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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2022-020919

- | | |
|-----|--|
| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES: YES/NO</u> |
| (3) | <u>REVISED.</u> |

.....

DATE

.....

SIGNATURE

In the matter between:

B[...] **L[...]** **R[...]**

Applicant

And

E[...] **M[...]** **D[...]**

First Respondent

THE MASTER OF THE HIGH COURT

Second Respondent

ZAF KHAN ATTORNEYS

Third Respondent

JUDGMENT

MAKUME, J:

Introduction

[1] In this matter the applicant seeks relief against the respondents in the following terms:

1.1 An order declaring that the applicant as the surviving spouse of the late T[...] M[...] R[...] (the deceased) has pre-emptive rights over the immovable property that formed the joint estate.

1.2 An order removing the first respondent as executrix testamentary in the estate of the late T[...] M[...] R[...] and that the second respondent appoint a new executor.

1.3 An order directing the third respondent to release the amount of R450 000.00 which was paid into their Trust account by the deceased and that it be paid into the estate bank account to be dealt with in terms of the law.

Factual Background

[2] It is necessary at this stage to set out a brief narrative of certain facts and circumstances giving rise to this litigation and which have a bearing on the issues to be answered.

[3] The applicant and the deceased were married in community of property on the 10th December 1992. A child was born out of that marriage.

[4] On the 18th November 1998 the applicant and the deceased acquired a property being Erf number 2[...], K[...] Extension [...], situate at 1[...] M[...] Street, K[...]. The property is registered in both their names in terms of title deed TL 8[...].

[5] The title deed further indicates that a bond was registered over the property in favour of First Rand Bank in the sum of R120 000.00 (One Hundred and Twenty Thousand Rands).

[6] The marriage relationship between the applicant and the deceased broke down, as a result, during the year 2004, the applicant vacated the common home being the immovable property described above and took up residence with her parents in Daveyton.

[7] No sooner had the applicant vacated the common home, the first respondent moved in and lived with the deceased as husband and wife. That relationship resulted in the birth of a child in 2008.

[8] In the same year being 2008, the deceased duly represented by attorneys Gerrie Lindeque of Boksburg instituted divorce proceedings out of the Central Divorce Court under case number 2371/08.

[9] In the summons and particulars of claim, the deceased is described as “an adult male, currently employed by the South African Police Service and resides at 1[...] M[...] Street, K[...], S[...]”.

[10] In that action the deceased prayed for “an order in terms whereof Plaintiff will buy out defendant’s undivided equal share in the immovable property situated at 1[...] M[...] Street, K[...], S[...] at a reasonable market related value thereof”.

[11] It would appear that the parties engaged in settlement negotiations and or discussed some sort of a settlement. The applicant says in her affidavit that the deceased withdrew the divorce action as she and the deceased were discussing reconciliation. This is of course disputed by the first respondent.

[12] On the 11th September 2012, the deceased duly represented by Messrs. ZAF Khan Attorneys (the third respondent herein) issued fresh divorce proceedings out of the Regional Court, Springs under case number GP/SPR/RC622/12.

[13] In paragraph 8 of the particulars of claim the deceased as Plaintiff prayed for an order in the following terms:

“That the Defendant forfeits benefits of the marriage in community of property to wit the increase in value of the immovable property situated at 1[...] M[...] Street Ext [...], K[...], S[...] and the Plaintiff’s interest in his Pension/Provident Fund with the Government Employees Pension Fund from December 2002.”

[14] In the particulars of claim in that action the deceased is described as “an adult male Police Detective stationed at SAPS Duduza, Nigel”.

[15] The applicant appointed her present attorneys of record to represent her in the divorce matter. Settlement discussions took place by way of correspondence exchanged between attorneys. On the 7th December 2015, the deceased’s attorneys addressed a without prejudice offer to the applicant’s attorneys in the following words”

“It is our instructions that our client is willing to pay your client the sum of R350 000.00 (Three Hundred and Fifty Thousand Rand) in full and final settlement of all claims that your client may have now or in the future against our client in respect of her half share in the joint estate. We will prepare the deed of settlement.”

[16] On the 14th December 2015, the applicant’s attorneys responded to the offer in the following words:

“We have consulted with our client and our client has instructed us that she would accept an amount of R450 000.00 (Four Hundred and Fifty Thousand Rand) as full and final settlement of all claim that our client has in respect of her half share in the joint estate.”

