

REPUBLIC OF SOUTH AFRICA



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

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

Case Number: **2025-212570**




DATE: 12.12.2025

SIGNATURE

In the matter between:

SKHUMBUZO ZACA

Applicant

and

NOBANTU ZACA

First Respondent

**GAUTENG PROVINCIAL COMMISSIONER:
SOUTH AFRICAN POLICE SERVICES**

Second Respondent

**MEC GAUTENG DEPARTMENT OF HEALTH:
JOHANNESBURG FORENSIC PATHOLOGY SERVICES**

Third Respondent

REASONS

MODIBA, J

- [1] The issue in this application was who had the right to bury Lwazi Ngcebo Lionel Zaca (the deceased). It primarily arose between the applicant and the first respondent, the only respondent who opposed the application. I conveniently refer to her as the respondent. The second and third respondents, the South African Police Service (SAPS) and the Johannesburg Forensic Pathology Services (the JFPS) did not enter the fray. They were probably cited due to the role they would play in enforcing the order of this Court. I could not conjure any direct interest they had in the order sought.
- [2] The applicant brought the application based on urgency in terms of uniform rule 6 (12). He sought an order declaring that he had the right to bury the deceased. He also sought other ancillary relief. The second respondent filed a counter application seeking an order declaring that she, and not the applicant had the right to bury the deceased. She too also sought similar ancillary relief. After hearing oral arguments from counsel for the parties on 25 November 2025, I dismissed the application and granted the counter application. I undertook to prepare succinct reasons for these orders. I set them out below.
- [3] The facts are largely common cause between the parties. Several factual issues are in dispute. The Plascon Evans rule dictates that common cause facts and the respondent's version of the disputed facts prevails. The applicant did not show that the respondent's version of the disputed facts is so untenable that this Court cannot reasonably rely on it. I therefore determine the disputed facts on the respondent's version which I set out below.
- [4] The deceased died under very tragic circumstances. On a fateful day during August 2025, he did not arrive home from work. A person described in the founding papers as his partner, with who he had been residing, opening a missing person case with the SAPS in respect of the deceased on 17 August 2025. His charged body was found in his car which had burnt down. A DNA analysis of his charged remains, which took several weeks to conduct, was used to identify him. In the meantime, the present dispute arose between the parties.
- [5] Although at the time of his death, he was living with a partner, he was party to a civil marriage with the respondent. Two minor children were born from their

marriage. They resided in Johannesburg together with their children until September 2023 when the deceased left their marital home after he was arrested on charges laid against him by the respondent. They remained estranged until the deceased met his tragic death.

[6] The applicant is the deceased's cousin. He resides in Kwa Zulu Natal (KZN). As already stated, he asserted that under the circumstances on this case, together with the deceased's relatives, they had to be granted the right to bury the deceased. He relied on the following factors:

6.1 the deceased informed him his marriage to the respondent had irretrievably broken down, he intended divorcing her and in the event of his death, he must give him a dignified funeral at their homestead in KZN;

6.2 the deceased and the respondent had been estranged for two years when he died, they were living separate lives, the deceased was living with his partner and other than a marriage certificate, nothing joined the parties together, his death would not restore their marriage;

6.3 there is no trace that the respondent reported the deceased missing;

6.4 given the wishes of the deceased concerning his burial, he will never rest in peace should his remains be buried in Johannesburg by his estranged wife.

[7] The applicant contended that having regard to the above factors and the fact that there was acrimony between the parties, the deceased family should be allowed to bury him in accordance with his wishes. The respondent asserted her legal right, as the deceased's surviving spouse to bury the deceased. She contended that she did not lose that right because of her estrangement from the deceased, especially having regard to the circumstances that led to their estrangement which I deal with below, and the fact that their relationship remained cordial. She further contended that although the deceased did express his intention to initiate divorce proceedings which she would not have opposed, he never acted on that intention. Therefore, no weight should be placed on this in these proceedings.

