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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 6336/2024

In the matter between:

VUSUMSI WILBERFORCE NGWEVELA

FIRST APPLICANT

MZWANDILE KNOX NGWEVELA

SECOND APPLICANT

and

BULELANI MONGAMELI NGWEVELA

FIRST RESPONDENT

THE MASTER OF THE HIGH COURT

SECOND RESPONDENT

Neutral citation:

Coram: **MPHEGO, AJ**

Heard: 31 July 2025

Delivered: 22 August 2025

Summary:

1. In this application, the first and second applicants seek (by way of an amended Notice of Motion), an order declaring that:
 - a) the last Will and Testament of Sipho Benjamin Ngwevela (“the testator”), dated 27 April 2008, is invalid and/or of no force and effect;
 - b) the testator died intestate with the first and second applicants being full-blood collaterals of the testator and beneficiaries of the estate of the testator.
2. The applicants also seek an order reviewing and setting aside the decision taken by the Assistant Master at the office of the second respondent on 27 October 2022, appointing the first respondent as executor of the estate of the testator, and that this court make an order appointing the first applicant as executor of the estate of the testator.

ORDER

3. This application is dismissed with costs.

JUDGMENT

Mphego AJ:**Introduction**

[1] In this application, the first and second applicants seek (by way of an amended Notice of Motion), an order declaring that:

- a) the last Will and Testament of Sipho Benjamin Ngwevela (“the testator”), dated 27 April 2008, is invalid and/or of no force and effect;
- b) the testator died intestate with the first and second applicants being full-blood collaterals of the testator and beneficiaries of the estate of the testator.

- [2] The applicants also seek an order reviewing and setting aside the decision taken by the Assistant Master at the office of the second respondent on 27 October 2022, appointing the first respondent as executor of the estate of the testator, and that this court make an order appointing the first applicant as executor of the estate of the testator.
- [3] The first respondent seeks an order from this court dismissing the application and upholding the validity of the Will and his appointment as executor. The first respondent did not file heads of argument. Heads of argument were filed on behalf of the first and second applicants.
- [4] The matter was set down, with the first and second applicants being represented by counsel and the first respondent appearing before this court without legal representation. The second respondent (the Master of the Western Cape High Court) filed a report confirming that their office will abide by the decision of this court.
- [5] As will be gleaned from the preceding paragraphs - at the centre of these proceedings is the Will of the testator. The Will was executed by the testator in the presence of two witnesses who were both above the age of 16. I deal with the witnesses, the person who typed the Will and the heir, in succeeding paragraphs.

Background

- [6] The testator died on 23 October 2010 at the age of 77. He was the eldest son of Nkohliso Johnson Ngwevela and Ntombonina Isabella Ngwevela, and is the elder brother of the first and second applicants. He is also the brother of the mother of Geraldine Ngwevela (“Ms Ngwevela”), the first respondent’s mother.
- [7] Ms Ngwevela is the heir in the estate of the testator in terms of the Will executed on 27 April 2008. Geraldine is the niece of the testator (Ms Ngwevela’s mother is the sister of the testator), and she grew up at [...] M[...]

Street, Langa. The first respondent in these proceedings is the son of Ms Ngwevela.

- [8] The testator was never married and had no children. He inherited the immovable property situated at [...] M[...] Street, Langa (“the property”), from his mother Ntombonina Isabella Ngwevela, when she passed away in 1992.
- [9] On 27 April 2008, the testator executed a Will in the presence of two witnesses. The witnesses are the first respondent and a family friend, Monde Mqingwana. The Will was typed by Ms Ngwevela and presented to the testator and witnesses for signing. The applicants allege that the testator was not mentally sound at the time of signing the Will, however, the necessary documentation to this effect has not been filed in support of that contention.
- [10] The Will of the testator states that Ms Ngwevela is appointed as the executor of the estate of the testator and that she is the sole beneficiary of the property belonging to the testator. The circumstances around the testator’s instructions to Ms Ngwevela to type the Will and bring it home for him to sign are not dealt with in the application.
- [11] Six years after the passing of the testator, Ms Ngwevela reported the estate of the testator to the second respondent and was appointed as executrix of the estate of the testator on 24 May 2016. The reporting documents to the second respondent show that Ms Ngwevela referred to herself as the daughter and dependant of the testator in the form(s) and/or sworn statement(s).
- [12] Ms Ngwevela herself ended up passing away in February 2022. Her son, the first respondent, is now the executor of the estate of Ms Ngwevela and the testator.

