



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

Case Number: 2023-125901

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

26 March 2025

DATE

SIGNATURE

In the matter between:

BOITUMELO MMASEKGOPEDI TSHETLO

Applicant

and

PAULINAH TSOMELE

First Respondent

**THE MASTER OF THE HIGH COURT
JOHANNESBURG**

Second Respondent

ESTATE LATE BRENDA TSOMELE

Third Respondent

JUDGMENT

Introduction

- [1] In these proceedings the applicant seeks an order –
- a. reviewing and setting aside the Master's decision of 21 September 2023, to remove the applicant as executor of estate number 018614/2023 (the “estate”);
 - b. directing the Master of the High Court to reinstate the applicant as executor of the estate;
 - c. that, should they oppose the application, the respondents pay costs of the application on an attorney and client scale,.

The facts

- [2] The estate with which these proceedings are concerned is the estate of the late Brenda Tsomele (the “deceased”) who passed away, intestate, on 13 June 2023.
- [3] The first respondent is the youngest sister of the deceased.
- [4] The second respondent is the Master of the High Court, Pretoria who is the official responsible for the administration of the deceased estates within his area of jurisdiction.
- [5] The applicant alleges that she and the deceased, at the time of the deceased's death, were partners in a permanent same-sex partnership in which they had undertaken reciprocal duties of support. This is disputed by the first respondent. This dispute is not germane to this judgment.
- [6] On 27 July 2023 the applicant applied to be nominated as the executor of the deceased's estate and, on 4 August 2023, a letter of executorship was issued by the second respondent, appointing the applicant as the executor of the estate. The applicant accepted the executorship.
- [7] The first respondent states that, at about this time, she was collecting and collating the material required to apply for the nomination as executor of the estate.

- [8] Having found out that the applicant had been appointed executor, the first respondent complained to the second respondent and a meeting was convened by the second respondent for 21 September 2023. The applicant and the first respondent accompanied by their respective legal representatives attended the meeting.
- [9] The so-called decisions taken at this meeting were recorded in a minute, which is attached to both the founding and answering affidavits.
- [10] As regards the letters of executorship which had been issued to the applicant, the minute is regrettably terse. It simply states, under the heading “*Resolution*”, that “*Letter issued to partner is recalled and cancelled*”.
- [11] Neither the minute nor the affidavits filed in these proceedings explain on what basis in law or fact the second respondent decided that the letters of executorship issued to the applicant should, in effect, be cancelled.
- [12] Regrettably the second respondent did not depose to an affidavit explaining his or her actions.

Removal of an executor

- [13] Section 54(1)(b) of the Administration of Estates Act¹ deals with circumstances in which the Master may remove an executor from office. None of those were apparently relied on by the second respondent and none, on the facts disclosed in the affidavits, are applicable.
- [14] Section 95 of the Administration of Estates Act deals with removal of an executor by the court. This section provided² –

95 Review of Master's appointments, etc

Every appointment by the Master of an executor, curator or interim curator, and every decision, ruling, order, direction or taxation by the Master under this Act shall be subject to appeal to or review by the Court upon motion at the instance of any person aggrieved thereby, and the Court may on any such appeal or review confirm, set aside or vary the

¹ 66 OF 1965

² The current wording of Section 95 was introduced by s. 6 of Act No. 15 of 2023 which took effect on 3 April 2024 after the meeting with the Master on 21 September 2023.

appointment, decision, ruling, order, direction or taxation, as the case may be.

[15] It was held in *M J v The Master of the High Court and others*³ –

*The right to review any appointment by the Master in terms of section 95 of the Act is merely a statutory recordal of such right and provides no independent grounds of review apart from those contained either in the Promotion of Administrative Justice Act, 3 of 2000 ('PAJA') or, to the extent that it is applicable, the common law. This ground of review is therefore subsumed by the review grounds in terms of PAJA. As was said by the Court in *Da Silva and Another v Da Silva NO and Others*:*

'That the decision taken by the third respondent [the Master] is reviewable is beyond question. Section 95 of the Administration of Estates Act is the answer to this question. Any decisions taken by third respondent in terms of the Act is reviewable under the Promotion of Administrative Justice Act, 3 of 2000 ('PAJA').'

Administrative action

[16] For the purposes of the Promotion of Administrative Justice Act⁴ ("PAJA"), the granting of letters of executorship is an administrative action⁵.

[17] It is settled law⁶ that, until an administrative action is set aside by a court in proceedings for judicial review "*it exists in fact and it has legal consequences that cannot simply be overlooked*".

[18] There are no judicial proceedings to set aside the letters of executorship granted to the applicant. Even if these letters of executorship were granted unlawfully (which they may or may not have been and on which I express no opinion), they exist in fact.

[19] In my opinion, therefore, the second respondent's so-called decision, as recorded in the minutes of the meeting of 21 September 2023, that the letters of executorship granted to the applicant are "recalled and cancelled" is invalid. This in turn means that, unless and until the letters of executorship granted to the

³ (15699/2017) [2019] ZAWCHC

⁴ 3 of 2000

⁵ *Da Silva & another v Da Silva NO & others* [2008] JOL 21659 (C)

⁶ *Oudekraal Estates (Pty) Ltd v City of Cape Town & others* [2004] JOL 12742 (SCA)

applicant are set aside by a court of competent jurisdiction, they exist in fact and cannot be ignored.

[20] I am therefore of the opinion that the applicant is entitled to an order substantially on the terms asked for by her.

Costs

[21] The applicant has been substantially successful and is entitled to costs. The applicant has asked for costs on the attorney and own client scale. That is not justified.

Order

It is ordered –

- A. The Letters of Executorship issued to the applicant on 4 August 2023 for estate number 018614/2023 remain in full force and effect unless and until set aside by a court of competent jurisdiction;
- B. The first respondent is to pay the applicant's cost of this application as between party and party on scale A.

A MITCHELL
Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 26 March 2025.

HEARD ON: 21 February 2025

DECIDED ON: 26 March 2025

For Applicants: **Adv YK Ndzima**
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For Second Respondent: No appearance

For Third Respondent: No appearance