

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

**Cases NO: 11450/2020**

**& 13401/2020**

**REPORTABLE: NO**

**OF INTEREST TO OTHER JUDGES: NO**

In the matter between:

**BURGERT ANDRIES VISSER N.O**

**PLAINTIFF**

and

**DANIEL CHRISTIAAN VISSER N.O**

**FIRST DEFENDANT**

**JAKOBUS BERNARDUS VISSER N.O**

**SECOND DEFENDANT**

**CHRISTINA WIEHELMA LAING N.O**

**THIRD DEFENDANT**

[Acting in their capacity as trustees  
For the time being of the DC Visser Familie  
Trust (IT 4540/20180)]

and

**FIRST RAND BANK LIMITED**

**FOURTH DEFENDANT**

Coram: Kholong, AJ

Date of hearing: 23 September 2025

Date of judgment: 8 October 2025

**Summary:** Evidence - Direct evidence of a single witness can be accepted provided it is credible. Such evidence if credible can be accepted even though it may conflict with probabilities set in expert opinion.

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## **ORDER**

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1. The will and testament which was purportedly executed by the late Daniel Christiaan Visser (Senior) on 11 December 2017 at Robertson does not contain the testator's signature and is thus null and void.
  2. The will and testament that was executed by the testator on 29 September 2011 at Worcester is his will and testament for purposes of liquidating and distributing his estate.
  3. The plaintiff's action under case number 11450/2020 is dismissed.
  4. The plaintiff in case no 11450/2020 to pay costs on scale A.
  5. The first defendant in case no 13401/2020 to pay costs on scale A.
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## **JUDGMENT**

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**KHOLONG AJ**

### **Introduction**

[1] This court has been called upon to determine two actions which are heard together stemming from an alleged failure by defendants to heed a demand from the executor of a deceased estate to pay an outstanding debt following on a sale of a farm previously belonging to the deceased. The relief sought by the parties in the two actions is ultimately determined by a determination by this court on the validity or otherwise of the will and testament bearing the name of the late Mr. Daniel Christiaan Visser ("the testator") dated 11 December 2017 and signed at Robertson.

The determination required of this court is whether this will contain the testator's signature.

[2] The Plaintiff in the first matter per case no 11450/2020 is Mr. Burgert Andries Visser an adult male businessman situated in Bonnievale who instituted action against the trustees of the DC Visser Familie Trust ("the trust") and First Rand Bank Limited ("FirstRand"). Mr. Andries Visser instituted action in his capacity as the executor in the estate of his late father the deceased.

[3] First, second and third defendants are plaintiff's family members. First defendant is D.C Visser an adult male businessman and brother of plaintiff staying on a farm in Worcester. Jakobus Visser is an adult male also situated on the farm Kloppersbosch, Worcester. Christian Laing is an adult female residing in Brackenfell. They are cited as defendants in their capacity as trustees of the DC Visser Familie Trust.

[4] The Fourth defendant is FirstRand Bank Ltd a bank situated in Cape Town and joined supposedly as a bondholder over the properties forming part of the farm Kloppersbos.

[5] In the second matter under case number 13401/2020 first plaintiff is Mr. DC Visser Junior and second plaintiff is Chrsitina Wiehelma Visser an adult female residing in Brackenfell. Third plaintiff is DC Visser Junior of Worcester cited in his official capacity as trustee in the DC Visser Familie Trust. The Fourth and fifth Plaintiffs are Christina Visser of Worcester and Jakobus Visser of Worcester cited in their capacity as trustees.

[6] The first and second defendant in this second matter is Burgert Visser, who is plaintiff in the first matter cited above and is cited in his personal and official capacity as executor of the deceased's estate. The third defendant is Christina Visser an adult female then residing at a retirement village in Worcester. The fourth defendant is Izak Visser an adult male residing in Brackenfell. The fifth defendant is the Master of the High Court.

