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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 023949/24

1. REPORTABLE: YES/NO

2. OF INTEREST TO OTHER JUDGES: YES/NO

3. REVISED: YES/NO

DATE: 05 September 2025

SIGNATURE OF JUDGE:

In the matter between:

SANDRA RENE WOLFAARDT N.O

First Applicant

RUEBEN CRAIG WOLFAARDT

Second Applicant

DANICA MADISON WOLFDAARDT

Third Applicant

And

MARIA JOHANNA HELENA SHERRIFF N.O

First Respondent

MARIA JOHANNA HELENA SHERRIFF

Second Respondent

MASTER OF THE HIGH COURT PRETORIA

Third Respondent

In re:

MARIA JOHANNA HELENA SHERRIFF N.O.

First Applicant

MARIA JOHANNA HELENA SHERRIFF

Second Applicant

And

SANDRA RENE WOLFAARDT N.O.

First Respondent

RUEBEN CRAIG WOLFAARDT

Second Respondent

DANICA MADISON WOLFDAARDT

Third Respondent

LOUINA MARAIS

Fourth Respondent

ANDRIES PIETER VILJOEN N. O

Fifth Respondent

MASTER OF THE HIGH COURT PRETORIA

Sixth Respondent

ORDER

1. The Respondent's Application for the condonation of the late filing of the replying affidavit to a counter-application is dismissed with no order as to costs.
2. **MARIA JOHANNA HELENA SHERRIFF is removed** from her office as Executrix of the **estate of the late AJ Bates** in terms of the provisions of section 54(1)(a) (v) of the Administration of Estates Act 66 of 1965.,
3. **MARIA JOHANNA HELENA SHERRIFF is directed** to immediately return her letters of executorship to the Master of the High Court, Pretoria.

4. **SANDRA RENE WOLFAARDT** is hereby removed from her office as Executrix of the **estate of the late AJ Bates** in terms of the provisions of section 54(1)(a) (v) of the Administration of Estates Act 66 of 1965.
5. **SANDRA RENE WOLFAARDT** is directed to return her letters of executorship to the Master of the High Court, Pretoria, within five (5) days of this order.
6. The Master of the High Court, Pretoria, is directed to appoint a substitute executor to such person or persons who it may deem fit and proper to be the Executor or Executrix within 30 days of the service of this order at the Master's office.
7. Each party to pay its own costs.

JUDGEMENT

FLATELA J

“Have you not heard that when the two brothers fight to the death, a stranger reaps a harvest? Chinua Achebe, Arrow of God (The African Trilogy)”

[1] The judgment concerns three opposed applications with the same case number, 023949/2022, the main application, the counter application and an application for condonation of the late filing of the replying affidavit in the counter application. The main application seeks the removal of the First and Second Respondents as executors in the estate of the late Albertus Jacobus Bates, estate number 0[...], in terms of section 54(1)(a)(v) of the Administration of Estates Act (the Act), citing misconduct on the part of the First Respondent. In the counter-application, the First and Second respondents also seek the removal of the First Applicant as executor, citing a conflict of interest.

[2] The First Applicant and the First and Second Respondents are joint executrices of the estate of the late Albertus Jacobus Bates (the deceased). The executrices are Sandra Rene Wolfaardt, the First Applicant in the main application.

Ms Wolfaardt is the daughter of the deceased, and Maria Johanna Helena Sherriff NO and Maria Johanna Helena Sherriff, the Respondent in the main application, is the surviving spouse of the deceased. The Master officially appointed them in accordance with section 18 of the Act on 22 July 2022.

[3] In the main application, the applicant is seeking the following order:

1. That the First respondent be removed as executor of the estate of the late Albertus Jacobus Bates, estate number 0[...], Master of the High Court, Pretoria, with immediate effect in terms of section 54(1)(a)(v) of the Administration of Estates Act, 66 of 1965
2. That the second respondent, in her personal capacity, be ordered to pay the costs of this application on a scale between attorney and client.
3. Further than alternative relief

[4] The First and Second Respondents are opposing the application and have launched a counter-application for the removal of the First Applicant as executor under section 54(1)(a)(v) of the Act.

Chronological and Procedural Events

[5] The main application was launched on 4 March 2024 and served on 8 March 2024. Notice of opposition was delivered on 25 March 2024, followed by answering and replying to affidavits.

[6] A counter-application was served on 22 May 2024, and a notice to oppose was filed on 3 June 2024, followed by further exchanges of pleadings. The replying affidavit in the counter application was filed out of time. A notice objecting to the late submission of the counter-application was delivered on 3 September 2024, leading to a condonation application on 13 September 2024. A notice of set down was served on 18 September 2024, and a notice of intention to oppose the condonation application was delivered on 27 September 2024.

