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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION, THEMBALETHU)**

Case Number: **605/2023**

In the matter between:

LERATO LIONEL DYANTYI

Applicant

and

THEO DYANTYI

First Respondent

TREVOR DYANTYI

Second Respondent

POPSI NORA DYANTYI

Third Respondent

THE MASTER OF THE HIGH COURT

Fourth Respondent

Coram

:

Da Silva Salie, J

Matter argued	:	15 August 2025
Judgment delivered	:	15 August 2025
Counsel for Applicant	:	Mr E Brand
Instructed by	:	Brand & Van Der Bergh
Attorneys		
Counsel for First Respondent	:	Adv. B Nduli
Instructed by	:	Legal Aid South Africa

JUDGMENT HANDED DOWN ON 15 AUGUST 2025

Order:

[23] Wherefore I make the following Order:

- [i] the application to set aside the acceptance and registration of the will of the late Dinah Dyantyi (Identity Number: 4[...]) dated 31 October 2020 by the fourth respondent (the Master) is dismissed.*
- [ii] the will of the late Dinah Dyantyi (spelt Dantyi) dated 31 October 2020 remains the accepted last will and testament.*
- [iii] the relief seeking to set aside the third respondent as the Master's representative is refused.*
- [iv] the relief seeking acceptance of the will of the late Dinah Dyantyi dated 12 July 2017 is refused.*
- [iv] the applicant is to pay the costs of the application."*

DA SILVA SALIE, J:

Introduction:

[1] This is an application to set aside the Master's acceptance and registration of the will of the late Mrs. Dinah Dyantyi ("Mrs. Dyantyi") (dated 31 October 2020). Ancillary relief is sought to set aside the third respondent's appointment as the Master's representative and leave seeking acceptance of the prior will which was executed by the late Mrs. Dyantyi, dated 12 July 2017 ("the 2017 will"), as her last will and testament. The application is opposed by the third respondent, the representative appointed by the Master of this Court to wind up the estate of the late Mrs. Dyantyi in terms of the will dated 31 October 2020 ("the 2020 will"). Initially the application was launched only against the third respondent and the Master of the High Court as the second respondent. Pursuant to a joinder application (dated 8 August 2024) brought by the applicant pending the continuation of the hearing of the matter, the two heirs as per the 2020 will were added as interested parties by agreement. The aforesaid heirs, the sons of the deceased, Mr. Theo Dyantyi ("Theo") and Mr. Trevor Dyantyi ("Trevor") were joined to the application, as the first and second respondents. Since various of the parties in the matter are related and bear the same surname, reference will be made in this judgment to them by their first names, save where stated otherwise.

Historical background:

[2] The applicant (Mr. Lerato Dyantyi "Lerato") is the grandson of the deceased. The applicant and third respondent ("Ms. Popsi Dyantyi" hereafter "Popsi") are related, as nephew and aunt. Mrs. Dyantyi passed away on 4 September 2022. The applicant resided in the property with his grandmother, which property now forms part of her deceased estate. Shortly after her passing, he was informed by Popsi that she had been appointed as the Master's representative in the winding up of his grandmother's estate, having so been nominated in terms of her will dated 31 October 2020. In terms

of the said will, the deceased's sons, Trevor and Theo Dyantyi, would inherit the estate, in equal shares, including the property situated in Pacaltsdorp, the property in which the applicant and his grandmother had resided. After his grandmother's passing and the coming to light of the 2020 will, he had to vacate from the property. Upon his consideration of the contents of the 2020 will, he found *it "highly unlikely"* that the document would reflect the wishes of his grandmother given that at the time of the stated date in the testament, 31 October 2020 his grandmother was in no mental position (as he believes) to have made a will. It is so that Mrs. Dyantyi had made an earlier will on 12 July 2017 in terms of which Lerato would be the sole heir of the estate including the Pacaltsdorp property.