The applicants’ case

- [13] The applicants contend that Ms Ngwevela unduly influenced the testator into executing the Will. This court has not been furnished with any documentation

which indicate undue influence of the testator, save for averments that the testator was sick and not mentally sound when he signed the Will.

- [14] The applicants stated that the Will was typed on a computer by Ms Ngwevela, and that she “made herself the sole heir of the testator’s estate”. The documents in this application do not indicate that she “made herself” an heir to the testator’s estate.
- [15] The applicants argue that the typing of the Will by Ms Ngwevela amounts to “*writes out the will or any part thereof in his own handwriting,*” under s 4A(1) of the Wills Act 7 of 1953 (“the Wills Act”) and that Ms Ngwevela is therefore disqualified to inherit in terms of the Will.
- [16] It was submitted that this court should note the suspicious conduct by Ms Ngwevela in that she discussed and agreed on a letter of authorisation with the family but presented a Will which the testator did not know that he was signing, and that the first applicant and Monde Mqingwana did not know that they were witnessing the signing of a Will. It is alleged that Ms Ngwevela did not disclose after the funeral of the testator that the testator left a Will in terms of which she stands to inherit the property, despite knowing that the intention of the Ngwevela family is to have the house transferred to the brothers of the testator (the applicants).
- [17] As stated above, Ms Ngwevela referred to herself as the daughter and dependent of the testator when she reported the estate of the testator to the second respondent.
- [18] According to the applicants, Ms Ngwevela’s silence about the existence of the Will and the delay in reporting the estate are suspicious and give rise to an instance where inferences can be drawn by this court around Ms Ngwevela’s intentions before and after the passing of the testator.
- [19] It was submitted on behalf of the applicants that Ms Ngwevela’s conduct is suspicious and that in relation to such suspicious conduct, this court should

infer that Ms Ngwevela's intention was to deceive the testator into leaving the property to her. Counsel for the applicants submitted that this court should apply the two rules found in *R v Blom 1939 AD 188* namely; that the inference sought to be drawn must be consistent with all the proven facts; and that the proven facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

- [20] The proven facts around Ms Ngwevela's suspicious conduct as alleged by the applicants are that (1) she typed the Will; (2) she reported the estate six years later, and (3) she stated in forms that she is the daughter and dependent of the testator.
- [21] The inferences that can be drawn from this are: (1) she may have not been aware of the requirement to report the estate of the testator and only came across legal advice in the year that she reported the estate; or (2) she could have been aware of the requirement to report the estate but decided to do so six years after the testator had passed.
- [22] The applicants did not present any documents indicating *mala fides* on Ms Ngwevela's part in waiting six years to report the estate of the testator. In applying common sense, if Ms Ngwevela wanted to carry out any malicious plan after deceiving the testator, she could have reported the estate in 2010, and the transfer of the property would have taken place long before she passed away.
- [23] In relation to referring to herself as the daughter and dependent of the testator some inferences which can be drawn include – that (1) she may have considered the testator as the father she knew all her life given that she grew up in the same home with him; (2) she may have wanted to misrepresent to the second respondent that the testator is her uncle. It is not clear how misrepresenting the second respondent could have assisted her because she, after all, stood to inherit in terms of the Will of the testator.

