



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

CASE NO: 2024-127653

- (1) REPORTABLE: **YES.**
(2) OF INTEREST TO OTHER JUDGES: **NO.**
(3) JUDGMENT : **24 AUGUST 2025**

Frank Snyckers
.....

In the matter between –

JACOBS, KAY PRISCILLA N.O.

First Applicant

JACOBS, KAY PRISCILLA

Second Applicant

And

ADAMS, SELWYN

First Respondent

THE MASTER OF THE HIGH COURT JHB

Second Respondent

***By transmission of this judgment by email and uploading on Court Online /
Caselines the judgment is deemed to be delivered***

JUDGMENT

SNYCKERS AJ

INTRODUCTION

[1] This matter came before me as an unopposed application.¹ The applicant (Jacobs), the executrix in the estate of her late son, Ivan, who was 29 years old when he passed away, sought a declarator that Ivan's father, the first respondent (Adams), be declared 'not to be a parent' in terms of the Intestate Succession Act, as to Ivan's estate, and that Jacobs in her personal capacity be declared the sole parent.

[2] The application was founded on the authority of the judgment of Kollapen J in *Wilsnach NO v TM and Others* 2021 (3) SA 568 (GP).

[3] With respect to the learned judge in the *Wilsnach* case, I do not follow that decision. I find myself unable to accord a normative interpretation to the term 'parent' as employed in the Intestate Succession Act,² as was done in *Wilsnach*. I do not find a constitutional reading of the provisions of that statute reasonably capable of yielding the interpretation accorded to them in *Wilsnach*. I do, however, employ *Wilsnach* as authority, which I endorse, for the application in

¹ I discuss the circumstances in which it was unopposed below.

² Act 81 of 1987.

these circumstances of the common law power of the court to declare an intestate heir *indignus* (or unworthy) to inherit. I find the application before me to contain sufficient allegations to encompass a case for such relief under its 'alternative relief' prayer.

BACKGROUND

[4] Jacobs and Adams had a brief relationship when Jacobs was eighteen. She fell pregnant with Ivan. Adams made a few payments to her before the pregnancy but showed limited interest. Adams was not present at the birth. Jacobs and Adams never lived together. After the birth, in the first month, Adams gave Jacobs some nappies. He then essentially disappeared from their lives. When Ivan got hurt as a one year old, Adams visited him in hospital. On the affidavit before me, that was it, as far as Adams' role as father was concerned, for some 29 years.

[5] In the first year, Jacobs sporadically chased Adams for maintenance, via the Maintenance Court. He made sporadic payments. When Jacobs obtained employment, with Ivan being a year old, she gave up on chasing Adams for maintenance, and maintained Ivan herself. Adams exited stage left, fully and finally.

[6] Jacobs raised Ivan with the help of her mother and brothers. Aunts and other family members helped where they could. When Ivan was about six, enter stage right Phillip McCarthy, who became Jacobs' life partner and *de facto* father.

[7] Ivan never mentioned contact with his father, except a chance occasion at a function 'at one point', when they did not speak.³

[8] The affidavit is firm that there was no relationship at all between Ivan and his father. Apart from the few maintenance payments that had been dragged out of him in the first year, Adams paid nothing at all over the 29 years of Ivan's life, and *'was for all intents and purposes totally absent as far as the upbringing of Ivan was concerned'*.

[9] Ivan was one of the victims of Covid-19, passing on 7 July 2021. He had no spouse, no life partner, no romantic relationship at death, no children, no siblings and no dependants. He had been employed and ended up with a net estate of R716 070.24.

[10] Under the provisions of the Intestate Succession Act (ISA) Jacobs and Adams, being Ivan's surviving parents, would each inherit some R358,000 from Ivan's estate.

[11] Jacobs brought this application, to declare herself the sole parent and Adams not to be a parent for purposes of the ISA and Ivan's estate. She based it squarely on *Wilsnach*, contending that the case was on all fours.

³ It is not explained how, if they did not speak and there had been no contact at all, Ivan knew it was his father whom he saw.

PROCEDURAL BACKGROUND – UNOPPOSED

[12] Given concerns I expressed via a widely shared note on Caselines, Jacobs filed an explanatory service affidavit the day before the application was heard.