[3] Lerato alleges out the outset of his founding affidavit that his grandmother had a confused mental state and that this vulnerability would have been abused to coerce her to sign a document by attaching her fingerprint thereto without knowing that she was signing a new will. He further states that when he confronted the witnesses to the 2020 will, Ms. Anna Paulse ("Paulse") and Ms. Susanna Carelse ("Carelse"), former neighbours of the deceased, they disputed that they signed the will in the presence of the commissioner and that they informed him that the deceased's fingerprint was already affixed to the document when they signed it as witnesses. They also informed him that they did not sign the will in each other's presence.

[4] Whilst he tried to get confirmatory affidavits from both Paulse and Carelse, they were not prepared to attest thereto on affidavit. Lerato was of the view that this was because Paulse and Carelse were fearful of signing an affidavit as they had been intimidated by Popsi when she got wind of the fact that applicant was making enquiries from the witnesses as to how their signatures had come to be in the 2020 will. For these reasons he stated that they would be called as witnesses to support this information under oath through oral evidence. No further affidavits were attached to the founding affidavit in support or confirmation of the application.

[5] The first respondent, Ms. Popsi Dyantyi (“Popsi”) set out in her answering affidavit that the deceased executed a will in terms of which she bequeathed her entire estate (in 50% share each) to her two sons, Theo and Trevor, whom have been joined as first and second respondent. On 31 October 2020, in line with the wishes of the deceased, she attended at the practice of the attorney, Mr. Ayanda Kettledas (“Kettledas”) together with her mother (the deceased), her brothers, as well as Paulse and Carelse. In his presence, the will was executed by her mother and then signed by both Paulse and Carelse as witnesses. The answering affidavits are supported by confirmatory affidavits by Mr. Theo Dyantyi, Mr. Trevor Dyantyi, Mr. John Matuku as well as an affidavit by Mr. Kettledas who confirms the averments of Popsi as far as it relates to them respectively. In essence these affidavits state that they were present at the offices of the attorney, Kettledas, where the testatrix instructed Kettledas as to her wishes as set out in the will. The draft will was accordingly prepared and after the attorney’s consultation with Mrs. Dyantyi, it was executed by her. Kettledas denies the allegations that the execution by the deceased was made in a manner as alleged by the applicant and that it was not done in compliance with the requirements of the Wills Act.

[6] In the replying affidavit, the applicant stated that his grandmother was not in a physical and mental state to attend to the execution of the will as claimed. In support of his reply, an affidavit is attached by one, Ms. Freda Cronje, who states that she was the frail care assistant to Mrs. Dyantyi for an extended period, which includes the time during which the 2020 will was executed. She was employed from Mondays to Fridays until 17h00 daily and that during this time Mrs. Dyantyi was very confused and mentally incapacitated. She also stated that the deceased could not have attended the offices of an attorney as she would have known about it. Mrs. Dyantyi was bedridden at this time, and, in any event, the deceased shared everything with her and would have told her about it.

Oral Evidence:

[7] The applicant relied primarily on the *viva voce* evidence of Paulse. Paulse declined to provide a confirmatory affidavit and indicated she was only prepared to testify orally before the Court. During her testimony she was tearful and expressed her reluctance to be involved in the family dispute. She also testified that she was threatened by family regarding her involvement and testimony and that she would stand losing her home. She confirmed that her signature appears in the 2020 will but claimed that she believed the document was from the Department of Social Welfare. She stated that she did not sign in the presence of attorney, Kettledas, but in the street on another day and with a thumbprint already affixed to the document. She denied that she signed it at the attorney's offices and claimed that it was not in the presence of the other witness (Carelse). She further testified that she had been to the attorney's (Kettledas') offices the day prior, on the 30th of October 2020. Kettledas was absent, for reasons that she understood was due to his mother's ill health, and thus nothing transpired on that day which would have amounted to the execution and signature of the document before this Court as the 2020 Will.