[17] The deceased’s attorney did not respond to the above counter offer instead they proceeded during March 2016 to draft a settlement agreement in which the

applicant was offered R400 000.00 instead of the amount of R450 000.00. The applicant did not accept this offer as a result no agreement was concluded.

[18] On the 23rd March 2016, some crucial events took place which are at the center of the dispute in this matter. Firstly, the applicant says in her papers that the deceased called her over the phone and told her that he was sick and wants to settle the divorce. In the disputed telephone discussion, the deceased informed the applicant that he had on the 11th March 2016 paid to his attorney the sum of R450 000.00 (Four Hundred and Fifty Thousand Rands) with instructions that same be paid over to her in terms of the applicant's counter offer.

[19] Secondly, on the same day being the 23rd March 2016, the deceased executed a will in which he appointed the first respondent as the executrix of his estate and bequeathed to her and their child "my entire estate".

[20] The deceased's bank account held at Nedbank under account number 1[...] shows the following transactions which are relevant in this dispute, they are:

20.1 On the 28th January 2016, an amount of R1 400 000.00 is deposited into that account.

20.2 On the 29th January 2016, two amounts of R500 000.00 each are transferred out of that account into the following number 5[...] leaving a balance of R400 000.00 (Four Hundred and Fifty Thousand Rands).

20.3 On the 2nd March 2016, an amount of R41 259.08 is paid from Nedbank account number 1[...] to FNBH Loan 6[...].

20.4 On the 11th March 2016, an amount of R450 000.00 is paid out of the deceased account to Messrs. ZAF Khan Attorneys.

[21] The deceased passed away on the 27th March 2016. Shortly, after that the applicant proceeded to the office of the Master of the High, Johannesburg where she reported the death of her husband and was issued with letters of executorship on the

21st April 2016, through her attorneys published a notice to creditors and debtors in terms of section 29(1) of the Administration of Estate Act¹ (the Act). It is clear that the applicant was, at that stage, not aware that the deceased had shortly before his death executed a will. The Estate which was reported as interstate has the number 009135/2016.

[22] The date stamp on the deceased's bank account referred to above is the 7th April 2016 which the applicant acquired at Nedbank, Daveyton. That account indicates that of the two transfers of R500 000.00 made on the 29th January 2016 only the amount of R500 000.00 was paid into an "Easy Access Investment account number 51767216 Investment 9997 which means that the other R500 000.00 must have remained in account number 5[...].

[23] It would appear that the first respondent must have become aware of these happening and armed with the last will and testament of the deceased, duly assisted by Messrs ZAF Khan Attorneys proceeded to report the death of the deceased. The Master of the High Court accepted the will on the 31st May 2016 and on the 15th June 2016, the letters of executorship issued to the applicant were withdrawn and new letters of executorship were issued in favour of the first respondent.

Events leading to the present application for removal of the first respondent as executor and to order third respondent to remit the R450 000.00

[24] The applicant says that she seeks removal of the first respondent as an executrix of the estate and alleges that first respondent has failed to execute her obligation in terms of the Act, has failed to abide by the directives of the Master and has thus caused her financial prejudice amongst others in failing to account for the money in the deceased's bank accounts.

[25] The first respondent denies that she has in any manner failed to comply with the Master's directive. In paragraph six (6) of her answering affidavit she says the following:

¹ ACT 66 OF 1965.

“I had amended the Liquidation and Distribution account after an objection had been lodged against the initial account and had filed same with the Master of the High Court. The amended Liquidation and Distribution account was emailed to the Master of the High Court during February 2021 and a hard copy delivered on the 20th October 2021, see letter attached marked “EMD1” to date the Master of the High Court has not confirmed the approval of the account nor had the Master of the High Court issued any directions pertaining to the said account.”

[26] In the further alternative, the first respondent alleges in her papers that the application was premature in that the applicant failed to comply with the provisions of section 36 of the Act. This argument was not pursued before me and correctly so as it is in my view misguided.

[27] In opposing the prayer that the third respondent release the amount of R450 000,00 from their Trust Account and pay same into the Estate’s bank account, the first respondent says that the amount was never intended as a settlement of the divorce matter but that this amount was to settle a debt that the deceased had incurred with a company called CMC SA (Pty) Ltd. The first respondent concludes by saying that the said amount is no longer held in Trust by the third respondent and cannot be accounted for as it was paid out prior to the death of the deceased.

[28] What is significant is that the first respondent does not give details of the creditor CMC and attaches no documents evidencing such indebtedness neither does she indicate as to when such debt was incurred and when was the amount paid to CMC.

