terms of the will in dispute described hereinlater. The relief sought is the reviewing and setting aside of the decision by the first respondent to revoke the acceptance of a will dated 29 May 2017 as the last will and testament of the late Mafanato Sara Nkuna (hereinafter referred to as "the deceased") as well as a decision accepting as the purported will and testament of the deceased a document dated 28 April 2018. Additional relief is sought directing the second respondent to administer the estate in terms of the will and testament dated 29 May 2017 as well as costs.

[2] The review application is opposed by the second respondent who has also launched a counter-application in which the relief sought is that the second respondent be directed to administer and devolve the estate of the deceased in terms of the will and testament dated 20 April 2018. In essence there are two matters which need to be determined, these being:-

[2.1] whether the Master was *functus officio* and entitled to set aside his acceptance of the first will and testament; and,

[2.2] if so, whether on a factual basis the will dated the 20<sup>th</sup> of April 2018 was the last will and testament of the deceased in terms of which the estate must be administered.

[3] The applicant was a beneficiary in terms of the 2017 will and accordingly has the necessary *locus standi* to launch the present application.

[4] It is submitted on behalf of the second respondent that the counter application is successful the review application becomes academic. It appears that this is in fact correct, save that it becomes relevant with regard to the question of costs. Under the circumstances I propose dealing with the counter application.

[5] The following facts appear not be in dispute:-

[5.1] on 18 September 2019 the second respondent reported the estate to the Master and furnished two original wills, one dated 20 April 2018 and the other 29 May 2017;

[5.2] however, the 20 April 2018 will was initially incorrectly read as being dated 2011 and not 2018 and accordingly the will dated 29 May 2017 was initially accepted by the Master as the last valid will;

[5.3] the Master was subsequently informed that the will dated 2018 had been misread and accepted the 2018 will without advising the

applicant or granting the applicant any opportunity to make representations to the Master.

[6] It must be pointed out that the second respondent (as a representative of FNB) has been appointed as executor in terms of both wills.

[7] The second respondent has filed a comprehensive answering affidavit (which served as the founding affidavit for the counter application) setting out precisely how the 2017 will as well as the 2018 will were prepared and signed. In doing so, she has set out how barcode numbers are allocated to each version of the will, that general terms and conditions are signed on each occasion, how the deceased consulted with a Mr Brittion on the 26<sup>th</sup> of March 2018 in order to change her will which instructions were written on the 2017 will by a Ms Smith, how a commissioner of oaths was requested to be present when the will was executed, how the proposed amendments were sent to the FNB Will Drafting Centre, how the number allocated to the new draft will was changed to reflect it as number -03, how the will was signed in the presence of a commissioner of oaths, Mr Brittion, Ms Pinho and Ms Smith and how a special "Tidy Files" number was allocated for the 2018 will which is a greater "Tidy Files" number than that which was allocated to the 2017 will.

[8] Confirmatory affidavits were filed from each of the persons who were present at the signing of the will, including the two witnesses. Mr Brittion and Ms Smith were also present when instructions to amend the will were given. The applicant took issue with the fact that the commissioner of oaths a Mr Guarino did

not file a confirmatory affidavit. This was explained in reply by the second respondent as being due to the fact that he had passed away.

[9] The applicant, through no fault of his own, was not able to comprehensively deal with or rebut the facts alleged giving rise to the 2018 will and the manner in which it was drawn and executed. It must be found and accepted that this was in fact the last will and testament of the deceased.

[10] Under the circumstances, the counter-application must succeed. The review application was not seriously contested save to argue that if the Master was at fault, it was purely a procedural issue. It was not. The Master acted *ultra vires* and usurped the functions of the Court in terms of the Administration of Estates Act.

[11] Under the circumstances, an appropriate order as to costs should be made. There is no reason why the estate of the deceased should not bear the costs of both applications.

[12] Under the circumstances I make the following order:

1. The second respondent is directed to administer and dissolve the estate of the late Mafanato Sara Nkuna in terms of her last will and testament dated 20 April 2018.
2. The second respondent in her capacity as executrix of the late estate of Mafanato Sara Nkuna is ordered to pay the costs of the review

application launched by Michael Nkobane and the costs of the counter application, such costs to be on scale B.

  
  
DM LEATHERN  
ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

**Date of Hearing:** 22 January 2024

**Date of Judgment:** 18 July 2024

**Appearances:**

**Counsel for Applicants:**

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