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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NUMBER: 18006/2024P

In the matter between:

STHOKOZILE BRONWYN BHENGU

APPLICANT

And

SIYABONGA CHAMANE

FIRST RESPONDENT

MBONGENI SHABALALA

SECOND RESPONDENT

THE MASTER OF THE HIGH COURT

THIRD RESPONDENT

JUDGMENT

P C BEZUIDENHOUT J:

[1] Applicant seeks an order that pending the appointment of an executor to the estate of the late Xolani James Chamane, who died on 29 June 2023, his assets which consist of motor vehicles and fixed property be handed to her for safe keeping and that the persons occupying the immovable property immediately vacate them and hand the keys to her. The motor vehicles and the properties are mentioned in the notice of motion but it is not necessary to list them at this stage.

[2] The application is opposed by First and Second Respondents who contend that the assets be kept by them and they also dispute that the deceased was married to the applicant.

[3] The will of the deceased was accepted by Third Respondent who also filed a report.

[4] The deceased left a will which is attached to the papers as exhibit "SBB5" wherein he refers to Applicant as his life partner in paragraph 4 of the will, nominating her as guardian of his minor sons. He also appointed executors and trustees, namely the Professional Providence Society Insurance Company Limited and Standard Trust Limited. However, on 7 November 2023 the said two institutions renounced the nomination to be executors to his estate.

[5] On 17 December 2024 the Master filed a report indicating that this application is not being opposed and setting out that the estate of the deceased was reported and registered as he died testate and had nominated executors in his will who renounced their nomination. Applicant applied for appointment as the executor of the estate. However, no letters of executorship have been issued as there are outstanding requirements.

[6] In her founding affidavit Applicant contends that she approached Third Respondent in an attempt to take over the estate of her late husband as everything was in a disarray and the estate assets were being misused which consists of immovable properties, a property at [...] A[...] Avenue Bellevue, Pietermaritzburg and 2[...] G[...] R[...] Estate 5[...] N[...] E[...] Road, Pietermaritzburg as well as four vehicles. The deceased's motor vehicles, after his death, on the instruction of First Respondent, were taken to Ladysmith as he stated that they had to be cleansed. This consisted of a Mercedes Benz GLC Coupé, a white Mercedes Benz, a black MBW 325i and one white Toyota Legend 45 bakkie. It is contended that the Toyota bakkie had been in a collision. It also became apparent later that the Mercedes Benz GLC Coupé has been repossessed by the bank.

[7] Applicant contends that she had nominated Mabaso and Partners Incorporated to act as her agents if she is appointed executor. They had to furnish a bond of security and had requested the return of the motor vehicles and for the properties to be vacated. None of these requests were adhered to.

[8] Due to the dispute between Applicant and First and Second Respondents, Third Respondent called a meeting between Applicant and First and Second Respondents with Third Respondent but First Respondent did not attend the meeting. It is therefore necessary that the assistance of this Court must be obtained to secure the assets.

[9] It is contended by Applicant that she was married to deceased in terms of customary law. A lobola process was concluded and their families celebrated an Umembeso during December 2018. Applicant attaches a list of cows and values for the lobola and the Umembeso gifts as required by the bride's family and photographs of the ceremony.

[10] Second Respondent is occupying the property at [...] A[...] Avenue Bellevue, Pietermaritzburg.

[11] First Respondent contends that the relationship between the deceased and Applicant had ended before he died. He contends that she has not pleaded nor established that she has the *locus standi* to bring this application. It is contended that one Nonkululeko Tracy Chawuka was the customary wife of the deceased at the time of his death and that there is an application pending in the High Court in this regard as to whether the customary marriage was correctly done and registered. It is further contended that there are various other beneficiaries who were not cited as Respondents.

[12] It is also contended that Second Respondent was residing in the said property at the instance of the deceased. It is admitted that the four vehicles were taken to Ladysmith. It is contended that they are safely stored. First Respondent also admits

that he was requested to attend a meeting at the Master's office but refused to do so as the application of Ms Chawuka had not yet been finalised.

