



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT MAHIKENG**

CASE NO: M653/2020

In the matter between:

MOKONE THABE COMFORT LEFAKANE APPLICANT
and

LEFAKANE VUYO

FIRST RESPONDENT

**STANDARD BANK TRUST
LIMITED/LIBERTY**

SECOND RESPONDENT

JENNY NAIDOO -21104008985

THIRD RESPONDENT

**THE MASTER OF THE HIGH COURT
OF SOUTH AFRICA**

FOURTH RESPONDENT

**THE ESTATE OF THE LATE
LEFAKANE-PILANE, MMANKWANE ADELAIDE**

(The deceased)

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 14:00 on 21 January 2026.

JUDGEMENT

TSAUTSE AJ

Introduction

[1] Before this Court is an application brought in terms of Uniform Rule 6(5)(g), in which the applicant seeks referral of the dispute regarding the validity of the will of the late Lefakane Pilane Mmankwane Adelaide (the deceased) to oral evidence. The first respondent opposes the application and seeks dismissal thereof, together with costs on the attorney-and-client scale.

[2] The main proceedings, launched by the applicant in November 2020, seek to set aside the deceased's will dated 16 March 2018 on grounds that include forgery by the first respondent, lack of testamentary capacity on the part of the deceased, and undue influence exerted by the first respondent. This application is limited to the question of whether the dispute should proceed to oral evidence under Rule 6(5)(g).

Background Facts

[3] The deceased was born on 26 April 1950 and passed away on 22 April 2019. She married the late John Matlapen on 16th May 2002, who predeceased her on 6 January 2018. The marriage produced no children.

- [4] At the time of her death, the deceased was the owner of several immovable properties situated in Mogale City and Moruleng, as well as various motor vehicles.
- [5] The deceased is survived by her two biological children, the applicant (born 29 May 1972) and the first respondent (born 2 August 2006). The deceased's late husband also had a child from a prior marriage, Pilane Gobakweng Lekgalake, who is the executor of his father's estate.
- [6] The applicant contends that the deceased suffered from serious chronic illnesses during the three years preceding her death, including *hypertension, diabetes mellitus, and renal failure*. According to the applicant, these conditions caused an altered mental state, rendering the deceased unable to appreciate the nature and consequences of executing a will in March 2018.
- [7] The applicant further alleges that the first respondent, who resided with the deceased, was abusive, a substance abuser, and exerted undue influence over the deceased. The applicant asserts that the deceased customarily nominated both her children in equal shares across all her policies and would not have disinherited the applicant had she been of sound mind.

The Applicant's Case

- [8] The applicant anchors her case upon the assertion that the impugned will does not reflect the true, voluntary, and independent intention of the deceased. She avers that the document was not prepared pursuant to the

deceased's own instructions, but rather at the behest of the first and third respondents, whose influence, she contends, overshadowed the deceased's will. She maintains that at the time of the alleged execution of the document, the deceased laboured under severe medical conditions which, cumulatively and progressively, diminished her mental capacity to such an extent that she could not appreciate the nature or consequences of executing a testamentary instrument.

[9] The applicant also alleges that the atmosphere in which the will emerged was one clouded by duress, undue pressure, and coercion from the first respondent, whose conduct, she says, was abusive, manipulative, and profoundly destabilising to the deceased. A further pall of suspicion is cast by the applicant's suggestion that the signature on the document may be forged, irregular, or otherwise not indicative of a conscious and capable act of the testatrix.

[10] The applicant accepts that the matter, by its very nature, gives rise to substantial and material disputes of fact. These disputes, she submits, cannot be meaningfully or justly determined on the papers alone. In her view, the truth of these assertions lies buried beneath layers of contested narrative and requires the clarifying light of viva voce testimony. Accordingly, she invokes Rule 6(5)(g) and petitions the Court to refer the matter to oral evidence, so that the contested terrain may be traversed with the benefit of examination and cross-examination.

[11] In addition, the applicant challenges the procedural integrity of the first respondent's participation, arguing that his condonation affidavit, filed

more than twenty-six months out of time, falls woefully short of the standard expected in such applications. She contends that the first respondent has failed to provide a full and frank explanation for the delay, has furnished no corroborating confirmatory affidavits, and ultimately has not persuaded the Court that condonation is warranted. In her submission, the defects in the condonation application further weaken the credibility of the first respondent's opposition and underscore the need for a careful, evidence-based inquiry.

