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

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2024-070995

DATE: 3 December 2024

In the matter between:

LEE ANN PASCALE LE ROUX

Applicant

and

ESTATE LATE BENJAMIN JACOBUS LE ROUX

First Respondent

FIRST RAND BANK LIMITED

Second Respondent

AFRICAN BANK LIMITED

Third Respondent

ELOISE LE ROUX

Fourth Respondent

THE MASTER OF THE HIGH COURT, JOHANNESBURG

Fifth Respondent

Neutral Citation: *Le Roux v Estate Late Le Roux and Others* (2024-070995)

[2024] ZAGPJHC --- (3 December 2024)

Coram: Adams J

Heard: 26 November 2024

Delivered: 3 December 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 3 December 2024.

Summary: Civil procedure – urgent application – for interim relief –

Pending main application to have executor removed and to appoint applicant in his place – alleged that appointment of executor is unlawful –

Pending the hearing of the main application, applicant seeks orders which will permit her or a third party, in the interim, to continue to administer the deceased estate and to manage and control its assets – the applicant's case not supported by the facts in the matter – applicant's version rejected out of hand on the papers –

Urgent application dismissed with a punitive costs order – respondent granted interim relief to protect the assets in the estate pending the main application.

ORDER

- (1) The applicant's urgent application is dismissed with costs.
- (2) The applicant shall pay the fourth respondent's costs of this urgent application on the scale as between attorney and client.
- (3) It be and is hereby declared that as and at the date of his death, Mr Benjamin Jacobus Le Roux ('the deceased') was a member of Leo Taur Airconditioning CC ('the CC') and that such membership of and member's interest in the CC is to form part of his deceased estate.
- (4) It be and is hereby declared that the purported transfer to the applicant of the member's interest of the deceased in the CC is null and void *ab initio* and is hereby set aside.
- (5) It is hereby directed that, pending the finalisation of and a decision on part B of the applicant's application dated 27 June 2024, the fourth respondent

shall be in charge of and manage, as a proxy on behalf of the deceased estate, the business of the CC, with full powers relating to its finances and administration, including being the signatory on any and/or all of the banking accounts of the CC.

(6) The second respondent [FirstRand Bank] be and is hereby ordered and directed forthwith to remove the hold placed on Leo Taur Airconditioning CC business account with account number: 6[...] ("the account") and to allow the fourth respondent (Eloise Le Roux) to have full access to and control of the business account and to conduct the day-to-day business operations of the business, to enable her to transact on the business account pending the finalisation of and a decision on part B of the main application.

JUDGMENT

Adams J:

[1]. This is an opposed urgent application by the applicant (Lee Ann)¹ for interim interdictory and mandatory relief in relation to the administration of the deceased estate of the late Benjamin Jacobus Le Roux (the deceased estate), who died on 13 September 2022, leaving a 'Last Will'. There is an ongoing dispute relating to the administration of the deceased estate, which dispute has had a long and a tedious history. The Last Will and Testament of the deceased and its validity are not disputed.

[2]. Lee Ann and Standard Trust Limited (Standard Trust) were nominated by the deceased in his will, which is dated 14 May 2018, as the joint executors of his estate, and were appointed as such after his death on 26 April 2023 by the fifth respondent (the Master). Standard Trust resigned as executor of the deceased estate on 2 January 2024 and renounced in writing on the said date

¹ Some of the parties are referred to by their first names rather than their surnames, for ease of reference, to distinguish between Lee Ann and the daughters of the deceased, Eloise, Jeanelle and Lelia. No disrespect is intended.

their nomination as joint executor of the deceased estate. Thereafter, the letters of executorship issued on 26 April 2023 were cancelled by the Master and a Mr Andre Christo Du Toit (Mr Du Toit) was appointed as the new executor in the said estate. Letters of Executorship were issued by the Master in favour Mr Du Toit on 14 June 2024, reportedly as an independent third party. This appointment and her removal as an Executrix of the deceased estate is presently being challenged by Lee Ann, who has launched an application in this court to have set aside the appointment of Mr Du Toit and to have her appointed as the sole executor in the estate. That application is presently pending and I understand is scheduled to be heard in the opposed motion court on 5 February 2025. The appointment of Mr Du Toit came about at the instance of the office of the Master as a result of the resignation of Standard Trust as co-executor of the deceased estate and after Lee Ann was removed as co-executrix, allegedly as a result of complaints by the other heirs of misconduct on the part of Lee Ann.

