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**REPUBLIC OF SOUTH AFRICA**



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

Case Number: **52392/2021**

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

DATE **6 January 2026**

SIGNATURE

In the matter between:

**M[...] K[...]**

Plaintiff

and

**A[...] K[...]**

First Defendant

**MOMENTUM METROPOLITAN LIFE LTD**

Second

defendant

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## JUDGMENT

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### JANSE VAN NIEUWENHUIZEN J

#### *Introduction*

- [1] This matter concerns the proceeds of a living annuity policy (“the policy”) purchased by L[...] J[...] K[...], who passed away on 17 July 2021 (“ the deceased”), during his lifetime.
- [2] The plaintiff is the widow of the deceased, the first defendant is the daughter of the deceased born from a previous marriage and the second defendant is the entity that issued the policy.
- [3] The plaintiff’s claim is based on a written beneficiary nomination signed by the deceased on 25 June 2021 (“June nomination”) in favour of the plaintiff. The plaintiff contends that the aforesaid beneficiary nomination is the last and only nomination signed by the deceased prior to his death.
- [4] On 19 July 2021, two days after the passing of the deceased, the first defendant submitted a beneficiary nomination dated 15 July 2021 (“July nomination”) to the second defendant. In terms of the beneficiary nomination, the deceased nominated the first defendant as beneficiary of the proceeds of the policy.
- [5] The plaintiff avers that the beneficiary July nomination is invalid, alternatively null and void, for one or more of the following reasons
- 5.1 the first defendant, misrepresented, alternatively fraudulently misrepresented, the July beneficiary nomination as an amendment of the June beneficiary nomination;
  - 5.2 the first defendant did not have the authority to amend the beneficiary nomination, on the basis of the power of attorney or otherwise;
  - 5.3 the first defendant did not have the authority to benefit herself as an agent of the deceased;

5.4 the amendment of the beneficiary was only presented to the second defendant after the deceased's passing;

5.5 the amended beneficiary nomination was incorrectly presented as a signed beneficiary nomination, when in fact it was signed in and during July 2020 and duplicated and amended on 15 July 2021 or 19 July 2021.

[6] The first defendant denies that the June nomination was the last and only beneficiary signed by the deceased and pleaded that the last valid nomination is the July nomination.

[7] The second defendant filed a notice to abide by the decision of the court.

*Facts common cause between the parties*

[8] The following facts are common cause between the parties:

8.1 the deceased purchased the policy on 23 October 2012 and nominated the plaintiff to receive the proceeds of the policy on his death;

8.2 the deceased signed a General Power of Attorney on 9 September 2019 in terms of which he nominated the first defendant as his agent for purposes of managing and transacting his affairs;

8.3 the deceased signed a beneficiary nomination form on 9 September 2019 in favour of the first defendant and signed a will bequeathing his estate to the first defendant;

8.4 the deceased signed a new will on 22 January 2020 bequeathing his estate to the plaintiff;

8.4 the first defendant signed a beneficiary nomination form on 6 May 2020, in her capacity as agent of the deceased, in favour of the plaintiff;

8.5 the first defendant signed a beneficiary nomination form on 9 July 2020, in her capacity as agent of the deceased, in favour of herself;

- 8.6 the first defendant signed a beneficiary nomination form on 24 June 2021, in her capacity as agent of the deceased, in favour of the plaintiff;
- 8.7 the deceased signed a beneficiary nomination form in favour of the plaintiff on 25 June 2021;
- 8.7 the first defendant signed a beneficiary nomination form on 15 July 2021, in her capacity as agent of the deceased, in favour of herself;
- 8.8 on 9 September 2021 the second defendant advised the parties that, due to the uncertainty pertaining to the identity of the beneficiary that is legally entitled to the proceeds of the policy, the proceeds of the policy will not be paid until receipt of a court order declaring who is legally entitled to the proceeds of the policy.

#### *Evidence*

- [9] I propose to only refer to the evidence that is relevant to the issues in dispute between the parties.
- [10] The plaintiff testified that deceased purchased the policy when he retired during 2012 and that she was the nominated beneficiary of the proceeds of the policy. The monthly income from the policy was paid into their joint account from which all the debit orders and “*everything else*” were paid. The plaintiff was in control of the finances, and she opened a separate cheque account at Absa to enable her to pay household expenses.
- [11] The plaintiff testified that she discovered in January 2020 that the deceased had changed his will. The deceased had health problems and whilst recovering from his health problems he told the plaintiff that he had changed his will and that he had bequeathed his estate to the first defendant. The deceased was crying when he broke the news to the plaintiff and promised to change his will. The deceased signed a new will on 22 January 2020 bequeathing his estate to the plaintiff.
- [12] When asked whether she was aware of the circumstances under which the deceased changed his will in 2019, the plaintiff testified that the first defendant

and a certain Willie Kotze (“Willie”) visited them in Ohrigstad in 2019. The first defendant told the plaintiff that she is taking the deceased for lunch to Pilgrim’s Rest and although the plaintiff did not know it at that stage, Absa had apparently phoned the deceased and informed him that his credit card was overdrawn.

