

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 58320/2021

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


.....
SIGNATURE

DATE 25 November 2024

In the matter between:

JAMES RHODES ROBERTSON

Applicant

and

JOHAN LOUIS BOOYSEN

First Respondent

THE MASTER OF THE HIGH COURT, JOHANNESBURG

Second Respondent

and

In the counter-application between:

JOHAN LOUIS BOOYSEN

Applicant

and

JAMES RHODES ROBERTSON	First Respondent
DARLING ODUM NOEL	Second Respondent
DAMBADZO TINWARO CHIWANDIRE	Third Respondent
GARTH ARTHUR MCEWAN	Fourth Respondent
CIPC	Fifth Respondent
THE MASTER OF THE HIGH COURT, JOHANNESBURG	Sixth Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 25 November 2024.

MAHON AJ:

- [1] This matter concerns disputes arising from the interpretation and execution of the late Philip Cronje's Last Will and Testament, executed on 6 June 2016. The primary focus is the alleged non-compliance by James Rhodes Robertson ("Mr Robertson") with what the respondent contends are certain conditions imposed by the Will, which have led to multiple legal proceedings, including Mr Robertson's main application seeking the removal of Johan Louis Booysen ("the executor") as executor of the deceased's estate and the executor's counter-application seeking declaratory relief regarding the interpretation of the Will and its conditions.

[2] The central question concerns the failure—or purported failure— by Mr Robertson to fulfil certain conditions imposed by the deceased’s Will as a prerequisite to inheriting a 51% membership interest in Kitsch Kool Properties CC, a business trading as Big Blue. These issues have given rise to the present application in convention, in which Mr Robertson seeks the removal of the executor of the deceased’s estate, and a counterapplication brought by the executor, seeking declaratory relief on the interpretation of the Will and the conditions governing Mr Robertson’s inheritance.

[3] Philip Cronje, the testator (whom I shall hereinafter refer to as “*the testator*” or “*the deceased*”, depending on the context), passed away on 1 December 2017. His Will included several notable bequests, including financial legacies to his husband, Darlington Odum Noel (“Mr Noel”), and his friend, Dambudzo Tinarwo Chiwandire (“Mr Chiwandire”). These payments were to be drawn from the deceased’s business interest in Big Blue. The Will also provided that Mr Robertson would inherit the remainder of the estate. It is the interpretation of these provisions in the Will which give rise to the counter-application for declaratory relief.

[4] The relevant provisions of the Will read as follows:

“1.1 I bequeath the following assets as a specific bequest to the following heirs:

1.1.1 To my husband, [Mr Noel]... I bequeath the following:

...

1.1.1.2 a payment of R15,000 per month for a term of 48 months, annually escalating by CPIX, payable from

the BIG BLUE business interest so herein bequeathed in 1.2.1...

...

1.1.2 To my friend, [Mr Chiwandire] ... I bequeath a payment of R5,000 per month for a term of 24 months, annually escalating by CPIX, payable from the BIG BLUE business interest so herein bequeathed in 1.2.1.

1.2 Subject to 1.1 and 1.3 hereof, I bequeath the whole of the remainder of my net estate to my business partner, [Mr Robertson]... on the following conditions:

1.2.1 all of my business interests in the apparel business commercially known as BIG BLUE, held in my own name and/ or in KitchKool Properties CC or elsewhere, subject to fulfillment of 1.1 above...

...

1.2.4 Should [Mr Robertson] not accept any conditional bequest or repudiate any bequest in 1.2.1... hereof, then that portion so repudiated shall be bequeathed to my friend, GARTH... McEWAN on the same terms and conditions.

1.2.5 Should... [Mr Robertson] fail to survive me for 30 (thirty) days, then the whole of the balance of my estate in 1.2 is bequeathed to my above mentioned heir, GARTH... McEWAN”.

- [5] The executor contends that conditions precedent for Mr Robertson’s inheritance were not met, specifically arguing that Mr Robertson failed to ensure the legacies to Noel and Chiwandire were paid as stipulated. This failure, the executor asserts, results in the forfeiture of Mr Robertson’s claim to the bequest. Furthermore, the executor alleges that Mr Robertson unilaterally and unlawfully transferred the deceased’s 51% membership interest in Big Blue to himself, in violation of the Will and a consent order issued in January 2020. That consent

order had required Mr Robertson to demonstrate compliance with the payment conditions before the membership interest could be transferred.

