



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

**Not Reportable
Case No: 4921/2024**

In the matter between:

ANNA MARTHA NIEMAN

Applicant

and

GERHARD JACOBUS OLIVIER

First Respondent

ANNAMART NIEMAN

Second Respondent

NELLIE OOSTHUIZEN

Third Respondent

JOHANNES JACOBUS NIEMAN

Fourth Respondent

FLORA PETREA BREYTENBACH

Fifth Respondent

JOHANNA MAGDALENA SMITH

Sixth Respondent

THE MASTER OF THE HIGH COURT

Seventh Respondent

ESTATE LATE WILLEM ADRIAAN NIEMAN (Master's Ref: 7170/2022)

Coram: Petersen ADJP
Date enrolled: 10 November 2025
Judgment reserved: 10 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the handing down of the judgment are deemed to be 14h00 on 16 February 2026.

Summary: Application for removal of executor – s 54(1)(a)(v) of the Administration of Estates Act 66 of 1965 – administration of deceased estates – test for undesirability – mere hostility or friction between executor and beneficiary insufficient – allegations of conflict of interest and failure to account for trust monies not established – executor's fiduciary duty to protect estate assets against irregular alienation – condonation for late filing granted in interests of justice due to magnitude of estate – application dismissed.

JUDGMENT

PETERSEN ADJP

Introduction

[1] This is an application for the removal of the first respondent, Mr. Gerhard Jacobus Olivier, as the executor of the Estate Late Willem Adriaan Nieman ('the deceased', in terms of s 54(1)(a)(v) of the Administration of Estates Act 66 of 1965 ('the Act').

[2] The applicant and deceased were married in community of property. The deceased passed away on 06 November 2022, and the applicant is the deceased's surviving spouse. The estate is substantial, with an estimated value exceeding R430 million, comprising largely of agricultural immovable property and farming interests.

[3] The first respondent is a practicing attorney who represented the deceased for approximately forty (40) years. He was nominated as the executor in the joint Will executed by the deceased and the applicant in 2008.

[4] The third and fourth respondents are the deceased's children and beneficiaries under the Will. They oppose the application and support the first respondent's continued tenure as Executor. The second respondent, the daughter of the applicant and the deceased, is the only beneficiary supporting the relief sought by the applicant.

Background to the present application

[5] Before addressing the main issue, it is necessary to contextualise this application within the broader litigation history between the parties. The present application for the first respondent's removal was preceded by the applicant's attempt to prevent his appointment entirely.

[6] Shortly after the deceased's passing, the applicant launched an urgent application in this Division under Case No. UM 228/2022. In Part A of the application, Reid J granted an order, appointing the applicant as Interim Executor with certain limited powers in respect of the movable assets in the joint estate. In Part B of that application, the applicant sought a final interdict to restrain the Master of the High Court from appointing the first respondent as the Executor of

the estate. On 10 July 2024, Hendricks JP dismissed that application. Hendricks JP analysed the provisions of the Administration of Estates Act and held that the legislature had seen fit to regulate the specific circumstances under which a proposed executor testamentary can be disqualified or prevented from taking up an appointment. Hendricks JP noted that the general ground of undesirability in terms of s 54(1)(a)(v) of the Act, which forms the very basis of the present application, was not included in the class of cases under s 22(2)(b) that allows the Master to refuse to grant letters of executorship.

[7] Relying on established case law, Hendricks JP concluded that the Court does not possess a general power derived from the common law to prevent the appointment of a person nominated in a testator's will, thereby making inroads into the principle of freedom of testation. It follows that removal under s 54(1)(a)(v) must follow upon appointment.

[8] The application to interdict the appointment was accordingly dismissed. Following the dismissal of that interdict, the first respondent was appointed as Executor, which has now precipitated this current application for his removal under the aforementioned s 54(1)(a)(v).

The main issue in dispute

[9] The relief sought to remove a testamentary executor is drastic. The main issue for determination in the present application is whether it is "undesirable" for the first respondent to continue in this office as Executor.

Condonation – The late filing of the replying affidavit

[10] Before dealing with the merits, the issue of condonation for the late filing of the applicant's replying affidavit, which is approximately four months out of time, must be addressed. The first respondent opposes the admission of this affidavit.

[11] The applicant attributes the delay in timely filing the replying affidavit to failed settlement negotiations, the need to wait for the answering affidavits of the third and fourth respondents, and the ill health of her legal representatives.

