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

Case No:2526/2024

In the matter between:

SEAN BEUKMAN

Applicant

and

MARYNA PIETERSE N.O.

First Respondent

In her capacity as Co-Executor of
the Deceased Estate of The late
Ronnie Johann Beukman
(Master's Reference: 4249/2022)

SUSANNA ALETTA LOUBSER N.O.

Second Respondent

In her capacity as Co-Executor of
the Deceased Estate of The late
Ronnie Johann Beukman
(Master's Reference: 4249/2022)

JUDGMENT DELIVERED ELECTRONICALLY ON 26 NOVEMBER 2024

MANGCU-LOCKWOOD, J**A. INTRODUCTION & BACKGROUND**

[1] The applicant seeks removal of the first and second respondents (*“the executors”*) as executors of the estate of the late Ronnie Johann Beukman (*“the deceased estate”*), and an order directing the third respondent (*“the Master”*) to appoint a new executor to the deceased estate. In addition, an order is sought for the executors to deliver to the new executor an account of the administration of the deceased estate which is to include certain specified documentation. In the alternative, an order is sought for the executors to lodge a liquidation and distribution (*“L&D”*) account within 15 court days.

[2] The applicant is the eldest son of the deceased and is a co-beneficiary to the will of the deceased, together with the second respondent. At the time of his death, the deceased was involved in life-partnership with the second respondent. Although the deceased previously executed other wills, the one that is relevant to these proceedings, and which was later accepted by the Master uncontested is dated 4 September 2021 (*“the Will”*), in terms of which the first and second respondents were appointed as executors to the deceased estate. The deceased passed away on 27 January 2022, and the executors were appointed by the Master on 27 June 2022.

[3] The applicant’s complaint is that, despite repeated requests, the executors have failed to take prescribed steps in the furtherance of the administration of the deceased estate, and specifically the lodgement of the liquidation and distribution account. Neither have they provided the applicant with requested banking and accounting documents

relating to the estate, specifically in relation to a guesthouse which continues to operate at the property of the deceased as an Air B&B business.

[4] Similarly, the applicant's pleas to the Master's office have fallen on deaf ears, as indicated by that office's failure to respond to the applicant's communication dated 4 May 2023 and 1 November 2023 in which the applicant set out the delays experienced and his frustration with the executors' handling of the estate, including their failure to file a liquidation and distribution account, or to request extension of the prescribed date for submission thereof from the Master, or to respond to his pleas for progress in the administration of the estate.

[5] In his communication to the Master, the applicant stated his view, which is at the heart of this application, namely that the second respondent has a conflict of interest between her duties as an executor and her interests as a beneficiary because she continues to reside at the property which is owned by the deceased estate and continues to earn an income from the AirB&B business, at the expense of the applicant, who is the only other beneficiary in terms of the Will.

B. THE RESPONDENTS' CASE

[6] The second respondent's stance, supported by the first respondent, is that the Air B&B is not an asset of the deceased estate. According to the second respondent, the deceased never earned any income from it; nor did he wish to do so. Instead, the deceased's intention was for the second respondent to generate an independent income, and to cease her 30 year-long transcription services work which had become increasingly burdensome. She also states that the income received from the guesthouse was never declared as income in the deceased's tax returns to the South African Revenue Services (SARS) while he was alive, but was reflected in hers.

[7] In answer to the applicant's complaint that the executors have failed to take steps in furtherance of the administration of the estate, the respondents have attached to their

answering affidavit a letter of 14 March 2024 addressed to the Master, in which the executors requested an extension for the lodging of the first and final liquidation and distribution account, until 6 September 2024. The reasons, in summary were that the applicant had removed a motor vehicle belonging to the deceased estate, without permission and was refusing to return it, which was delaying the valuation of the estate. There is a dispute of fact regarding this issue.

[8] Secondly, the executors explain that a summons was issued against a deceased brother of the applicant (“Adi”), for an amount of some R4 million, which was owed by him to the deceased. They explain that that claim is opposed by the executors in Adi’s deceased estate in litigation that is still pending. The applicant complains that the claim is “meritless” and is borne that out of ill-will and greed on the part of the second respondent, and is causing unnecessary delays in the finalization of the deceased estate. Another reason given for the delay in the finalization of the deceased’s estate by the executors is this current litigation.

C. THE RELEVANT LAW

[9] Section 25(1) of the Constitution of the Republic of South Africa 108 of 1996 (“*the Constitution*”) provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. The Constitutional Court has held that freedom of testation forms part of section 25(1), in that it protects a person’s right to dispose of his or her assets, upon death, as he or she wishes.¹ That Court has also held that freedom of testation triggers the constitutionally enshrined rights to privacy (section 10) and dignity (section 14) of the Constitution.²

¹ *Moosa N.O. v Minister of Justice* [2018] ZACC 19; 2018 (5) SA 13 (CC) para 18.