[6] Mr Robertson, on the other hand, maintains that the financial obligations outlined in the Will were not imposed on him personally but were directed at the close corporation, Big Blue, in which he already held a 49% membership interest. He argues that the payments to the legatees were made from the CC and that he has fully complied with the Will's requirements. He also challenges the executor's conduct in administering the estate, accusing him of delays, inaccuracies in the liquidation and distribution account, and mismanagement. Mr Robertson seeks the executor's removal and the appointment of an alternative executor nominated by him.

[7] The crux of the dispute revolves around the interpretation of the Will and whether it imposed personal obligations on Mr Robertson to make the payments to the legatees or merely intended for these payments to be made from the deceased's business interest in Big Blue. The executor asserts that the conditions were suspensive, meaning Mr Robertson's inheritance would not vest unless the conditions were met. Mr Robertson, in contrast, contends that any obligations under the Will were resolute and that his right to inherit vested immediately upon the testator's death.

[8] The executor seeks a declaratory order confirming that Mr Robertson has forfeited his claim to the bequest due to non-compliance with the Will's conditions. He also requests directions for the substitution of heirs, as provided for in the Will, which designated alternative beneficiaries should Mr Robertson

fail to comply. Mr Robertson, in his application, argues that the executor has breached his fiduciary duties by failing to act with diligence and by producing flawed liquidation and distribution accounts. He contends that these failures warrant the executor's removal and the appointment of a new executor to oversee the finalisation of the estate.

- [9] This court is therefore called upon to determine the true intention of the testator as expressed in his Will, whether Mr Robertson has complied with any pre-conditions for the vesting of his rights in terms of the Will, and whether the conduct of the executor justifies his removal.

THE COUNTER-APPLICATION FOR DECLARATORY RELIEF

- [10] Given the nature of the disputes, it is convenient to deal with the counter-application before dealing with the application in convention.
- [11] Mr Robertson claims to have complied with the conditions laid out in the Will by making payments from Big Blue's income. He submitted a payment schedule as evidence of compliance, which he asserts reflects the amounts paid to Mr Noel and Mr Chiwandire during the specified periods. Mr Robertson further contends that these payments were made in accordance with the Will and an oral agreement he had with the testator prior to his death, whereby the payments began before the testator passed away on 1 December 2017.
- [12] However, the executor disputes these claims. He argues that the payment schedule provided by Mr Robertson is an unsupported Excel document lacking corroboration from bank statements or other financial records. The executor further contends that the payments detailed in the schedule fail to reflect the

required annual inflation adjustments stipulated in the Will. This, he argues, constitutes a breach of the conditions imposed on Mr Robertson.

- [13] The executor also emphasises that Mr Robertson unilaterally transferred the deceased's 51% membership interest in Big Blue into his own name without fulfilling the financial obligations under the Will or adhering to a consent order issued on 28 January 2020. That order required Mr Robertson to provide proof of compliance with the payment obligations and address any shortfall in the estate before the membership interest could be transferred. According to the executor, this transfer was unlawful and contrary to the terms of the consent order.
- [14] Mr Noel, one of the legatees, filed an affidavit confirming that he did not receive the full payments as required under the Will, further undermining Mr Robertson's claims of compliance. The executor also notes that discussions with the testator before his passing made no mention of the alleged oral agreement cited by Mr Robertson. This calls into question the validity of Mr Robertson's assertion that payments began during the testator's lifetime.
- [15] These disputes must necessarily be determined in the light of the correct interpretation of the provisions of the Will. This enjoins me to employ the approach to interpretation which is, by now, well known and recognised to which was considered in **Endumeni**.¹ The approach is equally applicable when seeking to interpret the provisions of a Will.²

¹ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA)

² *Strauss v Strauss and Others* (2020/2236) [2023] ZAGPJHC 377 (24 April 2023)

[16] What is clear is that the testator's intention was that Mr Robertson was to inherit the balance of the testator's net estate, comprising, *inter alia*, all of the testator's business interests in the apparel business commercially known as Big Blue, and that Messrs Noel and Chiwandire would receive the payments referred to in clause 1.1 of the Will, for the specified periods. This intention must inform my consideration of the provisions of the Will and must provide the necessary context against which the competing interpretations of the Will, must be considered.