[12] The principles regarding condonation are well-established. It is not a mere formality. The applicant must show good cause, which involves a reasonable explanation for the delay and the existence of bona fide prospects of success (*Van Wyk v Unitas Hospital*¹). The delay in this matter is undoubtedly excessive. However, given the magnitude of the estate and the seriousness of the allegations levelled against the first respondent, an officer of this court acting in a fiduciary capacity, it is in the interests of justice that the dispute be fully ventilated.

[13] In the exercise of my judicial discretion, I am therefore inclined to grant condonation and admit the replying affidavit.

The provisional counter-application by the first respondent to file a supplementary affidavit

[14] The first respondent filed a provisional counterapplication to file a supplementary affidavit to deal with new matter raised in the replying affidavit. The first respondent did not persist in this application. In light of the view I take of the matter, the admission of the replying affidavit does not tilt the scales in

¹ *Van Wyk v Unitas Hospital* 2008 (2) SA 472 (CC).

favour of the first respondent. As such, a supplementary affidavit was not necessary for the disposal of the main issue.

The Applicant's Submissions

[15] The applicant's case for removal is premised largely on allegations of hostility, conflict of interest, and a breakdown of trust. Adv. Peter SC argued that the relationship between the applicant and the first respondent has deteriorated to such an extent that it is impossible for the first respondent to administer the estate impartially. Adv Peter SC argues the cause of the applicant for the removal of the first respondent, on three distinct grounds of conflict of interest and dereliction of duty.

[16] He submits that the first respondent, who has represented the Niemans as family attorney for over forty (40) years, has placed himself in an untenable position of conflict. Essentially, it is argued that he interposed himself in family disputes by representing the third and fourth respondents (heirs) contrary to the interests of the applicant and the deceased estate. The complaint in this regard is specifically premised on the indisputable fact that he advised these heirs to pursue 'partnership' claims against the estate regarding crop-sharing arrangements. He is accused of orchestrating this idea, despite previously advising the applicant to the contrary. Counsel contended that he cannot objectively adjudicate claims against the estate when he was the architect of those very claims. This, he submits, compromises the very independence required of an Executor.

[17] Adv Peter SC contends that the first respondent has failed to account for trust monies and has not acted in the best interests of the surviving spouse. It was further argued that the first respondent's insistence on litigating against the applicant, referring to the interdict proceedings under Case No UM228/2022 and

the ex parte sale application under Case No 805/2024, demonstrates a lack of impartiality. Much store is placed on the first respondent's failure to account for monies, estimated between R8 million and R10 million, held in his trust account for the deceased for approximately twenty (20) years. Counsel highlighted a purported serious discrepancy in the disclosure by the first respondent to the *curator ad litem* in September 2022, namely that the first respondent held R10 million in Trust. Yet, only R8 645 509.70 was disclosed in the estate inventory.

[18] In expounding on the aforesaid funds held in Trust by the first respondent, Adv Peter SC submitted that the first respondent failed to respond to formal demands for a full accounting of these funds, interest earned, and the purpose for which they were held. It is on this basis that the submission is made that the applicant, in her previous capacity as Interim Executrix, issued summons against him for the recovery of these funds and the delivery of estate documents. Counsel argued that the current situation is now absurd, as the first respondent is effectively both the plaintiff (as executor) and the defendant (in his personal capacity), tasked with deciding whether his own explanation for retaining trust monies for two decades is satisfactory. This was submitted as a clear instance of undesirability.

[19] For present purposes and relevant to the issues in case number 804/2024, which, in light of my judgment in that matter, renders the argument that the first respondent personally intervened to oppose the sale of the estate's undivided shares in agricultural land, despite having no personal interest in the matter, moot, I decline the invitation to engage on this submission.

The Respondents' Submissions

[20] The submissions from the first, third, and fourth respondents are essentially that the application is an abuse of process and a disguised appeal against the refusal of the interdict in Case UM228/2022, where Hendricks JP previously dismissed the applicant's attempt to prevent the first respondent's appointment.

[21] It was argued that the "hostility" complained of by the applicant is self-created. The first respondent, in the execution of his fiduciary duties, was obliged to oppose the applicant's unauthorized attempts to sell estate assets (the subject of Case 805/2024). Counsel submitted that an executor cannot be removed simply because he discharges his duty to protect the estate against the irregular conduct of a beneficiary.

