



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

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

Case 2024- 007943

Date: 12 February 2025

[REDACTED]

In the matter between:

NOMATHEMBA EUNICE MOTSEPE

Applicant

and

MTHENJWA DAVID HLATSHWAYO

First Respondent

**JOSEPHINE MOTSEPE & ANNA
MOTSEPE**

Second Respondent

**GOVERNMENT EMPLOYEES
PENSION FUND (GEPF)**

Third Respondent

**DEPARTMENT OF EDUCATION,
SEDIBENG DISTRICT, SEBOKENG**

Fourth Respondent

**MASTER OF THE HIGH COURT,
SOUTH GAUTENG**

Fifth Respondent

This judgment has been delivered by uploading it to the CaseLines digital data base of the Gauteng Division of the High Court of South Africa, Johannesburg, and by email to the attorneys of record of the parties. The deemed date and time of the delivery is 10H00 on 12 February 2025.

JUDGMENT

DU PLESSIS J

Introduction

[1] The applicant seeks an order to declare the last will and testament of the deceased invalid, null, and void, and that the estate be distributed in terms of the Intestate Succession Act.¹

[2] The matter was enrolled on the opposed motion roll after the first respondent, the attorney who drafted the will, filed an answering affidavit on the day the matter was to be heard on the unopposed motion roll. No other answering affidavits were filed. However, the records show that all the parties received the notice of motion, the founding affidavit, the confirmatory affidavit and the annexures.

[3] As proof of service of the notice of set down, the applicant uploaded proof that the notice was emailed to the first respondent and the second respondent(s) –to the first respondent. There were no read receipts attached. Service of the notice of set down occurred on 27 June 2024. An updated notice of set down was filed on CaseLines on 25 January 2025, but there was no proof of service of such notice found on CaseLines.

[4] There is no notice of appointment of attorneys of record on behalf of the second respondent(s) on record in this matter. Additionally, there is no evidence that they consented to service via email to the first respondent's email address. Therefore, proper service on the second respondent(s), the two individuals who stand to benefit under the will being contested, did not occur.

[5] It is perhaps also at this juncture necessary to note that the second respondent and third respondent are incorrectly cited on the papers. The respondents must be

¹ Act 81 of 1987.

cited individually, and in the case of Ms Josephine being deceased, the executor of her estate should be cited.

[6] At the hearing I voiced my concerns that there was no proper service on the second respondent(s). Counsel for the applicant, Mr Mateya, submitted that it was served on the first respondent. I indicated that there is nothing on the papers indicating that the first respondent represents the second respondent(s) in the matter, nor that they have agreed to email service to his email address. He could not take the matter further.

[7] It is a cornerstone of our legal system that a person is entitled to notice of legal proceedings against such person.² In this context, the service of a notice of set down is crucial for several reasons. From a constitutional perspective, a litigant has the right to be informed of proceedings affecting them (to enable compliance with the audi alteram partem principle). It may also be that a respondent did not oppose due to an oversight, and such service allows them to act before a final order is made. Conversely, when such a final order is made, the losing party cannot later claim they were unaware of the proceedings.

[8] On the other hand, a party claiming they were unaware of the proceedings can apply for rescission of judgment in certain circumstances.³ In such instances, service can strengthen the applicant's case by showing that due notice was given, reducing the possibility of a judgment being overturned on procedural grounds.⁴ This also ensures that there is finality and certainty in litigation.

[9] But perhaps more pertinently – courts rely on proper notification of proceedings to all parties to ensure that justice is done transparently. It ensures adequate procedural safeguards when granting orders. That is why in matters, especially matters where there is no appearance for the opposition, it is essential that the applicant can show that there was proper service and that all parties are aware of the

² *Steinberg v Cosmopolitan National Bank of Chicago* 1973 (3) SA 885 (RA) at 892C.

³ Rule 31(2)(b) and Rule 42.

⁴ *Elia and Others v Absa Bank Ltd* [2023] ZAGPJHC 649 par 18.

proceedings in court. If they choose not to enter an appearance, they do so at their own peril.

[10] Accordingly, there was no proper service on the second respondent(s), and the matter stands to be removed from the roll.

Order

[11] The following order is made:

1. The matter is removed from the roll due to lack of proper service on the second respondent(s).



WJ du Plessis
Judge of the High Court
Gauteng Division, Johannesburg

Heard on: 10 February 2025
Decided on: 12
February 2025

For the Applicants:

H Mateya instructed by SME Mohai
Attorneys