[17] The question is whether Mr Robertson's entitlement to inherit vested immediately upon the death of the testator, or whether it only vested once the payments to Messrs Noel and Chiwandire had been made:-

[17.1] In the former case, Mr Robertson's entitlement to inherit is not conditional upon such payments being made but, having accepted his inheritance, an obligation arises on the part of Mr Robertson to facilitate payment of the amounts referred to, to Messrs Noel and Chiwandire. These obligations are enforceable by Messrs Noel and Chiwandire against Mr Robertson but do no impact upon the vesting of Mr Robertson's rights;

[17.2] In the latter case, the payments to be made to Messrs Noel and Chiwandire would have constituted pre-conditions for the vesting of Mr Robertson's rights and, in the absence of such payments, Mr Robertson has no entitlement to stipulated inheritance.

[18] The classification of bequests in a Will determines the timing and nature of the beneficiary's rights and obligations. Bequests may be subject to either a suspensive condition, a resolutive condition, or a modus, each of which has distinct legal consequences. The distinction between these classifications is particularly relevant to determining whether a beneficiary's right to inherit vests immediately or only upon fulfilment of specific conditions. In the present matter, the issue is whether Mr Robertson's right to inherit vested immediately upon the death of the testator or whether it was contingent on the fulfilment of payment obligations to Messrs. Noel and Chiwandire.

[19] A suspensive condition in a bequest means that the right to inherit does not vest until the specified condition is fulfilled. The occurrence of the condition is a precondition to the vesting of the beneficiary's rights. If the condition is not fulfilled, the bequest lapses entirely, and the beneficiary gains no entitlement. In **Jewish Colonial Trust Ltd v Estate Nathan**,³ the court emphasised that a suspensive condition creates a contingent right that does not mature into a vested right unless the specified event occurs. Applying this framework, a bequest subject to a suspensive condition places the onus on the beneficiary to satisfy the condition before acquiring any legal entitlement to the inheritance.

[20] In contrast, a resolutive condition operates differently. Here, the right to inherit vests immediately upon the testator's death, but the right may be divested if the specified condition is fulfilled. The bequest is granted subject to the possibility

³ 1940 AD 163 at 176

that it may later be forfeited.⁴ A resolutive condition does not delay the vesting of a right but rather introduces a subsequent risk of forfeiture.

[21] A *modus*, on the other hand, creates an obligation for the beneficiary to perform certain actions without affecting the immediate vesting of the inheritance. The right to inherit vests immediately upon the death of the testator, but the beneficiary is bound to fulfil the obligations imposed by the *modus*.⁵ The key distinction between a *modus* and a suspensive condition is that a *modus* does not delay the vesting of the inheritance; rather, it imposes an enforceable duty on the beneficiary.

[22] In the present case, the terms of the testator's Will required payments to be made to Messrs. Noel and Chiwandire, escalating annually with inflation. If the bequest to Mr Robertson was subject to a suspensive condition, Mr Robertson's right to inherit the 51% membership interest in Kitsch Kool Properties CC would not have vested until the payments had been completed in full. In that scenario, failure to make the payments would mean that the right never vested, and the bequest would lapse. However, if the payments constituted a *modus*, Mr Robertson's right to inherit would have vested immediately upon the testator's death, creating an enforceable obligation to make the payments but not delaying or negating the vesting of his inheritance.

[23] The conclusion that Mr Robertson's rights vested immediately upon the death of the testator aligns with the overall intention of the testator as reflected in the

⁴ *Grusd v Grusd* 1946 AD 465

⁵ *Webb v Davis No And Others* 1998 (2) SA 975 (SCA)

Will. The interpretation that the bequest to Mr Robertson was subject to a modus rather than a suspensive condition is not only consistent with the language of the Will but also supports the practical implementation of the testator's wishes.

[24] The testator's explicit requirement that the payments to Messrs. Noel and Chiwandire be made "*payable from the Big Blue business interest*" suggests that the business interest needed to vest in Mr Robertson immediately upon the testator's death. This wording indicates that the testator intended the payments to be facilitated through the income and assets of Big Blue. For this to occur, it was technically necessary for Mr Robertson to assume control of the business, given that he only owned 49% of the members' interest. If the bequest to Mr Robertson were subject to a suspensive condition (with the result that he would not obtain control through the acquisition of the majority members' interest), he would not have the legal authority to manage or direct the business, making it impossible for him to give effect to the testator's wishes regarding the payments.