## **Background**

[7] Mr. Burgert Visser (“plaintiff”) instituted action against trustees of the DC Visser Familie trust and FirstRand Bank Ltd. He did so in his capacity as an executor in his father’s deceased estate. The trustees (defendants) of the trust are Mr. Burgert Visser’s family members in various capacities.

[8] In the first action plaintiff sought an order confirming cancellation of the sale agreement and an order of restitution of everything the deceased received in terms of the sale agreement back to the DC Visser Familie Trust less amounts which may have been due to Firstrand Bank in terms of the bond registered over the property Kloppersbos and Naudes Berg.

[9] Plaintiff pleaded that the deceased concluded an agreement with the trust signed in 2008 and amended in 2009 selling the farming business to the trust for R8 372 000. Plaintiff pointed out that the testator passed away on 7 October 2019 and the balance of the purchase price became payable on 8 February 2020. They had sent a letter on 14 February 2020 demanding payment of the outstanding amount in terms of clause 6 of the sale agreement. The trust failed to pay as demanded and plaintiff elected to cancel the agreement and notified defendants accordingly.

[10] Plaintiff seeks an order confirming cancellation of the agreement. He also seeks an order of restitution of everything the deceased received in terms of the agreement to the trust less amounts owing to FirstRand in terms of the bond registered over the farm.

[11] D.C Visser and Christina Visser together with the DC Visser Familie Trust in turn instituted proceedings against Burgert Visser the plaintiff in the first matter in his personal and representative capacity and to Christina Visser NO ; Izak Visser NO and the Master of the High Court.

[12] In this action the plaintiffs disputed the will presented in 2019 to the master subsequent to the death of the testator claiming that it does not contain the signature of the testator. They seek an order declaring that the will and testament executed by

the testator on 11 December 2017 at Robertson does not contain the testator's signature and that it is null and void. They also seek a declarator that the will and testament executed on 29 September 2011 at Worcester is his valid will and testament for purposes of liquidating and distributing his estate.

[13] The parties have agreed that if the order in the second action is granted, the relief sought in the first action become incompetent. It was agreed that the defendants in the first action and plaintiffs in the second action have the duty to begin the leading of evidence on the validity of the will. For convenience the parties will be addressed as plaintiffs and as defendants based on the first action instituted.

### **Defendant's evidence**

[14] Defendants first led the evidence of Ms. Palm as an expert witness. She is a forensic document examiner who amongst others received her training from 1996 with the South African Police Service forensic science laboratory. Ms. Palm testified about the process which is followed to determine whether a signature is authentic in terms of belonging to the author or not. She explained that a signature is created by way of individualization and habituation. She testified that a signature included natural variations which are unique to each author. That the range of these natural variations is also unique.

[15] She explained the process of evaluating a signature. That this in the first phase involves an assessment of the known signatures of an author to determine if they are of one group. She testified that of the 21 specimens provided to her which in the exhibits were s1 to s21. That s1 stood out in the sense that it did not conform with the rest of the signatures. This specimen was excluded by her when she proceeded to the next step of the assessment phase.

[16] She testified that an assessment phase involves an analysis of the manner in which the deceased's known signatures were constructed having regard to the movement of the hand in order to identify the distinguishing features of the author's signature. During the second phase of the enquiry, the comparison phase, the questioned signature is compared to the known signature of the author to identify the

features of the signatures which are similar and those which are dissimilar. The third phase involves evaluating the similar and dissimilar features to determine whether they amount to fundamental differences as opposed to natural variations. That the existence of fundamental differences is indicative of different authors. She explained that for these exercises she used a digital microscope and stereo microscope and took photographs of the signatures with high resolution digital camera.