[29] It is against this background that, I now set out in chronological form of events in the correspondence that led ultimately to this application and thereafter, I will deal with the statutory powers of both the Master of the High Court as well as the executor of a deceased estate.

[30] On the 1st September 2017, which is more than a year after the first respondent's appointment as executrix, the Master addressed a letter to the first respondent's attorneys in the following words:

"Not having complied with the provisions of section 35(1)/83 of the Administration of Estate Act No 66 of 1965 (as amended) you are required to lodge on or before 13th October 2017 the Liquidation and Distribution Account (Supported by vouchers) of the above estate of which you are appointed by Letter of executorship dated the 15th June 2016. Failing to comply punctually with this notice you will be summoned before the High Court to answer for your default in terms of section 36/85 or steps will be taken for your removal as executor/executrix in the manner provided for in section 54/85. Your attention is also directed to the provisions of sections 51(3)(b) 84(2)(b) (disallowance of remuneration) 54/85 removal from office and 102 Criminal penalties."

[31] On the 6th December 2017, the first respondent through her attorney filed the first and final Liquidation and Distribution account in the estate of the deceased.

[32] On the 21st February 2018, the Master of the High Court sent the first respondent's attorneys a list of queries and directives in connection with the Liquidation and Distribution Account. The executrix was in that document directed to do the following prior to advertising the account in terms of the Act, namely:

32.1 That she must file the Estate duty return Rev 267.

32.2 File all bank statements and cheques and proof of the opening of the Estate bank account.

32.3 Insert the ID number of the surviving spouse being the applicant Mrs B[...] R[...].

32.4 The names of the applicant spelled incorrectly.

32.5 As regards movable property, the Master required the executor to explain why on the 17th June 2016, the executor had indicated that the proceeds of the sale of the motor vehicle or its value was R50 000.00 and now in the Liquidation and Distribution account it is indicated R10 000.00.

32.6 Furniture had been valued at R90 000.00 on the 17th June 2016 and now it is no longer indicated in the account.

32.7 The Master wanted to know what happened to Nedbank Account number 1[...] and account number 5[...] an explanation needed.

32.8 The account has no indication of voucher numbers. She was asked to insert a column for vouchers as well as numbers to each item.

32.9 The executor was requested to provide all vouchers for the listed liabilities, namely:

• FNB Home Loan account	R41 259.08
• Laerskool	R 4 380.00
• Glynwood Hospital	R 894.42
• Dr Pretorius Hogg	R 309.10
• Dr Vermaak	R 1 463.75
• Dr Strydom	R 1 014.50
• Rita Henn & Partners	R16 213.45
• Glyview	R 600.00
• Dr Du Buisson	R 472.10
• Zack Khan (fees)	R17 100.00

32.10 Remove the numbering in the left margin.

32.11 The cash recapitulation statement incomplete please rectify.

32.12 Draw Redistribution agreement to show who is getting the immovable property and who gets the money as there is already bad blood among the heirs.

32.13 Insert place where the executrix certificate was signed.

[33] On receipt of the Liquidation and Distribution account the applicant acting in terms of section 35(7) of the Act lodged an objection against approval of the account. The objection was firstly, that the executrix awarded the immovable property to herself and her son, despite the fact that she knows that the property is jointly owned by the deceased and the applicant. Secondly, the applicant raised the issue of the amount of R450 000.00 which she says had not been paid to her and that this amount should be reflected as a cash asset in the account.

[34] The Master of the High Court also raised queries on the account and called upon the executrix to make the necessary amendments to the account. The first respondent failed to respond to the objection nor abide by any directive from the Master including the directives as in the query list dated the 21st February 2018.

[35] On the 5th June 2018, the Master addressed a letter to the first respondent which reads as follows:

“The account of your administration dated 6th December 2017 refers: The account has been examined and cannot be accepted as an adequate account of your administration having failed to comply with the provisions of section 29 and 35 of the Administration of Estate Act number 66 of 1965 (as amended) you are requested in your capacity as executor and or agent to comply with these requirements on or before 2nd July 2018. Failing punctuality to comply with this notice you will be summoned before the Supreme Court in terms of section 36 of the Administration of Estate Act number 66 of 1965 (as amended) to answer for your default. The Court will be asked to order that you pay the costs personally. In terms of section 51(3) (b) any remuneration to which you would have been entitled to is disallowed.”