[13] Second Respondent contends that the deceased was his cousin and that he was granted consent by him to reside in the said property. Second Respondent confirms that the vehicles were taken to Ladysmith but that the Mercedes Benz GLC Coupé has been repossessed by the bank. He also refers to Ms Chawuka and contends she was the wife of the deceased at the time of his death and the pending litigation in the High Court. There is no affidavit of Ms Chawuka attached to the papers.

[14] The relief sought in the Notice of Motion is that Applicant be granted control of all the assets of the deceased's estate pending the appointment of an executor. It is not that such property be bequeathed to her.

[15] The said assets are under the control of First and Second Respondent and there is a dispute as to who should control the assets until an executor is appointed. Although there was an attempt by the Master to convene a meeting the First Respondent admits that he refused to attend it.

[16] During argument it was submitted on behalf of Applicant that Applicant had the necessary *locus standi*, she was a mother of two of the children and that she was named in the will as the partner of the deceased. It was submitted that the issue that needs to be decided is the speedy appointment of an executor to take control of all the assets of the estate and to preserve them. If any of the other parties have any claims to the estate then such can be lodged with the Master through the executor when such is appointed. There is no prejudice if this is done but there can be severe prejudice to the estate if the said assets are not preserved as soon as possible.

[17] First Respondent contends that there was a non-joinder of various parties. This in my view is not of any consequence because the relief which is being sought is not the inheritance but merely the preservation of the estate. Accordingly the issue of non-

joinder is not an issue at this stage especially in light of the submission by Mr. Nyeme that all that is required is that an executor must be appointed as soon as possible.

[18] The issue of *lis pendens* was also raised and once again this is of no consequence as it is not the same parties, it is not the same issues, does not qualify under *lis pendens* and further is of no relevance in this matter. It must however be borne in mind that there is a will, that the will had been accepted by the Master, that the will should be followed and the only issue which also has to be decided is the appointment of an executor.

[19] It was however submitted that the head of the family which is First Respondent as the eldest family member should have control of all the assets pending the appointment of the executor. He submitted that the goods would be handed over to the executor once one is appointed.

[20] In the Administration of Estates Act 66 of 1965 in section 18(f) the Master can call upon the surviving spouse, the heirs of the deceased and persons having claims to attend before him or her any time to assist in making recommendations to the Master for the appointment of an executor. As set out this was arranged but First Respondent refused to attend.

[21] In terms of section 18(e) of the Administration of Estates Act where there is no executor as the executor ceased to hold such position which in this case, they refused to accept then the Master can appoint and grant letters of executorship to such person or persons whom he may deem fit and proper to be executor or executors of the estate of the deceased.

[22] As set out above during argument both Applicant and First and Second Respondents counsel agreed that an executor had to be appointed as soon as possible. This the Master can do.

[23] However the relief which is sought in the notice of motion seeks to have all of the assets placed under the control of Applicant pending the appointment of the executor. The relief sought therein is opposed and, in my view, will cause severe friction and that the main issue as conceded by counsel was to have an executor appointed and for the assets to be preserved.

Accordingly, the following order is made.

1. The Master of the High Court, Pietermaritzburg is directed within a period of fourteen (14) days of service on the Master of this order to appoint a duly qualified person as executor to the said estate of the late Xolani James Chamane.
2. The motor vehicles namely the white Mercedes Benz, the black BMW 325i and the white Toyota Legend 45 bakkie which First Respondent admitted was in his possession should be taken control of by the Sheriff of the High Court Pietermaritzburg and kept under his control until the appointment of an executor. The storage fees and costs thereof are to be paid out of the estate of the late Xolani Chamane.
3. The persons presently occupying the premises at [...] A[...] Avenue, Bellevue, Pietermaritzburg and 2[...] G[...] R[...] Estate, 5[...] N[...] E[...] Road, Pietermaritzburg are to continue residing in the said properties until the appointment of the executor who will then make a decision in that regard.
4. The costs of this application are to be paid out of the estate of the late Xolani James Chamane.

P C BEZUIDENHOUT J.

JUDGMENT HANDED DOWN:

7 MAY 2025

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