The First Respondent's Case

- [12] The first respondent resists the referral, maintaining that the applicant ought, from the outset, to have anticipated material disputes of fact. In his view, the applicant acted unreasonably in electing motion proceedings where the nature of the issues plainly demanded action procedure.
- [13] He further avers that the deceased possessed full testamentary capacity on 16 March 2018. In support of this position, he presents a detailed chronology of the deceased's dealings with her financial advisor, Mr Paul Gabriel Van der Aarde who worked for Discovery and Standard Bank. According to him, the deceased drove herself from Rustenburg to Pretoria on 19 February 2018 to consult on the preparation of her will, completed the wills application form, and authorised its submission to Standard Bank.
- [14] A draft will was emailed to her via Mr Paul Gabriel Van der Aarde for approval on 6 March 2018, and on 16 March 2018 she again travelled to Roodepoort, executed the will in the presence of Mr Paul Gabriel Van der Aarde and Ms Marshia Botha, and arranged for its secure storage until collected by Mr Azghar Bux from Standard bank.

- [15] The first respondent denies the allegation of undue influence. He points to a protection order the deceased obtained against the applicant on 23 August 2017, which he submits reflects a deliberate distancing by the deceased and lends weight to her decision to exclude the applicant from her estate.
- [16] He further contends that the applicant has furnished no expert medical evidence, no handwriting analysis, and no substantiation capable of sustaining the allegations of forgery or incapacity.
- [17] The first respondent urges the Court to dismiss the application as an abuse of the process, characterising it as the determined pursuit of a disappointed heir bereft of factual foundation.

Issues for Determination

- [18] The narrow question before the Court is whether this matter ought to be referred to oral evidence in terms of Rule 6(5)(g). In addressing that question, the Court must determine whether the disputes of fact raised on the papers are real, material, and of such a nature that they cannot be resolved without the benefit of viva voce testimony. Only where the paper record proves insufficient to yield a reliable determination does the rule permit the matter to proceed to oral evidence.

The Applicable Legal Principles

- [19] Rule 6(5)(g) affords the Court a measure of flexibility in managing motion proceedings when disputes of fact emerge, enabling it to balance the

imperatives of justice with the need for procedural efficiency. Parties are expected to anticipate such disputes and to seek appropriate directions at an early stage. The guiding principle remains that set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A). at para 24, where the Court held that, in the face of genuine disputes of fact incapable of resolution on affidavit, the matter must ordinarily be determined on the respondent's version unless that version is so far-fetched or palpably untenable that it may be rejected outright. Rule 6(5)(g) nevertheless confers a discretion on the Court to depart from this default position by directing that oral evidence be heard or by referring the matter to trial.

[20] In *Mamadi and Another v Premier of Limpopo Province and Others* (CCT 176/21) [2022] ZACC 26; 2023 (6) BCLR 733 (CC); 2024 (1) SA 1 (CC) (6 July 2022) at para 43, the Constitutional Court confirmed that in review proceedings brought under Rule 53, a court may not simply dismiss a matter under Rule 6(5)(g) without providing a final determination, even where factual disputes exist. The ordinary principles governing referrals to oral evidence or trial therefore apply. The judgment further expatiates that litigants must apply for such a referral timeously, for failure to do so may result in the court applying the *Plascon-Evans* rule and deciding the matter on the papers.

[21] A referral to oral evidence is justified only where justice cannot be achieved through reliance on the affidavits alone. Before granting such relief, the Court must be satisfied that the disputes are real and bona fide, that they are material to the outcome, and that the hearing of oral testimony will meaningfully assist in resolving them.

[22] The authorities consistently emphasise that a party who initiates motion proceedings despite the foreseeability of material disputes of fact does so at its own peril. Where disputes were reasonably predictable, a court may refuse a referral and apply the *Plascon-Evans* rule, potentially resulting in the dismissal of the application, as illustrated in *Mercantile Bank (A Division of Capitec Bank Limited) v Ross (2020/19791) [2021] ZAGPJHC 149 (13 August 2021)* at para 37 where the court dismissed an application for referral to oral evidence because there was no explanation for the delay in bringing the application timeously. This emphasises the need for diligence by legal representatives in managing motion proceedings.

[23] In cases concerning the validity of a will, the central enquiry remains the testator's mental capacity at the precise moment of execution. The Court's assessment must be rooted in contemporaneous evidence, for it is that moment alone which determines whether the will represents the free and informed act of the testator.

Analysis

(1) Whether disputes of fact exist

[24] The papers reveal indisputable areas of factual contention. Central among these are the deceased's mental capacity at the time the will was executed, the presence or absence of undue influence, and whether the will reflects the deceased's true intentions. Further disputes arise regarding the deceased's physical ability to drive herself to Pretoria for consultations, the authenticity of the signatures appended to the will, and whether the applicant's exclusion was a legitimate act of the testatrix or the product of manipulation by the respondents.

[25] These contested issues are not peripheral; they strike at the heart of the inquiry into the will's validity. South African law has long adopted a measured approach to material factual disputes in motion proceedings. Where such disputes are genuine and incapable of resolution on affidavit, final relief cannot be granted without recourse to oral evidence. The principles restated in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235 E–G hold that final relief is appropriate only where the facts as stated by the respondent, together with those admitted by the applicant, justify such an order. A court may reject the respondent's version only where it is so inherently improbable or untenable that it can be dismissed without the benefit of oral testimony.

