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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA**

CASE NO: 081849/2023

HEARD: 28 JANUARY 2025

DECIDED:18 FEBRUARY 2025

1) REPORTABLE: NO

2) OF INTEREST TO OTHER JUDGES: NO

3) REVISED.

DATE 18 FEBRUARY 2025

SIGNATURE

In the matter between:

ALANA BERENICE PERUMAL

Applicant

And	
ABRAHAM JACOBUS JANSE VAN RENSBURG N.O In his capacity as Executor of Estate Late Robert Stanton, in terms of the letters of executorship issued by the Master of the High Court	First Respondent
CLAUDIA LOUISE VAN DER COLF IDENTITY NUMBER 9[...]	Second Respondent

CLAUDIA LOUISE VAN DER COLF obo SOPHIA APPLE STANTON	Third Respondent
MAGDALENA GLAUDINA STANTON	Fourth Respondent
ANNA RAMADIMETJA	Fifth Respondent
BRONYWN ELIZABETH CARR	Sixth Respondent
THE MASTER OF THE HIGH COURT	Seventh Respondent

This judgment has been handed down remotely and shall be circulated to the parties by way of email / uploading on Caselines. The date of hand down shall be deemed to be 18 February 2025

ORDER

1. The application is upheld;
2. The document annexed to the applicant's founding papers marked Annexure "A", is hereby declared the last will and testament of Robert Stanton.
3. The seventh respondent is directed to accept the document for the purpose of

the Administration of Estates Act, Act 66 of 1965.

4. The second respondent shall pay the applicant's costs, with counsel's costs on scale B.

JUDGMENT

BAM J

Introduction

1. This is an application in terms of Section 2(3) of the Wills Act (the Act). Applicant seeks an order declaring the document or amended document marked Annexure "A", attached to her founding affidavit, as the last will and testament of the late Mr Robert Stanton (Stanton). She further asks that this court direct the seventh respondent to accept the document for purposes of the Administration of Estates Act, Act 66 of 1965. Section 2(3) enjoins the court, upon being satisfied that a document or amended document, drafted by a person who has since died, was intended to be that person's last will or testament, to order the Master to accept such document or amended document for purposes of administration of estates, as a will.
2. Prior to delving into the background, I record that the application is resisted only by the second respondent in her personal and representative capacity as the biological mother and natural guardian of her minor child, Sophia Apple Stanton, Apple. The mainstay of the resistance suggests that there are material disputes of fact, which prevent this court from determining the application. She further suggests, speculatively, that Stanton had not intended the document to be his last will. This suggestion stems from the fact that Stanton had not signed the amended will. It is common cause that the first respondent says he had emailed the amended will to Stanton during August.
3. Whatever disputes there may be, have no bearing whatsoever on the material matters to be determined by this court to determine the success or failure of this application. The second suggestion — that Stanton must have changed

his mind because he never signed the will even though it had been sent to him in August 2022 — is undermined by the established facts. I commence with an introduction of the parties before setting out the relevant background facts.

4. The applicant, Ms Alana Berenice Perumal, is a female skills development facilitator. She resides in Gauteng Province and has chosen the address of her attorneys of record for purpose of the present proceedings.
5. The first respondent, Mr Abraham Jacobus Janse van Rensburg N.O. is a nominee of PSG Trust (Pty) Ltd, with his employment address set out as, The Edge [...] Floor, [...] H[...] C[...], Tyger Waterfront, Bellville, Western Cape Province. He is cited mainly for his interest in the matter as the executor of the deceased estate of Stanton. The relief sought in these proceedings has no bearing on the respondent's appointment as executor.
6. The second respondent is Ms Claudia Louise van der Colf, a major female. She resides at R[...] P[...], 2[...] R[...] Crescent, Rooihuiskraal, Centurion, Gauteng. Ms van der Colf is also cited as the third respondent in these proceedings, in her representative capacity as the mother and natural guardian of Apple.
7. The Seventh Respondent is the Master of the High Court with its principal place of business at SALU Building, 3[...] T[...] S[...] Street, Pretoria, Gauteng.
8. The fourth, fifth, sixth and seventh respondents took no part in these proceedings.

