



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

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

Case no: 2021/27860

Date: 18 February 2025

In the matter between:

ZANELE MINENHLE MNTUNGWA

Applicant

and

PRINCESS NOLUTHANDO MARINAH MARIPANE

First Respondent

**PRESHNEE GOVENDER ATTORNEYS
INCORPORATED**

Second Respondent

THE MASTER OF THE HIGH COURT JOHANNESBURG Third Respondent

DIRECTOR GENERAL OF HOME AFFAIRS

Fourth Respondent

This judgment has been delivered by uploading it to the CaseLines digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by e-mail to the attorneys of record of the parties. The delivery date and time is 10H00 on 18 February 2025.

JUDGMENT

DU PLESSIS J

Introduction

[1] This is an application for leave to appeal against the judgment I handed down on 4 October 2024, in which I declared that the purported customary marriage between the first respondent and the deceased was null and void, removed the first respondent as executrix of the deceased's estate and appointed Marina Naydenova Attorneys as executors. The applicant in the leave to appeal (the second respondent in the application) contends that I erred in my findings on these issues. I refer to the parties as they were in the application.

[2] I must now determine whether the applicant has demonstrated a reasonable prospect that another court would come to a different conclusion or whether there is some other compelling reason why leave to appeal should be granted, as required by s 17(1) of the Superior Courts Act.¹ The previous test—whether another court might come to a different conclusion—has been raised to whether another court would do so.² I am of the view that there is no reasonable prospect that another court would come to a different conclusion.

[3] As for setting aside the Master's decision to appoint the first respondent as executrix, the procedural irregularities in the Master's appointment process were so significant that judicial intervention was warranted, for reasons set out in the judgment.

[4] The applicant challenges the court's appointment of Marina Naydenova Attorneys as executors, arguing that this power rests solely with the Master of the High

¹ Act 10 of 2013.

² *Mont Chevaux Trust v Tina Goosen* 2014 JDR 2325.

Court. However, this argument ignores the exceptional circumstances of this case. While courts generally defer to the Master in executor appointments, the exceptional circumstances of this case—fraud, procedural failures, and a missing executrix—necessitated the appointment to ensure that the interest of the minor children are protected.

[5] With regard to the finding whether a valid customary marriage existed between the first respondent and deceased, The evidence as set out in the judgment supports the court's conclusion that there was no customary marriage, as on the evidence before the court the two core elements as emerged from case law (lobola and the handing over of the bride) were not met. The multiple, inconsistent and fraudulent marriage certificates further undermine the first respondent's argument that they had a valid customary marriage.

[6] In the result, I am not persuaded that the appeal would have a reasonable prospect of success.

[7] Order:

1. The application for leave to appeal is accordingly dismissed with costs.


WJ du Plessis

Judge of the High Court, Gauteng,
Johannesburg

For the Applicants:

A Vosloo-De Witt instructed by Marina
Naydenova Attorneys

For the Respondents:

S Mathiba instructed by PGA Inc