[17] Ms. Palm testified that this exercise revealed six distinguishing features of the deceased's signature. The first is that the letter D starts at the top with a hooked formation from the left upwards, or a clockwise looped formation to complete the letter D. She explained these distinguishing features to the sixth distinguishing feature. Of significance is that the signature always starts at the top. She testifies that the questioned signature on the contested will fundamentally differs from the specimens containing the deceased's known signature. The fundamental difference being that the letter "D" on the questioned signature starts at the bottom. The second difference is that the left stroke of the "v" is constructed with a bow shaped formation bulging to the right. That the right side of the v extends upwards to the right and terminates higher in relation to the left side of the 'v'. The fundamental difference is that the second v on the questioned signature connects horizontally and does not extend upwards.

[18] The fourth fundamental difference is that a forward slanting straight stroke is inserted on the questioned signature separately from any other movement. The fifth distinguishing feature is the diacritic. That on the questioned signature instead of being a dash formation or angular hooked formation, the fifth difference is that the construction of the diacritic has a slowly drawn appearance. The sixth difference is that the flourish crosses through the body of the signature and not underneath the signature as on other specimen. Her conclusions were that the signature is not the authentic signature of the signatory.

[19] The defendant also led the evidence of Mr. DC Visser. He testified that approximately since 1988 having finished matric he moved to the farm to stay and help his father. He stayed on the farm with his father together with his wife and children. This until his father passed away. He testified that upon enquiry to his

father as to what would happen when his father passed away his father had told him he would inherit or take over the farm. It was against that backdrop that a process unfolded to set up a family trust to which his father sold the farm. He testified that it was his father who drove the process of structuring his estate and who communicated with accountants on a regular basis on business and financial matters.

[20] In argument, Counsel for defendant argued that this arrangement made by the testator was an estate planning scheme commonly used in the farming community in that belt of the country to avoid estate duty.

[21] Counsel for the defendant argues that although credible evidence of a witness that was present at the signing of a will would usually trump the evidence of an expert, the position is different where the evidence of the expert stands uncontroverted, and where only one witness is called to testify about the disputed signature of the testator. Counsel argued that in ***Grill v Stoffels and Others***<sup>1</sup> the evidence of an expert, Ms. Palm, held sway over defendant's single witness, and the court held in favor of the evidence of the expert.

[22] In respect of plaintiff's only witness counsel pointed out that Mr. Mostert was not one of the two witnesses who appended their signature but had been designated by plaintiff to be the only witness at the trial. He argued that where a party relies on a single witness, the court must be satisfied that such evidence is clear, credible and satisfactory in every material respect. That Mr. Mostert's testimony cannot be described as such.

[23] He points out that Mr. Mostert himself testified that he was at the meeting where the testator and Mr. DC Visser junior attended to discuss the possibility of a loan with his other son the plaintiff and where he says he was given a directive to prepare the will for testator after that meeting. He made it clear that he was not there looking after the interests of Mr. DC Visser or his trust. He states that Mr. Mostert had no personal or telephonic contact at all with the deceased for months prior to signing the contested will from 18 September to 11 December 2017. That during this

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<sup>1</sup> (7487/2007) [2011] ZAWCHC 119 (26 January 2011).

period his only contact was with Mr. A. Visser. He argues that Mr. Mostert drafted the will without ascertaining the deceased's true wishes. After that he went with that will to the farm to get the deceased to sign it. Counsel argues that Mr. Mostert was very evasive and defensive during cross examination.

[24] He points out that even though he had said he has no financial interest in the matter, under cross examination it emerged that he was the agent of the executor to be paid when plaintiff's action was successful. That this points to his testimony being untruthful. He argues that his role in preparing the will coupled with his role as plaintiff's agent for the administration of the deceased's estate proves that his personal interests are at stake. He further points out that his testimony about the deceased's concerns about his wife's well being given the state of the trust after he passed on was contradicted by his earlier statement that he didn't confer with anyone before drafting the will and that its contents was his idea.