[8] The evidence of Carelse, the other witness to the 2020 will, was called by the third respondent, was in direct conflict with that of Paulse. Carelse gave an account of the day in question, the date of the execution of the 2020 will, 31 October 2020: She testified that she attended with Popsi, Paulse, Mrs. Dyantyi (deceased), her sons Mr. John Matuka, as well as Theo and Trevor at the offices of the attorney, Kettledas. She signed as a witness to the will upon the request of Mrs. Dyantyi, whom she had known for 10 years at the time. She explained in detail the events on the day such as the travelling arrangements to the attorney's practice in York Street, George, including going "*upstairs on the third floor of a white building*" and the events leading up to when the deceased affixed her thumbprint to the will in the attorney's presence. She also testified that both herself and Paulse signed the will thereafter in each other's presence and in the presence of the testatrix and the attorney.

[9] Mr. Kettledas, the attorney who drafted the 2020 will, has been a practicing attorney since 2018. At the time he was an attorney as a professional assistant at G.J.

Williams Attorneys at 1[...] Y[...] Street, George. Since 2018 he has been practicing in the fields of both criminal and civil litigation as well as administration of estates including drafting and execution of wills. He is experienced in the drafting and execution of wills for illiterate testators who execute the will by the affixing of a mark or fingerprint. He is presently practicing for his own account as an attorney in George. He corroborated Carelse's version in all material respects. He referred to Popsi by her second name "Nora". He knows her professionally in relation to another matter and ran into her whilst on a bus, on a Tuesday or Wednesday, prior to the Saturday. She enquired if he could assist her mother with a will. A consultation was scheduled for Saturday, 31st October 2020. He testified that he met with the deceased in the morning of the scheduled date. She provided him with clear instructions in terms of which he acted accordingly. She wanted her sons, Theo and Trevor, to inherit her estate, and particularly the property in equal shares. The testatrix appeared to him coherent, although she was in a wheelchair and could not hold a pen. He was satisfied (in his capacity as an attorney) that she appreciated her instructions and the nature and effect thereof. He testified that she did not come across as being under any duress or threat to instruct him as to the contents of the will. He confirmed her identity and drafted the will in her presence. He described the procedure he followed in affixing the testatrix's thumbprint using his inkpad. He also testified that the statutory formalities were complied with as reflected on the 2020 will. He also confirmed that Popsi was present, with her brothers as well as the two ladies who signed as witnesses.

[10] Under cross examination, it was put to him that his affidavit states that he took instructions on 30 October 2020, which was Friday. Kettledas explained that the date of the 30th in the affidavit would have been incorrect, as it was on a Saturday, 31 October 2020 as opposed to a weekday, when he met with the testatrix and that he signed and printed the will as per her instructions during that consultation. He confirmed that his mother was ill at the time, a fact that was known in the community. He testified that he recalls what he did on this day at the office, a Saturday, generally a day he had scheduled for administrative tasks and had slotted this consultation in. His consultation

with Mrs. Dyantyi and the execution on the will was over approximately a period of 45 minutes to an hour.

Discussion:

[11] I have considered the contents of the document which forms the subject matter of the dispute, the document titled: **“THE LAST AND FINAL WILL AND TESTAMENT OF DINAH DANTYI”**, executed on all pages by way of a fingerprint with the commissioner of oaths, Kettledas, signing in his capacity as Commissioner of Oaths confirming that he had satisfied himself as to the identity of the signee, *“Mrs. Dinah Dantyi”*, and that the mark so made was indeed the thumbprint of the testatrix. He also confirmed, as commissioner on the will, that she understood and confirmed the contents of the document. I pause to mention that the will states the spelling of the surname of the testatrix as **“DANTYI”** whilst the family surname is spelt *“Dyantyi”*. Nothing much turns on this. It was also not raised as an issue before the Court.