- [24] In the circumstances, having regard to the above, I do not think that *R v Blom 1939 AD 188* assists the applicants' case.
- [25] The applicants contend that, in addition to being ill, the testator did not have a formal education and was not able to comprehend what he was signing. The first respondent did not dispute the fact that the testator did not have a formal education, but disputed that the testator did not comprehend what he was signing and the implications thereof.
- [26] The assertions and submissions made by the applicants around the instructions to Ms Ngwevela to write up a letter of authority are not supported by documentation indicating that the testator wanted to sign a letter of authorisation as opposed to a Will.
- [27] The first applicant stated in the founding papers that he did not know that he was witnessing the signing of a Will. It was submitted that when he signed as a witness, he did not have an education that is to a level to have understood the legal implications of the document he was signing on the day in question. I pause here to point out that the Wills Act prescribes that the role of witnesses is to attest that the testator signed the document in their presence, and that they, as witnesses, signed such document in the testator's presence and in the presence of each other.
- [28] The applicants also challenge the validity of the appointment of the first respondent as executor of the estate of the testator, which challenge originates from Ms Ngwevela's appointment as executor of the estate of the testator. The first respondent is currently the executor of both the late Ms Ngwevela and that of the testator. This issue is dependent on whether this court finds that the Will of the testator is invalid or not.
- [29] In the heads of argument and the founding affidavit, the applicants raised s 54(1)(a)(v) of the Administration of Estates Act 66 of 1965, which empowers the court to remove an executor found to be incompetent to continue in such office. The applicants submit that the first respondent is an undesirable executor due

to his conduct, lack of responsibility, and failure to protect the estate's interests, based on the issue of outstanding property rates in relation to the property. The applicants have not furnished this court with anything further regarding this contention, save for the municipality account reflecting a historical outstanding amount of approximately R72 000 as at 24 May 2024.

The first respondent's case

- [30] As stated in previous paragraphs, the first respondent is the son of Ms Ngwevela. Ms Ngwevela was the nominated executor of the estate of the testator when she was alive. She passed away, and the first respondent became the executor of Ms Ngwevela's estate and the estate of the testator.
- [31] The first respondent has disputed that the testator's Will was not properly executed or that the testator signed it under misrepresentation or duress. He stated that the testator was the legal owner of the property after inheriting it from his mother and that he [the testator] intended that Ms Ngwevela inherit the property through the Will.
- [32] He disputed the assertion that the property was always intended to remain a family house to be passed amongst the brothers. He contended that when the property was transferred to the testator in 1992, it was done without any conditions or restrictions, and the testator was free to dispose of it as he wished.
- [33] He further stated that the testator, although ill with a lung condition, was not mentally incapacitated and that the first applicant, as a witness, knew that he was witnessing the signing of a Will because the Will is clearly headed "THE LAST WILL". He argued that the first applicant is literate in that he possesses a qualification in Bible Studies and is a board member of a community organisation. The qualification of the first applicant was not disputed, but it was disputed that the first applicant was literate, specifically on the day of witnessing the signing of the Will. This court has not been furnished with the date on which the first applicant obtained his qualification in Bible Studies.

- [34] The first respondent has denied that the exclusion in s 4A(1) of the Wills Act applies to Ms Ngwevela because she did not write the Will in her own handwriting but rather she typed the Will of the testator. There are no documents before this court indicating that the intentions of the testator are not those recorded in the typed Will.
- [35] The first respondent stated in his opposing affidavit that the applicants' contention that the persons involved intended to sign a letter of authority, authorising Ms Ngwevela to administer the property, is unfounded and contradicted by the document's content and form.
- [36] He asserted in his opposing affidavit that the applicants lack *locus standi* as they are not beneficiaries under the Will and have no legal right to challenge his appointment as the executor or the validity of the Will. He further asserted that the court may only remove an executor if it is proven that the executor is undesirable or has failed in his duties, which he denies is the case here.
- [37] Lastly, according to his opposing affidavit, he seeks the dismissal of this application with costs on a punitive scale, because the applicants' case is defective, lacks merit, and is motivated by personal interest.

