

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

CASE NO:1251/2023

In the matter between:

M[...] C[...] M[...]

APPLICANT

**(OBO P[...], R[...]
AND N[...] M[...])**

and

JANE PEDZISAI N.O

FIRST RESPONDENT

JANE PEDZISAI

SECOND RESPONDENT

MASTER OF THE HIGH COURT

THIRD RESPONDENT

Neutral Citation:

Coram: Mahlatsi AJ

Heard: 17 October 2024

Delivered: 30 October 2024

Summary: Administration of estates – removal of executrix in terms of s 54(1)(a)(v) of the Administration of Estates Act 66 of 1965 as amended – lack of confidence and trust in executrix – duties of Master – removal of executrix unwarranted.

ORDER

1. The application is dismissed.
2. Each party to pay his or her own costs.

JUDGMENT

[1] This is an application brought in terms of s 54(1)(a)(v) of the Administration of Estates Act 66 of 1965, as amended, whereby the applicant firstly, seeks the removal of the first respondent as the executrix of the late C[...] L[...] M[...] (deceased) and secondly, that the second respondent be ordered to return her letter of appointment to the Master of the High Court, Bloemfontein (Master) within a specified period. Thereafter, the Master appoint Ms Madeline Peyper as well as any such person as necessary as the executors in the estate as soon as practically possible.

[2] The applicant brought this application in her own capacity and also as the legal guardian of the minor children namely, P[...] A[...] M[...] (P[...]), R[...] C[...] M[...] (R[...]) and N[...] J[...] M[...] (N[...]). The applicant is a Lesotho citizen and resident in Lesotho. She was customarily married to L[...] M[...] (L[...]) in the Kingdom Lesotho. He is survived by his wife (the applicant) and their two children, R[...] and N[...]. L[...] M[...] is the predeceased son of Dr C[...] L[...] M[...] who passed away on the 11 August 2020.

[3] Dr C[...] L[...] M[...] (Dr M[...]) was married to Mr J[...] H[...] M[...] and both stayed with their child (as per birth certificate P[...] from Home Affairs of South Africa) in Woodland Hills, Bloemfontein. Unfortunately, Dr M[...] and Mr M[...] were divorced before her death. Following the passing of Dr M[...], the first respondent was

appointed as the executrix to the estate after being nominated as such by Dr M[...]’s brother or relative, L[...] M[...], as the guardian to P[...].

[3] The first respondent made a liquidation and distribution account in which she recognised P[...] as Dr M[...]’s daughter and that P[...] is entitled to 50% of her estate. The first respondent then concluded that the remaining 50% of the inheritance would be divided equally among L[...]’s two minor children, N[...] and R[...].

[4] The applicant raised a complaint about the first respondent’s appointment as the executrix and stated further in her papers that P[...] is her daughter with L[...], her late husband, and P[...] is the granddaughter to Dr M[...], like N[...] and R[...]. The three children P[...], N[...] and R[...] must accordingly each get one third of the inheritance.

[5] Furthermore, the applicant contends that the first respondent was not duly appointed as the executrix of the estate because L[...] M[...] was not authorised by the family to nominate the first respondent and her signature that appears on the documents was forged. In addition, the allegation is levelled that the executrix is not managing the estate affairs well in that it is administered wrongly, and as result, she ought to be removed on that basis. The applicant alleges that she raised the issue of the maladministration of the deceased estate with the third respondent who failed to remove the first respondent.

[6] The first respondent’s riposte to these allegations and accusations is to the effect that there is no basis for applicant to bring this application. Rather, the respondent contends that the assertions are incorrect and bad in law.

[7] The function of the Master has been succinctly described by De Villiers CJ as follows:

‘The sole interest which the Master has in the administration of estates is to protect the interest of the creditors, heirs, legatees and all other person having any claim upon the estate.’¹

The Master is accordingly tasked to carefully supervise the entire administration process to ensue that the estate is administered in accordance with the provisions of the Act, other legislation related to the estate and, where applicable, the common law. In the exercise of its duties, the Master is by virtue of the provisions of the Act given very extensive powers of supervision, ranging from the appointment and removal of executors to decisions regarding the alienation of assets.

[8] Section 54 of the Act deals with the removal of an executor from such an office, and is set out in the Act as follows:

‘(11) An executor may at anytime be removed from his office–

(a) by the Court–

...

(v) if for any other reason the Court is satisfied that it is undesirable that should act as an executor of the estate concerned; . . .’

[9] In *Gory v Kolver No and Others*² the court dealt with the application for the removal of the executor in the deceased estate, where the heirs had lost all the trust, faith and confidence in the executor. The Constitutional Court stated the following:

‘In terms of section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965, an executor may at any time be removed from his office by the Court if for any reason other than those set out in the rest of section 54(1)(a), “the Court is satisfied that it is undesirable that he should act as executor of the estate concerned.”’

[10] In *Die Meester v Meyer en Andere*³ dealing with the approach to be followed by a court in exercising its discretion under this section, the Court held as follows:

¹ *Wessels v The Master of the High Court* 9 SC 18 at 26.

² *Gory v Kolver No and Others* [2006] ZACC 20; 2007 (4) SA 97 (CC).

