



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED. [REDACTED]
<u>16 May 2025</u>	
DATE	SIGNATURE

CASE NO: 952 / 2024

In the matter between:

DANIELE NICOLE DU PLESSIS

APPLICANT

And

FRANCINA ELIZABETHA RENIERS

FIRST RESPONDENT

**MASTER OF THE HIGH COURT
MBOMBELA**

SECOND RESPONDENT

J U D G M E N T

RATSHIBVUMO DJP:

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be on 16 May 2025 at 09H00.

[1] Background

Year 2020 was ushered in like any other. The world was least prepared for the pandemic that came with it, in the form of Covid-19 virus (the virus). In no time, regulations were imposed internationally, through which movements and gatherings were strictly restricted in an attempt to curb the massive deaths resulting from contracting the virus. South Africa was not spared either, with regulations being passed from the highest office. The virus had no respect for gender, race, age, rank or status, for when it was finally brought under control more than a year later, millions had succumbed to it, from the royal houses to the servicemen. Many were not able to pay their last respects due to restrictions in numbers of people permitted at funerals and traveling across the provincial borders owing to the regulations imposed. The ripple effect of this pandemic are still with us and will be felt for many years to come in various forms.

[2] The devastating impact of this pandemic and all the sad memories it left behind came back to life in the facts of this application. Mr. Patrick Marie Stanislas Henri Reniers (the deceased) and his wife of 15 years, Mrs. Francina Elizabetha Reniers (the First Respondent), came face to face with the hardship described in the paragraph above when in July 2021, they both contracted the virus. The deceased was immediately admitted at Mediclinic Hospital, Mbombela, but the First Respondent was not so lucky, as there were no more beds for her to be taken in too. She therefore resorted to self-medication whilst at home. As fate

would have it, she lived to see another day while her husband succumbed to the virus on 30 July 2021.

- [3] Prior to his death, the deceased and the First Respondent saw the devastating consequences of contracting the virus from all those that surrounded them, and came to terms with the real possibility that they might not survive. They then decided to write a joint will. They asked Mr. LS Giorgio (Giorgio), a financial advisor working for Liberty Standard Bank Group, to draft a will for them. Giorgio drafted a document, printed and delivered it to the First Respondent with instructions that she should arrange have it signed by herself and the deceased in the presence of two witnesses, who should also sign it.
- [4] On 26 July 2021, the First Respondent took the same document and gave it to Mr. B Macaulay (Macaulay), a broker working for OUTsurance, with instructions that he should take it to the deceased in hospital. According to the First Respondent, she signed it before handing it over to him, and this she did in his presence. She alleges that she signed it at her home which is in White River. Macaulay took the document to Mediclinic Hospital where, following a lengthy process, he was finally allowed into a hospital ward where the deceased was being kept alone, under oxygen supply.
- [5] Once inside, Macaulay handed over the three paged document and a pen to the deceased, who signed all the pages without reading and handed it back to him. Macaulay added his own signature and also completed the date and place on the last page. Although the deceased was weak, he lightly talked about braai he planned have with him upon his discharge from the hospital. This was however not to be, for unbeknown to him, his time on earth was on the fourth day countdown.

- [6] From the hospital, Macaulay took the document home where his wife co-signed as a second witness. This she did, in the absence of the deceased and the First Respondent. The document was then taken back to the First Respondent who kept it believing it to be a joint will, attested to by the deceased and herself. It is this document that was presented to the Master of the High Court (the Second Respondent) when the deceased passed on, who accepted it as the last will of the deceased.
- [7] The Applicant, a daughter of the deceased from his first marriage was aggrieved by the acceptance of the will by the Second Respondent. She found it hard to accept that her father would bequeath nothing to her or any of his children whereas in his will dated 05 July 1987, he had all his children as his beneficiaries. She is also concerned over some inaccuracies in the will which according to her, make it highly unlikely that the deceased could have desired to have this document as his last will. She casts doubts on whether the deceased is the person who caused the document to be drafted in its current form.
- [8] First of these inaccuracies is the reference to the type of marriage the deceased and the First Respondent had. The Applicant attached a pre-nuptial contract dated 03 May 2006 which clearly reflects that the First Respondent and the deceased were married out of community of property without the accrual. In the joint will, the deceased and the First Respondent classify their marriage as having been entered out of community of property, with the accrual.
- [9] Another inaccuracy is to be found in how the deceased nominated four of his grandchildren as conditional beneficiaries. Their names were provided as Marco Groenewald, Lexi Groenewald, Laurica Reynolds and Odin Reynolds. The undisputed fact is that the deceased did not have a grandchild known as Lexi Groenewald. Instead, his grandchild is Lexi Du Plessis. The last inaccuracy is in the spelling of the name of Laurica (Reynolds) whose correct spelling is

Laurika. The First Respondent admits that these are indeed inaccuracies, but she classifies them as typos.

[10] The Applicant also finds it odd that the deceased would name all his grandchildren as beneficiaries and leave out just one, named Tyler. The First Respondent claims that this was a deliberate act by the deceased as he had not met or seen Tyler since his birth.