[12] It is not in dispute that the 2020 will appears regular on its face which reads that it was executed before attorney Mr Kettledas, who also acted as Commissioner of Oaths, given that the testatrix signed by way of a thumbprint. However, the applicant's challenge is based on alleged non-compliance with section 2(1)(a) of the Wills Act 7 of 1953. Stated differently, the applicant disputes that the will was in fact signed as it appears to be the case. **I understand this to mean that the regularity is apparent but in fact not real.** During the closing arguments, Mr. Brand, (attorney for the applicant) handed up a more legible copy of the will where it appears that words in pencil were inscribed stating where the witnesses should sign by way of initials and full signature. This, he argued, supports the contention that the witnesses were not present at the office of the attorney and that the penciled inscriptions/directions were typically made by an attorney where the witnesses/signatories are not present. Regrettably, this evidence was not put to Kettledas during cross examination, and he was not afforded an opportunity to answer thereto. I shall deal with aspect later herein. The respondents and supporting witnesses deny all allegations of irregularities and maintain that the

statutory formalities were complied with and that the deceased had full mental capacity. I pause to mention that whilst initially issues relating to the testatrix's mental capacity and coercion were raised, at the conclusion of the matter, however, the applicant's case was essentially that the will was not valid due to lack of compliance with the formalities as per the Wills Act. The grounds of mental incapacity and coercion were not pursued, however I accept that it is to be considered by this Court to a limited extent and holistically to support the applicant's contention that the execution of the will could not have happened as the respondents and the witnesses claimed it had happened.

The Wills Act 7 of 1953 and Statutory Requirements:

[13] When a testator executes a will with a thumbprint in South African law, the governing framework is section 2(1)(a) and section 2(1)(a)(v)–(vi) of the Wills Act 7 of 1953 (as amended), along with trite case law interpreting those provisions.

[14] As I had referred to earlier in this judgment, no basis is made for the allegation that the deceased was not in a mental state or that she did not have the required cognitive and executive functioning to make a will. These averments are not in any manner supported by other evidence, including any medical evidence or an explanation as to why this conclusion is alleged.

[15] Section 2(1)(a) of the Wills Act sets out the formalities for a valid will. Normally, a will must be signed by the testator at the end of the document on each page, in the presence of two competent witnesses who are present at the same time, and the witnesses must sign in the presence of the testator and each other. When the testator cannot sign with a pen and instead executes the will by making a mark or affixing a thumbprint, additional safeguards apply: A “mark” includes a thumbprint, as in this case, the 2020 will, and is legally recognised as a “mark” in terms of section 1 of the Wills Act.

Requirements for a will executed by mark / thumbprint (section 2(1)(a)(v))

[16] Where a will is signed by the testator, and *in casu*, a thumbprint affixed by the late Mrs Dyantyi, by her making of a mark or thumbprint, it is also required that:

- (a) Each page of the will must also be signed by the testator/trix (or bear the mark/thumbprint).
- (b) The will must be signed in the presence of a commissioner of oaths.
- (c) The commissioner must certify on the will that he is satisfied that the will is that of the testator/trix.
- (d) The Commissioner of Oaths must satisfy themselves as to the identity of the testator/trix.
- (e) Confirm that the document is indeed the will of the testator/trix.
- (f) Append a certificate confirming the above, along with his or her designation and signature, on the will itself.

Purpose of the Additional Requirements in the event of execution by affixing a thumbprint:

[17] It is trite that as execution by way of a thumbprint or mark could be more open to abuse than a handwritten signature, more likely as the testator/trix may be illiterate or physically disabled, there is a higher risk of fraud or substitution. The commissioner's involvement provides independent confirmation of the authenticity and voluntariness of the execution.

Credibility findings:

[18] I find that the versions of Carelse and Kettledas were clear, consistent, logical and mutually corroborative in material respects. Their testimony was reliable and creditworthy in all important aspects. By contrast, Paulse's version was inconsistent with the probabilities, internally contradictory in various respects, and delivered by a witness who expressly did not wish to be involved in the matter. In my view, Paulse's testimony was not a reflection of the truth, but an account which was marred by fear or influence of family acrimony. She also came across as reticent and her evidence was not clear and satisfactory. She was very emotional, and it was very apparent that her account of events was tailored as she testified. Whilst she maintained that she wants no part in the affairs of the family, in contrast she did not come across as an independent witness as her account of events reflected an embroilment in the emotional acrimony between the polarized members of this family. She attempted, dismally I need add, to adjust her version with that of the applicant in order to bolster the version of the applicant and to distance herself from having in fact been a witness to the 2020 will. The latter is an event which has since come to haunt her given her relationship with the applicant and his protestation to the validity of the 2020 will to which she was a signatory as a witness.