'Whatever the position may be, under the common law and according to the authorities under the old Administration of Estate Act 24 of 1913, the Court is now empowered in terms of section 54(1)(a)(v) of the present Administration of Estates Act, 66 of 1965 to remove as executor from his office if it is undesirable that he should act as executor of the concerned. The Court has a discretion and the predominating consideration remains the interest of the estate and the beneficiaries.'⁴

[11] The Courts have been slow to interfere with the discretion of the executor unless it is clear that the executor abused his authority and acted in serious contravention of the law. The primary duties of the executor are succinctly set out by Meyerowitz:

'The executor acts upon his responsibility, but he is not free to deal with assets in the manner he pleases. His position is a fiduciary one and therefore he must act not only in good faith but also legally. He must act in terms of the law, which prescribes his duties and the method of his administration and makes him subject to the supervision of the Master in regard to a number of matters'⁵

The learned author continues:

'An executor is not a mere procurator or agent for the heirs but is legally vested with the administration of the estate. A deceased estate is an aggregate assets and liabilities and the totality of rights, obligations and powers of dealing therewith, vests in the executor, so that he alone can deal with them.'

[12] In the circumstances of the current matter, the applicant complaint about the first respondent's appointment as the executrix saying her signature on annexure 'EX9' was forged. I do not agree with her submission, as it is unfounded and baseless and was only referred to in the heads of argument.

³ *Die Meester v Meyer en Andere* [1975] 2 All SA 344 (T).

⁴ Ibid at 358, such being my own translation from the original Afrikaans: 'Hoe dit ook al sy onder die gemene reg en ingevolge die gewysdes onder die ou Boedelwet, 24 van 1913, is die Hof nou gemagtig kragtens art. 54(1)(a)(v) van die huidige Boedelwet om 'n eksekuteur te verwyder indien dit onwenslik is dat hy as eksekuteur van die betrokke boedel optree. Die Hof het hier 'n diskresie en myns insiens bly die oorheersende oorweging die belange van die boedel en van die begunstigdes.'

⁵ Meyerowitz on *Administration of Estates and their Taxation* 2010 ed at 12:20.

[13] The applicant also complained when she noticed that P[...] was allotted 50% of the inheritance because she was mentioned and identified as Dr M[...]’s child. It appears that this became the main issue between her and the first respondent with regard to the estate.

[14] Upon perusal of the papers it becomes evident that the applicant acquired information regarding the birth of P[...] as her child, from Lesotho. Amongst the documents produced is a Lesotho birth certificate indicating the birth of P[...], and is dated 8 June 2022 (FA5), together with a letter from the Ministry of Home Affairs Lesotho (Lesotho Home Affairs) dated 21 June 2022 (FA4) which is eighteen months after Dr M[...]’s passing.

[15] There is an abridged birth certificate from the Department of Home Affairs in South Africa dated 17 July 2017 (FA8) which serves as proof that P[...] is Dr M[...]’s child, and it was also the only proof available to the first respondent that P[...] is Dr M[...]’s child.

[16] It is evident that when the applicant applied for P[...]’s birth certificate from Lesotho Home Affairs, the intention was to strengthen her case against the first respondent. It is in that period where she applied to the Department of Home Affairs in South Africa for the change of parenthood of P[...], and as per the attorney’s minute dated 1 March 2023 (FA10), there is no reply provided for her request. At this stage, P[...] is legally Dr M[...]’s child.

[17] The first respondent received information from the next of kin information from L[...] M[...], which included the names of Dr M[...]’s children who are L[...] and P[...] (FA13). Furthermore, R[...] and N[...] were listed as beneficiaries as the grandchildren of Dr M[...] and are to receive 50% of the inheritance.

[18] L[...] M[...] did the honourable thing as he acted as P[...]’s guardian and, in the interest of the estate, facilitated the appointment of the first respondent by providing the necessary information of the estate. The first respondent accepted the

information and proceeded to the Master for the appointment to be processed. The first respondent application was finalised on the on 10 November 2020 (FA1).

[19] The first respondent made a first liquidation and distribution account. She issued letters of demand and issued summonses to collect the monies owed and properties belonging to the estate by the debtors, but it was on account of this that differences between herself and the applicant arose.

[20] The third respondent was approached by the applicant with regard to her perceived issues or problems and her request about the first respondent. The third respondent found no fault necessitating his intervention with regards to how the first respondent managed the administration of the estate.

[21] The applicant has not convinced this Court that the alleged disagreement with the first respondent as well as her loss of trust and confidence in the first respondent serves as sufficient reasons for the removal of the executrix. On basis of the above authorities and the evidence presented on behalf of the first respondent, it is not desirable nor is it in the best interest of the estate and the heirs to remove the first respondent as the executrix of the estate.

[22] There is no evidence on a balance of probabilities suggesting that the current executrix must be replaced. The application is found not to have merits on all the grounds raised by the applicant.

[23] In the circumstance the following orders are made:

1. The application is dismissed.
2. Each party to pay his or her own costs.

MAHLATSI AJ

Appearances:

For the Appellant:

Adv Mohale LW

Instructed by:

PJ Mahlasela Attorneys

For the Third to Fifth Respondents:

Adv Moeng LBJ

Instructed by:

Pedzisai-Pion Attorneys