

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-072243

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
22 April 2025 DATE	 SIGNATURE

In the matter between:

LINDIWE MARGARET MOTLOI
(in capacity as surviving spouse)

Applicant

and

GIFT DUNCAN MOROLONG N.O.
(substituted as executor)

First Respondent

KAGISO MOTLOI
(in capacity as heir)

Second Respondent

PULENG ROSETTA MOTLOI
(in capacity as heir)

Third Respondent

SELLO JACK MOTLOI
(in capacity as heir)

Fourth Respondent

LEFULESELE ALICE MOTLOI
(in capacity as heir)

Fifth Respondent

PALESA MOLETE
(in capacity as heir)

Sixth Respondent

KAMOHELO MOTLOI-MOSOANG
(in capacity as heir)

Seventh Respondent

THEMBA SITHOLE
(in capacity as heir)

Eighth Respondent

THANDO SITHOLE
(in capacity as heir)

Ninth Respondent

FIRST NATIONAL BANK LIMITED

Tenth Respondent

THE MASTER OF THE HIGH COURT, BLOEMFONTEIN

Eleventh Respondent

THE REGISTRAR OF DEEDS, JOHANNESBURG

Twelfth Respondent

THE REGISTRAR OF DEEDS, BLOEMFONTEIN

Thirteenth Respondent

JUDGMENT

CRUTCHFIELD J

- [1] This application comes before me on the opposed motion roll of Tuesday, 22 April 2025. The applicant, Lindiwe Margaret Motloi, cites 11 respondents. The first respondent is the executor of the deceased estate cited as an attorney who is operating out of an address in Bloemfontein. The eleventh respondent is the Master of the High Court in Bloemfontein, the thirteenth respondent is the Registrar of Deeds, Bloemfontein and the twelfth respondent is the Registrar of Deeds, Johannesburg. First National Bank Ltd is cited as the tenth respondent without an address. The balance of the respondents, the second to ninth respondents, are heirs under the estate, all cited as being care of an attorney in Bryanston. It emerges that the particular attorney in Bryanston was not authorised to accept service of this application in respect of the second to ninth respondents.
- [2] Notwithstanding the fact that the Registrar of Deeds, the Master of the High Court and the executor of the deceased estate as cited in this application reside in the area of jurisdiction of the Bloemfontein High Court, the applicant instituted this matter in the jurisdiction of the Gauteng Provincial Division, Johannesburg.

- [3] It is self-evident that this Court, sitting in Johannesburg, does not have jurisdiction over the executor operating in Bloemfontein, the Master of the High Court in Bloemfontein or the Registrar of Deeds in Bloemfontein. Nor does this Court have jurisdiction over the second to ninth respondents as the attorney, one Mr Buys, operating out of an address in Bryanston, is not authorised to accept service on behalf of the second to ninth respondents.
- [4] In the circumstances there is no debate that this Court does not hold jurisdiction to determine this application.
- [5] Counsel for the applicant, upon the matter being called before me at 10h00 on Tuesday, 22 April 2025, very properly and much to his credit, conceded the absence of jurisdiction of this Court and I am grateful to him for his assistance in this regard.
- [6] In the circumstances, the sole issue before me is the form of the order that I am to grant and more specifically, the scale of the costs that stand to be ordered against the applicant. Mr Zwane, counsel for the applicant, very properly tendered costs of the removal of the application before me. Counsel for the first respondent sought costs of the application on a party and party scale as between the applicant and the first respondent on scale C and sought an order that the application be struck from the roll on the basis of the absence of jurisdiction.
- [7] Given that this application cannot succeed within the jurisdiction of this Court, the appropriate costs order is costs in respect of the application and not wasted costs merely caused by the removal of the application from the roll.
- [8] In respect of the scale of the costs, whether it be on scale C or scale B, first respondent filed an answering affidavit during or about November 2023. The first respondent, pertinently and pointedly, raised the point of the absence of jurisdiction of this Court in respect of the matter and also raised further preliminary points including that two of the issues are in fact pending in litigation before the High Court in Bloemfontein.

[9] Proper attention paid by the applicant to the first respondent's answering affidavit at the time that the answering affidavit was delivered, would have and ought to have resulted in the applicant removing the application and withdrawing the application given the absence of jurisdiction. Notwithstanding, a replying affidavit was delivered by the applicant, heads of argument were delivered by both parties and the matter was set down for hearing before me.

[10] As a result, a replying affidavit and heads of argument were delivered, the costs of counsel in respect of both the applicant and the first respondent and costs of preparation for the hearing on 22 April 2025 were incurred. All of those costs could have been avoided in the event that the applicant had paid proper attention to the issues raised by the first respondent in its answering affidavit. In those circumstances, I am minded to grant an order that the costs as between the applicant and the first respondent be on the scale as between party and party on scale C.

[11] In the circumstances, I grant the following order:

1. The application is struck from the roll for the absence of jurisdiction of this Court.
2. The applicant is to pay the first respondent's costs on a party and party scale on scale C.

I hand down the judgment.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

Adv Zwane instructed by Chuene Attorneys
Incorporated.

For the First Respondent:

Adv Kloek instructed by Rudolf Buys and
Associates.

[9] Proper attention paid by the applicant to the first respondent's answering affidavit at the time that the answering affidavit was delivered, would have and ought to have resulted in the applicant removing the application and withdrawing the application given the absence of jurisdiction. Notwithstanding, a replying affidavit was delivered by the applicant, heads of argument were delivered by both parties and the matter was set down for hearing before me.

[10] As a result, a replying affidavit and heads of argument were delivered, the costs of counsel in respect of both the applicant and the first respondent and costs of preparation for the hearing on 22 April 2025 were incurred. All of those costs could have been avoided in the event that the applicant had paid proper attention to the issues raised by the first respondent in its answering affidavit. In those circumstances, I am minded to grant an order that the costs as between the applicant and the first respondent be on the scale as between party and party on scale C.

[11] In the circumstances, I grant the following order:

1. The application is struck from the roll for the absence of jurisdiction of this Court.
2. The applicant is to pay the first respondent's costs on a party and party scale on scale C.

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

Adv Zwane instructed by Chuene Attorneys
Incorporated.

For the First Respondent:

Adv Kloek instructed by Rudolf Buys and
Associates.