[7] The parties have been identified differently across the three applications, which may lead to confusion. To avoid confusion, the parties will be referred to as in the main application.

Parties

[8] The First Applicant, Sandra Rene Wolfaardt NO, is a major female and is acting in her capacity as an executrix of the estate of the late Albertus Jacobus Bates. The Second Applicant is Reuben Craig Wolfaardt, a major male student, grandson of the deceased, and an heir to 25% of the residue of the late estate. The Third Applicant is Danica Madison Wolfaardt, a major female teacher, granddaughter of the deceased and an heir of 25% residue of the late estate.

[9] The Respondent is Maria Johanna Helena Sherriff NO, a major female widow. She is cited in her capacity as co-executrix of the deceased estate. The Second Respondent, Maria Johanna Helena Sherriff, is cited in her personal capacity (the Respondent). The Respondent was married to the deceased out of the community of property, with the inclusion of the accrual system, and the death of the deceased terminated their marriage.

[10] The Third Respondent is the Master of the High Court, Pretoria, under whose supervision the deceased estate is being administered. No relief is sought against the Third Respondent. The Master is joined here insofar as it may have an interest in the matter and is required to render a report to the court in accordance with rule 6(9) of the Uniform Rules.

[11] I will now outline the factual background and the legal principles governing the removal of executors. I will then address the parties' pleadings, relevant case law, and evidence, as well as the applicable law. I will conclude by applying the law to the facts.

Factual Background and common cause facts

[12] The facts leading to the dispute in this matter are largely common cause. The deceased executed his will on 17 April 2018 and passed away on 26 October 2021. He bequeathed his estate to his immediate family, consisting of his surviving spouse, Maria Johanna Helena Sherriff (the Respondent), with whom he was married out of the community of property with the inclusion of the accrual system, and to his daughter, Sandra Rene Wolfaardt (the First Applicant). The residue of the estate is to be distributed equally among his surviving spouse, his daughter, and his grandchildren, Reuben Craig Wolfaardt and Danica Madison Wolfaardt, (the second and third applicants), with each inheriting 25% of the residue of the late estate.

[13] The deceased nominated two executors to administer the estate; however, they declined the appointment due to incapacity. Consequently, the First Applicant and the Respondent were nominated as co-executors by the next of kin. Jointly, they appointed Ms. Louina Marais, an attorney, as their agent for the administration of the estate on 14 December 2021.

[14] Before the Master issued the letter of executorship to the First Applicant and the Respondent, the Respondent withdrew R7,563,071.63 from the deceased's bank accounts between 26 October 2021 and 31 May 2022. The Master officially appointed them in accordance with section 18 of the Act on 22 July 2022.

[15] On 8 March 2023, a meeting was held between the First Applicant, the Respondent, and their agent to discuss the estate's administration, and the Respondent's withdrawal of funds was also addressed. The Respondent promised to repay the funds by 14 April 2023 but failed to do so. Instead, she purchased immovable property registered in her name for R2,999,000.00 on 23 March 2023, without repaying the amount. The Respondent later paid R3,990,324.84 to the estate on 25 April 2023 but refused to settle the remaining balance, claiming the funds had been used for business and household expenses.

[16] The Respondent has lodged an accrual claim of R18,844,098.05 against the estate. The agent and Ms Sandra Rene Wolfaardt NO rejected the accrual claim. She submitted a second claim, which her co-trustee, Andries Pieter Viljoen, the trust's auditor, recalculated to R6,196,181.07. While she contests any liability for the

remaining balance owed to the estate, she maintains that her accrual claim takes precedence as a first charge against the estate. She argues that once the accrual claim is adjudicated, a set-off can be executed accordingly.

[17] The First Applicant instructed her attorneys to demand repayment of the outstanding balance and to demand that the Respondent immediately resign as executor. The Respondent tendered her resignation as an executrix, provided that the First Applicant also resigns, citing a conflict of interest, because the First Applicant, together with their agent, had rejected her accrual claim without cause.

[18] I now deal with the legal principles governing the removal of an executor.

Legal principles governing the removal of an executor

[19] The removal of an executor is governed by section 54 of the Act, which provides as follows:

54 Removal from office of executor

(1) An executor may at any time be removed from his office-

(a) by the Court-

(i)

(ii) if he has at any time been a party to an agreement or arrangement whereby he has undertaken that he will, in his capacity as executor, grant or endeavour to grant to, or obtain or endeavour to obtain for any heir, debtor or creditor of the estate, any benefit to which he is not entitled; or

(iii) if he has, by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to vote for his recommendation to the Master as executor or to effect or to assist in effecting such recommendation; or

(iv) if he has accepted or expressed his willingness to accept from any person any benefit whatsoever in consideration of such person being engaged to perform any work on behalf of the estate; or

(v) if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned; ...”