[13] The matter had been called on the unopposed roll before Mabesele J on 28 May 2025. On that day, Adams appeared in person and said he wanted to oppose the application. There was discussion at court between the parties and the judge. The upshot was an order *‘by agreement between the parties’* postponing the application *sine die* and directing Adams to deliver an answering affidavit within fifteen days *‘failing which the applicants may proceed on an unopposed basis.’*

[14] The affidavit tells me that the order was explained to Adams by counsel for the applicants and by the judge, who then handed down the order, of which a physical copy was provided to Adams. He was advised of the email addresses to which his affidavit should be sent.

[15] Fifteen court days came and went without any affidavit from Adams. On 25 June, attorneys BossR sent an email to Jacobs’ attorneys, referring to “our letter dated 10 June” and indicating they held instructions to oppose the application and saying a notice of intention to oppose was attached, but attaching no such notice. They requested to be invited to Caselines. They were successfully invited to Caselines on 13 August 2025, as a Caselines audit trail confirmed. The applicants’ attorneys responded to the email, requesting that a

specified candidate attorney be copied in future emails. No letter dated 10 June had ever been received from BossR attorneys. No affidavit was forthcoming, nor any communications about the absence of an affidavit.

[16] Be that as it may, given the terms of the order of 28 May 2025, there was no need for any notice of intention to oppose. What was required was an answering affidavit, by now long overdue, failing which the applicants could proceed on an unopposed basis.

[17] Apart from successfully inviting BossR to Caselines on 13 August, employing the email address they had used to communicate, a notice of set down for 21 August was also uploaded to Caselines and emailed to the BossR address, and to another email address also apparently employed by BossR attorneys.

[18] The affidavit also says the applicants' attorneys unsuccessfully tried to contact BossR attorneys, employing the telephone number quoted at the foot of the BossR email. It appeared this number 'belonged to another company'.

[19] I am satisfied that, in terms of the order of 28 May 2025, and after the above events, the application was entitled to be heard and determined before me on an unopposed basis.

[20] Apart from seeking some re-assurance about matters of service, I had also in my Caselines note requested short heads, expressing my misgivings about *Wilsnach* and indicating that, although an unworthiness declaration was in principle possible, the circumstances in which such declarations were given tended to be very circumscribed.

[21] Counsel for Jacobs, Ms *Kriek*, confronted with no doubt surprising and inconvenient additions to her unopposed brief, provided short heads before the hearing, and, after I had referred her to the article by Wood-Bodley to which I will refer below, and which I debated with her in court, also provided further authority during the hearing, and further heads promptly in the evening after the hearing, as I had requested. This was a helpful and admirable act of stepping up to the plate on her part, for which I was grateful.

WILSNACH

[22] In *Wilsnach*, a five year old child with cerebral palsy passed away, leaving an intestate estate of some R21m paid to him as damages. The parents had not been married, the father had not been present at the birth, the parents had never co-habited, and the father essentially disappeared from the child's life after some 6 months. The child had been taken care of primarily by his grandmother. The grandmother had brought proceedings under the Children's Act⁴ to remove the parental rights of both the mother and the father and to become the sole guardian of the child. This included restricting the rights of contact of both the mother and the father.

[23] The outcome of the grandmother's application, after the ordered intervention of the family advocate and a report having been compiled, was the termination of any and all parental rights of the father under s18(2)(a), (b) and

⁴ Act 38 of 2005.

(c) of the Children's Act,⁵ and the granting to the mother and the grandmother of joint and full parental rights and responsibilities. The mother and child had been living with the grandmother. The child needed intensive full-time care.

[24] The child in *Wilsnach* died two days after that order. The curatrix in the child's estate then approached the court essentially seeking declarations and guidance on who was to be regarded as the parents of the child and who should inherit intestate.

[25] Kollapen J held that the term 'parent' was not defined in the ISA or in the Children's Act, and that the term was capable of different meanings in different contexts. The term in the ISA was to be interpreted in line with the Constitution and in particular the best interests of the child. Much recourse was had to the degree to which the term 'parent' under the Children's Act was used in the context of the possession of parental rights and responsibilities.

[26] The essence of the reasoning for not recognising the father as a parent in *Wilsnach* was contained in paragraphs 65 and 66 of the judgment. It was considered that it would offend the entire constitutional scheme and not be in the best interests of the child for a father to be considered not to be a parent under the Children's Act but to be a parent under the ISA, despite having severed all links with the child and having made a conscious decision not to be a parent.