² *King N.O. and Others v De Jager and Others* [2021] ZACC 4; 2021 (4) SA 1 (CC) at para 144; *Minister of Education v Syfrets Trust Ltd* 2006 (4) SA 205 (C); *Curators, Emma Smith Educational Fund v University of KwaZulu Natal* 2010 (6) SA 518 (SCA) para 46.

[10] The law is settled that testators have the freedom to dispose of their assets in a manner they deem fit, an issue that is central to the concept of ownership, except insofar as the law places restrictions on this freedom.³

[11] Regarding the interpretation of wills, the 'golden rule', which was established as far back as 1914, is to ascertain the wishes of the testator from the language used. And when these wishes are ascertained, the court is bound to give effect to them, unless there is a rule or law which prevents that.⁴

[12] In addition, there has been support for what has been referred to as an 'armchair approach' which was espoused in *Aubrey Smith v Hofmeyer NO*⁵, as follows:

'Generally speaking, in applying and construing a will, the Court's function is to seek, and to give effect to, the wishes of the testator as expressed in the will. This does not mean that the Court is wholly confined to the written record. The words of the will must be applied to the external facts and, in this process of application, evidence of an extrinsic nature is admissible to identify the subject or object of a disposition. Evidence is not admissible, however, where its object is to contradict, add to or alter the clearly expressed intention of the testator as reflected in the words of the will. ... in construing a will the object is not to ascertain what the testator meant to do but his intention as expressed in the will.

On the other hand, in addition to receiving evidence applying the words of the will to the external facts, the Court is also entitled to be informed of, and to have regard to, all material facts and circumstances known to the testator when he made it. As it has been put, the Court places itself in the testator's armchair. Nevertheless, the primary enquiry still is to ascertain, against the

³ See *Spangenberg and Others v Engelbrecht NO and Another* (717/21) [2023] ZASCA 100 (14 June 2023) at para 9; *King N.O. and Others v De Jager and Others* [2021] ZACC 4; 2021 (4) SA 1 (CC) para 144.

⁴ *Robertson v Robertson* 1914 AD 503 and 507.

⁵ *Aubrey Smith v Hofmeyer NO* 1973 (1) SA 655 (C) at 657E - 658C.

background of these material facts and circumstances, the intention of the testator from the language used by him in his will'

[13] It has been held⁶ that, in effect, both the golden rule and the armchair approach are encapsulated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁷, although that case did not deal with the interpretation of a will. That case set out the interpretative rule as follows:

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. ... The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

[14] In *KPMG Chartered Accountants (SA) v Securefin Ltd*⁸, the Supreme Court of Appeal (SCA) held that, to the extent that evidence may be admissible to contextualise the document to establish its factual matrix or purpose or for purposes of identification, it must be used as conservatively as possible. That is only when a patent or latent ambiguity appears from the written document, including a will, for the purposes of evaluating, interpreting and making a finding on a clause in the document. The case of *Engelbrecht v Senwes Ltd*⁹ is instructive in this regard, where the following was stated:

⁶ *Spangenberg and Others v Engelbrecht NO and Another* para 14 and 15.

⁷ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.

⁸ *KPMG Chartered Accountants (SA) v Securefin Ltd* 2009 (4) SA 399 (SCA) para 39.

⁹ *Engelbrecht v Senwes Ltd* 2007 (3) SA 29 (SCA) paras 6-7. Approved in *Eke v Parsons* 2016 (3) SA 37 (CC) para 30.

'The intention of the parties is ascertained from the language used read in its contextual setting and in the light of admissible evidence. There are three classes of admissible evidence. *Evidence of background facts is always admissible.* These facts, matters probably present in the mind of the parties when they contracted, *are part of the context* and explain the 'genesis of the transaction' or its 'factual matrix'. Its aim is to put the Court 'in the armchair of the author(s)' of the document. *Evidence of 'surrounding circumstances' is admissible only if a contextual interpretation fails to clear up an ambiguity or uncertainty.* Evidence of what passed between the parties during the negotiations that preceded the conclusion of the agreement is admissible only in the case where evidence of the surrounding circumstances does not provide 'sufficient certainty'.

[15] With this legal background in mind, I now turn to deal with the parties' contentions.

D. DISCUSSION

[16] At the heart of the dispute between the parties is the interpretation of the provisions of the Will, which read as follows:

"2. EXECUTORS AND TRUSTEES

2.1 I nominate my life partner, **SUSANNA ALETTA LOUBSER ID NR 6[...]** and **MARYNA PETERSE ID NR 5[...]** to be the Executors of my Estate and Trustees of the Trust herein created.

...

2.3 It is my wish that my Executors and Trustees herein, shall direct my beneficiaries in terms of this Will, to occupy 1[...] P[...] Place, Melkbosstrand, subject to the following:

2.3.1 It is my wish that the guesthouse established by myself and my life partner, **SUSANNA ALETTA LOUBSER**, at 1[...] P[...] Place, Melkbosstrand, shall continue to be run in the same way as it has been since its inception in 2017 and that the proceeds (and liabilities) of this business be divided equally between my two beneficiaries in terms of this Will.