[20] The principle governing the removal of the executor is neatly summarised in the judgment of Collins J in a matter of *M-S and Another v Le Motte and Others* ¹

[15] ‘A court approached with an application seeking the removal of an executor is vested with a discretion, and in the exercise of that discretion the predominant considerations are the interests of the estate and those of the beneficiaries.² In the adjudication of this matter this Court shall also take into account that the executors, were appointed on 25 February 2020, and have been in control of the estate assets for over a year.

In the decision of *Volkwyn NO v Clarke and Damant* 1946 WLD 456, it was held that it is a matter of “...seriousness to interfere with the management of the estate of a deceased person by removing from the control thereof persons who, in reliance upon their ability and character, the deceased has deliberately selected to carry out his wishes...”

The incorrect exercise of his duties by an executor, and even a failure to strictly observe the strict requirements of the law is not enough. “Something more” is required.

“...it is not indeed every mistake or neglect of duty or inaccuracy of conduct of trustees, which will induce Courts of Equity to adopt such a course. But the

¹ *M-S and Another v Le Motter and Others* (64484/2020,10475/2021,zagpphc 620 (21 September 2021)

² *Die Meester v Meyer en Andere* 1975 (2) SA 1 (T) at 17F, a passage approved by the Constitutional Court in *Gory v Kolver NO and Others* (Starke and Others Intervening) 2007 (4) SA 97 (CC) at [56].

*acts or omissions must be such as endanger the trust property or to show a want of honesty or a want of proper capacity to execute the duties, or a want of reasonable fidelity...*³

These principles are equally applicable to the removal of executors.⁴

This Court in the decision *Oberholster NO and Others v Richter* [2013] All SA 205 (GNP) after considering the authorities referred to above, held:

21.1 the court should not approach the matter as if it were an application for an interdict, as this misconceives the nature of the application before it;⁵

21.2 the enquiry is whether it is “undesirable” for the executor to continue acting in such capacity;⁶

21.3 “...mere disagreement between an heir and the executor of a deceased estate, or a breakdown in the relationship between one of the heirs and the executor, is insufficient for the discharge of the executor in terms of section 54(1)(a)(v) of the Act. In order to achieve that result, it must be shown that the executor conducted himself in such a manner that it actually imperilled his proper administration of the estate.”⁷

21.4 “...*the particular circumstances of the acts complained of are such as to stamp the executor or administrator as a dishonest, grossly inefficient or untrustworthy person, whose future conduct can be expected to be such as to expose the estate to risk of actual loss or of administration in a way not contemplated by the trust instrument.*”⁸

[22] In the context of the administration of an estate the above principles translate into the question whether the court is satisfied that

³ *Sackville West v Nourse and Another* 1925 AD 516 at 527.

⁴ *Die Meester v Meyer en Andere* supra at 16H.

⁵ At [21] and [22]

⁶ At [22]

⁷ At [17]

⁸ Ibid.

the continuance in office of the executor would detrimentally affect the proper administration and winding-up of the estate.⁹

The parties' contentions

Applicant's contention

[21] The Applicant seeks the removal of the First and Second Respondent based on three grounds, namely:

- a. The respondent misappropriated funds from the deceased estate.
- b. The respondent used estate assets for their own personal use and benefit without proper permission
- c. The respondent distributed estate assets unlawfully
- d. The respondent has a conflict of interest

[22] The First Applicant asserts that during the period from the day the deceased passed away to 31 May 2022, the Respondent misappropriated R7 563 071 63 from the deceased estate as follows:

- a. An amount of R7 324 283.68 from the RMB Maximiser account in the deceased's name with account number 6[...]
- b. An amount of R238 787.95 from the RMB current account in the deceased's name and with account number 5[...]

[23] The Applicants contend that between 8 March 2023 and 14 April 2023, when the Respondent was supposed to repay the appropriated funds to the estate, she purchased an immovable property for R2,999,000. The sale took place on 23 March 2023. The property was registered in his name on 17 November 2023. No bond was registered over the property.

⁹ Van Niekerk v Van Niekerk and Another supra at [9].

[24] The First Applicant states that the Respondent, through her lawyers, asserted that the funds withdrawn from the deceased's accounts belonged to the Trust and that the withdrawal was fully supported by the co-trustee, who is also an auditor of the Trust. The Respondents also informed the lawyers for the First Applicant that the co-trustees will be asked to repay R2,314,759.84 to the deceased estate. The Respondent further indicated her desire to negotiate over the outstanding balance of R1,019,200.