⁵ On the facts in *Wilsnach*, the father would not have acquired parental rights under the Children's Act in any event, as none of the prerequisites for doing so under section 21 was met. The order "terminating" these rights in the grandmother's application therefore did not disturb the *status quo* in respect of the father's "parental" status under the Children's Act.

[27] Reference was made to cases in America where, in certain contexts, parental status was conferred on persons other than biological parents, or in which the right to inherit intestate was forfeited on the strength of a statutory provision for forfeiture.⁶

[28] Reference was also made, in a footnote, to the concept of “unworthiness to inherit” in our law, and the fact that, as confirmed in *Pillay*,⁷ “*courts are not limited to the known and recognised principles of unworthiness and that they could be expanded on the basis of public policy.*”

[29] The grandmother and the mother were then declared “parents” under the ISA in *Wilsnach*.

[30] *Wilsnach* received implicit endorsement in a different context in *Kedibone*.⁸ In considering who could act as guardian for the purposes of representing a minor in litigation, the case was cited by Fisher J as authority for the proposition that “*the determination of who is the best person to deal with the claim for the maintenance of the child is, by its very nature, a matter of inquiry and not assumption*’.⁹

[31] In *Bouwer*,¹⁰ Van der Westhuizen J declined to employ *Wilsnach* as authority to apply the concept of a ‘de facto guardian’¹¹ in interpreting the term

⁶ Paras 84 to 89.

⁷ *Pillay & Others v Nagan & Others* 2000 (1) SA 410 (D).

⁸ *Kedibone v obo MK & another v Road Accident Fund* [2021] 3 All SA 544 (GJ), paras 126 and 127.

⁹ Para 127.

¹⁰ *Bouwer obo MG v Road Accident Fund* 2021 (5) SA 233 (GP).

¹¹ *Bouwer* para 35.

'guardian' under the Children's Act, finding *Wilsnach* to be "*of no real assistance in the present matter*".¹²

[32] This case is not concerned with deeming or declaring someone a "parent" under the ISA who is not one of the "both parents" contemplated in section 1(1)(d)(i) of the ISA. The reasoning of this judgment and its declining to follow *Wilsnach* are concededly relevant for such declarations, but this is not what is before me.

[33] This case is concerned instead with seeking a declaration that one of those "both parents" contemplated in the ISA is not a parent under the ISA.

PARENTS UNDER THE ISA

[34] There is, in my view, a fundamental difference between the concept of parenthood under the Children's Act, on the one hand, and the notion of "parent" under the ISA, on the other.

[35] At heart, when it comes to "parents", the Children's Act deals with and regulates the rights and obligations normally associated with parenthood. Critically, "illegitimate" fathers have no parental rights under the Children's Act, unless the relatively burdensome requirements of section 21 are met. I revert to this below. The Children's Act is concerned with fostering the best interests of the child and with regulating the rights and obligations of persons vis-à-vis

¹² *Bouwer* para 16.

the child – caring for, maintaining, having contact with, having custody of, and acting as the guardians of, children.

[36] The ISA is concerned with what happens to an estate when someone dies intestate. How does it flow? Downwards, sideways, upwards, diagonally, and so on. First here, then there. If there's x, then via x *per stirpes*. If no x, then y. It is important for these rules to be clear and relatively free from doubt, in a way that is not the case with the rights and obligations governed by the Children's Act. Put differently, the rights and obligations governed by the Children's Act by definition attract a greater degree of fluidity than the rules applicable to intestate succession do or should. The concept of parent in the Children's Act is shorthand for those who should act as parents, necessarily incorporating a default starting point with much room for normative adjustment. The concept of parent in the ISA is aimed at identifying the existence of a blood relative to determine the direction of the flow of estate assets.

[37] It is also important for the direction of estate flow, and its rules, to be free from normative assessment in a way that is neither necessary nor desirable for the rights and obligations associated with "parenthood" as contemplated in the Children's Act. The Children's Act, after all, is all about what is best for the child. The ISA is not. It does not call for an assessment of which persons associated with the deceased are more, and which less, deserving of inheritance. Whatever canon of construction is applied, I cannot reasonably ascribe such an intention to the legislature, especially when the purpose of the ISA is considered. I cannot ascribe an intention that its concepts, when it identifies the intestate heirs, are to be interpreted normatively, with an eye on desert. This is,

however, often appropriate, and sometimes obligatory, under the Children's Act. It is neither under the ISA.