Background

9. The following is either common cause or has not been seriously challenged: The applicant and Mr Stanton were involved in a romantic relationship, having met during early in January 2021. The second respondent shares a child with Stanton, Apple. Their relationship had terminated in 2020. Apart from sharing

a child, it is common cause that the second respondent was no longer part of Stanton's life, after termination of their relationship. Stanton and the applicant soon formed a close bond and were engaged on 28 July 2022. Their wedding was planned for December 2023. Images of the couple extracted from their wedding web page, announcing their wedding date and venue, have been provided to the court, including images of trips they took with their branded family.

10. Arising from a hip replacement surgery that Mr Stanton had undergone during April 2022, his health suffered and continued to suffer throughout the course of 2022. On 10 July 2022, Stanton made amendments to his will. The applicant further avers that, in anticipation of their being together, she too had met with a financial planning house to assist her with her will to make Stanton a beneficiary. Unfortunately, she only came to check the work pertaining to her will after Stanton's funeral. Very briefly, a reading of the changes in the will suggests that Stanton was aligning his will to reflect the applicant as his life partner. The changes were made by Stanton using his laptop, with the applicant alongside him. He thereafter sent the amended will to the first respondent, with a message stating that the changes need to be made, whereafter Stanton will sign, captured in the words set out here below:

'...sien ask (sic) my testament met veranderings amend dit en stuur aub terug via my om te teken.'

Loosely translated: *See ask my will with changes amend it and please send back via me to sign.*

11. The first respondent confirms in his affidavit that he received the amended will from Stanton on 10 July 2022. He further states that he sent the will back on 4 August, with the changes incorporated. The applicant avers that she has access to Mr Stanton's emails but she could not find this particular email from the first respondent.

12. Stanton was in and out of hospital during 2022. On 17 January 2023, he fell and broke his femur. He was admitted to hospital and discharged on 25 February 2023. Concerned that he had not heard from the first respondent about the will, Stanton sent a voice message, on 9 March 2023, to the first respondent, stating that his will be sent back as he wants to get it done. In his own words:

'Hi Kotie, dis Rob hierso. Hoor hier Mnr ek dink nou net daaraan. Ek het nog noe my will, my amended will, gesien of geteken nie. Um ja, so ek will maar net hoor war is die update op daai laat ek dir gedoen kan kry voor, nie voor nie, maar jy weet net well in advance. So laat my maar net dankie.

Loosely translated, the message states: Hi Kotie, it's Rob here. Listen here Mr. I'm just thinking about it now. I have not yet seen or signed my will, my amended will. Um yes, so I just want to hear what is the update on that so I can key before, not before, but you only know well in advance. So let me just thank you.'

13. On 8 April 2023, whilst spending time with the applicant's family in Cape Town, Stanton fell ill. He died in his sleep on 9 April 2023. He had travelled to Cape Town with his mother and daughter. The facts pertinent to this case may then be summarised thus:

- (i) Stanton made amendments to his will during July 2022, using his laptop.
- (ii) The first respondent has confirmed under oath that he received the will, effected the amendments, and sent it back by email on 4 August 2022.
- (iii) Two messages were sent by Stanton to the first respondent. The first accompanied the amendments, wherein he said to the first respondent, the amendments must be effected so that he (Stanton) signs. The second is the voice message of 9 March 2023 for the first respondent, where Stanton says he had not received the will, which confirms the applicant's assertions before this court.
- (iv) Stanton died on 9 April 2023.

Applicable legal principles

14. Section 2(1) of the Act provides that:

- (a) ...no will executed on or after the first day of January, 1954, shall be valid unless-
- (ii) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction.

15. Section 2(3) provides:

‘If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).’

16. It has been said that by ‘enacting section 2(3) of the Act the legislature was intent on ensuring that failure to comply with the formalities prescribed by the Act should not frustrate or defeat the genuine intention of testators. It has rightly and repeatedly been said that once a court is satisfied that the document concerned meets the requirements of the subsection a court has no discretion whether or not to grant an order as envisaged therein. In other words the provisions of s 2(3) are peremptory once the jurisdictional requirements have been satisfied.¹

17. The court in *Van der Merwe* pointed out that:

‘A lack of a signature has never been held to be a complete bar to a document being declared to be a will in terms of s 2(3). In *Letsekga*, ..., the lack of a signature was not held to be a bar to an order in terms of s

¹ *Van der Merwe v Master of the High Court and Another* (605/09) [2010] ZASCA 99; 2010 (6) SA 544 (SCA); [2011] 1 All SA 298 (SCA) (6 September 2010), paragraph 14.