2.3.2 To achieve this, I direct that my life partner, as remuneration for her running every aspect of this business, be allowed to stay rent-free on the premises.

2.3.3 Should my son, **SEAN LAWRENCE BEUKMAN**, wish to occupy the apartment, cottage, or any room presently forming part of the main house or guesthouse, he shall forfeit from his share of the monthly income derived from the property, the potential income value of the unit he wishes to occupy.

4. **DISTRIBUTION OF ESTATE**

I give and bequeath as follows:

4.1 To my life partner, **SUSANNA ALETTA LOUBSER** (ID NR 6[...]):

- 4.1.1 A 50% share of my property situated at 1[...] P[...] Place, Melkbosstrand (Erf 2[...] Melkbosch Strand);
- 4.1.2 My BMW, 2016 model, C[...], or replacement thereof;
- 4.1.3 Speed Queen washing machine, drier, dishwasher, microwave, television.
- 4.1.4 The said **SUSANNA ALETTA LOUBSER** shall retain, as her exclusive property, all items being used in the 1[...] P[...] Place Guesthouse, ("the guesthouse") comprising of two sea-facing bedrooms, two bedroom apartment and two bedroom cottage).

In the event of **SUSANNA ALETTA LOUBSER** not surviving me for a period of 30 days, then her share shall devolve upon my son, **SEAN LAWRENCE BEUKMAN** (ID NR 6[...]) or my grandson, **JOHN LAWRENCE BEUKMAN** (ID NR 0[...]). This share shall be limited to bequeaths she would have received in terms of Sub Paragraph 4.1.1, 4.1.2 and 4.1.3 *supra* , but will exclude items stipulated in Sub Paragraph 4.1.1 *supra*.

4.2 To my son, **SEAN LAWRENCE BEUKMAN** (ID NR 6[...])

- 4.2.1 A 50% share of my property situated at 1[...] P[...] Place, Melkbosstrand (Erf 2[...] Melkbosch Strand);
- 4.2.2 My Ford Ranger bakkie, registration number C[...], or replacement thereof;

4.2.3 Any furniture and movable items belonging to me and not mentioned in Sub Paragraphs 4.1.3 and 4.1.4 *supra*.

In the event of **SEAN LAWRENCE BEUKMAN** not surviving me for a period of 30 days, then his share shall devolve upon my grandson **JOHN LAWRENCE BEUKMAN** (ID NR 0[...])

5. **REST AND RESIDUE**

I give and bequeath the rest and residue of my Estate, nothing excepted whatsoever, in equal shares to my life partner, **SUSANNA ALETTA LOUBSER** and to my son, **SEAN LAWRENCE BEUKMAN**. In the event of **SUSANNA ALETTA LOUBSER** not surviving me for a period of 30 days, then her share shall devolve upon my son, **SEAN LAWRENCE BEUKMAN**. In the event of **SEAN LAWRENCE BEUKMAN** not surviving me for a period of 30 days, then his share shall devolve upon my grandson, **JOHN LAWRENCE BEUKMAN**.”

[17] Although the applicant approached the Court on the basis, amongst others, that the second respondent typed the Will and that she should be disqualified from receiving any benefit therefrom based on section 4 A(1) of the Wills Act No. 7 of 1953, this ground was abandoned at the commencement of proceedings. Furthermore, it is not necessary to decide whether or not the deceased was unduly influenced in drafting the Will, although the issue takes considerable space in the applicant’s papers, because the Will was accepted by the Master and its validity has never been challenged.

[18] The parties’ present deadlock regarding the AirB&B business brings into sharp focus the provisions of paragraphs 2.3 to 2.3.3 of the Will. In the first place, paragraph 2.3.1 reveals that the AirB&B, which is referred to as a guesthouse in the Will, was

established on the property by the deceased and the second respondent in 2017. To the extent that there is a dispute between the parties regarding who was instrumental, or most instrumental, in its establishment, the Will draws no such distinction, but acknowledges a joint effort on the part of both the deceased and the second respondent.

[19] Then, according to paragraph 2.3.1, the guesthouse is to continue to be run in the same way as it has been since inception, but no detail is provided in this regard. It is in this context that the respondents' version is relevant, namely that the income generated from the guesthouse has always been for the second respondent's benefit, to the exclusion of the deceased. This contention is based, firstly, on the allegation that the income gained from the business was not declared as the deceased's in his income tax returns submitted to SARS, but was declared as the second respondent's. Secondly, the second respondent relies on an alleged agreement with the deceased that she would retain the income generated by the guesthouse.

[20] Although the second respondent relies significantly on the allegation relating to income tax returns submitted to SARS, she did not provide her tax returns in support of these averments. In this regard, the applicant delivered a notice in terms of Uniform Rule 35(12), requesting the income tax returns and bank statements of the deceased and of the second respondent for the whole period starting in 2017, which is when the guesthouse was started. The second respondent objected to the production of her tax returns on the basis that they contain confidential information. She also objected to the production of the bank account statements of the deceased as from 2017 to his passing on the basis that she was not in possession thereof and because she did not refer to those documents in her answering affidavit. She, however, disclosed some tax documents of the deceased, as from 2019 to 2022.

