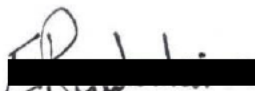


REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-063283

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVIEWED: YES / ☒ NO
04 June 2025 DATE	
 SIGNATURE	

In the matter between:

LERATO OCEANIA MONARENG N.O	Applicant
And	
BEATRICE DIEKETSENG NTULI	1 st Respondent
JOYCE MMAMOLETSATSI KOELE	2 nd Respondent
MASTER OF THE HIGH COURT JOHANNESBURG	3 rd Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	4 th Respondent
RADITSELA EXPRESS CC	5 th Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I made the following order:

1. The application is dismissed with costs.

[2] The reasons for the order follow below.

Introduction

- [3] The applicant approached the court on an urgent basis to have the appointment of the first and second respondents as members of the fifth respondent declared invalid, setting the appointment aside and removing the said respondents as members of the fifth respondent.
- [4] The applicant is the duly appointed executor in the estate of her biological father who was the sole member of the fifth respondent.
- [5] The first and second respondents are sisters. They had two brothers, Tau Andrew Raditsela and George Raditsela, both of them deceased.
- [6] The second respondent together with Tau Andrew were members of the fifth respondent.
- [7] The parents of the first and second respondents, Samuel and Nomabece Raditsela were the beneficial owners of the predecessor of the fifth respondent, Sam Raditsela trading as Express Tours.
- [8] On the death of Samuel Raditsela in January 1996 his wife Nomabece was appointed as the representative of his estate in terms of section 23(10) of

the Black Administration Act, 38 of 1927.

- [9] Express Tours was operated as a family business and was managed by Nomabece, the first and second respondents and their brothers Tau Andrew and George Raditsela.
- [10] Shortly after Nomabece died on 20 November 2003 Tau Andrew changed the name of the business to Raditsela Express CC and took over the assets of the business from Nomabece's estate and appointed himself as the sole member of the Close Corporation.
- [11] The administration of the estate of Nomabece was never finalised. The properties owned by Nomabece was never transferred and Tau Andrew remained resident in the properties.
- [12] The other siblings namely the first two respondents and George kept on assisting with the business and occasionally provided financing for the running of the business.
- [13] Tau Andrew passed away on 26 November 2023 and the first and second respondents together with their brother George were appointed as the executors of his estate on 3 January 2024.
- [14] Shortly after the death of Tau Andrew, the applicant appeared on the scene, alleging that she is the biological child of Tau Andrew. Up to that stage his siblings were not aware that he had any offspring.
- [15] The siblings immediately challenged paternity and requested proof of paternity from the attorneys of the applicant. They also requested proof of the existence of any other children allegedly sired by their brother. They received no response.
- [16] George passed away on 6 January 2024 and the first and second

respondents appointed themselves as members of Raditsela Express CC in the belief that it was a family business. On closer inspection of the affairs of the business they learnt that there is an amount of R13 Million owing to the South African Revenue Service (SARS) in respect of unpaid taxes, the business account had been frozen, the business was flagged as tax non-compliant on the Central Supplier Database as a result of which the Gauteng Department of Education (GDE) was precluded to make payments to the business for services rendered.

- [17] The first and second respondent succeeded in temporarily salvaging the operations, securing payments from the GDE and entering into a negotiations with SARS in respect of payment. The business is currently fully operational, and the SARS debt is being serviced.

The basis for the relief sought

- [18] The applicant contends that she is the eldest surviving child of Tau Andrew and that he was the sole member of Raditsela Express CC.
- [19] She avers that the first and second respondents not only acted unlawfully when they changed the founding statement of the fifth respondent so as to insert themselves as members of the fifth respondent but also acted fraudulently when they reported the estate of Tau Andrew to the Master when they indicated that he does not have any children and that they are the only beneficiaries of his estate.
- [20] On the strength of the letters of executorship issued to them they inserted themselves as members of the Close Corporation and started dealing with the assets of the Corporation.
- [21] She contends that the appointment is contrary to the provisions of section 35 of the Close Corporations Act, Act 69 of 1984 (CCAct). She further avers that she as the executor is entitled in terms of section 35 to deal with the

interest of her father in the CC.

Discussion

[22] The gist of the applicant's contentions is that the first and second respondents fraudulently misrepresented to the Master that the deceased had no offspring and as a result their appointment was due to the fraudulent misrepresentation.

[23] She furthermore submits that as a result of the existence of fraud the steps taken by the then executors amounted to a nullity and should therefore be declared invalid.

[24] The conclusion she arrives at that the Master cancelled the first Letters of Executorship due to the existence of fraud is not borne out by the decision of the Master.

[25] The Master informed the second respondent that the complaint by the applicant was that she was not informed or involved in the nomination of the executor. No mention was made in the notice of any fraud or fraudulent misrepresentation.

[26] The minutes of the meeting that took place on 30 April 2024 makes no mention of fraud or fraudulent misrepresentation. The minutes states the complaint as follows:

"The children of the deceased complaint(sic) that they were not involved nor participated in the appointment of the executors"

[27] The resolution by the Master likewise makes no mention of fraud or fraudulent misrepresentation. The resolution states as follows:

“Pga Attorneys has resigned as agent for the executors and will return the letter of appointment to the Master for cancellation The letter of appointment issued to the siblings of the deceased is hereby recalled and the children are afforded opportunity to participate and nominate an executor of their own choice.”

[28] The letter cancelling the Letters of Executorship was issued by the Master on 15 April 2024 and the decision by the Master to recall the Letter of Executorship is dated 30 April 2024.

[29] The effect of the cancelling of the Letter of Executorship is that all that was done in the administration of the estate by the former executors was done in terms of a valid Letter of Executorship. The Master did not declare the conduct of the erstwhile executors invalid nor is there an application before court to declare the actions of the erstwhile executors invalid.

[30] Whilst in possession of valid Letters of Executorship the erstwhile executors availed themselves of the powers in section 35 of the CC Act which provides as follows:

Subject to any other arrangement in an association. agreement, an executor of the estate of a member of a corporation who is deceased shall, in the performance of his duties

(a) cause the deceased member's interest in the corporation to be transferred to a person who qualifies for membership of a corporation in terms of section 29 and is entitled thereto as legatee or heir or under a redistribution agreement, if the remaining member or members of the corporation (if any) consent to the transfer of the member's interest to such person;

[31] The actions of the erstwhile executors in transferring the membership interest of the deceased into their names as heirs was consequently not fraudulent. The transfer was not invalid and does not stand to be set aside.

[32] The matter is furthermore not urgent. The applicant knew as early as 10 March 2024 of the appointment of the erstwhile executors. There was nothing to prevent her from launching the application then. Instead she

waited nearly two months before launching her application which is then premised on the obligation of an executor to prepare and submit a Liquidation and Distribution account within six months. The further basis for the urgency is that the erstwhile executors have begun to sell some of the assets. This was however done whilst they were still the lawfully appointed executors and was it done in the execution of the administration of the estate.

Conclusion

[33] For the reasons stated above I conclude that the applicant has not made out a case in support of the relief claimed and therefore I made the order in paragraph 1.


E Raubenheimer

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **04 June 2025**

COUNSEL FOR THE PLAINTIFFS:

Mr Mametja

INSTRUCTED BY:

Mametja and Associates

COUNSEL FOR THE RESPONDENT:

INSTRUCTED BY:

Preshnee Govender Attorneys

DATE OF ARGUMENT: 18 June 2024

DATE OF JUDGMENT: 04 June 2025