[25] Furthermore, the Respondent's attorneys prepared a reconciliation of the funds that were withdrawn, which indicated that:

- a. R5 568 975 was appropriated to the respondent.
- b. An amount of R1 755 309.68 was appropriated to business accounts
- c. An amount of R5 568 975 was appropriated to the respondent, and amount of R980 000 is allocated to her personal maintenance.
- d. An amount of R559 450.16 is allocated to business accounts
- e. An amount of R39 200 is allocated to funeral costs.

[26] In response, the Respondent states that the funds withdrawn from the deceased's accounts were actually the trust funds. She explains that her late husband had bequeathed the shares to her, but in a meeting with the trustees, it was agreed that the shares be sold for R6 million, the proceeds invested, and the interest used to meet the deceased's needs. She says that after her husband's death, the business and life continued, and she had to oversee the running of the business, including paying various expenses. Therefore, the funds were used to cover these expenses of the trusts. The Respondent also averred that he used some of the funds for household costs.

[27] The Respondent admitted her purchase of a property, which was registered in her name two years post the deceased's death. However, she contended that this situation must be viewed in light of the following: the First Applicant and the joint agent are obstructing her accrual claim against the estate without due consideration; the bank accounts associated with the two trust owned by the deceased were frozen, with the exception of the RMB account, which, while belonging to the deceased, held

funds that were attributed to the trust. The Respondent indicated that a portion of these funds was utilised for the operational expenses of the trust across various business ventures.

[28] The First Applicant further claims that the Respondent has been using estate assets for their own benefit and enjoyment without permission, particularly the deceased's Land Cruiser and trailer. The First Applicant states that the deceased owned a Venter trailer before his death, and this trailer was part of the assets in the deceased's estate. The First Applicant mentioned that after receiving the letter of executorship and during meetings with the joint agent, she asked about the trailer. Initially, the First Respondent denied any knowledge of the trailer, but later admitted that she had taken it from the storage facility and given it to her son. The First Applicant asserts that the Respondent had no entitlement to the trailer under the will. The trailer was required to be sold in accordance with Section 47 of the Act. Any distribution of the estate assets in breach of this section is a criminal offence punishable by a fine or imprisonment.

[29] In response, the Respondent admitted that her son was not entitled to the trailer. However, the Respondent denies using estate assets for personal benefit and unlawfully distributing them, claiming a conflict of interest involving the First Applicant. She states that the First Applicant has taken the assets and keys to the beach house, denying her access despite the will's stipulation that the deceased wished for her to have access for a period of four weeks annually, in agreement with the First Applicant. Still, the First Applicant changed the locks and denied her access.

Conflict of interest

[30] The First Applicant asserts that, according to the initial inventory prepared by the agent, the gross value of the estate was R8,086,016.00; however, the Respondent has lodged a claim in the amount of R18,844,098.05 in respect of the alleged accrued amount due upon the deceased's death. The First Applicant asserts that the Respondent's accrual claim exceeds the total value of the deceased estate.

[31] The applicants contend that, in terms of the provisions of section 32 of the Act, the capacity to reject claims against the estate is vested in the executor, meaning that the Respondent, as executrix, will be required to accept or reject their own claim, effectively judging their own claim against the estate. Therefore, the Respondent faces a conflict of interest between her personal interest in the estate and her role as an executrix who should act in the best interest of the estate and the heirs.

[32] The Applicants assert that the deceased's estate has a valid claim against the Respondent for misappropriated funds under section 46 of the Act. Recovery may necessitate legal action against the Respondent, but the estate cannot proceed without her cooperation. Since she is unlikely to sue herself for the misappropriated funds, she faces a conflict of interest between her personal interests and those of the estate.

The Respondent's contentions

[33] The Respondent raised four points in *limine*, namely:

- a. The Respondent contended that the applicants failed to provide a copy of their application to the Master before filing it with the registrar, which constitutes a violation of Rule 6(9) of the Uniform Rules. The respondent asserted that they intend to file an interlocutory application under Rule 30(1) for this non-compliance and will seek an order to compel the Master to fulfil their duties under the Act, along with a request for a punitive costs order.
- b. Non-Compliance with Rule 41A - The Respondent asserts that the applicants did not indicate their position on mediation as required by Rule 41A(2)(a). The respondent contends that this matter is suitable for mediation and has suggested the resignation of the executor, proposing that the Fiduciary Institute of South Africa (FISA) nominate a new executor if the first applicant also resigns.
- c. Non-Joinder of the Appointed Agent - Louina Marais was jointly appointed as the agent for estate administration but has neither

submitted a liquidation and distribution (L&D) account nor requested an extension. The respondent argues that the agent should be joined in this application; therefore, it should be dismissed due to the non-joinder.