[21] The second respondent is supported by the first respondent who states, in her capacity as the deceased's previous tax consultant who completed the deceased's tax returns from 2019, that the deceased never viewed the guesthouse or the income

derived from it as part of his estate, and as a result, the income from the guesthouse was never reflected on his tax returns by her. However, the first respondent's affidavit did not attach tax returns from 2017, understandably because she only assisted the deceased from 2019. As an executor, however, she would have access to those documents if she requested them in terms of her fiduciary and custodial duties in terms of the Administration of Estates Act 66 of 1965.

[22] It is understandable that the applicant made the Rule 35 request for the period starting in 2017 because it would provide information relating to the period that the business resumed and whilst the deceased was alive, so that this Court and the applicant can have insight into the respondents' version, and be able to assess whether or not their version is correct. This issue, after all, is the high watermark of the second respondent's stance that the business income belongs only to her.

[23] The stance adopted by the respondents in response to the Rule 35(12) Notice is unsatisfactory. Even if it is true that the deceased did not declare the income of the guesthouse as part of his tax obligations, that does not necessarily mean that the income belonged to the second respondent whilst the deceased was alive, or that it is now due to the second respondent. Given the second respondent's considerable reliance on the tax return averments, the executors' refusal and/or failure to provide all those documents is unhelpful because that information would only be peculiarly within their knowledge.

[24] Furthermore, the importance and relevance of those documents to these proceedings cannot be understated given that part of the reason that the applicant has approached this Court is his frustration that the administration of the estate has been shrouded in mystery and lack of information. I am accordingly in agreement with the applicant that the respondents, and in particular the second respondent, has failed to take the Court into her confidence in support of her contention in this regard. As a result, I consider her averment that her income tax documents prove that the income

generated from the guesthouse has always been hers, to be bald and unsubstantiated, and cannot be decided in her favour in light of *Plascon-Evans*¹⁰ rule.

[25] But most importantly, even if the respondents' version is correct, that does not have the effect of invalidating or vitiating the express terms of the Will which relate, not to the past but the future income of the guesthouse. Nowhere does the Will state that the guesthouse and income derived therefrom is not to be considered as part of the deceased's estate. Instead, paragraph 2.3.1 states unambiguously that the future proceeds and liabilities of the guesthouse are to be divided equally between the two beneficiaries, namely the second respondent and the applicant. It has not been suggested by the respondents that the deceased was not entitled to include such a provision in his will. After all, if the income of guesthouse was not his to dispose of one would have expected the second respondent to take issue with that, in line with the well-established principle of election in terms of which a beneficiary must either adiate or repudiate the benefits of a will.¹¹

[26] The general rule in that regard is that a beneficiary is assumed to have adiated unless she expressly repudiates. In *Ex Parte Sutherland*, the court quoted a passage from *Wills* as follows:

"The principle of election is that when a testator bequeaths or disposes of property which belongs to a beneficiary (heir or legacy) alone or which belongs to the beneficiary jointly with the testator, the beneficiary must elect whether he will accept the benefits conferred by the will. If he accepts the benefits he must abide by the other provisions of the will disposing of his own property (or his share therein), and the bequest and disposition of his own property must be fulfilled, the rule being that, when a person accepts a benefit under a will, he is bound to adopt the whole

¹⁰ *Plascon-Evans Paints (TVL) Ltd v Van Riebeck Paints (Pty) Ltd* 1984 (3) SA 623 (A). See also *National Director of Public Prosecutions v Zuma* [2009] 2 All SA 243; 2009 (2) SA 279 (SCA).

¹¹ *Ex parte Sutherland N.O.* 1968 (3) SA 511(W); Meyerowitz, *The Law and Practice of Administration of Estates and their Taxation* (2023) Juta, page 323 para 18.4. See also LAWSA 2011 para 218.

contents of the will conforming to all its provisions and renouncing every right inconsistent with it, and that when he elects to keep his own property he forfeits all benefits under the will.”

[27] The second respondent has taken no steps to repudiate the terms of the Will, even after the doctrine of election was pertinently raised in the applicant’s papers, and she must accordingly be taken to have accepted all its terms. That being so, it must be accepted that the terms of the Will require the second respondent to share the income of the guesthouse with the applicant. There is otherwise no evidence of the alleged agreement between the deceased and the second respondent to the effect that the second respondent is to retain the income from the guesthouse for her own use, whether from before the death of the deceased or afterwards. At best, the evidence indicates that the income from the Air B&B business was shared between the deceased and the second respondent, but even in that regard, there is not adequate evidence to reach a definitive conclusion. But, in any event, in the face of the clear terms of the Will which make provision for the future proceeds of the business to be divided equally between the applicant and the second respondent, such a conclusion would not entitle the second respondent to exclusively retain the income of the guesthouse.