[38] When it comes to the term "parent" in the ISA, the starting point must be the words "*both parents*" in section 1(1)(d)(i):

"(1) If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and-

(a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;

(b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;

(c) is survived by a spouse as well as a descendant-

(i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount 5 fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and

(ii) such descendant shall inherit the residue (if any) of the intestate estate;

(d) is not survived by a spouse or descendant, but is survived-

*(i) **by both his parents**, his parents shall inherit the intestate estate in equal shares; or*

*(ii) **by one of his parents, the surviving parent shall** inherit one half of the intestate estate and the descendants of the deceased parent the other half, and if there are no such descendants who have survived the deceased, the surviving parent shall inherit the intestate estate; or*

*(e) is not survived by a spouse or descendant **or parent**, but is survived –*

....”

[39] A critical provision for purposes of this case, and for the reasoning in *Wilsnach* in paragraphs 65 and 66, is section 1(2):

“(2) Notwithstanding the provisions of any law or the common or customary law, but subject to the provisions of this Act and sections 40 (3) and 297 (1) (f) of the Children’s Act, 2005 (Act 38 of 2005), having been born out of wedlock shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation.”

[40] Section 4(e) then provides as follows:

“(e) an adopted child shall be deemed-

- (i) to be a descendant of his adoptive parent or parents;*
- (ii) not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child.”*

[41] These provisions are comprehensive, and exhaustive, and intended to be so. Not only do they expressly include an “illegitimate” father as a parent (i.e. one of the two possible parents, not being precluded from being one due to “illegitimacy”); they expressly make this subject to the provisions in the Children’s Act that exclude donor fathers and make the commissioning parents

the parents in cases of surrogacy, and expressly provide for the substitution of parents that occurs with adoption. And they talk specifically in the language of "blood relations".

[42] What these provisions decidedly do *not* do is say that a father of a child born out of wedlock, who has not acquired any parental rights under section 21 of the Children's Act, is not a parent. In fact, they say exactly the opposite.

[43] Nor do they say a parent whose parental rights have been terminated under the Children's Act is not a parent. They deal comprehensively with the interplay with parental status under the Children's Act and deliberately refrain from providing thus.

[44] Nor, in my view, can they reasonably be said to permit a desert-based normative assessment of the term "parent" in identifying the intestate heirs.

[45] I am greatly fortified in these views by what I regard as an excellent article in the *South African Law Journal* by Michael Cameron Wood-Bodley.¹³

[46] The author examines the different purposes and approaches of the Children's Act and the ISA with respect to parenthood, and the historical treatment of illegitimate fathers in our law of intestacy. The author concludes as follows:¹⁴

¹³ Michael Cameron Wood-Bodley "Who is a 'parent' for the purposes of the Intestate Succession Act: *Wilsnach NO v TM*" 139 (2022) *South African Law Journal* 768.

¹⁴ Wood-Bodley at 779.

“In addition to being inappropriate in terms of history and context, as the historical origins of intestate succession discussed above indicate, allowing the Children's Act, and decisions made thereunder, to impact the interpretation and application of the rules of intestate succession gives rise to various anomalies and problematic issues.”

[47] Some of these “*anomalies and problematic issues*” are then persuasively illustrated in a way that reinforces my decision not to follow *Wilsnach*.¹⁵ A very serious problem is that any removal or substitution of a “parent” from the line of ancestors that would inherit would act as judicial diversion of the river of assets that flows through identified relatives up, sideways and down, with no consideration at all for the “desert” of the tributaries of the removed or substituted “parent”, and with the creation of wholly new tributaries with potentially seriously anomalous and unintended consequences.

[48] The following passage bears extensive citation:¹⁶

*“Moving to a different kind of issue, would the devolution of the deceased's estate have been different if the deceased had attained the age of eighteen and then died? The best-interests-of-the-child principle on which **Wilsnach** places some reliance (para 66) only applies to persons under the age of eighteen (see s 28(3) of the Constitution, and s 1(1) of the Children's Act s v 'child', see also **Centre for Child Law v***

¹⁵ At 780-784.