[22] It was further submitted that the testator's wishes regarding the appointment of an executor should be respected. He argued that the applicant has failed to provide evidence of "substantial and compelling reasons" for removal and that mere friction or the applicant's personal dislike of the first respondent is irrelevant.

The merits

[23] Section 54(1)(a)(v) of the Act empowers the Court to remove an executor if "*it is undesirable that he should act as executor of the estate concerned.*" The discretion vested in this Court is strict. Adv Peter SC correctly directs this Court

to the decision in *Gory v Kolver NO and Others*,² where the Constitutional Court stated as follows in this regard:

‘[56] In terms of s 54(1)(a)(v) of the Administration of Estates Act 66 of 1965, an executor may at any time be removed from his office by the Court if for any reason other than those set out in the rest of s 54(1)(a), ‘the Court is satisfied that it is undesirable that he should act as executor of the estate concerned’. In *Die Meester v Meyer en B Andere* 1975 (2) SA 1 (T) Margo J (with whom Davidson J and Franklin J concurred), dealing with the approach to be followed by a court in exercising its discretion under this section, held as follows:

‘Hoe dit ook al sy onder die gemenereg en ingevolge die gewysdes onder die ou Boedelwet 24 van 1913, is die Hof nou gemagtig kragtens art 54(1)(a)(v) van die huidige Boedelwet om ‘n eksekuteur te verwyder indien dit onwenslik is dat hy as eksekuteur van die betrokke boedel optree. Die Hof het hier 'n diskresie en myns insiens bly die oorheersende oorweging die belange van die boedel en van die begunstigdes.’

(Loosely translated: ‘Be that as it may under the common law and pursuant to the precedents under the old Administration of Estates Act 24 of 1913, the Court is now authorized in terms of Section 54(1)(a)(v) of the current Administration of Estates Act to remove an executor if it is undesirable that he acts as executor of the estate concerned. The Court has a discretion here and, in my view, the prevailing consideration remains the interests of the estate and of the beneficiaries.’ (emphasis added))

[57] ... it cannot, in my view be said that Mr Kolver has been guilty of any maladministration or any other form of misconduct in respect of Mr Brooks’ deceased estate. The question whether it is just and equitable that Mr Kolver be removed from his office as executor is thus a difficult one. The discretion vested in the High Court by s 54(1)(a)(v) is a discretion in the strict sense...” (emphasis added)

² *Gory v Kolver NO and Others* 2007 (4) SA 97 (CC) at paras 56 and 57.

[24] The Court must respect a testator's freedom to choose their executor. As held in *Volkwyn N.O. v Clarke and Damant*³ mere friction or hostility between the executor and the heirs is insufficient grounds for removal. It must be shown that the executor's conduct is such that it would be detrimental to the administration of the estate.

[25] It is prudent to engage the three main grounds to establish undesirability, which the applicant seeks to expound upon in argument. Firstly, a conflict of interest arising from advice given to the third respondent regarding a partnership claim. Secondly, an alleged failure to account for trust monies held by the first respondent. Thirdly, obstruction of the sale of agricultural land.

The first ground - Conflict of Interest

[26] The applicant alleges that the first respondent '*interposed himself*' in a family dispute by advising the third respondent and her husband that their crop-sharing arrangement with the deceased might constitute a partnership. The applicant views this as advice contrary to the estate's interests. The first respondent contends that he merely pointed out the legal attributes of the existing business model and advised the parties to obtain independent counsel, which they did.

[27] An Executor is not an agent of the surviving spouse. His duty and fealty are to the estate as a whole. At an elementary level, merely alerting a potential creditor or beneficiary to a legal reality or advising them to seek independent advice to resolve a claim surely cannot constitute a conflict of interest. On the contrary, suppressed claims can lead to future litigation that harms the estate.

³ *Volkwyn N.O. v Clarke and Damant* 1946 WLD 456.

There is no cogent evidence that the first respondent manufactured a claim. He merely navigated a complex factual matrix involving long-standing family farming operations. This ground must therefore fail.

The second ground - Trust Monies

[28] The applicant alleges that the first respondent held approximately R10 million in trust for the deceased for over twenty (20) years and has failed to account for it. She points to a discrepancy between the R10 million figure mentioned in a curator ad litem report and the R8.6 million reflected in the estate inventory.