[36] Instead of addressing the issues raised by both the Master and the applicant's attorneys, the first respondent attorneys addressed a letter to applicant's attorneys dated the 27th June 2018 in the following words:

"We have been informed by the Master of the High Court that it may be prudent to do a redistribution agreement. We therefore invite your proposal on how the assets are to be distributed."

[37] To these the applicant's attorneys responded as follows: "The surviving spouse wishes to retain the following assets:

- i) Immovable property Erf 2[...] K[...] Ext [...];
- ii) Cash calculated as per distribution account."

[38] The above proposal was rejected by the first respondents' attorneys and as a follow up on the 2nd August 2018, applicant's attorneys raised with Messrs ZAF Khan, the third respondent, the follow issues:

- i) That according to the Nedbank statement dated the 29th January 2016 two amounts of R500 000.00 each were transferred out of the deceased's bank account number 1[...] but only one amount of R500 000.00 was deposited into Nedbank Investment account number 5[...].
- ii) That the executrix should explain what happened to the other R500 000.00 as it is not shown on the Investment account.

[39] The response by Messrs ZAF Khan dated the 6th August 2018 did not, at all, address the issue of the bank account. The attorneys chose to argue and put forward a version dealing with inheritance clearly avoiding this crucial aspect.

[40] On the 12th June 2020, the applicant obtained an order in this Court under case number 43536/2019 which order reads as follows:

40.1 That the first respondent is directed to advertise the Liquidation and Distribution account in terms of section 35 (4) and (5) of the Administration of Estates Act within 60 days after having been directed to do so by the Master and to inform the applicant's attorneys.

40.2 That Nedbank is ordered to disclose and furnish to the applicant within 7 days all bank accounts and balances as at date 29 January 2016 held by the deceased T[...] R[...] directly linked to the transaction or transfer of the sum of R500 000.00 from the deceased Nedbank account number 1[...].

40.3 Costs reserved.

[41] The order referred to above had been preceded by a letter dated the 4th April 2019 addressed by the Master to the executrix in which she was directed to advertise the Liquidation and Distribution Account subject to the pre-advertisement directive set out in that letter. Clearly, the first respondent did not heed or do anything hence the court order dated the 12th June 2020.

[42] On the 2nd September 2020, which was three months after the court order the account had not been advertised neither had the first respondent complied with the directives and objections raised as far back as February 2018. The Master then addressed a letter to the first respondent's attorneys in the following words:

"It has come to our attention that yourselves together with the executrix have till to date failed to advertise the above Estate in terms of section 35 despite our request as per our letter dated the 4th April 2019 and court order dated 12th June 2020. Please find copies for ease of reference. You are hereby instructed to advertise the Estate by no later than the 11th September 2020 failure to do so we will proceed to remove the executrix for failing to comply with her statutory duties."

[43] On receipt of the letter referred to above the first respondent proceeded to advertise the account on the 18th September 2020 without having complied with all the directives and objections raised as far back as February 2018.

[44] On the 1st October 2020, the applicant's attorneys on becoming aware of the advertised account filed the following objection to the account, namely:

44.1 That the immovable property Erf 2[...] (1[...] M[...] Street, K[...] Ext[...]) is a joint asset belonging to both the surviving spouse and the deceased.

44.2 That the executrix cannot alone without the parties entering into a redistribution agreement allocate the assets according to her own discretion. The executrix has no authority to retain or sell the estate assets without consent of the owner herein the surviving spouse.

44.3 Paragraph 5 of the testamentary will does not specifically bequeath immovable property to the deceased heirs.

44.4 The surviving spouse therefore elect to retain the house as part of her award.

44.5 The account does not reflect a true and proper Liquidation and Distribution of the Estate since the executor knowingly and intentionally failed to collect all monies due to the estate.

44.6 On the 11th March 2016, the deceased prior to his death advanced the sum of R450 000.00 into the account of ZAF Khan. The surviving spouse demands that the executor collect payment of the debt and be paid into the Estate late account alternatively proof of payment of the money advanced copy of bank statement is attached.

[45] On the 5th February 2021, the Master of the High Court referred the objection raised to Messrs ZAF Khan and requested that they respond within 7 days. No response was received, as a result, the Master sent a follow up letter on the 30th March 2021.

[46] On the 21st October 2021, the Master having examined the amended account addressed the following query to Messrs ZAF Khan:

Requirements before estate account is advertised

“Kindly attend to address the issue of the money held by Nedbank on behalf of the deceased which was also addressed and made an order by the Court on the 12th June 2020.”