- d. Non-Joinder of Trust Trustees- The deceased's will mentions the AJB Family Trust and the Albie Family Trust, where both applicants are beneficiaries. The respondent asserts that the trustees have a significant interest in the relief sought and that the application should be dismissed due to their non-joinder.

[34] The point in *limine* raised by the Respondent lacks merit. It is worth noting that the Master was properly joined in these proceedings and duly served with the application. Concerning compliance with Rule 41(A), the requisite notice was served alongside the application on 8 March 2024. Therefore, this point in *limine* is unfounded.

[35] Regarding the joinder of the parties' agents, it is pertinent to highlight that the relief sought is against the principals of the parties involved. Since Ms. Marais serves as an agent for both parties and no specific relief is sought against her, her joinder is unnecessary. Additionally, regarding the fourth point in *limine*, no claims are being made against the Trustees, and therefore, their joinder was not necessary.

Merits

[36] The Respondent admitted to withdrawing a total of R7 234 000 from the deceased's estate over roughly seven months before the First Applicant and herself were appointed as executors. However, she denies that she misappropriated funds from the deceased's estate as alleged. She states that the deceased passed away on 26 October 2021, and the letters of executorship were only issued by the Master nine months later, on 20 July 2022. She explains that after her husband's passing, life and business "carried on proverbially," and therefore, she had to oversee the management of various businesses, which involved making payments for several expenses, including but not limited to paying SARS, levies, and other recurring monthly costs.

[37] The Respondent states that she was married to the deceased for 25 years and is an heir to the estate. She is a co-trustee of the AJB Familie Trust and the Albie Familie Trust. She is also a co-director of Lansie Eiendoms Beleggings PTY LTD, which her late husband owned. The Respondent claims that, as a director, co-trustee, and wife, she was actively involved in the deceased's various business ventures for many years and was therefore fully familiar with his businesses and their management. The Second Respondent states that, before the deceased's passing, she also acted through the authority granted to her.

[38] The Respondent states that not all the funds credited to the RMB account belonged to the deceased. She explains that the deceased bequeathed his shares in Aeterno Investments 159 (Pty) Ltd to her according to his will. At a meeting of the trustees of the AJB Families Trust held on 18 January 2020, the trustees approved the sale of shares in Aeterno Investments 159 (Pty) Ltd for R6 million. The interest received was to be reinvested in an interest-bearing investment, and the earnings were to be used to meet the deceased's needs. An amount of R5 million, paid in tranches of R1 million, was transferred to the RMB account for the beneficial interest the capital would have earned. As a result, although R5 million was paid into the RMB account from the sale of shares, it technically and legally belonged to the AJB Family Trust, and the shares were, in any event, bequeathed to her.

[39] The Respondent claims that the funds were withdrawn with the full knowledge and consent of her co-trustees, Peter Viljoen, the auditor of the trusts.

[40] The Respondent argues that the First Applicant opposes her claims without proper consideration, which may warrant her removal. She was advised to apply under section 54(1)(a)(v) of the Act.

The Counter-Application

[41] The Respondent seeks the removal of the First Applicant from the office of executor with immediate effect. She also relies on section 54(1)(a) (v) of the Act. The Respondent seeks, in addition, an order that the First Applicant be directed to return

the letters of executorship to the Master, and to pay the costs of the application in her personal capacity.

[42] The Respondent claims that the First Applicant, in her capacity as co-executor, has consistently refused to recognise the Respondent's actuarially calculated accrual claim against the estate, which the Respondent contends exceeds what she allegedly owes the estate.

[43] The Respondent asserts that the agent appointed (the fourth respondent) has not taken the obvious approach of provisionally including her accrual claim in the Liquidation & Distribution (L&D) account and submitting it to the Master to resolve the impasse quickly and finalise the estate. Instead, they have rejected the accrual claim and failed to respond to correspondence from her attorney.

[44] The Respondent asserts that the First Applicant's refusal to fairly consider the accrual claim is described as a "self-serving exercise" that resists all claims from a particular source irrespective of their merits. Based on this conduct, the Respondent argue that there is good cause for the removal of the First Applicant as executrix in terms of section 54(1)(a)(v) of the Act, as the First Applicant shouldn't continue acting as executrix given the obstruction and refusal to deal with the claims fairly.

[45] The grounds for the application are that the First Applicant is unsuitable to remain as executor because she has a conflict of interest.

[46] The Respondent proposes that both the First Applicant and the Respondent must resign as executrices and that an independent person be appointed as sole executor to finalise the estate, which would save legal costs and avoid burdening the court.