[26] Where this threshold is not met, Rule 6(5)(g) permits the Court to direct that oral evidence be heard in order to resolve the disputes. This approach has been affirmed in matters involving the validity of wills, where factual complexities frequently demand the scrutiny that only viva voce evidence can provide. In *Mokoena v Molefe and Others* (CIV APP FB 10/2022) [2023] ZANWHC 116, for example, the Court referred the matter to oral evidence precisely because disputes relating to testamentary capacity and undue influence could not be adequately addressed on paper alone. Cases of this nature often require detailed, contextual assessments, sometimes including expert testimony, to establish the testator's state of mind and the circumstances surrounding the execution of the will.

[27] It remains true, however, that allegations alone do not suffice. They must be grounded in evidence capable of supporting a reasonable inference of irregularity. Suspicion, however sincerely held, cannot stand as a substitute

for proof. In the present matter, the disputes raised are both genuine and material, and their resolution cannot be obtained merely through the affidavits. They therefore preclude a final determination on the papers.

(2) Whether the disputes are bona fide

- [28] The first respondent places before the Court a detailed and coherent factual account concerning the execution of the will, supported by documentation and the testimony of witnesses involved in the process. The applicant, by contrast, advances grave allegations of mental incapacity, undue influence, and forgery, yet provides no expert medical opinion, no confirmatory medical affidavits, and no handwriting analysis to support these claims.
- [29] The absence of expert evidence is unquestionably noteworthy, but it is not, at this preliminary stage, fatal to the applicant's case. The allegations, although lightly supported, are of a nature that could be meaningfully tested and clarified through oral testimony and cross-examination. The assessment of whether a dispute is bona fide is governed by the principles originating from the *Plascon-Evans* rule and later judicial refinements. In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*, the Court held that in final motion proceedings a dispute of fact prevents the granting of final relief unless the facts alleged by the applicant and admitted by the respondent, together with those alleged by the respondent, justify the order sought. The applicant's version may be rejected only if it is fictitious or so patently untenable that it can be dismissed on the papers alone.

[30] This approach was reaffirmed in *National Director of Public Prosecutions v Zuma*, where the Supreme Court of Appeal emphasised that motion proceedings are ill-suited to resolving factual conflicts unless the respondent's version can be dismissed as a bare or uncreditworthy denial, a contrived dispute, or one so implausible that it collapses under its own weight.

[31] In applying these principles to the present matter, it becomes apparent that a respondent is required to advance a factual matrix sufficient to reveal a genuine triable issue, not merely to raise a bald contradiction. The applicant's allegations of incapacity, undue influence and forgery are serious accusations that ordinarily require some corroborative evidential foundation. The absence of such corroboration may weaken their force on paper, yet it does not necessarily strip them of all credibility. The nature of the issues raised, particularly those relating to mental capacity and the circumstances of the will's execution are precisely the type of matters that are often elucidated only through the rigorous testing made possible in oral proceedings.

[32] The Court retains a discretion under Rule 6(5)(g) to refer a matter to oral evidence where the affidavits do not provide sufficient clarity and where the interests of justice demand a fuller ventilation of the issues. The jurisprudence recognises that, especially in disputes concerning the validity of a will, a court may be compelled to rely on oral testimony and expert evidence, for questions of testamentary capacity, volition, and authenticity are rarely capable of definitive resolution on the papers alone.

[33] It is also true that the party alleging a dispute of fact bears the burden of demonstrating its genuineness. They must address the disputed facts directly and with sufficient candour. A failure to do so may invite the application of the *Plascon-Evans* rule, permitting the Court to determine the matter on the respondent's version. Yet the present allegations, though thinly substantiated, are not inherently fanciful, nor are they incapable of proof. They remain capable of being tested meaningfully through viva voce evidence.

[34] The case law supports the conclusion that serious but presently underdeveloped allegations may nonetheless constitute bona fide disputes where they raise genuine concerns that cannot responsibly be resolved on affidavit. The disputes in this matter, while imperfectly presented, are sufficiently grounded to preclude a final determination on the papers alone.

(3) Whether oral evidence would resolve the disputes

[35] Questions about whether the deceased had the mental capacity to make a will, whether any undue influence was exerted, and whether the signatures are genuine are the kinds of issues that are best explored through oral evidence. These matters depend heavily on assessing credibility, understanding the surrounding circumstances, and evaluating expert opinions. Affidavits alone rarely provide enough detail for the Court to make reliable findings. Hearing witnesses testify and allowing for cross-examination gives the Court a fuller picture and helps it determine, with greater confidence, what happened when the will was signed.