[47] The first respondent as well as her attorneys did not comply as a result on Friday, the 25th February 2022, the Master addressed a letter to ZAF Khan attorneys in the following words:

“Kindly comply with our queries sheet dated the 21st October 2021 upon receipt of this email.”

[48] It was as a result of the above that on the 29th August 2022 the applicant launched this application seeking removal of the first respondent as executrix Testamentary and that her attorney being the third respondent account for the sum of R450 000.00 paid into their Trust account by the deceased on the 11th March 2016.

The legal principles governing administration of deceased estates

[49] In *Wessels and Others v Master of the High Court, Pretoria and Others*,² the functions of the Master were described as the protection of the interest of creditors, heirs, legatees and all other persons having any claim upon an estate. In the exercise of this function the Master is given extensive powers of supervision by the Act.

[50] The main task of the Master’s office is the examination of Liquidation and Distribution accounts which shall have been prepared by the executrix or his

² [2018] ZAGPPHC 892.

representatives. If such an account is not found to be compliant with the Act and regulations it is the duty of the Master to advise the executor of such defects as well as objections received. The Master does this in a document titled “query sheet”.

[51] The Master further has powers in terms of section 36 of the Act to compel an executor to comply with any directive set out in the query sheet. If an executor does not or refuses or delays to submit a proper account the Master may by order of the Court remove such executor from office.³

[52] An executor once appointed takes control of all the assets of the deceased. He or she does so by:

a) Advertising in the Government Gazette and newspaper circulating in that district where the deceased resided a notice calling on persons who have claims against the deceased Estate to lodge claims with the executor and also debtors of the deceased Estate to pay such debt.⁴

b) Open a banking account in the name of the Estate with a bank in the Republic of South Africa as soon as he or she has funds of the Estate in excess of R1000.00.⁵

c) Lodge the Liquidation and Distribution account with the Master within the prescribed time period being six months from the date of issuing of Letters of executorship.⁶

[53] Section 54 of the Act provides for the removal of an executor from office by the Court. It reads as follows:

“(1) An executor may at any time be removed from his office: -

a) by the Court: -

i)

³ See section 54 of the Act.

⁴ See section 29 of the Act.

⁵ See section 28 of the Act.

⁶ See section 35(1)(a) of the Act.

v) if for any other reasons the Court is satisfied that it is undesirable that he or she should act as executor of the Estate concerned.”

[54] The applicant in this matter relies on section 54(1)(a). This Court has a discretion to remove the first respondent and in doing so the predominant consideration remains the interest of the Estate and the beneficiaries.⁷

[55] The evidence in this matter has established that the executor has failed to comply with the Master’s directive raised in respect of the first and the amended account. As an example, on the 24th August 2020, the Master having examined the account raised the following query, “kindly attend to address the issue of the money held by Nedbank on behalf of the deceased which was also addressed and made an order of court on the 12th June 2020”.

[56] It must be recalled that when the executor submitted or lodged the account dated 6th December 2017, the Master raised queries which were never addressed by the executor in her subsequent amended account. Amongst the queries, the executor was directed to furnish “all bank statements including proof that an estate bank account had been opened”. This has to date hereof not been done. In particular, the executor was asked to explain what happened to the bank accounts bearing account number 1[...] as well as account number 5[...]. It is so that up to date hereof the executor has not furnished any explanation.

[57] Annexure RAI is a copy of the amended Liquidation and Distribution account dated the 4th February 2021. That account only attended to rectify the query raised in respect of the movable property. The questions raised about the Nedbank account was not addressed at all.

[58] That account also states that an amount was paid to FNB in respect of home loan account being the sum of R41 259.08. This is incorrect as that amount had already been paid by the deceased during his lifetime being, the 2nd March 2016, it is accordingly incorrect to have included that amount as a claim against the estate.

⁷ See *Gory v Kolver NO and Others* [2006] ZACC 20; 2007 (4) SA (CC); 2007 (3) BCLR 249 (CC) at [56].

[59] The executor was asked to submit vouchers in respect of all claims against the estate as well as administration expenses this was not done.

[60] On the 3rd October 2024, the Master filed a report at the request of this court. In paragraph 5.2(ii) and (iii) the Master reports as follows:

“With regards to the amended Liquidation and Distribution account lodged on the 20th October 2021 and the query sheet issued on the 21st October 2021, there was no compliance nor response hence we send another email on the 25th February 2022 which we do not have a response to in the file. Attached is annexure B in support. There was no instruction from our side as we were still waiting for the executrix and the agent to comply with our query as mentioned above.”

[61] The above report was forwarded to the first respondent and her attorneys for comment. No comment has been received to date. I accept the report as stating the correct facts. I have as the result, come to a conclusion that there is sufficient evidence before me supporting the removal of the first respondent as executrix of the Estate of the deceased. She has failed to comply with most of the directives and she is acting to the detriment of the estate and its beneficiaries.

[62] In the first prayer, the applicant asks for an order that she as the legally married surviving spouse of the deceased be declared to have pre-emptive rights over the immovable property. This prayer is in my view unnecessary because the applicant is a co-owner of that property which fact has not been disputed and correctly so. In accordance with their marriage regime the applicant is entitled to half of the value of the joint estate. This fact was recognised by the deceased in the particulars of claim in the first divorce action. The deceased also made an offer to pay the applicant an amount of money in settlement of her share in the estate.

[63] The last prayer is the application that the third respondent, namely, Messrs ZAF Khan attorneys be directed to pay the amount of R450 000.00 (Four Hundred and Fifty Thousand Rands) into the estate of the deceased.

[64] The third respondent whilst conceding that the said amount was indeed paid into their Trust account by the deceased on the 11th March 2016, did not file any affidavit setting out what happened to the money this was done in an affidavit by the first respondent who simply said the amount was paid to a company called CMC and submitted no proof nor explanation about that payment. She testified to hearsay. The payment of that amount to ZAF Khan took place at the same time as there were discussions to settle the divorce action. It is not surprising that the deceased called the applicant and told her about the money which amount is the same amount that her attorneys had proposed as a payment in full and final settlement of the divorce action.

[65] On the 29th July 2024, this Court issued a directive calling on the third respondent to file proof of payment of the amount of R450 000.00 to CMC (Pty) Ltd which proof must include the date of payment as well as the invoice proving the debt due by the deceased to that company.

[66] The third respondent chose to file an affidavit sworn to by their client the first respondent to which affidavit is attached an acknowledgement of debt in which is indicated that the deceased acknowledged himself to be indebted to CMC SA (Pty) Ltd in the sum of R450 000.00. That document is dated the 12th February 2026. The basis for the indebtedness is said to “being in refund of the commissions paid to me by the creditor on the sale of the motor vehicle which had since been seized by the South African Police Service”.

[67] I find this document highly suspect and unreliable. In the first place, it only surfaced well after closure of the pleadings and argument in Court if it was there the question is why was it not produced as an annexure to the answering affidavit and why does the third respondent not depose to an affidavit to explain and give details as requested in the directive.

[68] Secondly, the deceased was a police officer in the employment of the South African Police it is strange and inconceivable that he was now “a motor vehicle salesperson”. This is not only new evidence, but it is unreliable and stands to be

ignored. The evidence of the first respondent is inconsistent with the vastly credible evidence of the applicant that the amount was to have been paid to her as per settlement negotiations that were taking place at that time. There was no settlement reached if there had been, then, at least the amount of R450 000.00 should have been included as a claim against the estate in the Liquidation and Distribution account.

[69] In conclusion, this Court is satisfied that the executor has made herself guilty of maladministration of the Estate and should be removed, as a result, I make the following order:

Order

1. It is hereby confirmed that the applicant and the deceased jointly owned the immovable property being, Erf 2[...] K[...], Ext [...], situated at 1[...] M[...] Street, K[...] held by the deceased and the applicant in terms of title deed TL8[...]
2. The first respondent is hereby removed as executrix Testamentary in the estate of the late T[...] M[...] R[...].
3. The second respondent, the Master of the High Court is hereby directed to withdraw letters of executorship issued in favour of the first respondent and to take steps in terms of the Act and call for nomination of an independent executor within 14 days from date of this order.
4. The third respondent is ordered to pay the amount of R450 000.00 (Four Hundred and Fifty Thousand Rands) into an interest-bearing account to the benefit of the estate whilst awaiting the opening of an estate bank account by the new executor.
5. The first and third respondents are ordered to pay the costs of this application on scale C.

Dated at Johannesburg on this 31st day of January 2025

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 25 July 2024
Date of Judgment: 31 January 2025

Appearances:

For Applicant: Adv. MA Maholo
Instructed by: Messrs. ML Mateme Attorneys

For 1, 2 & 3 Respondents: Adv. Coleman
Instructed by: Messrs. Alida Rossouw Attorneys