[3]. In the interim and pending a final decision in the aforementioned opposed application by Lee Ann, Mr Du Toit was on 2 October 2024, on urgent application by Lee Ann, interdicted and restrained *inter alia* from performing any work in relation to the administration of the deceased estate in his capacity as executor. Strangely, Mr Du Toit was also ordered to pay punitive costs of the said urgent application.

[4]. In this urgent application, Lee Ann applies – again pending finalisation of and a decision on the aforementioned opposed application – for orders ‘unfreezing’ the funds held on account of Leo Taur Airconditioning CC and the funds held on account of the deceased estate. Ancillary relief is also applied for. Leo Taur Airconditioning CC (‘the CC’) is a duly registered close corporation, of which, by all accounts, the deceased was a member as and at the date of his death on 13 September 2022. In his Last Will and Testament the deceased bequeathed his interest in the CC to his three daughters, Eloise (the fourth

respondent), Jeanelle and Lelia. The relevant portion of the will reads as follows: -

‘1.3 Bequest of Residue

I direct that all my member's interest in and loans to the close corporation known as Leo Taur Airconditioning CC shall be brought to cash by the Executors and I bequeath the residue of my estate in equal shares to my children, Eloise Le Roux, Jeanelle Le Roux and Lelia Elizabeth Le Roux, but should any such beneficiary predecease me, then the share of such beneficiary shall devolve upon that beneficiary's descendants by representation and failing such descendants upon the remaining beneficiaries or the beneficiaries substituted for them.’

[5]. It may be apposite to cite in full the relief sought by Lee Ann in the notice of motion, which reads in the relevant part as follows: -

‘BE PLEASED TO TAKE NOTICE that the applicant intends to apply to this Court ... for an order in the following terms:

1.
2. The second respondent [FirstRand Bank] be ordered and directed forthwith upon receipt of this order to remove the hold placed on Leo Taur Airconditioning CC business account with account number: --- ("the account") and to allow the applicant to have full access and control to the business account and to conduct the day-to-day business operations of the business, *pendente lite* and to be able to transact on the business account pending the finalisation of Part B of the main application.
3. The second respondent [FirstRand Bank] be interdicted and restrained *pendente lite* from providing the fifth respondent [the Master] with bank statements and/or any other financial information relating to Leo Taur Airconditioning business account pending the finalisation of Part B of the main application.
4. The third respondent [African Bank] be ordered and directed forthwith upon receipt of this order to remove the hold placed in the first respondent's estate late account, with account number: --- ("the

account") and allow the estate administrators of the first respondent's late estate, NYR administrators Service, to have full access and control of the first respondent's estate late account, *pendente lite* and able to attend to the administration of the estate late pending the finalisation of Part B of the main application.

5. The third respondent [African Bank] be interdicted and restrained *pendente lite* from providing the fifth respondent [the Master] with bank statements and/or any financial documents or information relating to the first respondent's late estate account pending the finalisation of Part B of the main application.

6. The fourth respondent [Eloise] be interdicted and restrained, *pendente lite* from interfering with the day-to-day operations of Leo Taur Airconditioning CC and from contacting or engaging with suppliers of the Leo Taur Airconditioning CC directly or indirectly through the offices of the fifth respondent and/or through any third party with the intention to derail the supply or the ongoing daily operations of Leo Taur Airconditioning CC pending the finalisation of Part B of the main application.

7. The fourth respondent [Eloise] be interdicted and restrained, *pendente lite* to not in any way interfere with the administration and winding up of the first respondent late estate through the offices of the fifth respondent and/or through any third party to the extent of derailing the day-to-day business operations of Leo Taur Airconditioning CC and reducing the asset value of the business pending the finalisation of Part B of the main application.

8. The fifth respondent [the Master] be ordered and directed to follow the provisions as specified in the document headed Last Will and testament of Benjamin Jacobus Le Roux dated the 14th of May 2018 for the purpose of administering and winding up of the first respondent's late estate in terms of the Estates Act, No 66 of 1965.

9. The fifth respondent be ordered and directed, forthwith upon receipt of this order to issue the letters of executorship in terms of section

13 and 14 of the Administration of Estates Act No 66 of 1965, *pendente lite* appointing Mr Ettienne Le Roux as the sole executor in the first respondent's late estate pending the finalisation of Part B of the main application.