[36] In *Spies NO v Smith en Andere* 1957 (1) SA 539 (A), the Appellate Division emphasised that undue influence strikes at the heart of free testamentary expression and therefore requires careful scrutiny. The Court held that the legal test for undue influence is met where it is shown that the testator's will was displaced by the will of another, producing a disposition that the testator would not have made freely and voluntarily. Such allegations, involving coercion or fraud, are seldom capable of proper assessment on the papers and ordinarily call for detailed, oral evidence. A similar approach was adopted in *M.E.K and Another v Pokroy N.O and Others* (2024), where the High Court declared three wills executed by a terminally ill testator invalid on the grounds of undue influence and lack of testamentary capacity.

[37] The importance of oral and expert evidence in cases like this, is also well illustrated in *De Klerk and Others v Opperman; In Re: Opperman v Opperman and Others* (29052/2018) [2024] ZAGPJHC 1928. In that matter, the Court refused leave to appeal after finding the deceased's will invalid because he lacked testamentary capacity. That conclusion relied heavily on expert medical evidence showing that the deceased had moderate Alzheimer's disease and could not manage his affairs at the time he signed the will.

[38] Although the applicants challenged the reliability of the respondent's expert, the Court found that their own experts had taken too narrow a view of the medical evidence. The respondent's expert, on the other hand, gave a balanced and persuasive assessment. This case demonstrates how essential oral and expert evidence can be in determining a testator's mental

state and in resolving complex factual disputes, just as in the matter now before this Court.

Whether Oral Evidence Resolves Disputes

- [39] However, the Court must also consider whether the applicant ought to have instituted action proceedings from the outset, given the foreseeability of these disputes. Even so, the Court must also take into account that the applicant chose to proceed by way of motion rather than by issuing action. The disputes about capacity, influence, and proper execution were foreseeable from the beginning. A party who selects the motion procedure despite clear factual disputes assumes the procedural risks that follow. The Court must therefore balance the need for oral evidence to reach a just outcome with the principle that litigants must choose a procedure that is appropriate for the kinds of disputes they intend to raise.

(4) Interests of justice

- [40] The validity of a will constitutes a matter of profound importance, warranting a procedure that permits the fullest ventilation of the truth. Courts exercise their discretion under Rule 6(5)(g) to refer disputes to oral evidence where the interests of justice demand it, particularly in estate matters involving capacity and influence.
- [41] Despite the applicant's procedural irregularities and limited supporting evidence, the gravity of the issues, testamentary capacity, volition, and potential undue influence, militates against summary dismissal without a full evidentiary hearing. In *Gundwana v Steko Development CC and Others* (CCT 44/10) [2011] ZACC 14; 2011 (3) SA 608 (CC); 2011 (8) BCLR 792 (CC). and similar rulings, the Constitutional Court has affirmed

that bypassing oral evidence in motion proceedings contravenes the interests of justice when material facts are disputed.

Conclusion

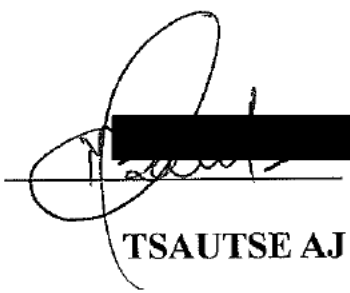
[42] The Court is satisfied that material and bona fide disputes of fact exist, which cannot be resolved on the papers alone, and that oral evidence will materially assist in their determination. The interests of justice compel referral to viva voce proceedings rather than dismissal, notwithstanding the applicant's procedural shortcomings.

[43] While both practitioners levelled accusations of imprecision in drafting and lapses in case management against each other particularly regarding the alleged repetition of affidavits and the pursuit of a motion procedure despite foreseeable disputes, this Court reminds counsel that their duty is to advance these proceedings with professionalism, restraint, and courtesy. The interests of the parties must remain paramount. Although the circumstances do not justify a punitive costs order at this stage, the usual principle that costs follow the result shall apply, thereby encouraging diligence and procedural efficiency.

Order

1. The application succeeds and is referred to oral evidence in terms of Uniform Rule 6(5)(g).
2. The issues for viva voce determination are:

- (a) Whether the deceased possessed testamentary capacity when executing the will dated 16 March 2018;
 - (b) Whether the will was executed freely and voluntarily;
 - (c) Whether the first respondent exerted undue influence;
 - (d) The authenticity of the signatures on the will;
 - (e) Whether the will reflects the deceased's genuine testamentary wishes.
3. Within sixty (60) days of this order, the parties must file agreed witness statements including expert summaries if relied upon, or approach the Registrar for a case management conference if no agreement is reached.
4. The costs of this application are costs in the cause.



TSAUTSE AJ
Judge of the High Court

APPEARANCES

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Date of hearing:

25 November 2025

Date of judgment

21 January 2026