[13] Upon his return from lunch, the deceased was upset and confronted the plaintiff with the overdrawn credit card. The confrontation escalated and, according to the plaintiff, they had *“a normal fight between husband and wife.”* Willie Kotze (“Willie”) shortly thereafter became the deceased’s financial advisor.

[14] The plaintiff testified that the deceased requested her on the 24<sup>th</sup> or 25<sup>th</sup> of June 2021 to change the password of his Momentum portfolio to a password only she will know. He was no longer interested in accessing his portfolio and if he wanted to know how much money there was, he would ask her.

[15] Whilst scrolling through the portfolio the plaintiff noticed that the first defendant is the 100% beneficiary of the proceeds of the policy. She was extremely upset by the discovery and asked the deceased *“now what the hell is going on here!”*. The deceased first phoned Willie but could not get hold of him. Thereafter he phoned the first defendant and spoke in a harsh manner to her. Willie eventually returned the deceased’s call and undertook to send a new nomination form. A while later the deceased spoke to the first defendant again and the plaintiff could hear the first defendant telling the deceased that *“he must just sign the paper”*.

[16] The form that nominated the plaintiff as beneficiary was signed by the deceased on 25 June 2021 and emailed to Willie. In an email dated 28 June 2021 Willie confirmed that Momentum’s records had been updated accordingly.

[17] The plaintiff was referred to the first defendant’s version contained in an affidavit filed in an urgent application brought by the plaintiff, in which the first defendant stated that the deceased, prior to effecting the changes in September 2019, discovered that the plaintiff had stolen from him for a period of 16 to 17 years, and that she had paid an amount of R 17 000, 00 per month into an account that he was unaware of.

- [18] The plaintiff denied this and responded that the deceased was aware of the account. The plaintiff explained that the account referred to is the Absa account she opened to pay household expenses.
- [19] It was put to the plaintiff that deceased wanted to divorce her prior to his death. The plaintiff answered that she only became aware after the passing of the deceased that divorce proceedings were apparently initiated.
- [20] During cross-examination the plaintiff agreed that the deceased never informed her that he had nominated the first defendant as beneficiary of the proceeds of the policy. It was put to the plaintiff that the deceased did not inform her because he did not want her to know. The deceased no longer trusted the plaintiff.
- [21] Hester Maria Joubert employed by the second defendant as the Head of Legal, Wealth and Retirement products, testified next. Her evidence did not take the issues in dispute any further. That concluded the evidence on behalf of the plaintiff.
- [22] The first defendant testified she had an extremely close relationship with her father. The bond between them became stronger after her brother passed away and they leaned on each for support. She spoke to her father at least once a day and sometimes twice a day. They trusted each other unconditionally. During a visit to the deceased in August 2019 the deceased indicated that he wanted to change financial advisors and asked the first defendant whether Willie Kotzee (“Willie”), a friend of the first defendant would be able to assist him. The first defendant put the two in contact and Willie became the deceased’s financial advisor. Willie required FICA documents to assist the deceased and the deceased asked the first defendant to help him to obtain the documents.
- [23] The deceased did not want the plaintiff to know that he is changing financial advisors, and they told the plaintiff that they were going for lunch. They proceeded to the bank to obtain bank statements and when the deceased saw the statements he, according to the first defendant: *“absolutely went in shock. He was shaking and he could not understand what was going on”*. The reason for his

shock has already been canvassed in the evidence of the plaintiff. The first defendant testified that deceased became very angry and that they had to stop halfway home in order for her to calm him down.

[24] Upon discovering that the plaintiff had, according to the deceased, stolen money from him, the deceased phoned Willie and told Willie that he does not trust the plaintiff with the wishes he had. Previously the deceased's estate would be bequeathed to the plaintiff, and the plaintiff had to make sure that the value of deceased's estate is looked after. Upon the plaintiff's passing the first defendant would inherit everything from the plaintiff. The deceased, however, became afraid that the plaintiff will not look after his estate and that she will not care for the first defendant. This informed his wish to change everything to the first defendant, because he trusted her to look after the plaintiff.