[25] Counsel argues that his testimony that he realized after Andre Mostert's wife had signed the will at the farm as a witness together with Mr. Marco, that that would pose a problem is not credible. That according to him a second will was then printed by Andre Visser's wife on her home computer. That he could not give a coherent answer under cross examination how the disputed will found its way to plaintiff's wife's computer. He points out that Mr. Mostert could not remember whether he took a memory stick with him, whether he emailed it through to plaintiff's wife earlier or emailed it there and then. That this apparent failure is also implausible. He points out that his claim that his version of having checked the file manager two weeks before testimony showing the will having been printed at 15h31 as implausible and misleading as it became clear under cross examination that the file manager he referred to was the file timestamps which do not record when a document was printed. That this was misleading and calculated at creating the impression that the second will was printed and signed in his presence when this is not substantiated by computer records.

[26] He points out that the disputed will was not held by Mr. Mostert for safekeeping and he never kept a copy on his computer server or records. But for reasons unexplained the initial will with the error he had identified was not destroyed



nor discarded when the corrected will was signed. On the contrary the initial will was saved on his computer and the disputed will was not found in his records or his computer at all. That this testimony presents too many gaps and contradictions to be regarded as a version that is plausible. He questions why the witnesses who appended the signature were never called as this was the purpose why they signed as witnesses in the first place. Further that plaintiff himself chose not to testify. That despite giving instruction to put his version to defendant during cross examination he chose not to testify for purposes of affirming his instructions to rebut Mr. DC Visser's version.

[27] He points out that there is no dispute about the authenticity or validity of deceased's three earlier wills. He points out that should second action succeed, the will of the 29 September 2011 should be declared to be the deceased's valid will and testament.

[28] He points out that in the event they failed in the second action, the order which plaintiff is seeking in prayers (a), (b) and (c) of the particulars of claim do not include an order that the farm be transferred to the deceased estate. They point out that transfer of the farm into the trust's name in the deeds office more than 16 years before renders restitution of the farm incompetent. This because there was physical transfer and millions of rands have since been spent to improve the farm. That it is impossible to return it in its original form to the deceased estate 16 years later. That a mortgage bond had been registered over the immovable property initially in favor of FirstRand who is a party and later in favor of ABSA Bank Ltd who haven't been joined as a party in the first action. That the obvious relief available in those circumstances would have been to sue for the balance of the purchase price which plaintiff didn't do.

### **Plaintiff's evidence**

[29] Plaintiff led the evidence of a single witness, Mr. T. Mostert who is an accountant. He testified that there was a meeting held between trustees of the DC Visser Trust which included defendant Mr. DC Visser and the deceased. He explained that the trust had financial problems and had ceased payment of the life

insurance policy over the deceased's life. At the conclusion of the meeting the deceased spoke to him concerning his will. He on 11 December 2017 attended a meeting at the plaintiff's farm where the deceased was present.

[30] Mr. Mostert testified that at this meeting he presented the deceased with a will he had prepared and brought for the deceased. That the will was signed in his presence. He testified that he feared that the validity of the will would be compromised as plaintiff's wife co-signed the will as a witness. He testified that he asked for another copy of the will to be signed but this time Mr. Andries Visser's wife was not one of the signatories.

[31] In argument, Counsel for the plaintiff submitted that once the court has decided on the validity of the will the plaintiff's remedies are specific performance and if it is not possible the plaintiff acquires a claim of damages against the trust to the tune of R2 336 662 as reflected in the financials of 28 February 2019.

[32] Counsel argues that it falls on the defendant to prove that the will was invalid. He points out that the two witnesses of the defense Ms. Palm and DC Visser were not present when the disputed will was signed. He points out that Mr. Mostert's evidence was cogent and direct that the deceased read and understood the will and signed it in the presence of others and signed it. He argues that defendant's case relied on indirect opinion and expert evidence when the plaintiff relies on direct evidence.