[19] As regards the value to be attached to the affidavit of the frail care assistant (Ms. Cronje hereafter "Cronje") of the testatrix, I am not persuaded that the contents of this affidavit assist the applicant. Firstly, Cronje is not qualified as a medical or related field expert witness able to testify to the deceased's mental capacity or executive functioning at that time. Secondly, the will is dated Saturday, 31 October 2020, however she was not employed or present at the testatrix home on Saturdays. Kettledas testified that the testatrix attended at his office on the Saturday (31st) and that she was in a wheelchair, consistent with her limited mobility and physical health at the time. Cronje would not have personal knowledge of the actions of the testatrix on a weekend day as she was not employed over weekends. Her frail care assistance was daily from Monday to Fridays. Thirdly, Cronje's version is inherently contradictory as she asserts that the deceased was incoherent and very confused during this period, yet she simultaneously claims that the deceased "*shared everything*" with her and would have disclosed to her any consultation with an attorney which the testatrix would have attended to. It could

simply be that the testatrix did not wish to disclose the visit and execution of the will to her frail care worker or with others and keep it private, possibly cautious to the tension it would otherwise cause within the family given that in her previous will, the 2017 will, the property was bequeathed to her grandson, Lerato, as opposed to her two sons, Theo and Trevor, who now stands to inherit her estate in equal shares. Either way, the contents of Cronje's affidavit that, on the one hand, the deceased was so frail and confused that she was mentally incoherent and on the other, that the deceased would have shared everything her cannot logically be sustained. This contradiction further detracts from the reliability of her evidence.

Conclusion:

[20] The onus rests on the applicant to establish, on a balance of probabilities, that the 2020 will is invalid. Where the will is regular on the face of it, as in this case, the presumption of due execution applies unless rebutted by the applicant who seeks to have the will set aside as being invalid. A will, which appears regular and complete *ex facie*, is presumed to be valid until its invalidity is established on a balance of probabilities by the person alleging the invalidity.

[21] For the reasons set out above, I am not persuaded that the applicant had discharged this onus. The discrepancies or concerns which are raised by the applicant, such as difference of the dates between the 30th and 31st October 2020, the copy of the will handed up during argument which reflects the pencil inscribed directions to the witnesses where to sign and the uncreditworthy evidence of Paulse does not amount to rebutting the presumption of regularity of the 2020 will which had been accepted by the Master. The version advanced by the respondents' witnesses is more probable and is supported by the independent evidence of the attorney who drafted and commissioned the will. There is no credible evidence of non-compliance with section 2(1)(a) of the Wills Act. Whilst this is the nub of the applicant's case to set aside the 2020 will, it clearly falls woefully short of discharging the onus which rests upon it to succeed in the

relief to have the 2020 will set aside and for the 2017 will to be accepted as the last will and testament of Mrs. Dyantyi.

[22] In the result, I am not persuaded that the applicant has sufficiently met the threshold to succeed in setting aside the impugned will (the 2020 will) and the application falls to be dismissed with costs.

Order:

[23] Wherefore I make the following Order:

- “[i] the application to set aside the acceptance and registration of the will of the late Dinah Dyantyi (Identity Number: 4[...]) dated 31 October 2020 by the fourth respondent (the Master) is dismissed.*
- [ii] the will of the late Dinah Dyantyi (spelt Dantyi) dated 31 October 2020 remains the accepted last will and testament.*
- [iii] the relief seeking to set aside the third respondent as the Master’s representative is refused.*
- [iv] the relief seeking acceptance of the will of the late Dinah Dyantyi dated 12 July 2017 is refused.*
- [iv] the applicant is to pay the costs of the application.”*

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
EASTERN CIRCUIT LOCAL DIVISION,