- [8] She pertinently placed the applicant's legal standing to bring this application in dispute. According to her, the applicant is not the deceased brother as alleged. He is his cousin. In his founding affidavit, he had not alleged that he enjoyed the support of the deceased's other relatives, even though he placed reliance on their participation in the deceased's burial. He remedied this in reply, by filing confirmatory affidavit from several persons who alleged to be the deceased's relatives and one claimed to be his child from a previous relationship and another who claimed to be his half-brother.
- [9] The parties agreed that in South African law, in the absence of the deceased's specific instructions, the legal right and responsibility to make decisions regarding the burial of a deceased person who died intestate, lies with his or her heirs.¹ Ordinarily, estrangement does not nullify that right and duty. Each application is considered on its facts and public policy considerations have a bearing on the court's decision to deprive a party of his or her right to bury a deceased person.
- [10] The applicant cited copious authorities which he contended supported his case, however, they were either distinguishable on the facts or he simply cited the outcome of a case without any reference to its peculiar circumstances and its similarities with the present case. Dealing with each of these authorities will not add value to this judgment.
- [11] It is common cause that the applicant is not the deceased's intestate heir. Given that the respondent disputed that the deceased had a child from a previous relationship, none of the persons who filed confirmatory affidavits in support of his application are his intestate heir. None of the factors he relied on justified depriving the respondent of her legal right to bury the deceased and to make to make decisions regarding his burial. On the respondent's version, he is not the deceased brother. Therefore, his relationship with the deceased is not as proximate as he would have this court believe. The alleged deceased's wishes concerning his burial are only based on his say so. They are unwritten. It is

¹ See *Johannesburg City Parks & Zoo and another v Zwane* 2024 JDR 4043 (GJ) para 17-21 and all the authorities cited there.

unclear why the deceased would have made speculations about his death as alleged by the applicant. He was relatively young. There is no suggestion that he was unwell. His death was sudden and unexpected. It simply fails on the Plascon Evans rule as the respondent has placed it in dispute.

[12] The deceased left the matrimonial home after he was arrested on allegations of domestic violence. The respondent did not expel him from the matrimonial home. It was never the respondent's intention to end the marriage. The fact that she would not have defended the divorce proceedings the deceased had intended to institute does not alter this position. In the two years that they have been estranged, they have been able to maintain a cordial relationship as evidenced from whatsapp messages attached to the respondent's answering affidavit. Neither of the parties instituted divorce proceedings. Any speculation as to whether he would have persisted in his intention to institute divorce proceedings carries insignificant weight in these proceedings.

[13] Given the fact that together with the children born in the marriage between the respondent and the deceased, she is the intestate heir, the respondent and none of the parties who supported his application are his intestate heirs and having regard to the six years period during which the parties lived together, that their matrimonial home is in Johannesburg, the respondent and the minor children continued to reside there, she was a victim of domestic violence perpetrated by the deceased as a result of which the two became estranged; public policy demands that she should not be deprived of her legal right to bury the deceased, lest this court subjected her to secondary victimization. For reasons set out above, the respondent's locus standi point in limine was established.

[14] I set out the order granted on 25 November 2025 below:

Order

14.1. The Applicant's application and the First Respondent's counterapplication are declared to be urgent. Insofar as necessary, in terms of Rule 6(12), the usual forms and services provided for in the Uniform Rules of Court and/ or Practice Directives are dispensed with.

14.2. The Second Respondent is hereby interdicted from issuing a letter for the Johannesburg Forensic Pathology Services (JDPS) to release the mortal remains of the deceased, Lwazi Ngcebo Lionel Zaca, with identity number: ----- ("the deceased") to the Applicant. The Second Respondent is directed to issue a letter to release the mortal remains of the deceased to the First Respondent.

14.3. The Applicant is interdicted from procuring a funeral service or burial of the deceased at any place and claiming the remains of the deceased for burial.

14.4. The First Respondent has the sole burial rights over the remains of the deceased, and she is entitled to choose a place where the deceased will be buried and to make funeral arrangements as she sees fit.

14.5. The JFPS is interdicted from releasing the remains of the deceased to the Applicant. It is directed to release the remains of the deceased to the First Respondent for burial.

14.6 The Applicant is ordered to pay the costs of this application, including costs of counsel.



L.T. MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant:

NG Khumalo
Instructed by Mwelase Attorneys Inc

For the First Respondent:

CS Baloyi
Instructed by NN Maseko Attorneys

For the Second and Third

Respondents:

No appearance

Date of hearing:

25 November 2025

Date order was granted:

25 November 2025

Date of reasons:

12 December 2025

MODE OF DELIVERY: This judgment is handed down by transmitting it to the parties' legal representatives by email, uploading on CaseLines and release to SAFLII. The date and time for delivery is deemed to be 10 am.

