



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

**Case Number: 2023-125901**

- |     |                                 |
|-----|---------------------------------|
| (1) | REPORTABLE: NO                  |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES                    |

28 AUGUST 2025

DATE

SIGNATURE

In the matter between:

**BOITUMELO MMASEKGOPEDI TSHETLO**

**Applicant**

**and**

**PAULINAH TSOMELE**

**First Respondent**

**THE MASTER OF THE HIGH COURT  
JOHANNESBURG**

**Second Respondent**

**ESTATE LATE BRENDA TSOMELE**

**Third Respondent**

---

**JUDGMENT – LEAVE TO APPEAL**

---

### *Introduction*

[1] On 26 March 2025 I handed down judgment in these proceedings, in which I ordered that –

- a. the Letters of Executorship issued to the applicant on 4 August 2023 for estate number 018614/2023 remain in full force and effect unless and until set aside by a court of competent jurisdiction;
- b. the first respondent is to pay the applicant's costs of this application as between party and party on scale A.

[2] The first respondent now seeks leave to appeal that judgment.

### *Grounds*

[3] The first respondent seeks leave to appeal the judgment on grounds which I summarise as follows –

- a. the judgment fails to deal with the fact that the Master referred the matter to court with a specific instruction that the Honourable Court must make a determination regarding the alleged "lifetime partnership";
- b. the judgment fails to deal with the fact that the first respondent requested the court a quo in her heads of argument to make a determination on the alleged "lifetime partnership" of the applicant and the late Brenda Tsomele;
- c. the finding that the dispute regarding the eligibility of the applicant to be appointed as executor of the late Brenda Tsomele's estate as alleged "lifetime partnership" is not germane to the application;
- d. the judgment does not deal with the fact that the essence of the first respondent's case relates to the unlawfulness of the applicant's appointment and the first respondent required that that appointment be set aside.

### *Leave to appeal*

- [4] Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides *inter alia* that leave to appeal may only be given where the judge concerned is of the opinion that the appeal would have a reasonable prospect of success or there is some other compelling reason why the appeal should be heard.

### *Substantive grounds*

- [5] The substantive grounds upon which the first respondent relies to appeal the judgment misunderstand the import of the judgment. The only issues which I was called upon to decide are those set out in the notice of motion. There was no counter-application for any other relief made out in the answering papers filed by the first respondent. The second respondent took no part in the proceedings. In particular there was no application before me by either the first or second respondents, that the appointment of the applicant as executor be set aside.
- [6] The order sought by the applicant in the notice of motion was to review and set aside the Master's decision taken on 21 September 2023 to remove the applicant as executor of the estate. I found that the Master (second respondent) did not have the power to make such a decision. That finding is not disputed by the first respondent in her application for leave to appeal. In the absence of any counter-application, the decision that the Master did not have the power to remove the applicant as executor of the estate, had the inevitable consequence that the applicant is and was not removed is executor of the estate and thus remains the executor of the estate.
- [7] The eligibility of the applicant to be appointed as executor of the late Brenda Tsomele's estate as alleged "lifetime partnership" was not relevant to the issues I was called upon to decide. I was thus not called upon to decide and did not make any decision concerning –
- a. the alleged "lifetime partnership" of the applicant and the late Brenda Tsomele;

- b. the dispute regarding the eligibility of the applicant to be appointed as executor of the late Brenda Tsomele's estate;
- c. the unlawfulness of the applicant's appointment.

[8] In addition the first respondent states that the judgment fails to deal with the fact that the Master referred the matter to court with a specific instruction that the Honourable Court must make a determination regarding the alleged "lifetime partnership". Assuming such an instruction in these circumstances would be binding on the court (which I doubt), because the Master, as second respondent, took no part in these proceedings, no order was asked for and no decision on this issue was called for.

#### *Procedural grounds*

[9] The first respondent has pointed out that, in my judgment I referred to the second respondent as the Master of the High Court, Pretoria. This is, regrettably, a typographical error. The second respondent was and is the Master of the High Court, Johannesburg. This appears from the case heading and, as the first respondent has pointed out, it is the second respondent (Master of the High Court, Johannesburg) who was served with all notices and documents in the proceedings. Nothing turns on this point.

[10] The first respondent submits that the court failed to deal with the *locus standi* of the applicant as it went to the root of the status and/or *locus standi* of the applicant not only to apply for letters of executorship but to launch motion proceedings in the court a quo. As I have stated above I was not called upon to decide the *locus standi* of the applicant to apply for letters of executorship – I was only called upon to decide whether the letters of executorship had been lawfully “recalled and cancelled” by the second respondent. The applicant, as the person named in the letters of executorship, certainly had the *locus standi* to

apply to this court to challenge whether the actions of the second respondent were valid or not<sup>1</sup>.

[11] The first respondent submits the applicant's motion lacked clarity as to whether she was launching review proceedings in terms of Rule 53 of the Uniform Rules of Court or in terms of the Promotion of Administration of Justice Act (PAJA) and seeks dismissal of her application. Although this issue was mentioned by the first respondent in the proceedings a quo, the first respondent nevertheless proceeded to respond to the application on the basis of the applicant's grounds set out in her notice of motion and founding affidavit. In any event, the applicant was entitled to pursue the relief she sought either in terms of Rule 6 or Rule 53<sup>2</sup>. While the applicant did not specifically mention PAJA, on the face of it the applicant complied with the provisions of that Act and the first respondent does not allege any non-compliance that has caused her prejudice.

### *Conclusion*

[12] In my opinion therefore, there is no reasonable prospect that another court may come to a different conclusion from the conclusion reached in the judgment referred to in paragraph 1 above.

### *Costs*

[13] There is no reason why the costs should not follow the result.

### *Order*

The application for leave to appeal is dismissed with the first respondent to pay the applicant's party and party costs, including counsel, on scale A.

---

<sup>1</sup> In argument on leave to appeal the first respondent mentioned for the first time a "*Chief Master Directive 9 of 2023- Deceased Estate Matters*". That directive came into effect on 3 November 2023 and was thus not in effect when the letters of executorship in issue in these proceedings were issued; nor when second respondent purported to cancel and recall those letters of executorship.

<sup>2</sup> *Jockey Club of South Africa v Forbes* [1993] 1 All SA 494 (A); *Helen Suzman Foundation v Judicial Service Commission (Trustees for the Time Being of the Basic Rights Foundation of South Africa as amicus curiae)* 2018 (7) BCLR 763 (CC)

  
**A MITCHELL**  
Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 28 August 2025.

HEARD ON: 22 August 2025

DECIDED ON: 28 August 2025

For applicants: **Adv YK Ndzima**  
078 832 5340

**Attorney**

Khulekani Tshabalala and Associates  
28 Klein Street  
Lakefield  
Suite 6, 1st Floor  
010 442 4635  
khulekani@lawincorp.co.za

For first respondent: **Adv Nelisa Gwele**  
[nngwele@yahoo.co.uk](mailto:nngwele@yahoo.co.uk)  
067 240 9286

**Attorney**

Mr. Thabang Mathibe  
Mathibe Thabang Attorneys  
36 First Ave  
Northmead  
Benoni  
010 235 0250  
[mathibets@mtaattorneys.co.za](mailto:mathibets@mtaattorneys.co.za)

For second respondent: No appearance

For Third Respondent: No appearance