[29] The first respondent submits that these funds were investments held on the deceased's instructions, his client for forty (40) years. He has, in fact, not hidden the amount of R8,645,509.70 but included it in the inventory submitted to the Master. This was an amount established by the curator ad litem, which was not hidden or suppressed by the first respondent. It appears to have been held in Trust with the deceased's knowledge.

[30] The Administration of Estates Act provides specific machinery for the accounting of estate assets. The Executor must lodge a Liquidation and Distribution Account, which is subject to the Master's query and public inspection. The applicant attempts to bypass this statutory process by demanding a forensic account before lodging the L&D account.

[31] A discrepancy in figures or a demand for vouchers is a matter to be resolved between the Executor and the Master. Unless there is clear evidence of misappropriation, of which there is prima facie none on the papers, accounting queries do not render an executor 'undesirable'. The first respondent has

disclosed the funds and placed them under the Master's purview. It remains for the Master to consider how this impacts the Estate. This ground must also fail.

The third ground - The Sale of Agricultural Land

[32] As indicated above, this ground is dealt with as part of a substantive application for rescission under case number 805/2024. This 'ground' is fully canvassed in the judgment of this Court in case number 805/2024, handed down on the same date as the present judgment. It suffices to briefly dispose of it expeditiously.

[33] The applicant accuses the first respondent of obstructing the administration of the estate by opposing the court order in case 805/2024, which was granted ex parte and authorized the sale of estate farms by public auction. It is common cause that the applicant obtained the order for the sale of the farms on an ex parte basis on 27 February 2024, at a time when she was not the 'substantive executor' but merely an 'interim executor' by order of court (per Reid J). The first respondent subsequently successfully applied to have that order suspended.

[34] An executor has the primary duty to take custody of estate assets. If an unauthorized person (or even a beneficiary) attempts to alienate estate assets via ex parte proceedings without the Executor's involvement, the Executor is duty-bound to intervene to protect the estate. The first respondent's opposition to the sale was not obstructionism. It was the performance of his fiduciary duty. The first respondent's conduct in this regard demonstrates diligence, not undesirability. This ground must similarly fail.

Conclusion

[35] The applicant has failed to establish that the first respondent is dishonest, grossly inefficient, or untrustworthy. What is evident from the papers is the applicant's deep-seated hostility and acrimony towards the first respondent. This hostility appears to stem from the first respondent's refusal to bow to the applicant's wishes where they conflict with the terms of the Will or his duties under the Act, and historical dissatisfaction in his role as the attorney not so much of the Nieman family but of the deceased, which spanned some forty (40) years.

[36] As stated in *Bramwell and Lazar, NNO v Laub*⁴ an executor cannot be removed merely because he is *persona non grata* to one of the beneficiaries. To remove the first respondent would be to disregard the deceased's express wish to have his trusted attorney of forty (40) years administer his estate.

Costs

[37] The first, third, and fourth respondents seek costs. The first respondent argues for costs *de bonis propriis* rather than from the estate. The applicant has instituted multiple applications. Her conduct has been litigious, delaying the finalisation of the estate. It would be unjust for the estate and, by implication, the other beneficiaries to bear the costs of this meritless application.

⁴ *Bramwell and Lazar, NNO v Laub* 1978 (1) SA 380 (W).

Order

[38] In the result, I make the following order:

1. Condonation for the late filing of the Applicant's Replying Affidavit is granted.
2. The application for the removal of the First Respondent as executor of the Estate Late Willem Adriaan Nieman is dismissed.
3. The Applicant is ordered to pay the costs of the First, Third, and Fourth Respondents in her personal capacity, such costs to include the costs consequent upon the employment of two counsel where applicable, taxed on Scale C.



A H PETERSEN

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG**

Appearances

For the Applicant: Adv. John Peter SC
Instructed by: Loubser-Ellis and Associates Inc.
Mmabatho

For the First Respondent: Adv. J F Pistor SC with Adv M G Hitge
Instructed by: De Kock & Duffey Attorneys
c/o Van Rooyen Tlhapi Wessels Inc.
Mahikeng

For the Third and
Fourth Respondents: K.W. Lüderitz SC with Adv. K. Fitzroy
Instructed by: Japie Van Zyl Attorneys
c/o CJP Oelofse Attorneys
Mahikeng