10. The respondent(s) who oppose the relief sought in this application be ordered to pay the costs of this application and that if more than one respondent opposes the relief sought, that the combination of the respondents opposing this application be ordered to pay the costs of this application, jointly and severally the one paying the other to be absolved.

11. The applicant be granted such further or alternative relief as this Honourable Court considers appropriate.'

[6]. As I have already indicated, in the main application or, more particularly, in Part B of the so-called main application, Lee Ann in sum applies for an order reviewing and setting aside the appointment by the Master of Mr Du Toit as Executor of the deceased estate and for an order appointing her as sole executrix. She also applies for ancillary relief.

[7]. The fourth respondent (Eloise) opposes the urgent application *inter alia* on the grounds that the application is not urgent. In the event that it is determined that there is any urgency, then it is submitted on behalf of Eloise, that the urgency is entirely self-created. The fourth respondent furthermore contends that the application should in any event fail because the applicant has not made out a case for the interim interdictory and mandatory relief.

[8]. The main issue to be decided in this urgent application is whether the applicant has made out a case on the facts for the relief sought. In that regard, the salient common cause fact is that the applicant, as things presently stand, is not the executrix in the deceased estate. Mr Du Toit is the executor, having been duly appointed by the Master and issued with Letters of Executorship on 14 June 2024. It is so that his appointment is the subject of a court challenge presently pending before this court. However, this does not change the fact that

the applicant cannot ask for an order that she be granted access to the bank accounts of the deceased estate. There is no legal basis – none whatsoever – on which she can be granted such relief. That, in my view, puts paid to the claim by the applicant for relief relating to the bank accounts of the deceased estate. Moreover, with the pending application relating to a decision as to who should be appointed as the executor of the deceased estate, the rhetorical question to be asked is why the applicant deemed it necessary to launch this application, especially in relation to the claim for the appointment of an ‘interim’ executor. There is no legal basis for the granting of such relief.

[9]. As regards the claim by the applicant *qua* member of Leo Taur Airconditioning CC, it is so, as contended by the fourth respondent, that factually the applicant is not a member of the CC and therefore lacks the necessary standing to ask for the relief she claims in relation to the bank accounts thereof. The simple point being that, as alleged by the fourth respondent, the supposed ‘appointment’ of the applicant as a member of the CC is a fraud, howsoever one views the matter. The deceased died on 13 September 2022 and the applicant was supposedly ‘appointed’ as a member by a general meeting of the CC on 14 September 2022, at which the deceased was supposedly present. The deceased also signed the letter of appointment of the applicant as a member on 14 September 2024. This narrative needs only be stated for it to be rejected – it is laughable.

[10]. There is a further difficulty with the version of the applicant and that relates to the process followed to appoint the applicant as a member. A member in a close corporation is not appointed – one becomes a member by virtue of one’s ownership of a member’s interest in a CC. One takes transfer of membership from another member. The simple point being that the supposed appointment of the applicant as a member makes no sense and her version in that regard stands be rejected as far-fetched and wholly untenable. I also have no hesitation in rejecting out of hand the convoluted explanation given by the

applicant as to how it came about that she was appointed as a member of the CC.

[11]. I therefore conclude that the deceased was a member of the CC when he died, and as such the business falls into the hands of the executor, as the administrator of the deceased estate. The member's interest in the CC should therefore be distributed to the heirs as provided for in clause 1.3 of the Last Will and Testament of the deceased.

[12]. As for the claim that a further executor be appointed pending the hearing of part B of the main application, it is, as contended by the fourth respondent, that the appointment of executors is regulated through s 15 of the Administration of Estates Act 66 of 1965, which makes it clear that an appointment is final and no further executors can be appointed while one is already appointed. Section 15 reads as follows: -

'15 Endorsement of appointment of assumed executors on letters of executorship

(1) The Master shall, subject to subsection (2) and sections 16 and 22
—

(a) on the written application of any person who has been duly nominated as an assumed executor, is not incapacitated from being an executor of the estate of the deceased and has complied with the provisions of this Act; and

(b) on production of the deed of assumption duly signed by the person so nominated and the executor who has so nominated him, endorse the appointment of such person as assumed executor on the letters of executorship granted to the executor testamentary.