[25] Control over the business interest is integral to Mr Robertson's ability to fulfil the obligations imposed by the Will. By immediately vesting the membership interest in Mr Robertson, the testator ensured that he could direct the operations of Big Blue and use its resources to make the required payments to the legatees. This immediate vesting aligns with the practical necessities of the estate plan, as it enables Mr Robertson to take the steps necessary to comply with the Will's obligations.

[26] Furthermore, interpreting the bequest as subject to a suspensive condition would create an impractical and potentially unworkable outcome. Without

vesting, no party would have clear authority over the Big Blue business interest, leading to uncertainty and potential delays in fulfilling the testator's wishes. This would contradict the overall intention of the Will, which was to ensure that the payments to Messrs. Noel and Chiwandire were made in a structured and timely manner using the resources of Big Blue. The interpretation that Mr Robertson's rights vested immediately, resolves this issue by granting him the authority to effectuate the testator's wishes while simultaneously imposing an enforceable obligation to comply with the terms of the Will.

[27] In light of these considerations, the conclusion that the bequest to Mr Robertson vested immediately upon the testator's death is both consistent with the language of the Will necessary to give practical effect to the testator's overarching intentions and is also consistent with its apparent purpose. The inclusion of a modus ensures that Mr Robertson is bound by the obligations to make the payments, but the vesting of the business interest is not delayed or contingent upon the fulfilment of these obligations.

[28] The evidence suggests that the Will imposed a modus rather than a suspensive condition. The wording of the Will indicates that Mr Robertson's inheritance was granted outright, subject to his obligation to facilitate payments to Messrs. Noel and Chiwandire. This interpretation aligns with the legal principle that a modus does not suspend the vesting of rights but creates an enforceable duty to fulfil the obligations stipulated by the testator. As such, Mr Robertson's right to inherit vested immediately upon the testator death, and the payments to Messrs. Noel and Chiwandire became obligations enforceable against him rather than conditions precedent to his entitlement.

THE ORAL ARRANGEMENT

- [29] Mr Robertson has argued that an arrangement existed between himself and the deceased prior to the testator's death, under which he began making payments to Mr Noel of the amounts referred to in clause 1.1 of the Will, while the testator was still alive, in accordance with the testator's wishes. According to Mr Robertson, these payments, which purportedly began in 2016 following the execution of the Will, were intended to fulfil the financial obligations stipulated in the Will. He contends that these pre-death payments should be taken into account for the purpose of determining whether he has complied with the *modus* imposed by the Will.
- [30] Mr Robertson further asserts that the deceased's direction to make these payments demonstrates his intention for the payments to commence prior to his death. He relies on this alleged arrangement to argue that he has substantially complied with the financial obligations outlined in the Will.
- [31] The contention that payments to Mr Noel had already commenced prior to the death of the deceased requires careful scrutiny in light of the express terms of the deceased's Last Will and Testament. The Will unequivocally outlines the obligations imposed upon Mr Robertson, specifying the amounts payable to Mr Noel and the timeframe within which those payments were to be made. It is significant that the Will does not reference any pre-existing arrangement or payments to Mr Noel preceding the testator's death. Such extraneous arrangements are legally irrelevant when the Will is silent on them.

- [32] The absence of any mention of such an arrangement in the Will is telling. If the deceased had intended for payments made prior to his death to be credited toward the obligation imposed on Mr Robertson posthumously, one would reasonably expect the Will to reflect this intention explicitly. The Will, as a formal and deliberate document, constitutes the authoritative record of the deceased's final wishes. Any deviation from or supplementation of its terms, particularly concerning financial obligations of this nature, would require clear and unambiguous inclusion in the Will itself.
- [33] Moreover, the terms of the Will suggest that the payments to Mr Noel were integrally tied to the inheritance of the deceased's business interest in Big Blue. The payments are expressly stated to be "*payable from the Big Blue business interest.*" This reinforces the conclusion that the obligation arises only upon the vesting of the business interest in Mr Robertson, which could occur only after the testator's death. To conclude otherwise would be to imply that the deceased intended to bind the business interest or its resources prior to his death, a notion not supported by the language of the Will.
- [34] The argument that the deceased had entered into a separate arrangement with Mr Robertson for pre-death payments to Mr Noel is not only unsupported by the Will but also inconsistent with the principle that the Will serves as the definitive record of the testator's intentions. Any such arrangement, if it existed, should have been explicitly incorporated into the Will through amendment or codicil to reflect its significance and ensure clarity. The silence of the Will on this issue must be taken as deliberate and determinative.