[11] The Applicant challenges the validity of the deceased and First Respondent's will on the basis that it was not signed in the presence of the two witnesses. An order is sought by her in the following terms:

11.1 The last will testament of Patrick Marie Stanislas Henri Reniers (the deceased) and the First Respondent dated 26 July 2021, be declared *void ab origine*.

11.2 The last will and testament of Patrick Marie Stanislas Henri Reniers (the deceased) and the First Respondent dated 26 July 2021, be disregarded in totality by the 2nd respondent in the administration of the Deceased's estate.

11.3 Cost of suit against the First Respondent on an attorney and client scale in the event of the application being opposed, alternatively, cost of suit on party and party scale against the First Respondent.

[12] The application is opposed by the First Respondent. According to her, the application should be dismissed with costs on attorney and client scale. This cost order is sought even if the application was to be granted by the Court. In the event that the Court would find that the will is invalid for having not been executed in the presence of two witnesses, then the Court should consider her counterapplication. In the counterapplication, the First Respondent prays that the Court should condone her and the deceased's non-compliance with the formalities provided in section 2(3) of the Wills Act, No. 7 of 1953 (the Act). The relief sought is crafted in the following terms:

12.1 An order in terms of the provisions of section 2(3) of the Wills Act 7 of 1953 condoning the noncompliance with the formalities of the execution of a valid

will and specifically non-compliance with Section 2(1)(a)(ii) and (iii) of the said Act;

12.2 An order declaring the joint will executed by the First Respondent and the deceased dated 26 July 2021 valid;

12.3 Ordering that the cost of this application be paid by the applicant on an attorney and client scale.

[13] The First Respondent's answering affidavit was brought together with a request for condonation for having been filed out of time. The condonation is not opposed by the Applicant.

[14] The application is not opposed by the Second Respondent.

[15] The law.

The relevant parts of section 2 of the Act provide as follows,

"2 Formalities required in the execution of a will.

(1) Subject to the provisions of section 3bis-

(a) no will executed on or after the first day of January, 1954, shall be valid unless-

(i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other person, in the presence also of such other person; and

(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person anywhere on the page; and

...

(3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).

2A Power of court to declare a will to be revoked

If a court is satisfied that a testator has-

(a) made a written indication on his will or before his death caused such indication to be made;

(b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or

(c) drafted another document or before his death caused such document to be drafted,

by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked." [My emphasis].

[16] Discussion.

From the wording of section 2(3) of the Act, it appears plainly clear that the Court is empowered to condone non-compliance with the formalities for a valid will, thereby rescuing a will that otherwise would be invalid. It however could not have been the intention of the Legislature to validate a document which did not comply with any of the formalities provided in section 2(1) of the Act.¹ There appears to be three prerequisites for the rescue provision to become operational. First the document must have been non-compliant with one or more of the listed formalities. Secondly, the document must have been drafted by a testator. Lastly, circumstances should show that the testator intended the document to be his or her last will.

¹ Webster v The Master and Others 1996 (1) SA 34 (D) at 42F.

[17] Undisputed facts of this case are to the effect that neither the deceased nor the First Respondent signed the will in the presence of the two witnesses. Macaulay denied that the First Respondent signed it in his presence. In line with the *Plascon-Evans* rule, this Court must decide this application with all the disputed facts being considered in favour of the Respondent. A final order can be granted only if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the latter, justify such order.² For purposes of this judgment, the Court would therefore presume that the First Respondent signed the document in the presence of Macaulay.

[18] This leaves the will still non-compliant with the formalities. In terms of the formalities, it is required that it should be signed in the presence of two witnesses. To be signed in the presence of just one witness and while the testators were separate from each other, and in different areas, falls far too short to be considered valid. Even the one witness in whose presence the First Respondent claims to have signed the document in his presence, he did not sign it in her presence as required, but in the presence of just the deceased. The situation is worse when it comes to the second witness, Macaulay's wife who signed the document in the absence of the two testators.

[19] The purpose of section 2(3) was noted by the Supreme Court of Appeal (the SCA) in *Van der Merwe v The Master and Another*³ when it held, "by enacting s 2(3) of the Act, the Legislature was intent on ensuring that failure to comply with the formalities prescribed by the Act should not frustrate or defeat the genuine intention of testators. It has rightly and repeatedly been said, that, once a court is satisfied that the document concerned meets the requirements of

² See *National Director of Public Prosecution v Zuma* 2009 (2) SA 277 (SCA) at para 26.

³ 2010 (6) SA 544 (SCA) at para 14.

the subsection, a court has no discretion whether or not to grant an order as envisaged therein. In other words, the provisions of section 2(3) are peremptory once the jurisdictional requirements have been satisfied.”