¹⁶ At 781.

Media 24 Ltd 2020 (4) SA 319 (CC) para 67). Had the deceased reached the age of eighteen, he would have ceased to be a 'child' for the purposes of the Children's Act (see s 1 of that Act s v 'child'). The rationale for referring to the Children's Act for the purpose of determining the identity of his 'parents' for the purposes of intestate succession would then seem to fall away. It would also seem that the legal force of the order conferring parental responsibilities and rights on the third respondent in respect of the deceased would also have fallen away if the deceased had reached the age of eighteen. If so, the justification (such as it is) for reinterpreting the Intestate Succession Act's concept of 'parent' so as to include the third respondent as a beneficiary would fall away at that point too. If this understanding of the Children's Act is correct, the third respondent's entitlement to inherit on intestacy, and the first respondent's exclusion, depended on the deceased dying before turning eighteen. Yet, if it is repugnant to society's sense of what is right for the first respondent to inherit from the deceased at the age of five, it is surely also repugnant for him to inherit if the deceased died after turning eighteen."

[49] The above militates heavily against the approach adopted in *Wilsnach*.

[50] Wood-Bodley also persuasively illustrates that the American decisions cited in *Wilsnach* do not provide support for the reinterpretation of the term "parent" in the ISA.¹⁷

¹⁷ At 784-5.

[51] I am accordingly of the firm view that the term “parent” under the ISA is incapable of being defined with reference to a normative assessment of the degree to which a person deserves the name, as held in *Wilsnach*, and that Adams is Ivan’s “parent” as contemplated in section 1(1)(d)(i) of the ISA.

UNWORTHINESS

[52] That, however, is not the end of the matter.

[53] In his article referred to above, Wood-Bodley considers that, in principle, it was legally possible for the decision in *Wilsnach*, at least with respect to the father in that case, to have been based on the common law doctrine of *indignus*. That principle, an extension of the maxim *de bloody hand erft niet* (“the bloody hand does not inherit”), deprives an intestate heir of the right to inherit if he or she is shown to be “unworthy” to inherit. The cases have gradually expanded the application of this principle to cover other instances of unworthiness beyond killing the deceased, such as seriously wounding the deceased, or acting fraudulently in respect of the inheritance – often being complicit in an attempt to defraud heirs by forging a will. As already noted above,¹⁸ *Wilsnach* specifically drew support for its ultimate conclusion from the endorsement in *Pillay* of the principle that the concept of *indignus* could be extended on the basis of public policy.

¹⁸ Para 28, footnote 6.

[54] Wood-Bodley is hesitant to endorse an application of this principle in cases such as *Wilsnach*. This is unsurprising, given views expressed by the same author in the same journal some twelve years earlier. The following extensive passage, which also cites the earlier article, once again bears full citation here, especially as it sets out some of the debate concerning extension of the application of the doctrine to new cases:

*“It must be acknowledged that none of the specific grounds of unworthiness that has hitherto been applied by our courts is directly applicable to the facts of **Wilsnach**, or readily lends itself to adaptation. (For a discussion of the grounds see Corbett et al ibid at 82-5 and De Waal & Schoeman-Malan ibid § 6.3.2.) Furthermore, the judgments are not entirely in agreement about whether the courts have the power to extend the grounds of unworthiness by adapting existing grounds or by identifying entirely new grounds based on public policy. On the one hand, in **Ex parte Steenkamp and Steenkamp**¹⁹ (supra) at 750E-751H the court rejected the very possibility of judicial extension of the grounds. On the other hand, in **Taylor v Pim**²⁰ (supra) (at 493 lines 14-15), the judgment of Bale CJ quoted Domat with apparent approval to the effect that '[t]he causes which may render the heir unworthy of the succession are indefinite'. Similarly, in **Danielz NO v De Wet** 2009 (6) SA 42 (C) the court appealed directly to public policy as a justification for excluding a beneficiary. In **Pillay v Nagan** (supra) the court adapted an existing ground to cover analogous circumstances without any debate over*

¹⁹ 1952 (1) SA 744 (T).