[28] The result is that, where paragraph 2.3.1 states that the guesthouse is to continue to run as it has been since its inception, that cannot include the proceeds and liabilities of the business because the Will expressly sets out what is to be done in regard thereto. The phrase: *“shall continue to be run in the same way as it has been since its inception”*, must therefore refer to something other than the income and liabilities of the business. Rather, the strong likelihood is that this phrase refers to the operational running of the business.

[29] That conclusion is supported by the specific acknowledgement in paragraph 2.3.2 of the second respondent’s *“running every aspect of this business”*. In that regard, the paragraph provides that the second respondent is to be remunerated, not by retaining income received from running the business, but by being allowed to stay rent-

free on the property. This is another clear indication that the income from the guesthouse is not automatically due to the second respondent. If that were so, there would be no need for the Will to provide for her remuneration.

[30] Concomitant to paragraph 2.3.2 is paragraph 2.3.3, in terms of which the applicant may occupy part of the property, in which event he forfeits what is granted in paragraph 2.3.1, namely his share of the monthly income derived from the property. This is further support that the income generated from the Air B&B is to be shared equally between the applicant and the second respondent, and that the deceased had the exclusive right to dispose thereof as between the two beneficiaries.

[31] Thus, a holistic reading of paragraph 2.3 is that it sets out the conditions for two things, namely the continuation of the guesthouse business, and secondly, the occupation of the property by the beneficiaries. It permits the second respondent to continue to run the guesthouse. If she continues to run the business, her remuneration is to occupy the property free of charge. It is not to receive the full income of the business, but only a half share of the proceeds of the guesthouse.

[32] By contrast, the applicant stands to lose more if he chooses to occupy the property in that he forfeits his half share of the income generated from the Air B&B business according to paragraph 2.3.3. In this regard, it was highlighted on behalf of the respondents that, since the applicant has no wish to occupy the property, paragraph 2.3 as a whole cannot be implemented because the two beneficiaries cannot agree regarding its implementation.

[33] I do not agree with this argument. Paragraph 2.3.3 gives the applicant an option to occupy the property or not. If he chooses to occupy the property, he forfeits his share of the income derived from the property in terms of clause 2.3.1. If he chooses not to occupy the property, he does not forfeit his share of the monthly income derived from the property. That is the only consequence of his choosing not to occupy the property. It is not that the whole of 2.3 cannot be given effect to.

[34] There is accordingly a way to interpret the Will in such a manner that the business continues to run, operated and occupied only by the second respondent. In such event, each beneficiary receives their share of the income generated from the business, but in addition, the second respondent occupies the property for free.

[35] The converse is that, if the second respondent is not willing to continue to run the guesthouse, there is no income to generate from the business and no income for the beneficiaries to share. It also means that there is no remuneration for the second respondent in terms of paragraph 2.3.2, for her running of the business in the form of free accommodation on the property. It is in that eventuality that selling the property in terms of paragraph 4 may be the only available option.

[36] Whilst paragraphs 2.3 to 2.3.3 set out the conditions for occupation of the property during the continued running of the guesthouse business, paragraph 4 deals with the distribution of the estate, in terms of which each of the beneficiaries is to receive 50% of the property plus a motor vehicle and specified movable items. The respondents argued that, because paragraph 2.3 is dealt with under the heading of 'Executors and Trustees' instead of under 'Distribution of the Estate', it does not amount to a bequeathment. This is also indicated, so it was argued, by the fact that paragraph 2.3 opens with: "*It is my wish*". In aid of this argument the respondents referred to the previous will of the deceased dated June 2021, which made no mention of the guesthouse, an indication that the guesthouse is not an asset in the estate but merely a business that is inextricably linked to possession and/or ownership of the property. Apart from this, the respondents point out that the second respondent is to acquire all the movable property that is currently used in the guesthouse, which is another indication that her ownership of the guesthouse.

[37] I have already dealt with the second respondent's alleged ownership of the guesthouse. It is neither supported by the terms of the Will, nor by any evidence before this Court. But importantly, the running of the guesthouse cannot operate outside the

ambit of section 26 of the Administration of Estates Act which places upon the executors a duty to take custody and control of all the deceased's estate, save for that which is in the possession of any person who claims to be entitled to retain it under any contract, right of retention or attachment. The second respondent has yet to establish a right to retain the income of the guesthouse, even in these proceedings, save for her say-so. In those circumstance, until there is a disposition of the deceased's estate in the form of sale of the property, the income generated from the guesthouse must be dealt with in accordance with clause 2.3.1.