2(3) of the Act. Ex parte Maurice 1995 (2) SA 713 (C) decided in the same year as Letsekga was to the same effect. In Thirion v Die Meester & andere 2001 (4) SA 1078 (T) an unsigned document drafted by a person shortly before he committed suicide was held to be a valid will and declared as such in terms of s 2(3). In that case the deceased had executed a prior will that had complied with all the prescribed formalities. The very object of s 2(3), as pointed out above, is to ameliorate the situation where formalities have not been complied with but where the true intention of the drafter of a document is self-evident.²

18. In order to succeed in an application in terms of section 2(3), the applicant must prove, on a preponderance of probabilities that:

- '(a) that the document, annexure JN4, was drafted or executed by the deceased;
- (b) that the deceased had died since the drafting of the document; and
- (c) that the document was intended by the deceased to be his will.³

19. It can be accepted that (a) and (b) have been met in the circumstances of the present case. The applicant's irrefutable evidence is that the amendments to the will were effected by Stanton. The amendments were sent to the first respondent who has also confirmed receiving Stanton's email. Stanton has since demised. The real question is (c), whether Stanton intended that the document be his will and testament.

20. The sole contention raised by the second respondent is this, because Mr Stanton had not signed the will after the first respondent sent it back to him, on 4 August 2022, he had no intention to have this document as his last will and testament. He had changed his mind. But this speculation is completely destroyed by the indisputable fact that on 9 March, exactly one month before Stanton passed on, he sent the voice message to the first respondent, urging

² Id, paragraph 16.

³ *Ndebele N.O. and Others v Master of the Supreme Court and Another* (10338/96) [1999] ZAWCHC 9 (15 December 1999), paragraph 18.

for an update regarding his amended will. He made the point that he had not seen his amended will.

21. In conclusion, Stanton's intention to have Annexure A as his last will and testament is established from the following undisputed facts:

- (i) Stanton personally drafted amendments to his will in July 2022 and sent it to the first respondent;
- (ii) The words used in Annexure A, describe the applicant as his life partner. Provision is further made for her in the will to reflect the applicant's status in his life;
- (iii) When sending the amendments to the first respondent, Stanton sent a message, indicating that the changes need to be made in order for him to sign.
- (iv) Thirty days before he died, Stanton left a voice note for the first respondent, on 9 March 2023, enquiring about the amended will, and pointing out that he had not seen it and he wanted an update.
- (v) The voice message confirms the applicant's version that Stanton had not received the first respondent's email of 4 August.

22. The voice message of 9 March 2023 cannot be seen as conduct of a man who had changed his mind about his will. On the contrary, not only had Stanton intended to make Annexure A his last will and testament, one may go so far as adding that there was even a sense of urgency in his words. The requirements of section 2(3) in my view have been met. They are: (i) Stanton drafted the changes to his will; (ii) He has since passed on; and (iii) Based on 19 (i) to (v) Stanton intended that the amended will, annexure A, be his last will and testament. Consequently, in terms of section 2(3) of the Act, this court is enjoined to order the Master to accept Annexure A as Robert Stanton's last will and testament, for purposes of the Administration of Estates Act.

Costs

23. All that remains is the issue of costs. Ordinarily, it is desirable in matters of this nature to have the costs declared costs in the administration of the

estate. But I am not persuaded that such an order would be appropriate in the circumstances of this case. The second respondent chose to oppose the application without legal grounds other than to frustrate and hurl insults at applicant. It was not reasonable of the second respondent to come to court offering that there are disputes of fact based on her speculation about what the deceased had intended. It is only appropriate that the second respondent be ordered to pay the applicant's costs.

Order

1. The application is upheld.
2. The document annexed to the applicant's founding papers marked Annexure "A", is hereby declared the last will and testament of Robert Stanton.
3. The seventh respondent is directed to accept the document for the purpose of the Administration of Estates Act, Act 66 of 1965.
4. The second respondent shall pay the applicant's costs, with counsel's costs on scale B.

N.N BAM

**JUDGE OF THE HIGH COURT,
GAUTENG DIVISION, PRETORIA**

Date of Hearing: 28 January 2025

Date of Judgment: 18 February 2025

Appearances:

Counsel for the Applicant:

Adv L van Gass

Instructed by:

Van der Merwe & Associates

Waterkloof, Pretoria

Counsel for Second and Third

Respondents:

Adv R de Leeuw

Instructed by:

DLBM Incorporated

Wapadrand, Pretoria