(2) No endorsement under subsection (1) shall be made after the executor vested with the power of assumption, or if there are two or more executors jointly vested with the said power, after every such executor has for any reason ceased to be executor.

(3) The appointment of any person in terms of subsection (1) shall not be affected by the subsequent incapacity or death of the executor by whom he was assumed.'

[13]. Section 52 of the Act makes it clear that once the executor is appointed, no other person can act in his place. The section reads as follows: -

'It shall not be competent for any executor to substitute or surrogate any other person to act in his place.'

[14]. The point about these provisions is that, as things stand, no other executor can be appointed, which means that the relief sought by the applicant cannot competently be granted.

[15]. For all of these reasons, the applicant's urgent application must fail. There are other reasons mentioned by the fourth respondent as to why the application was doomed from the start such as lack of urgency. In light of my findings *supra*, it is not necessary for me to deal with any of the further grounds of opposition raised by the fourth respondent. Suffice to say that, in my view, the urgent application can easily be successfully resisted on the basis of any one of those other legal points *in limine* raised by the fourth respondent. Importantly, I am at a complete loss to understand why the applicant launched this application in light of the fact that there is the pending opposed application before the court and the fact that on 2 October 2024 she was granted other interim relief.

[16]. To say that the present application was ill-advised is an understatement.

[17]. I conclude, in sum, that the applicant's application falls to be dismissed.

[18]. I am also of the view that, in light of the allegation by the applicant that if the bank accounts of the CC remain frozen, it runs the risks of ceasing operations. This, in turn, could lead to the loss of jobs, which would be

regrettable. An order should therefore be granted to avoid this possible unfortunate outcome.

[19]. The fourth respondent, by all accounts, was intimately involved in the running of the business of the CC. She also has a vested interest in the well-being of the CC in that she, together with her two sisters, have been bequeathed, in terms of the will, the proceeds from the liquidation of the member's interest of the deceased. I therefore am of the view that the interest of justice and the matter requires that she be appointed to manage the business in the interim period. I intend granting orders to that effect.

Costs

[20]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*².

[21]. I can think of no reason why I should deviate from this general rule. The applicant should therefore be ordered to pay the costs of the fourth respondent of the opposed urgent application. Moreover, the conduct of the applicant in these proceedings warrant a punitive costs order on the scale as between attorney and client. As already indicated, the applicant's urgent application was singularly ill-advised.

Order

[22]. In the result, I make the following order:

- (1) The applicant's urgent application is dismissed with costs.
- (2) The applicant shall pay the fourth respondent's costs of this urgent application on the scale as between attorney and client.

² *Myers v Abrahamson* 1951(3) SA 438 (C) at 455

(3) It be and is hereby declared that as and at the date of his death, Mr Benjamin Jacobus Le Roux ('the deceased') was a member of Leo Taur Airconditioning CC ('the CC') and that such membership of and member's interest in the CC is to form part of his deceased estate.

(4) It be and is hereby declared that the purported transfer to the applicant of the member's interest of the deceased in the CC is null and void *ab initio* and is hereby set aside.

(5) It is hereby directed that, pending the finalisation of and a decision on part B of the applicant's application dated 27 June 2024, the fourth respondent shall be in charge of and manage, as a proxy on behalf of the deceased estate, the business of the CC, with full powers relating to its finances and administration, including being the signatory on any and/or all of the banking accounts of the CC.

(6) The second respondent [FirstRand Bank] be and is hereby ordered and directed forthwith to remove the hold placed on Leo Taur Airconditioning CC business account with account number: 6304 9700 825 ("the account") and to allow the fourth respondent (Eloise Le Roux) to have full access to and control of the business account and to conduct the day-to-day business operations of the business, to enable her to transact on the business account pending the finalisation of and a decision on part B of the main application.

L R ADAMS

Judge of the High Court

Gauteng Division, Johannesburg

HEARD ON:	26 th November 2024
JUDGMENT DATE:	3 rd December 2024 – Judgment handed down electronically
FOR THE APPLICANT:	T Khaba
INSTRUCTED BY:	Cassim Rahman Attorneys, Randburg
FOR THE FOURTH RESPONDENT:	X Van Niekerk
INSTRUCTED BY:	Tuckers Incorporated, Ravenswood, Boksburg
FOR THE FIRST, SECOND, THIRD AND FIFTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance