



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

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

SIGNATURE

DATE: 24 October 2024

Case No. 2024-107486

In the matter between:

ELMARIE SAUER

Applicant

and

MANDY POLLOCK NO

First Respondent

ABSA TRUST LIMITED

Second Respondent

MASTER OF THE HIGH COURT, JOHANNESBURG

Third Respondent

JUDGMENT

WILSON J:

- 1 On 22 October 2024, I struck this application from my urgent roll, and ordered each party to pay their own costs. I said at the time that I would publish my reasons in due course. These are my reasons.

- 2 The applicant, Ms. Sauer, is the erstwhile life partner of Robert Burger. Mr. Burger died on 13 May 2024. Mr. Burger had suffered from dementia. The first respondent, Ms. Pollock, is Mr. Burger's daughter. She was appointed as Mr. Burger's *curator bonis* and *curator ad personam* shortly before his death. In that capacity, she did two things that are relevant to this application. First, she attempted to arrange the sale of a property Mr. Burger owned in the North West province. The contract of sale was signed before Ms. Pollock's appointment as Mr. Burger's curator, so there is a dispute about its validity. But since the sale later fell through, that dispute is of no relevance to the issues before me.
- 3 The second thing Ms. Pollock did, on 11 April 2024, was to sign a will on Mr. Burger's behalf. The effect of this will would have been to bequeath Mr. Burger's entire estate to his grandchildren in equal shares. The 11 April 2024 will purported to replace an earlier will, executed on 24 March 2022, in which Mrs. Sauer was named as the sole beneficiary of Mr. Burger's estate.
- 4 After Mr. Burger died, Ms. Pollock submitted the 11 April 2024 will to the third respondent, the Master, and sought to be appointed as the executrix of Mr. Burger's estate. The Master took the view that the 11 April 2024 will was not a valid will, since it was not signed by Mr. Burger, and since Ms. Pollock could not sign it on his behalf. The Master nonetheless appointed Ms. Pollock as the executrix of Mr. Burger's estate, presumably on the basis that Ms. Pollock is Mr. Burger's daughter and that, in the absence of a valid will, his estate would devolve intestate.

- 5 Ms. Sauer then applied urgently to me to declare the 11 April 2024 will invalid and to set aside Ms. Pollock's appointment as the executrix of the estate. On 17 October 2024, Ms. Sauer also submitted the 24 March 2022 will to the Master, and will presumably press the Master to deal with Mr. Burger's estate as directed in that will.
- 6 Everyone accepts that the 11 April 2024 will is invalid. The Master has rejected it, and an order declaring it invalid would have no practical effect. The effect of the Master's rejection of the 11 April 2024 will is that unless and until the Master accepts the 24 March 2022 will as valid, Mr. Burger's estate will be dealt with on the basis that he died intestate. It follows from this that there is presently no basis to challenge Ms. Pollock's appointment as the executrix of Mr. Burger's estate. Ms. Pollock's appointment as the executrix has nothing to do with the 11 April 2024 will. It is rather the consequence of the Master's determination that Mr. Burger died intestate. That determination was not directly challenged before me, and no review of the Master's decision to deal with Mr. Burger's estate on the basis that he died intestate was brought.
- 7 If and when the Master accepts the 24 March 2022 will, the approach to the administration of Mr. Burger's estate will probably have to change. I understood Mr. Botes, who appeared together with Mr. Dames for Ms. Sauer, to argue that I should anticipate that development, assume the validity of the 24 March 2022 will, and make orders that would give effect to it. I see no reason to usurp Master's functions in that way. It is for the Master to examine the 24 March 2022 will and to act accordingly. If the Master rejects the will, Ms. Sauer will have her remedies then. If the Master accepts the will, and

assuming that there is no challenge to his decision to do so, Mr. Burger's estate will be dealt with as directed in the 24 March 2022 will.

- 8 It seems to me that there is no reason for me to intervene in the meantime. No-one asked me to make an order freezing Mr. Burger's estate while the Master examines the 24 March 2022 will, and I would have seen no need for such an order. The sale of Mr. Burger's property in the North West province has fallen through, and there is no indication that any of his other assets are on the verge of being spirited away, or otherwise being placed beyond the reach of whomever Mr. Burger's rightful heirs turn out to be. If that changes, the parties will have their remedies then.
- 9 However, on the facts placed before me, there was no warrant for me to interfere with the parties' affairs or with the Master's performance of his statutory functions. There was, accordingly, no urgency to the application.
- 10 Each party sought a punitive costs order against the other. Each accused the other of sharp dealing and bad faith. It is not necessary for me to adjudicate those complaints. In any event, I cannot tell from the papers whether the underlying disputes between the parties bespeak genuinely unethical conduct by either one of them, or no more than a painful struggle over the memory and belongings of a cherished father and loving partner. Either way, there were no facts placed before me that would allow me to make a just order for costs in favour of either party. Since it is not at all clear to me how Mr. Burger's estate will ultimately devolve, this is not the sort of case where costs should simply follow the result.

11 It was for these reasons that I struck the application from the roll and ordered each party to pay their own costs.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 24 October 2024.

HEARD ON: 22 October 2024

DECIDED ON: 22 October 2024

REASONS: 24 October 2024

For the Applicant: F Botes SC
CR Dames
Instructed by Arthur Channon Attorneys Inc

For the First Respondent: G Olwagen-Meyer
Instructed by Barry Hurter Inc