[38] The fact that paragraph 2.3 is formulated as a wish does not mean it deserves less weight or can be ignored, and I have not been referred to any legal authority for such an approach. That would go against the principle of freedom of testation. In expressing the contents of paragraph 2.3 as a wish, the deceased was expressing his intimate wishes as regards the continuation of the guesthouse, whose ownership is not seriously disputed as already discussed. The deceased's right to express his intimate wishes in this regard has been recognized by the Constitutional Court in the following passage of *King N O and Others v De Jager and Others*:

*'It cannot be gainsaid that private testamentary bequests (when juxtaposed to public trusts) relate to our most intimate personal relationships and can very well be based on irrational and erratic decisions which are located in the domain of the "most intimate core of privacy". It is, therefore, apposite for the right to privacy to play an active role in determining whether judicial interference can enter the perimeter of private testamentary bequests. This, in turn, buttresses the point that when courts intervene in private testamentary bequests of this nature there ought to be a lower level of judicial scrutiny.'*¹²

[39] As was stated in *Raubenheimer v Raubenheimer and Others*¹³:

¹² At para 144.

¹³ *Raubenheimer v Raubenheimer and Others* 2012 (5) SA 290 (SCA) par [23].

“In interpreting a will, a court must if at all possible give effect to the wishes of the testator. The cardinal rule is that 'no matter how clumsily worded a will might be, a will should be so construed as to ascertain from the language used therein the true intention of the testator in order that his wishes can be carried out.’”

[40] The conclusion of all the above is that there is no support for the reading of the Will in such a way that the income from the Air B&B belongs solely to the second respondent and not to the deceased estate.

[41] In terms of section 54(1)(a)(v) of the Act a court has a discretion to remove an executor from office if it is undesirable that he or she should act as executor of the estate concerned. Some of the relevant considerations in this regard may include the interests of the estate and of the other beneficiary in the estate.¹⁴ Mere disagreements between heirs and the executor of a deceased's estate, or even a breakdown in the relationship between one of the heirs and the executor is insufficient for the discharge of the executor in terms of subsection 54(1)(a)(v) of the Act. It must be shown that, *inter alia*, the executor has conducted him or herself in such a manner that it has actually affected his or her proper administration of the estate.

[42] The court will remove an executrix on the ground of maladministration or absence of administration if proved to its satisfaction.¹⁵ Executors have been removed for failing to lodge accounts after a long period had lapsed¹⁶, and for serious dereliction of duty. Mere negligence in administration will ordinarily not be a ground for removal in the absence of proof that the estate or the beneficiaries would be prejudiced if the executor remained in office.¹⁷

¹⁴ See *Gary v Kolver NO*; *Gory v Kolver NO and Others* (CCT28/06) [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC) (23 November 2006) ft 65.

¹⁵ Section 54(1)(a).

¹⁶ *Die Meester v Meyer* 1975 (2) SA 1 (T).

¹⁷ *Van Heerden v Keyser* 1913 CPD 3; *Nettleton v Kilpatrick* 1 Roscoe 190; *Keane v Coghlan* 11 CTR 550. See also *Letterstedt v Broers* 9 AC 370; *Sackville West v Nourse* 1925 AD 516 at 527.

[43] Meyerowitz states that: -

*“Where it is sought to remove an executor from office it must appear that the acts complained of are such as to stamp the executor as a dishonest, grossly inefficient or untrustworthy person whose future conduct can be expected to expose the estate to actual loss, or of administration in a way not contemplated ...”*¹⁸

[44] As stated in *Gary v Kolver*¹⁹ section 54(1)(a)(v) confers a discretion on the Court to remove an executor if it is satisfied that it is just and equitable for the executor to be removed.

[45] The facts outlined earlier indicate that the second respondent harbours a clear conflict of interest and is intransigent with regard thereto. No legal basis is revealed in the evidence for the second respondent’s claim to retain the guesthouse income. The correspondence indicates that, since the appointment of the executors, the applicant has been sent from pillar to post, mostly to get the second respondent to comply with the clear terms of the Will. And regrettably, the first respondent failed to bring to bear an objective mind to the respective beneficiaries’ dispute in this regard. The equities were accordingly tilted against the applicant. This is one reason I am of the view that it would be just and equitable for the second respondent to be removed as an executor. Her interests as a beneficiary in this matter are interfering with her duties as an executor.

[46] The delays in the administration of the estate, while the second respondent continues to earn an income from the estate, to the detriment of the applicant, are incongruous. As a result of the long history of events that have occurred, it is evident that there has been a complete breakdown of trust between the applicant and the respondents, and the former has lost all faith in them as executors. This is aside from

¹⁸ *Volkwyn NO v Clarke & Damant* 1946 WLD 456.

¹⁹ At para 56.

the acrimony between the applicant and the second respondent, which is evident from the papers, and which is not sufficient to remove the respondents as executors. The conflict of interest alone has a detrimental effect on the proper administration of the estate, and is sufficient reason to remove, at the very least the second respondent, as an executor. However, as discussed below, the delays incurred in the matter, are also relevant, as is the conduct of the first respondent.

[47] For now, it is relevant to mention that courts have held that it is only executors who are vested with the authority to vindicate the assets of an estate. In this case, that would include the authority to institute proceedings for disclosure of the income of the Air B&B business from 2017 and to pay over the income received since the passing of the deceased, to the deceased estate.