[25] This led to the signing of the will, beneficiary nomination form and power of attorney on 9 September 2019. The deceased was very disappointed with the plaintiff's behaviour and informed the first defendant that he wanted to divorce the plaintiff. The first defendant consulted an attorney's firm Miller, Bosman, Le Roux and a consultation was set up with the deceased. The deceased's health, however, deteriorated after the consultation and he no longer had the energy to proceed with the divorce.

[26] When the plaintiff became aware that the deceased had changed his will he phoned the first defendant and told her that the plaintiff is treating him with disrespect. The deceased just came out of hospital and he was very frail. He told the first defendant that he felt extremely pressurised by the plaintiff's behaviour towards him and that he is going to change his will to pacify the plaintiff.

[27] Insofar as the beneficiary nomination form of 6 May 2020 is concerned, the first defendant testified that the deceased requested her to change all methods of communication with Momentum directly to her. He did not want to receive any communication from Momentum. In the beginning of May 2020, the deceased phoned her and told her that Momentum had send quarterly statements to his email address. The plaintiff had access to his emails and the deceased was

concerned that the plaintiff might notice that she is no longer the beneficiary on the policy,.

[28] The deceased requested the first defendant to change the beneficiary to the plaintiff and gave her the password to his email account so that the first defendant could make sure that there is no email communication from Momentum.

[29] The deceased informed the first defendant that once all correspondence from Momentum had ceased, she must change the beneficiary nomination back to her name. On 9 July 2020 the deceased instructed the first defendant to change the beneficiary nomination back to her name and she complied with the instruction.

[30] On 24 June 2021 the deceased contacted the first defendant and he was very distressed. He informed the first defendant that the plaintiff gained access to his Momentum website without his knowledge. She could hear the plaintiff shouting in the background and the deceased requested her to change the beneficiary to the plaintiff. The first defendant got hold of Willie, signed the beneficiary nomination form in favour of the plaintiff and instructed him to submit the form as quickly as possible. Willie complied with her request and the beneficiary was once again changed to the plaintiff.

[31] On 25 June 2021 after the form was already submitted to Momentum, Willie informed the first defendant that he had also received a form from the deceased and that the deceased insisted on proof that the form was submitted. The first defendant knew that the plaintiff had access to the deceased's emails and that the plaintiff was unaware of the power of attorney in terms of which the first defendant changed the beneficiary of the policy. She was afraid of what the plaintiff might do if she became aware of the power of attorney and requested Willie to inform the deceased that the form signed by the deceased was submitted to Momentum. The first defendant testified that she wanted to protect the deceased from being harassed by the plaintiff.

[32] During July 2021 the first defendant spoke to the deceased, and he informed her that he is not well at all and that she needs to change the beneficiary

nomination to her. The first defendant was on a trip in the Cape and phoned Willie to assist with the deceased's wish. The first defendant took an old nomination form used tipex to change the date and gave the form to Willie who had travelled to Vredenburg that was close to where she was at that stage.

[33] The first defendant testified that she was hesitant to submit the form because: *"I was afraid for my father of putting him in that situation at home and with the wife. Because the situation with him being in that vulnerable situation and having this person giving him a hard time, I was afraid that she could see that I would be the beneficiary. And I was afraid for that to happen."*

[34] When she gave the form to Willie she told him that he should not submit the form immediately. On the 16<sup>th</sup> of July 2020 the deceased phoned her and was anxious to know whether the form had been submitted. The deceased passed away the next day and the first defendant requested Willie to submit the form.

[35] Willie testified next and his evidence corroborated the evidence of the first defendant in all material aspects.

#### *Discussion*

#### *Power of Attorney did not authorise the first defendant to amend the beneficiary nomination*

[36] The Power of Attorney provides a wide range of powers to the first defendant which include the power to sign or execute any Deed or Instrument in writing as effectually as the deceased might or could have done it personally. The beneficiary nomination form is an Instrument in writing, and the first defendant was accordingly authorised to sign the form on behalf of the deceased. Mr van Zyl, counsel for the plaintiff, to his credit, did not persist with this point during argument.