[20] Over time, sight was lost of the fact that the court’s powers to condone is derived from the statute and that for that reason alone, the prerequisites in that statute had to be met before the court can assume the condonation powers. In giving meaning to the purpose referred to in *Van der Merwe*, courts in various Divisions focused on the question on whether the testator may have intended the document to be his/her last will. Little or no value was attached to the first requirement to the effect that the document must have been drafted by the testator.⁴

[21] As a result of this approach, the statutory provision empowering the courts to condone non-compliance where “a document was drafted or executed” by a person who has since died, was given a wider interpretation, not limited to drafting by the testator personally.⁵ In some of these decisions, courts proceeded to condone the non-compliance of a will, even after making a finding to the effect that it was not drafted by the testator.⁶ There are however, those judgments that took a narrower or stricter interpretation of the words, “drafted” such as in *Ramlal v Ramdhani Estate*⁷, where the court refused to grant condonation where the document was drafted by an attorney on the instructions of the testator.

[22] The string of conflicting decisions was ended (or should have ended) with the SCA judgment in *Bekker v Naude*⁸ where the court made a clear distinction

⁴ See *Ex Parte Laxton* 1998 (3) SA 238 (N) and *Back and Others NNO v Master of the Supreme Court* [1996] 2 All SA 161 (C).

⁵ See for example *Ndebele and Others v The Master and Another* 2001 (2) SA 102 (C).

⁶ See *Mdlulu v Delarey and Others* [1998] 1 All SA 434

⁷ 2002 (2) SA 643 (N).

⁸ 2003 (5) SA 173 (SCA).

between drafting a document and causing a document to be drafted. In that matter, Olivier JA, writing the unanimous judgment was critical of *Back*⁹ where Van Zyl J had preferred a broader interpretation of “drafting” relying on the recommendations by the South African Law Commission, which recommendations were rejected by the Legislature.

[23] In giving ordinary interpretation to the statute, the SCA ruled that the Legislature was alive to the difference between drafting a document and causing a document to be drafted. The Legislature did not just reject the recommendation by the South African Law Commission on how section 2(3) of the Act should be worded. It went on to accept that wording in respect of section 2A of the Act which section was inserted into the Act together with section 2(3) thereof, through Act no. 43 of 1992. Section 2A which came into operation on the same date as section 2(3) provides that “if the court is satisfied that the testator drafted another document or before his death caused such document to be drafted, by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked.”

[24] The SCA held, rightly so in my view, that if the Legislature intended that even the documents that were not personally drafted, but ‘caused to be drafted’ by the testator, should be considered for condonation of an invalid will, it would have provided so as it did under section 2A of the Act. The omission by the Legislature could not have been an error as the recommendations to the contrary were before it when the legislation was passed. As Olivier JA reasoned, the requirement that the document should have been drafted by the testator is stated in unambiguous language, and for good reason. The formalities of a will have been set for centuries to try to eliminate fraud, and disputes after the death of the testator. Even when a ‘power of condonation’ was granted to the courts, this

⁹ *Supra*.

aim was kept alive. The requirement that the document be drafted by the testator himself guarantees a degree of reliability because it requires proof of a personal act of the testator, from which his intention can be clearly deduced.¹⁰

[25] My understanding of the above is that once a court finds that the document was not personally drafted by the testator, its powers to condone an invalid will are automatically excluded. The second leg inquiry on whether the testator intended the document to be his last will shall therefore fall away. The Legislature found no excuse for any document the testator caused to be drafted, not to comply fully with the formalities of a valid will.

[26] The only room available to challenge these provisions would be if an aggrieved party challenges its constitutionality, which in *casu* does not even arise. The intention of the Legislature therefore stands to be upheld.

[27] Conclusion.

It is therefore this Court's finding that the deceased's will does not comply with the formalities of a will, for reason that it was not signed in the presence of two witnesses and was also not signed by the two witnesses in the presence of the testators. For that reason, it should be declared invalid. For the reason of this finding in respect of the first leg of inquiry, it is unnecessary to proceed to the second leg to consider if the said document was intended to be the last will by the deceased.

[28] As for the costs, I see no reason why costs should not follow the outcome. A case has not been made for punitive cost to be awarded as prayed for by both parties. I will therefore make the order in the following terms

[29] The Order:

¹⁰ See *Bekker supra* at paragraph 16.

For the aforesaid reasons, I make the following order:

29.1 The late filing of the First Respondent's answering affidavit is condoned.

29.2 The last will testament of Patrick Marie Stanislas Henri Reniers and the First Respondent dated 26 July 2021, is declared invalid.

29.3 The Second Respondent is directed to disregard the last will and testament of Patrick Marie Stanislas Henri Reniers and the First Respondent dated 26 July 2021, in the administration of the deceased's estate.

29.4 The First Respondent is ordered to pay the Applicant's costs.

29.5 The First Respondent's counterapplication is dismissed with costs.


T. RATSHIBVUMO

**DEPUTY JUDGE PRESIDENT
MPUMALANGA DIVISION OF THE HIGH COURT**

APPEARANCES:

FOR THE APPLICANT: MR. C SMITH

**INSTRUCTED BY: CHRISTO SMITH ATTORNEYS
MBOMBELA**

FOR THE FIRST RESPONDENT: ADV. KW VAN HEERDEN

INSTRUCTED BY:

**L ÜNENBURG JANSE VAN
VUUREN ATTORNEYS
MBOMBELA**

DATE HEARD:

06 MAY 2025

JUDGMENT DELIVERED:

16 MAY 2025