Evaluation

- [38] In order for the applicants to be granted an order declaring the Will invalid, this court must be satisfied that the formalities required in the execution of a Will in s 2(1)(i) to (iv) of the Wills Act were not complied with.
- [39] A copy of the Will at page 37 of the record is signed by the testator and two witnesses. It is not in dispute that the Will was signed by the three parties in the presence of each other. Evidence indicating non-compliance with s 2(1)(i) to (iv) has not been presented in these proceedings. I reproduce the provisions of this section for convenience:

- ‘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 signed by the testator or by such other person anywhere on the page; and ...’

[40] The second inquiry relates to the competency of the testator to make a Will under s 4 of the Wills Act. The testator was 75 when he executed the Will, and it was not disputed that he was ill with a lung condition. The applicants have argued that the testator was not of sound mind but did not take this contention further despite the fact that the burden of proof that the testator was mentally incapable at the time rested with them. The first respondent argued that the testator was of sound mind.

[41] In terms of the Plascon-Evans rule¹, the applicants bear the onus of proof on a balance of probabilities for the relief they seek from this court. This court is not satisfied that the applicants have discharged the onus of proof under s 4 of the

¹ Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)

Wills Act. The undue influence argument was also not taken further in the papers and in argument, save to state that none of the parties knew that they were signing a Will on 27 April 2008. To this end, in applying the Plascon-Evans rule, the applicants have not discharged the onus which they bear, therefore this court cannot grant the relief sought.

[42] Given that this court cannot find non-compliance with s 4, the result is that the Will dated 27 April 2008 is valid and the estate of the testator does not fall to be administered in terms of the intestate succession regime.

[43] The third inquiry relates to the competency of Ms Ngwevela to inherit in terms of the Will she was involved in typing from a computer. The applicants argue that Ms Ngwevela typing the Will amounts to '*writes out the will or any part thereof in his own handwriting*' in s 4A(1) of the Wills Act, which should disqualify her from receiving any benefit under the Will. The first respondent submitted that the Will was typed, not handwritten by Ms Ngwevela and therefore does not fall within the ambit of s 4A(1) of the Wills Act. The court decisions support the first respondent's submission on this issue.

[44] In the case of *Blom and another v Brown and others* [2011] 3 All SA 223 (SCA) it was held that the disqualification under s 4A(1) of the Wills Act applies to those who write out the Will in their own handwriting. The court did not extend this disqualification to those who type the Will, thereby reinforcing the distinction between handwritten and typed documents.

[45] In *M-S and Another v Le Mottee and Others* [2021] ZAGPPHC 620, the court stated that:

'On a mere interpretation of section 4A of the Wills Act, it appears that the disqualification only relates to wills written in one's own handwriting which will amount to a disqualification in terms of section 4A of the Wills Act.'

[46] In the circumstances, this court cannot find that Ms Ngwevela is disqualified in terms of s 4A(1) of the Wills Act.

- [47] The second respondent appointed the first respondent as the executor of the estate of the testator by virtue of being the executor of Ms Ngwevela's estate, who was the sole executor and heir in the estate of the testator. Without an order declaring the Will of the testator invalid and disqualifying Ms Ngwevela from benefiting from the Will of the testator, it seems to me that this position would remain.
- [48] In relation to Ms Ngwevela referring to herself as the daughter and dependant of the testator in the form(s) and/or sworn statement(s) submitted to the second respondent, this court is not tasked with making a determination in relation to those forms and/or sworn statements.
- [49] There is no reason why this court should grant the order sought by the applicants, namely, *"reviewing and setting aside the decision taken by the Assistant Master in the office of the second respondent on 27 October 2022, appointing the first respondent as executor of the estate of the testator, and to appoint the first applicant in his stead."*
- [50] The applicants have failed to make out a case for the relief sought in the amended Notice of Motion.
- [51] The application must fail and there is no reason why costs should not follow the result.

Order

This application is dismissed with costs.

TR MPHEGO
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicants : Adv. C Simon

Instructed by : Le Grange Attorneys
K. Le Grange

For the respondents : Mr. B.M. Ngwevela (in person)