[48] In *Cumes v Estate Cumes*²⁰ it was held that if an heir or other interested person maintains that an executor should take steps for the recovery of assets in the estate, then his or her proper remedy, if such action is not instituted, is to request the court for the removal of the executor for breach of duty, since it is only the executor who is vested with the authority to vindicate the assets of the estate. In *Segal and Another v Segal and Others* the court stated as follows:

“In our law the executor is the person in whom, for administrative purposes, the deceased’s estate vests. It is his function to take all such steps as may be necessary to ensure that the heirs in the estate to which he is appointed receive what in law is due to them. It is an aspect of this function to remove whatever obstacles exist to the achievement of this end. If the actions of an executor in another estate are such as to prevent the receipt by the estate which he administers of assets due to such latter estate, it is he who should take all appropriate steps to remedy the position. If these steps involve the removal of the executor in such other

²⁰ *Cumes v Estate Cumes* 1950 (2) SA 15(C) at p19. See also *Gross and Others v Pentz* [1996] ZASCA 78; 1996 (4) SA 617 (SCA).

estate it falls within the competence of the executor in the creditor estate, and not of an heir in the estate, to take the necessary action.”

[49] The applicant has requested information relating to the income of the guesthouse for a long time before instituting these proceedings, with the second respondent refusing to give such account on the basis that the income is hers to retain. As a result, the actual income of the guesthouse for this whole period remains unknown, and the second respondent continues to benefit from it. It is no wonder that the applicant seeks an order directing the executors to account in respect of the business, amongst other things. The second respondent's failure to account in respect thereof is in direct conflict with her responsibilities as an executor. The income should furthermore be paid into the bank account of the deceased estate and form part of its administration, as required in terms of section 28 of the Act.

[50] As I have already adverted, the first respondent has failed to display impartiality in keeping with her fiduciary duties, and has, instead, enabled the second respondent's conduct, which the applicant regards as rubber-stamping. I agree with the applicant. I have already rejected the view held by her in support of the second respondent, which is contrary to the clear terms of the Will, that the income of the Air B&B belongs to the second respondent and not the deceased estate. It is difficult to reconcile the fiduciary responsibilities held by the first respondent as an executor, with her decision to go along with the second respondent's stance. In part, this may be explained by her reliance on what she claims occurred prior to the death of the deceased. However, that information is clearly at odds with the expressed terms of the Will, which she is required to execute as part of her fiduciary duties. There is also to consider that the first respondent did not distance herself from the conduct of the second respondent or from opposing this application.

[51] The primary duties of an executor are succinctly set out in Meyerowitz, *Administration of Estates and Estate Duty*,²¹ which states that:

²¹ 2004 edition, para 12.20.

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

[52] The learned author also states²² that an executor is “*not a mere procurator or agent for the heirs*”, but is legally vested with the administration of the estate. Where there are co-executors, Meyerowitz²³ points out that “*all of the executors must exercise their functions and duties jointly, and or share equal responsibility for the administration of the estate and are liable for one and other’s acts. If one of the executors refuses to join in the administration of the estate ... The remaining executors must seek relief from the court by obtaining an order compelling the co-executor to do the specific required, or dispensing with his concurrence, or removing him from office...*”

[53] In addition to the above, there have been some delays in the matter, which are not explained satisfactorily. It is not disputed that, as far back as 17 March 2022, before the appointment of the executors, the applicant made clear that he wished for the administration of the estate to be finalised as soon as possible and that all the property in the estate should be sold. Then, as from 4 May 2022 the applicant’s attorneys requested various financial documents, including a statement of account reflecting the income and expenses pertaining to the property since the passing of the deceased, with no success. Although the executors were not yet appointed at that stage, they have not denied being aware of the applicant’s stance and requests since appointment. The evidence shows that the applicant’s pleas have fallen on deaf ears. And it is only the second respondent that has benefited from the delays in the administration of the estate, whether by design or wilfully. It is therefore ironic that two years later, an

²² At para 12.20.

²³ At para 12.20

argument was mounted on behalf of the respondents that the property should rather be sold because the applicant does not want to occupy the property whilst the second respondent wants to continue running the guesthouse.

[54] Despite the fact that the executors were appointed on 27 June 2022, a written request for extension of the period for the filing of a liquidation and distribution account (“L&D account”), was only made after the launching of these proceedings on 14 March 2024. Although the executors allege that they previously made a request orally, there is no indication when this was, or of any other details in that regard or of evidence thereof. I am inclined to agree with the applicant that this is a belated knee jerk reaction given that they were appointed almost a year previously, and had failed to respond to the applicant’s inquiries about their progress.

[55] Cynically, the executors reported in that same belated letter of 14 March 2024 that these proceedings were part of the cause of the delay in the administration of the estate. This, in circumstances where these proceedings were launched more than a year after their appointment. No reason is otherwise given for the belated request for extension, or the failure to provide the requested documentation to the applicant.