Point in Limine

[47] The First Applicant raised two points *in limine* to the Respondent's counterapplication. She argues that the application for the executor's removal should be made against her personally, not just as an executor, as Ms. Sherriff has not

joined her in her personal capacity while seeking personal costs. She asserts that the counter-application should be dismissed with costs due to this non-joinder.

[48] The First Applicant claims that Ms. Sherriff delayed filing the counter-application until after the main application was served, despite previously stating that it would be submitted concurrently. She contends this is an attempt to stall proceedings and constitutes an abuse of process, warranting a punitive costs order. The accrual claim is acknowledged but awaits verification of its extent.

[49] Regarding the point *in limine*, the Respondent filed a notice of intention to amend the citation. The Respondent did not object to the amendment, and it was effected.

Accrual Claim

[50] In response to the Respondent, the First Applicant does not dispute the Respondent's accrual claim but insists it must be calculated accurately based on factual and legal principles before acceptance. The First Applicant argues that the calculation is flawed because it includes assets from two trusts excluded from the deceased's estate. She claims the actuary's calculations were based on an incorrect joint estate assumption and that the issues were outlined in an email from the agent. Consequently, she believes the initial accrual claim was fundamentally defective, which justified her in rejecting it as executor.

[51] Regarding the second recalculated claim, the First Applicant asserts that she is unable to evaluate the claim due to the initial miscalculation, a non-actuarial claim lacking documentation, disputes over asset valuation, and a conflict of interest. She emphasises that the accrual claim can only be included in the Loss and Dividend (L&D) account if it is admitted. She says submitting an inaccurate L&D account would breach her fiduciary duty.

[52] The First Applicant maintains that the L&D account prepared by the Respondent's attorneys does not accurately reflect the estate's position and favours her claim. The calculations seem to uncritically accept Ms. Sherriff's asset

valuations. Furthermore, the deceased's estate must include funds from his RMB Money Maximiser account, which Ms. Sherriff claims belonged to the trusts.

[53] The First Applicant clarifies that both she and the Respondent each inherit 25% of the estate's residue and that her executor responsibilities require her to act in the interests of all heirs, preventing her from accepting a flawed accrual.

[54] The First Applicant assert that the claim is considered a "so-called accrual claim" lacking a legitimate basis. The Applicant expressed readiness to evaluate the latest claim once she receives the necessary documentation. She states that Ms. Sherriff owes the estate R3,333,958.84 for misappropriated funds and may face a penalty under section 46 of the Act.

[55] Regarding the Respondent's proposal that the FISA should nominate a senior FISA member to be appointed, she argues that the appointment of a new executor would not be in the best interest of the estate or the heirs, especially since an independent attorney is already engaged in the winding-up process.

[56] The Respondent filed her replying affidavit to her counter-application late and failed to address condonation in it. The Applicant objected to its filing and filed a Rule 30 notice. It was then that the Respondent filed a condonation application. The Respondent says she was abroad for over 30 days. When the Respondent decided to go overseas, she either knew or ought to have known that there were pending pleadings. In any event, the points raised in the reply are not different from those raised in the answering affidavit. There is no reason why the affidavit could not have been filed on time. I am not satisfied that the Respondent has shown good cause for condonation. The application for condonation is dismissed with no order costs.

Issues for determination

[57] Whether it is in the interest of the deceased estate that the Respondent and/or the First Applicant should be removed as executors or that they continue. She says she was abroad, and he was also advised that the court was on recess.

The duties of executors

[58] The duties of an executor were neatly summarised in the matter of *D B v Brand and Another*¹⁰

“An executor is legally vested with the administration of the estate. This means that the deceased estate's assets, liabilities, rights, obligations, and powers vest in the Executor, and he alone can deal with them. The job of an Executor cannot equate to that of an agent, as he has no principal to give him instructions.¹¹ An Executor is not free to deal with the assets of an estate in any manner he pleases. His position is fiduciary; therefore, he must act legally and in good faith.¹² A party instituting litigation against an estate has to join the Executor as a party to the litigation.¹³ “

Discussion

[59] In the main application, the issues are relatively straightforward. The Respondent admitted the withdrawal of funds from the deceased's account before the issuance of letters of executorship. In a meeting held between the First Applicant, the Respondent, and their joint agent, the Respondent undertook to repay the withdrawn amounts and has engaged in discussions regarding the terms for settling the remaining balance.

[60] When the Respondent failed to fulfil the undertaking, the First Applicant instructed her attorney to write a letter to the Respondent demanding the bank statements of the accounts from which the funds were transferred from the deceased estate and further demanded that the Respondent immediately resign as an executor.