[33] Counsel proceeds to argue that Ms. Palm was not an objective, unbiased expert as she constantly advocated the cause of the litigant who called her, the defendant. He argues that Ms. Palm focused exclusively on what she believed to be inconsistencies in the disputed signature and refused to mention any corresponding features. That after testifying that one exception was sufficient, she was confronted with the view of authorities she relied on which points out that one inconsistency is not sufficient. That when caught out she came with long winded and irrelevant explanation instead of admitting she was wrong. He points out that the fact that Ms. Palm concludes her report by stating that the evidence is conclusive that the

signature Q1 is not an authentic signature of the signatory removes any credibility she may have as no expert opinion can be equated to a fact.

[34] Counsel for plaintiff argues that Mr. Mostert's testimony is supported by the fact that he is not a beneficiary under the will. He is an independent person who assists the executor with administration of the deceased's estate. The existence of two wills is also a consideration; his firm's bas statements of account; the screenshot which he argues supports Mostert's evidence that on 11 December the will was reprinted after it was earlier attested by plaintiff's wife. He argues that it was never put to Mr. Mostert that his evidence was wrong and that of Ms. Palm was right. Nor that the deceased didn't sign. What was put to him was that the will was signed when he had left the farm.

[35] In respect of the cancellation of the sale agreement and restitution under case number 11450/2020 counsel submits that the evidence is that plaintiff issued letter of demand and the trust did not comply with the demand. That the executor is thus entitled to cancel the agreement. That therefore if the disputed will is valid it follows that plaintiff was lawfully appointed and the defense that executor didn't have the right to cancel the agreement falls away. That the agreement was validly cancelled.

[36] In this regard Counsel submits that the deed of sale was on 10 February 2009. The purchase price was R8 372 000 of which R3 293 100 was paid by taking over the existing bonds and the balance of 5 078 900 secured by a bond in favor of deceased. That this amount was bequeathed by deceased to the DC Visser Trust in terms of the previous wills. That per financial statements in the following years up to 2019 when debt was split between deceased and his wife reflecting a debt of R2 336 662 as due to the deceased. This is also the year the deceased died on 7 October 2019. He points out that DC Visser claimed not to remember whether this amount was paid and ducked and dived which makes him an unreliable witness. That therefore this amount remains due.

[37] Counsel points out that the evidence of the trust is such that it points out that restitution is no longer possible as the farms were extensively developed. Bonds to a total value of between R9 to R15 million have been registered on the property per

deeds office records totaling R24 Million. The value of the farm has increased significantly. That therefore damages seem to be an appropriate remedy. He argues that the plaintiff's claim is for specific performance. That if the court should find that restitution is no longer possible that is not end of the road for plaintiff. His claim for damages arises once such finding is made. He argues that it is permissible for this court to make an order that damages be paid by the trust as set out in the financials of 2018.

[38] He submits that in those circumstances the plaintiff would be left with choices whether to ask for an order for damages as alternative relief; amend its particulars of claim to claim such damages or institute a separate action for damages in lieu of specific performance.

## **The Law**

[39] In **S v Sauls**<sup>2</sup> Diemont JA noted that a court may on the facts of that case convict on the evidence of a single witness, provided that such evidence is credible. The court noted in this matter that there is no rule of thumb test or formula to apply when it comes to consideration of the credibility of a single witness. It stated that the trial judge will weigh his evidence, will consider its merits and, having done so, will decide whether it is trustworthy and whether, despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has been told. It was also found in **Motor Vehicle Assurance Fund v Kenny**<sup>3</sup> in a case involving collision that direct credible evidence can be accepted even though such evidence may conflict with probabilities set in expert opinion evidence. This court finds these judgements instructive.

[40] Watermeyer C.J noted in **Elgin Finedays Ltd v Webb**<sup>4</sup> that it is true that if a party fails to place the evidence of a witness, who is available and able to elucidate the facts, before the trial court, this failure leads naturally to the inference that he fears that such evidence will expose facts unfavorable to him. The court noted that

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<sup>2</sup> 1981 (3) SA at 180.