[56] Another reason given in that letter for the delays is the litigation involving the estate of the deceased Adi, which was launched on 6 September 2023, over a year after the appointment of executors. I note that the merits of that matter are disputed by the applicant. However, I do not consider it appropriate to pronounce on that issue in these proceedings given that the matter is before a court of law, and given that this Court has not been fully placed in a position to pronounce on the merits thereof. It is rather appropriate that that litigation should take its course.

[57] For all these reasons, I am of the view that both executors should be removed from their positions as executors, and for new executors be appointed, forthwith.

E. COSTS

[58] The applicant seeks costs *de bonis propriis* against the executors. Although the conduct of the executors leaves much to be desired, especially that of the second respondent, who continues to earn an income from the very estate that she is administering and continues to refuse to account for that income, I am of the view that the first and second respondents should pay costs on an attorney and own client scale. There is no reason as to why the estate, from which the second respondent continues benefit, should be placed out of pocket.

[59] The same applies in respect of the applicant who has been forced to approach the Court in the circumstances of this case. The law allows a beneficiary, by reason of their vested right in the proper administration of the estate, to institute proceedings especially in circumstances where the executor is conflicted in challenging her own decision, as is the case here.²⁴

[60] Furthermore, it is clear from the contents of the letter addressed by the executors to the Master on 14 March 2024 that they only formally sought an extension as regards the submission of the prescribed documents once these proceedings were launched. And they mischievously, if not misleadingly, included the institution of these proceedings as an additional cause for delay in the finalization of the administration of the estate. Had they been accountable and transparent regarding their administration of the estate it would not have been necessary for the applicant to launch these proceedings.

F. ORDER

[61] For all these reasons, the following order is granted:

1. The first and second respondents are hereby removed as executors of the deceased estate of the late Ronnie Johann Beukman (*“the deceased estate”*).

²⁴ This is known as the ‘Benningfield principle’ from the foreign case of *Benningfield v Baxter* (1886) 12 AC 67 (PC).

2. The third respondent is ordered to appoint a new executor to the deceased estate, within thirty days hereof.
3. The first and second respondents shall, within 15 court days of the appointment of the new executor, deliver to such executor an account of their administration of the deceased estate, duly supported by the relevant documentation, which account shall include:
 - 3.1 A chronological summary of all the procedural steps taken by them during the administration of the deceased estate;
 - 3.2 All the income received and expenses incurred to date;
 - 3.3 A list of all the established assets of the deceased estate and their whereabouts;
 - 3.4 A list of all the liabilities and running expenses of the deceased estate; and
 - 3.5 All further information or documents in their possession or under their control that the new executor may reasonably require in order to take over the administration of the deceased estate.
4. The first and second respondents are to pay the costs on an attorney and own client scale.

N. MANGCU-LOCKWOOD
Judge of the High Court

Appearances

For the applicant	:	Adv A Walters
Instructed by	:	Smit & Kie Attorneys Y Smit
For the respondent	:	P D W Myburgh
Instructed by	:	Riaan De Kock & Co. Inc.



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

Case No:2526/2024

In the matter between:

SEAN BEUKMAN

Applicant

and

MARYNA PIETERSE N.O.

First Respondent

In her capacity as Co-Executor of the
Deceased Estate of The late Ronnie Johann Beukman
(Master's Reference: 4249/2022)

SUSANNA ALETTA LOUBSER N.O.

Second Respondent

In her capacity as Co-Executor of the
Deceased Estate of The late Ronnie Johann Beukman
(Master's Reference: 4249/2022)

THE MASTER OF THE HIGH COURT, CAPE TOWN

Third Respondent

**VARIATION ORDER IN TERMS OF RULE 42 DELIVERED ELECTRONICALLY
ON 11 DECEMBER 2024**

The parties have brought to my attention that the costs order in the judgment handed down on 26 November 2024 contained an ambiguity, which I consider to be an error. Accordingly, paragraph 4 of the order is hereby varied in terms of Rule 42, to reflect the intention of the judgment.

THE VARIED ORDER

Having considered the documents filed of record and heard counsel for the parties, it is hereby ordered as follows:

5. The first and second respondents are hereby removed as executors of the deceased estate of the late Ronnie Johann Beukman (*“the deceased estate”*).
6. The third respondent is ordered to appoint a new executor to the deceased estate, within thirty days hereof.
7. The first and second respondents shall, within 15 court days of the appointment of the new executor, deliver to such executor an account of their administration of the deceased estate, duly supported by the relevant documentation, which account shall include:
 - 3.6 A chronological summary of all the procedural steps taken by them during the administration of the deceased estate;
 - 3.7 All the income received and expenses incurred to date;
 - 3.8 A list of all the established assets of the deceased estate and their whereabouts;
 - 3.9 A list of all the liabilities and running expenses of the deceased estate; and

3.10 All further information or documents in their possession or under their control that the new executor may reasonably required in order to take over the administration of the deceased estate.

8. The first and second respondents are to pay the costs *de bonis propriis*, jointly and severally, on an attorney and client scale.

BY ORDER OF THE COURT

COURT REGISTRAR

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