²⁰ (1903) 24 NLR 484.

whether judicial extension of the grounds is permissible. However, in both the **Taylor** case and the **Danielz** case the direct reliance on public policy was obiter. (In **Taylor** the ratio on which the bench concurred was not the view of Domat mentioned in Bale CJ's judgment but that the beneficiary had brought about the death of the deceased by procuring alcohol for her against the advice of her medical advisors and had neglected to obtain medical assistance when she needed it (Bale CJ at 495 second para, Finnemore J at 496 sixth para to 497 first para, and Beaumont J at 497 second para). In **Danielz** the beneficiary actually repudiated her benefits under the will (Michael Cameron Wood-Bodley 'Forfeiture by a beneficiary who conspires to assault with intent to do grievous bodily harm: **Danielz NO v De Wet** 2009 (6) SA 42 (C)' (2010) 127 SALJ 30 at 34 last para).) Nevertheless, despite the single dissenting view in the **Steenkamp** case, the modern trend seems to be to permit judicial extension of the grounds in appropriate circumstances. Arguably, if the grounds are to be extended it is best for this to be achieved by developing existing grounds, because of the well-known danger that a direct appeal to public policy means that the outcome depends on the views of the particular judge hearing the case (Wood-Bodley op cit at 34 last para). Nevertheless, if the **Wilsnach** case is correct to rely on the first respondent's 'constitutional obligations and responsibilities towards his child' (**Wilsnach** para 65), and on the best-interests-of-the-child principle, for the exclusion of the first respondent they could equally provide authority for an extension of the grounds of unworthiness by direct reference to public policy. An identification of the

precise grounds of unworthiness on which the first respondent might be excluded is, however, beyond the scope of this note. In my view, his extreme neglect of his helplessly disabled child was so shocking that he ought to be identified as unworthy to inherit in the legal sense, particularly in view of the source of the child's estate. Nevertheless, if he cannot be excluded on grounds of unworthiness then he must inherit."

[55] The author's endorsement of a conservative approach to extending the *indignus* principle in the earlier article was considered in *Smit*,²¹ as were his endorsement of the judgment of Steyn J in *Steenkamp*²² and his rejection of the approaches in *Taylor* and *Danielz* cited in the passage above. In *Smit*, a case to which Ms Kriek referred me in her further heads of argument, Matame J declined to follow the author's reticence and instead endorsed the approach in *Taylor* and in *Danielz*, applying the following passage from Domat²³ (mentioned in the passage quoted extensively above):²⁴

"The causes which may render the heir unworthy of the succession are indefinite, and the discerning of what may or may not be sufficient to produce this effect depends on the quality of the facts and circumstances. Thus we are not to limit these causes to such as shall be explained in the following articles, where we have only mention of those which are expressly named in the laws. But if there should happen any other case where good manners and equity should require that an heir

²¹ *Smit v The Master, Western Cape* [2022] 4 All SA (WCC) (Matame J).

²² See footnote 18 above.

²³ Jean Domat, a 17th Century French jurist, probably qualifying for our common law as a lesser "Old Authority".

²⁴ As cited by Matame J in *Smit* para 180 from para 38 in *Danielz*.

should be declared unworthy, it would be just to deprive him of the inheritance.”

[56] The extension in *Smit* was nowhere near the kind of extension apparently endorsed in *Wilsnach* and potentially at issue here. Indeed, I am not sure it required deep delving into the appropriateness of extensions in *Smit* at all, given the factual basis employed for the declaration of unworthiness in that case.²⁵ Yet even the author Wood-Bodley, who admonished against free extension of the *indignus* principle beyond incremental extensions of known cases, appeared willing to accept extreme neglect by a father of his child as a sufficient legal basis to be covered by the *indignus* principle.

[57] Two of the American decisions considered in *Wilsnach* applied statutory provisions that provided for forfeiture of intestate rights by fathers who abandoned their children.²⁶ For our purposes his can be seen in one of two ways: either as a warning to leave such an extension to the legislature, or as the comfort of comparative endorsement of these circumstances as accommodated by public policy by certain legislatures.

[58] I must confess to a great degree of hesitancy on my part to apply the concept of *indignus* here. Had it not been for *Wilsnach*, the extension, upon a sobering consideration of the cases to date that have applied the doctrine, and

²⁵ “[T]he applicant forged the three (3) documents for her own benefit, planned and ultimately was instrumental in the killing of the deceased for her to be able to take control of the entire estate...” (para 182).