¹⁰ D B v Brand and Another (131572024) 2024 ZAWCHC 164

¹¹ Van Den Bergh v Coetzee 2001(4) SA 93(T)

¹² Ries v Ries's estate 1912 CPD 390

¹³ Booysen v Booysen 2012 (2) SA 38 (GSJ)

[61] On 23 May 2023, through her attorneys, the Respondent again admitted withdrawal. The Respondent even committed the co-trustees to paying part of the balance of R2,314,759.84 to the estate, whilst she indicated that she wanted to negotiate regarding the balance of R1,019,200. It is acknowledged that the Respondent acquired the property for a purchase price of R2,999,000.00 in cash; however, the Respondent has failed to provide a clear account of the financial resources utilised for this acquisition.

[62] It does not avail Ms Sherriff to deny liability in these proceedings. The First Applicant has substantiated allegations of misconduct against the Respondent on several grounds. Firstly, the Respondent misappropriated the estate's funds by improperly withdrawing funds from the deceased's estate without obtaining the requisite permissions. Secondly, the Respondent undertook to repay the withdrawn amounts and engaged in negotiations regarding the repayment terms but failed to repay the full amount due. Thirdly, the Respondent failed to fulfil the payment undertaking by the deadline. However, a partial payment was subsequently made, and the Respondent instead acquired a property, claiming to have utilised personal funds for this transaction. In my view, the Respondent used the estate assets for her own benefit and did so without required permission.

[63] The Respondent is also a creditor of the estate, as she has lodged an accrual claim against the estate for R18,844,098. Although the Respondent also submitted a second claim of R6 million, she has not abandoned the initial claim. In terms of section 32 of Act, the executor must either accept or reject the claim.

[64] This matter is in all fours with the matter of *Hanath v Hanath and Others*¹⁴, and the judgment in that matter, penned by Binns-Ward J, is dispositive of this matter. Dealing with the duties of executors in *Hanath v Hanath and Others* ¹⁵Binns-Ward J stated:

¹⁴ *Hanath v Hanath* (3239) [2021] ZAWCHC 102

¹⁵ *Id.*

“In the current case, it is worth remembering that an executor also has a duty towards creditors of the estate to exercise his or her powers bona fide and with objectivity. In dealing with a claim, an executor is expected to assess its merits on a fair consideration of the facts and its legal merits. Should an executor also be one of the creditors of the estate, an unenviable situation will arise in which he or she will have to be the judge of his or her own claim. In my view, it is generally undesirable that an executor should find him or herself in such a situation. It not only goes against the basic principle that anyone should be the judge in their own case, but it also posits a potential conflict between the executor’s interest as a creditor of the deceased estate and his or her fiduciary duty to administer it for the benefit of the beneficiaries.”

[65] I am satisfied that it is not desirable for the Respondent to continue serving as an executor due to her misconduct and a conflict of interest.

[66] In its counter-application, the Respondent contends that it is also not desirable for the First Applicant to continue serving as an executor due to a conflict of interest. She stated that the First Applicant has denied her access to the beach house, contrary to her late husband’s wishes that she spend four weeks a year there. In response, the First Applicant conceded that she changed the locks to the beach house and removed all the Respondent’s belongings after she noticed that some items were missing from the house.

[67] Regarding the accrual claim, it is common cause that the Respondent’s attorneys initially lodged an accrual claim of R18,844,098.05, which Ms Marais wholly rejected. Subsequently, the Respondent submitted a recalculated claim of R6,215,185.64, which was further amended and amounted to R6,196,181.07.

[68] On 16 January 2024, the Respondent’s accrual claim was provided to the Fourth Respondent. However, on 18 January 2024, the First Respondent’s attorney addressed a letter to her attorney wherein the following was stated:

“We furthermore confirm that on perusal of the so-called calculation on(sic) your client’s accrual claim, we have to place on record that, as it stands at this point, it is totally unacceptable”

[69] On 23 January 2024, the Respondent’s attorney wrote to the First Respondent’s attorneys and stated that:

“... We have received amended calculations in respect of the accrual claim from the auditor, which was sent to Mrs. Louina Marais - agent for both of the executors. We await her response and an updated draft of the first and final liquidation and distribution account. We are concerned about your client’s rejection of our client’s accrual claim in toto. Also, in what appears to be your client’s general unwillingness to work towards the finalisation of matters. Your client is apparently not willing to even accept our client’s claim partially or to advance any reasons for her non-acceptance. That attitude defies all reason in our opinion”.