#### *First defendant in her capacity as agent may not nominate herself as beneficiary*

[37] As a general principle an agent may not benefit from any business and/or transactions concluded on behalf of his/her principle. The law on this point was

succinctly summarised in *Philips v Fieldstone Africa (Pty) Ltd and Another* 2004 (3) SA 456 (SCA) at para [30]

*"[30] The principles which govern the actions of a person who occupies a position of trust towards another were adopted in South Africa from the equitable remedy of English law. The Roman and Roman-Dutch law provided equivalent relief. In Transvaal Cold Storage Co Ltd v Palmer 1904 TS 4 at 19 - 20 and 34 - 5 the sources were considered and the conclusion was expressed that the extension and refinement of the Civil Law by English courts was a development of sound doctrine suited to 'modern conditions'. The fullest exposition in our law remains that of Innes CJ in Robinson v Randfontein Estates Gold Mining Co Ltd (supra at 177 - 80). It is, no doubt, a tribute to its adequacy and a reflection of the importance of the principles which it sets out that it has stood unchallenged for 80 years and undergone so little refinement.*

*"Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not allowed to make a secret profit at the other's expense or place himself in a position where his interests conflict with his duty. The principle underlies an extensive field of legal relationship. A guardian to his ward, a solicitor to his client, an agent to his principal, afford examples of persons occupying such a position. As was pointed out in The Aberdeen Railway Company v Blaikie Bros (1 Macq 461 at 474), the doctrine is to be found in the civil law (Digest 18.1.34.7), and must of necessity form part of every civilised system of jurisprudence. It prevents an agent from properly entering into any transaction which would cause his interests and his duty to clash. If employed to buy, he cannot sell his own property; if employed to sell, he cannot buy his own property; nor can he make any profit from his agency save the agreed remuneration; all such profit belongs not to him, but to his principal. **There is only one way by which such transactions can be validated, and that is by the free consent of the principal following upon a full disclosure by the agent. . . .**" (own emphasis)*

[38] Two principles emerge from the emphasised quotation, one; it is possible in law for an agent to benefit from dealings concluded on behalf of his/her principle and two; the benefit will, however, only be lawfully gained with the knowledge and consent of the principle.

[39] In *casu the* deceased was fully aware that the relevant beneficiary nominations will benefit the first defendant. In possession of such knowledge the deceased instructed the first defendant as his agent to proceed with the beneficiary nominations in her favour.

[40] In the result, the first defendant in her capacity as an agent of the deceased had the authority to, on instructions of the deceased, complete and submit the beneficiary nominations that benefited her.

*Misrepresentation alternatively fraudulent misrepresentation*

[41] In order to succeed with her claim based on misrepresentation *alternatively* fraudulent misrepresentation, the plaintiff had to allege and prove that the first defendant in submitting the July nomination negligently *alternatively* being aware, made a representation to the second defendant that was false, wrongful and that the representation caused the plaintiff patrimonial loss.

[42] The plaintiff alleges that the July nomination was falsely presented by the first defendant to the second defendant as a nomination signed on 15 July 2021 whereas the first defendant knew that the nomination was signed in and during July 2020 and duplicated and amended on 15 July 2021.

[43] In considering the plaintiff's allegation based on misrepresentation, it is apposite to have regard to the terms of the policy in as far as the deceased's right to nominate a beneficiary is concerned. Clause 10 the policy reads as follows:

*"10. We will pay the value of your investment to the beneficiary you have nominated when you die. If you have not nominated a beneficiary we will pay the investment value to your deceased estate."*

[44] Although the terms of the policy do not prescribe a specific procedure to be followed in nominating a beneficiary, it emerged during evidence that the second defendant utilised the beneficiary nomination form for this purpose.

[45] The second defendant's choice does, however, not change the terms of the policy. All that is required in terms of clause 10 is proof that the deceased nominated a beneficiary prior to his death. The duplicated and amended form signed by the first defendant on 15 July 2021 is proof of the beneficiary nominated by the deceased prior to his death and complies with clause 10 of the policy.

[46] In the result, the first defendant did not make a false and wrongful representation to the second defendant.

*Amendment invalid because it was effected after the deceased's death*

[47] It is not a term of the policy that the that the nomination of a beneficiary had to be effected prior to the deceased's death. As stated *supra* the only requirement is that the deceased had to nominate a beneficiary prior to his death.

[48] Consequently, the fact that the amendment was only effected after the death of the deceased does not affect the validity of the nomination.

*Conclusion*

[49] In the result, the plaintiff has failed to establish on a balance of probabilities that the nomination of the first defendant as beneficiary of the proceeds of deceased's policy is invalid and the plaintiff's claim stands to be dismissed with costs. The matter is of sufficient complexity to warrant counsel's fees on scale C.

*Order*

The plaintiff's claim is dismissed with costs. Counsel's fees on scale C.

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**JANSE VAN NIEUWENHUIZEN  
JUDGE OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION**

**DATE HEARD:**

09 September 2025

**DATE DELIVERED:**

6 January 2026

On behalf of the applicant: Adv H.C Van Zyl

Instructed by : Saltzman Attorneys

On behalf of the first respondent: Adv.J.F Van Der Merwe

Instructed by: Brits & Matthee Attorneys