²⁶ See in particular Mandy-Jo’s law in Kentucky, at issue in *Simms v Estate Blake*, No 2017-CA-000306-MR (Ky App 2018), Commonwealth of Kentucky Court of Appeals, *Wilsnach* footnote 25.

the debate between cases such as *Steenkamp* and *Danielz*, would have struck me as a bridge too far.

[59] Nevertheless, there is the authority of *Wilsnach*. *Wilsnach* specifically had recourse to *Pillay* and the unworthiness doctrine to support its ultimate conclusion concerning the definition of “parent” in the ISA. It drew support from those American cases that applied statutory codification of disqualification from intestate succession on the part of the father who had abandoned his child. My application of the *indignus* doctrine here to these facts would not be novel – it would be following that portion of the *ratio* of *Wilsnach* that does not entail the difficulties considered above that attend upon interpreting the term “parent” in the ISA. In this regard, I am still bound by *Wilsnach* save to the extent I regard it as clearly wrong, and, with respect, I do not regard its assessment that the unworthiness doctrine would find apposite application to facts like these to be clearly wrong. The common law allows application of the *indignus* concept based on contemporary public policy. Contemporary public policy in this very sphere is addressed in detail in *Wilsnach*.

[60] I agree with Ms *Kriek* that the facts in this case must be seen as sufficiently on all fours with the relevant facts in *Wilsnach* for its reasoning to apply here, at least as far as unworthiness goes. In *Wilsnach*, the father broke off contact when the child turned 6 months old.²⁷ Here, apart from a single visit to the hospital when Ivan was one year old, and a few sporadic maintenance payments dragged out of him through the Maintenance Court process in that first year, Adams had no involvement at all in Ivan’s life right from the very start,

²⁷ *Wilsnach* para 12.

for the 29 years of Ivan's life. I do not think the law shrinks from application of the *indignus* concept here.

[61] I was concerned about where the lines were to be drawn between complete abandonment throughout the life of the child, on the one end of the spectrum, to lesser forms of abandonment. I was concerned about floodgates and the length of pieces of string. *"After he bought that Ferrari, he stopped calling on Sundays". "Yes, he paid for their schooling, but he did not even attend the wedding, and has been living in the Bahamas for the last thirty years."* These are not the kind of scenarios that this judgment contemplates. This judgment talks only to the situation of complete and utter abandonment of a child by a father essentially from the beginning of the child's life, and then for the next 29 years. Further refinement and drawing of lines will await another day and another case.

[62] It may be noted in any event that *Wilsnach* opened the door for a normative assessment of the term "parent" in the ISA, begging questions such as the above already. In my respectful view, it rests on a more solid jurisprudential basis to ask these questions in the public policy extension of the concept of *indignus* than in an assessment of the term "parent" in the ISA with an eye on desert.

[63] I had some concern whether the application before me sufficiently made out a case for a declaration of unworthiness, instead of a declaration of not being a parent, and debated this with Ms *Kriek*.

[64] The factual allegations required for the declaration of unworthiness in this case would not have differed in any way from the allegations set out in the founding papers for declaring Adams not to be a parent under the ISA. Nor would any defence Adams set up against application to him of *Wilsnach* have differed in any way had the relief sought been a declaration of unworthiness as opposed to striking him from the status of “parent”. Both essentially entail a declarator by the court that he should not inherit from Ivan’s estate, for exactly the same reasons. Accommodating the alternative relief I grant in the order below under the prayer for “alternative relief” in the Notice of Motion in this case would not prejudice Adams in any way in his ability to answer the case, had he felt so inclined.

ORDER

[65] In the circumstances I make the following order:

1. The first respondent, Selwyn Adams, is declared unworthy to inherit from the estate of the late Ivan Jacobs, Master Reference 027191/2021.
2. Save as set out in 1 above, the application is dismissed.
3. Costs are in the estate late Ivan Jacobs.

Frank Snyckers

Frank Snyckers

Acting Judge

Heard 21 August 2025

Judgment 24 August 2025

For the applicant: R Kriek

Instructed by: Booyens Attorneys; Pretoria

No appearance for respondents