[35] Accordingly, any payments made to Mr Noel before the testator's death cannot be taken into account in assessing whether Mr Robertson has complied with his obligations under the Will. The obligations arising from the *modus* are specific and arise only after the inheritance vests in Mr Robertson upon the testator's death.

THE CLAIM FOR REMOVAL OF THE EXECUTOR

[36] Mr Robertson seeks the removal of Booysen as executor of the deceased estate. Mr Robertson contends that the executor has failed to discharge his statutory and fiduciary duties, leading to delays, errors, and other alleged mismanagement in the administration of the estate. Relying on section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965, Mr Robertson asserts that it is undesirable for the executor to continue acting as executor and that his removal is necessary for the proper administration of the estate. The claim is based on specific allegations of misconduct, negligence, or failure to act diligently, each of which will be addressed in turn.

Alleged Delays in Finalising the Estate

[37] A primary ground for removal is the alleged delay in finalizing the administration of the estate. Mr Robertson contends that the estate remains unresolved more than five years after the testator's passing and that no final liquidation and distribution account has been submitted to the Master. He further asserts that the executor failed to seek extensions as required under the Administration of Estates Act, 1965, exacerbating the delay and causing prejudice to the beneficiaries.

[38] In response, the executor attributes the delay to the complex nature of the estate and the numerous disputes that have arisen, including litigation initiated by Mr Robertson himself. The executor points out that these disputes, particularly those related to the interpretation of the Will, the alleged pre-death payments, and Mr Robertson's unilateral actions concerning the membership interest in Kitsch Kool Properties CC, have necessitated judicial intervention and have significantly prolonged the administration process.

[39] While the delay in finalising an estate may, in some cases, justify the removal of an executor, it is necessary to consider the specific circumstances of the case. The administration of this estate involves complex issues, including disputes over the interpretation of the Will, contested claims by Mr Robertson, and the need to resolve the financial obligations arising from the *modus*. It is evident that these disputes have contributed significantly to the delay. An executor cannot reasonably be held accountable for delays caused by litigation initiated by one of the beneficiaries. Furthermore, no evidence has been presented to suggest that the executor has acted in bad faith or deliberately protracted the administration process.

Alleged Errors in the Liquidation and Distribution Account

[40] Mr Robertson alleges that the executor has committed errors in preparing the draft liquidation and distribution account, which reflect a distorted and inaccurate picture of the estate's assets and liabilities. Specifically, Mr Robertson claims that the account incorrectly includes assets not forming part of the deceased's estate, such as immovable property transferred by the

deceased prior to his death. He also alleges that the valuation of the deceased's interest in Kitsch Kool Properties CC is overstated, failing to account for loan accounts and other liabilities.

- [41] The executor acknowledges certain errors in the draft liquidation and distribution account but maintains that these were corrected following objections raised during the prescribed objection process. Importantly, the executor's duty is to present an accurate account, but errors that are corrected during the objection process do not necessarily amount to misconduct or a failure of fiduciary duty. There is no evidence to suggest that these errors were deliberate or that they resulted in prejudice to the estate. The correction of the errors demonstrates the executor's responsiveness to legitimate concerns raised by interested parties.

Alleged Breach of Fiduciary Duties

- [42] Mr Robertson further alleges that the executor has breached his fiduciary duties by failing to act in the best interests of the estate and its beneficiaries. He contends that the executor has not taken sufficient steps to ensure compliance with the terms of the Will, particularly the financial obligations arising from the *modus*. In support of this claim, Mr Robertson points to the executor's alleged failure to enforce payment obligations against him and his handling of disputes related to the Big Blue business interest.

- [43] The executor has consistently maintained that he has acted diligently and impartially in carrying out his duties. The disputes surrounding the *modus* and the Big Blue business interest are complex and have required judicial

intervention to resolve. The executor's decision to seek declaratory relief regarding the interpretation of the Will was a prudent step aimed at clarifying the testator's intentions and ensuring the proper administration of the estate. There is no indication that the executor has acted improperly or failed to pursue the best interests of the estate in this regard.

Alleged Lack of Communication

[44] Finally, Mr Robertson alleges that the executor has failed to communicate effectively with the beneficiaries, leaving them uninformed about the progress of the estate administration. While effective communication is an important aspect of an executor's duties, the evidence presented does not establish that the executor has been unreasonably unresponsive or has deliberately withheld information. On the contrary, the executor has engaged with the beneficiaries and their legal representatives, particularly in addressing objections and disputes raised during the administration process.

