

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: A66/2024

In the matter between:

A L COETZEE

Appellant

and

ANNIE BOSMAN

Respondent

In her capacity as Master's Representative in the Estate of the Late Hermanus Louw Bosman duly authorised by Letters of Authority with Estate No.1670/2020 issued by the Master of the High Court at Cape Town on 10 August 2021

And

Case number: A67/2024

In the matter between:

MILLIE MAKERETA VAN AS

Appellant

and

ANNIE BOSMAN

Respondent

In her capacity as Master's Representative in the Estate of the Late Hermanus Louw Bosman duly authorised by Letters of Authority with Estate No.1670/2020 issued by the Master of the High Court at Cape Town on 10 August 2021

Coram: KUSEVITSKY, J et SIDAKI, AJ

Heard on: 14 JUNE 2024

Delivered on: 02 SEPTEMBER 2024

JUDGMENT

SIDAKI, AJ

- [1] In these matters, the appellants seek to appeal against the following orders of the Magistrate at Porterville Magistrate's Court:
- a. An order in case number 238/2021, dated 22 June 2022, dismissing the claim for reason of a lack of jurisdiction.
 - b. An order in case number 239/2021, dated 22 June 2022, dismissing the claims for reason of a lack of jurisdiction.
- [2] In each of these matters, the appellants as plaintiffs had instituted action in the Porterville Magistrate's Court against the defendant in her capacity as the Master's representative in Estate Late Hermanus Louw Bosman (the defendant was appointed by Letters of Authority in Estate No.1670/2020 issued by the Master of the High Court at Cape Town on 10 August 2021).
- [3] Case number 238/2021 was a claim, by way of a simple summons, for payment of a sum of R6 400.00 in respect of goods and services rendered to the deceased for motor spares and repairs. Case number 239/2021 was a combined summons for two claims; first claim, in the amount of R52 664.10, for the division of certain assets which the plaintiff and the deceased had jointly held and, second claim, in the amount of R48 000.00, for reimbursement of

expenses incurred in respect to which the plaintiff and the deceased were said to be jointly liable.

- [4] Personal service was effected on the defendant in both matters.
- [5] Following the defendant's failure to enter an appearance to defend, each plaintiff applied for default judgment, together with costs and interest.
- [6] When considering the default judgment applications, the Magistrate raised *mero motu* two queries which were addressed to the plaintiffs. First, whether the claims had been submitted to the defendant within the requisite timeframe and, second, whether that court had jurisdiction to adjudicate the claims.
- [7] As regards the first query, the plaintiffs responded that the claims had been submitted timeously. Regarding the second query, the response was that the Magistrate's Court indeed had jurisdiction to adjudicate the claims on the basis that both plaintiffs and the deceased had resided within that magisterial district and that the whole cause of action had arisen within that court's jurisdiction.
- [8] The Magistrate thereafter decided both matters on a similar basis. Although not pertinently dealt with in the judgments, the Magistrate seemed to accept that the claims had indeed been submitted to the defendant within the requisite timeframe. On jurisdiction, the judgments deal with a different point which was not raised in the Magistrate's queries, namely, the Magistrate states in the judgments that the claims brought by the plaintiffs were of a specific kind to be dealt with only in accordance with the provisions of the Administration of Estates Act 66 of 1965. On this basis alone, the claims were dismissed for a lack of the court's jurisdiction. The judgments do not cite any authority to support the Magistrate's finding.
- [9] In respect to case number 239/2021, the Magistrate proceeded to make certain obiter remarks which were critical of the merits of the claims.

- [10] Notices of appeal were timeously filed, however there were delays thereafter due to the appellants' inability to afford legal representation to pursue the appeals in the High Court. The applications for legal aid assistance came to nothing. Ultimately, the appellants sought the services of *pro bono* counsel through the Cape Bar which managed to assist the appellants.
- [11] Mr Van Aswegen appeared in this court for both appellants on a *pro bono* basis. The court commends him for the helpful written submissions and argument before us. There was no appearance for the respondent.
- [12] Condonation was sought for the delay in prosecuting the appeals. We have considered the reasons for the delay and are satisfied that a proper case has been made out to grant condonation for the delays in pursuing the appeals. There was no opposition to the condonation application, and we could not find any prejudice to any party for granting condonation.
- [13] The issue on appeal is whether it was a misdirection for the Magistrate to find that the court lacked jurisdiction to entertain a claim brought in terms of the common law instead of submitting such claim to the executrix under the scheme for the liquidation of deceased estates provided in the Administration of Estates Act.
- [14] Mr Van Aswegen referred us to the judgment of the Supreme Court of Appeal in *Nedbank Limited v Steyn and Others* [2015] ZASCA 30 (25 March 2015); [2015] 2 All SA 671 (SCA); 2016 (2) SA 416 (SCA), in which it was considered whether the provisions of the Administration of Estates Act preclude a creditor from its common law right to institute action against a deceased estate for payment in terms of a loan agreement.
- [15] In that case, it was confirmed that the statutory scheme did not oust a creditor's right to pursue a claim against the estate under the common law. This has been the standing legal position. It would appear that the Magistrate did not have the benefit of considering the decision in *Nedbank v Steyn*.

[16] The Magistrate's findings in both these matters were a misdirection on a point of law.

[17] The appeals accordingly succeed.

In the result, I propose the following orders:

Case number 238/2021:

- a. Condonation is granted for the delay in pursuing the appeal.
- b. The appeal is upheld.
- c. Paragraph 5 of the judgment and order of the court *a quo* is set aside and substituted with an order in the following terms:
 - [i] "This court has jurisdiction to entertain the claim."
 - [ii] "Default judgment is granted."
- d. There is no order as to costs.

Case number 239/2021

- e. Condonation is granted for the delay in pursuing the appeal.
- f. The appeal is upheld.
- g. Paragraph 6 of the judgment and order of the court *a quo* is set aside and substituted with an order in the following terms: "*This court has jurisdiction to entertain the claim.*"
- h. The default judgment application is remitted to the court *a quo* for determination on the merits of the case before a different Magistrate.

- i. There is no order as to costs.

SIDAKI, AJ

I agree and it is so ordered

KUSEVITSKY, J

Appearances:

Appellants' counsel: AJ Van Aswegen

Appellants' attorneys: Brand and Partners, Vredenburg
Mauritz Briers & Associates
Cape Town