[70] On 30 January 2024, the First Respondent’s attorneys of record replied and stated the following:

*“We confirm that your client is not interested in playing open cards with our client, and in fact, this is borne out of your client’s first attempt to have a **so-called accrual claim calculated**” (Emphasis added).*

[71] Responding to these allegations, the First Applicant asserted that the second accrual claim can be considered once Ms Sherriff has been removed as the executor, and all documentation has been received.

[72] Dealing with the conflict of interest, Binns-Ward J in *Hathan*¹⁶ Said:

“The issue is whether it is appropriate when a creditor’s claim by an executor of a deceased estate who is also a beneficiary in terms of the

¹⁶ Id.

will is disputed by another beneficiary that the executor should be charged with determining it. I think not; on the trite premise that no-one may be the judge in his own cause. It matters not that there is a remedy available to anyone dissatisfied by the executor's decision by way of objecting to the liquidation and distribution account or recourse to court. That would be the same as suggesting that anyone may be the judge in their own cause so long as a right of appeal is available. It is an obviously untenable proposition. As Margo J (Davidson and Franklin JJ concurring) noted in *Die Meester v Meyer en Andere* 1975 (2) SA 1 (T) at 17D-E, '*In die geval van botsende belange, is die blote feit dat 'n eksekuteur nie onpartydig kan wees by die beoordeling van eise teen die boedel nie, prima facie grond vir sy verwydering. Webster v Webster en 'n Ander, 1968 (3) SA 386 (T) op bl. 388C - D.*'¹⁷ In my view that consideration, when it arises, will ordinarily determine how a court will exercise its discretion in terms of s 54(1)(a)(v) of the Administration of Estates Act. I would therefore respectfully endorse the previously expressed view that the mere existence of a demonstrated conflict of interest affords prima facie sufficient ground for the removal of an executor in terms of the provision. It seems to me to be axiomatic that it would ordinarily be undesirable for an executor affected by a conflict of interest to remain in office."

[73] I fully agree with the evaluation provided by Binns-Ward J in Hathan on this matter. After a thorough consideration of the evidence presented, I find that the continuation of the First Applicant, who is both an heir and co-executor, as executor of the deceased estate is not in the best interests of the estate. There is a conflict of interest; similarly, the First Applicant cannot be a judge in his own cause.

[74] I have considered the First Applicant's submission on the potential delays associated with appointing a new executor. Regrettably, this dispute has escalated to litigation, a situation that could have been amicably resolved by the parties

¹⁷ 'In the case of a conflict of interests, the mere fact that an executor cannot be impartial in the consideration of claims against the estate is prima facie a ground for his removal'. *Webster v Webster en 'n Ander*, 1968 (3) SA 386 (T) at p. 388C – D'

involved. Instead, they acted unilaterally and accessed the estate's assets without prior authorisation. Fortunately, a joint agent appointed by both parties, who is also an attorney, has already been appointed to manage the administration of the estate. It would be prudent for the Master to consider appointing this joint agent as the executor, as doing so could streamline the process and minimise additional delays and costs for the estate. Even if a different executor is appointed, it's important to recognise that the new appointee would benefit from the groundwork laid by the joint agent, who has been actively overseeing the winding-up of the estate.

[75] As a result, I make the following order:

1. The Respondent's Application for the condonation of the late filing of the replying affidavit to a counter-application is dismissed with no order as to costs.
2. **MARIA JOHANNA HELENA SHERRIFF is removed** from her office as Executrix of the **estate of the late AJ Bates**, estate number 0[...], Pretoria, in terms of the provisions of section 54(1)(a) (v) of the Administration of Estates Act 66 of 1965.
3. **MARIA JOHANNA HELENA SHERRIFF is directed** to return her letters of executorship to the Master of the High Court, Pretoria, within five (5) days of this order.
4. **SANDRA RENE WOLFAARDT** is hereby removed from her office as Executrix of the **estate of the late AJ Bates** estate number 0[...] in terms of the provisions of section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965.
5. **SANDRA RENE WOLFAARDT** is directed to immediately return her letters of executorship to the Master of the High Court, Pretoria.
6. The Master of the High Court, Pretoria, is directed to appoint a substitute executor to such person or persons who it may deem fit and proper to be the Executor or

Executrix within 30 days of the service of this order at the Master's office.

7. Each party to pay its own costs

FLATELA LULEKA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties and/or their representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 05 September 2025 at 10H00

Appearances

Counsel for the Applicants:	Adv A Coertze
Instructed by:	JPA Venter Attorneys

Counsel for the 1 st – 2 nd Respondents:	Adv N.C Maritz
Instructed by:	Ehlers Fakude Attorneys

Date of the Hearing:	17 February 2025
Date of the Judgement:	05 September 2025