Concluding Remarks on the Claim for Removal

[45] A host of grounds were relied upon for the executor's removal. I have dealt with the most prominent grounds above but neither these grounds, nor the less prominent grounds relied upon, justify the removal of the executor.

[46] The removal of an executor is a serious step that should not be taken lightly. It requires clear and compelling evidence of misconduct, incapacity, or other factors rendering the executor unable or unfit to perform their duties. While Mr Robertson has raised several allegations against the executor, these largely relate to disputes over the interpretation of the Will and delays arising from the

complex nature of the estate. There is insufficient evidence to establish that the executor has acted improperly, negligently, or in breach of his fiduciary duties. The delays and errors alleged by Mr Robertson are not of such a nature as to justify the removal of the executor under section 54 of the Administration of Estates Act, 1965. Accordingly, the claim for the removal of Mr Booyesen as executor cannot succeed.

COSTS

- [47] Costs are a matter for the discretion of the court, to be exercised judicially based on the circumstances of the case. The general principle is that costs should follow the result, meaning that the unsuccessful party is ordinarily required to pay the costs of the successful party. However, in this matter, it is evident that each party has achieved a measure of success, warranting a departure from the general principle.
- [48] Mr Robertson has succeeded in resisting the counterapplication for declaratory relief, as this court has concluded that his entitlement to inherit vested immediately upon the death of the testator, subject to the obligations arising from the *modus*. This finding aligns with Mr Robertson's contention that his inheritance was not conditional upon the prior fulfilment of the payment obligations to Messrs. Noel and Chiwandire.
- [49] Conversely, the executor has successfully resisted the application for his removal. This court has found that the allegations of misconduct, negligence, and failure to discharge fiduciary duties have not been established to a degree that justifies removal under section 54 of the Administration of Estates Act.

Accordingly, the executor is entitled to remain in office as executor of the deceased estate.

- [50] Given that both parties have succeeded on significant issues, it would not be appropriate to make a costs order in favour of either party. In the exercise of this court's discretion, the appropriate order is that each party shall bear its own costs. This outcome reflects the balanced measure of success achieved by each party in these proceedings.

CONCLUSION

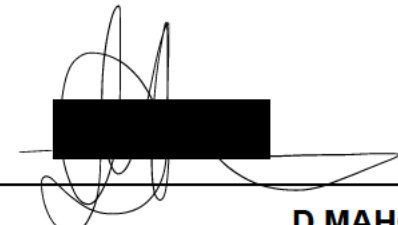
- [51] The disputes arising from the administration of the estate of the late Mr Cronje highlight the complexity of the issues surrounding the interpretation of the Will, the fulfilment of the financial obligations imposed on Mr Robertson, and the conduct of the executor. This court has determined that Mr Robertson's right to inherit the 51% membership interest in Kitsch Kool Properties CC vested immediately upon the death of the testator, subject to the obligations arising from the *modus*. Any alleged pre-death payments to Mr Noel cannot be taken into account for purposes of compliance with the *modus*, as the Will is silent on such arrangements, and they are inconsistent with its express terms.
- [52] With respect to the claim for the removal of the executor, this court finds that Mr Robertson has not established sufficient grounds to justify such an order. While certain delays and errors have been identified in the administration process, these are largely attributable to the complex nature of the estate and the disputes initiated by Mr Robertson himself. There is no evidence to suggest that the executor acted in bad faith, negligently, or in breach of his fiduciary duties.

On the contrary, the executor has acted diligently and reasonably in seeking judicial clarification to ensure the proper administration of the estate.

[53] Both parties have achieved a measure of success in these proceedings. Mr Robertson has succeeded in resisting the declaratory relief sought by the executor, while Mr Booysen has successfully defended the claim for his removal. In light of this balanced outcome, it is appropriate that each party bear its own costs.

[54] In the circumstances, the following order is made:

1. The application and the counter-application are dismissed.
2. Each party is to pay their own costs of the proceedings.



D MAHON
Acting Judge of the High Court
Johannesburg

Date of hearing: 22 August 2024

Date of judgment: 25 November 2024

APPEARANCES:

For the Applicant: Adv C Spangenberg
Instructed by: WF Bouwer Attorneys

For the Respondent: Adv J Matthee
Instructed by: Freddie Ludick Attorneys