<sup>3</sup> 1984 (4) SA 432 (EC).

<sup>4</sup> 1947 (4) 744 (AD) at 749.

the inference is only proper if the evidence is available and if it would elucidate the facts.

[41] This court noted that whilst versions and propositions were put to Ms. Palm that Mr. Bester the expert would come testify to rebut the testimony of Ms. Palm and proceedings of this court on several occasions had to be delayed and adjourned to allow consultation with this expert witness, this expert witness never came to testify. This court concurs therefore with the argument by Counsel for the defendant that a negative inference must be drawn in the light of plaintiff's failure to call the expert witness or provide some cogent explanation for his failure to testify especially given the impact this witness has had on this trial. This court agrees with Counsel for defendant that he was clearly available and had been present in court and consulted often to check propositions made by Ms. Palm during cross examination a number of times. When the time came for him to confirm his version, the plaintiff did not present him. It is this court's view therefore that the evidence of the expert Ms. Palm is the only expert opinion it has on the record and it remains unchallenged.

[42] It is this court's view that Ms. Palm presented a well-reasoned expert opinion and the basis of her findings. This court is satisfied that the 6 distinguishable features in the contested signature as presented by Ms. Palm are plausible and reasonable. This court on balance accepts the testimony of the expert Ms. Palm.

[43] Equally, this court finds the evidence of the plaintiff's only witness Mr. Mostert unsatisfactory. This court concurs with Counsel for plaintiff and finds that he could not give a coherent answer under cross examination on how the disputed will found its way to plaintiff's wife's computer. His explanation that he could not remember looks implausible. It is unlikely that a person will travel kilometers to a farm with the sole purpose of meeting to secure finalization and signature of a will he drafted. At the meeting he discovers gaps or errors on that document he had drafted, causes changes to be made but conveniently doesn't remember how that replacement document or draft was organized.

[44] This court also concurs with Counsel for the defendant that Mr. Mostert's claim that his version of having checked the file manager two weeks before

testimony showing that the will had been printed at 15h31 as implausible and misleading as it became clear under cross examination that the file manager he referred to was the file timestamps which do not record when a document was printed but modified. This is misleading and calculated at creating the impression that the second will was printed and signed in his presence when this is not substantiated by computer records.

[45] This court concurs that it is also striking that the disputed will was not held by Mr. Mostert for safekeeping and he never kept a copy thereof on his computer server or records. That for reasons unexplained the initial will with the error he had identified was not destroyed nor discarded when the corrected will was signed. On the contrary this initial will was saved on his computer and the disputed will was not found in his records or his computer at all. This court concurs that this testimony presents too many gaps and contradictions to be regarded as a version that is plausible. It is this court's view that on balance the expert opinion being clear and credible must be accepted that the disputed signature was not the signature of the testator.

## **Conclusion**

[46] This Court thus concludes that the signature on the contested will is not the authentic signature of the testator and deceased, Mr. DC Visser senior. The will bearing this disputed signature is thus null and void.

## **Costs**

[47] Plaintiff and defendant made submissions on costs. Costs must follow the results including costs of Counsel where so employed on scale A.

## **Order**

Accordingly, I would make the following order:

[48] The will and testament which was purportedly executed by the late Daniel Christiaan Visser (Senior) on 11 December 2017 at Robertson does not contain the testator's signature and is thus null and void.

[49] The will and testament that was executed by the testator on 29 September 2011 at Worcester is his will and testament for purposes of liquidating and distributing his estate.

[50] The plaintiff's action under case number 11450/2020 is dismissed.

[51] The plaintiff in case no 11450/2020 to pay costs on scale A.

[52] The first defendant in case no 13401/2020 to pay costs on scale A.

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**KHOLONG, AJ**

**Appearances:**

For the Plaintiff: Adv. A. De Villiers

Instructed by: VGV Attorneys

For the

First Defendant: Adv R.B. Engela

Instructed by: Morne Binedell Attorneys