

REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
17/2/2026.	
DATE	SIGNATURE

Case No: 2024/131187

In the application between:

SUNIL GOSAI

Applicant

(in his capacity as the executor in the estate

of the late CM MUSGROVE)

and

ABSA BANK LIMITED

First Respondent

MASTER OF THE HIGH COURT

Second Respondent

NELSPRUIT, MPUMALANGA

Neutral Citation: Delivered: By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT

SENYATSI J:

Introduction

- [1] This is an application in which the Applicant seeks a mandatory interdict compelling the First Respondent (“Absa”) to transfer all monies standing to the credit of the deceased, Corinne Mary Musgrove, into an estate bank account operated by the Applicant in his capacity as executor. The application is opposed by Absa, which has raised serious and detailed allegations of fraud against the Applicant and has also brought a counter-application for the appointment of a curator to investigate the matter.
- [2] Having considered the papers, including the founding affidavit, the answering affidavit (which incorporates a detailed forensic investigation), the replying affidavit, and the heads of argument filed by both parties, I am of the view that the application cannot succeed. For the reasons that follow, the application is dismissed.

Background

- [3] The deceased, Ms Musgrove, died without any known traceable relatives. In 2015, one Sorraya Carrem fraudulently procured her appointment as executrix and stole approximately R513,000.00 from the estate. Absa subsequently reimbursed the estate.

- [4] The Applicant, Mr Sunil Gosai, was appointed executor by the Master of the High Court, Nelspruit, on 16 November 2023. He subsequently demanded that Absa transfer the balance held in Ms Musgrove's accounts (approximately R2.1 million) to an estate account. Absa refused, alleging that its investigation revealed that the Applicant is attempting to perpetrate a fraud on the estate.

The Parties' Contentions

- [5] The Applicant's case is essentially twofold: (i) he is the duly appointed executor; and (ii) in terms of the Administration of Estates Act 66 of 1965, Absa is obliged to comply with his lawful instructions. He contends that Absa has no legal standing to challenge his appointment or to withhold estate funds.
- [6] Absa's opposition is based on what it describes as overwhelming evidence that the Applicant's appointment is fraudulent. Its answering affidavit, deposed to by its forensic investigator, Ms Lora Wagner, sets out numerous contradictions and improbabilities in the Applicant's version. These include:
- [6.1] Contradictory statements by the Applicant regarding his relationship with Ms Musgrove (at times describing her as his mother's sister, at other times as a friend of his aunt).
- [6.2] The fact that Ms Musgrove's body was discovered in a state of decomposition in March 2014, and that she was buried as a pauper by the state in July 2014 – whereas the Applicant relies on a death certificate that records her date of death as 21 April 2015.
- [6.3] The absence of any credible evidence linking the Applicant to Ms Musgrove's residence in Kensington, and property records

showing that he owns property in Lenasia and has no recorded link to the Kensington property.

[6.4] The questionable nature of the will presented by the Applicant, including that it was signed in Lenasia in February 2014 while Ms Musgrove was allegedly receiving medical treatment in Johannesburg, and that it appears in suspiciously good condition despite its purported age.

[6.5] The identity document relied upon by the Applicant (and earlier by Carrem) shows a coat of arms that was only introduced in 2000, whereas the document purports to have been issued in 1998.

[7] Absa argues that, in light of these serious disputes of fact, the application ought to be dismissed. It further seeks, by way of counter-application, the appointment of a curator to investigate the matter and report back to the court.

Evaluation

[8] The Applicant's replying affidavit is strikingly inadequate. It fails meaningfully to engage with the detailed and serious allegations set out in Absa's answering affidavit. Instead, the Applicant merely denies the allegations, labels them as hearsay, and accuses Absa of racial discrimination without providing any evidence in support. He does not apply for the referral of the dispute to oral evidence or trial.

[9] In motion proceedings, where there are material disputes of fact that cannot be resolved on the papers, the court generally applies the principles set out

in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*¹. Unless the respondent's version is so far-fetched or untenable that it can be rejected on the papers, the respondent's version must be accepted.

- [10] In the present case, Absa's version is supported by substantial documentary and investigative evidence, including police statements, property records, and the evidence of independent witnesses. The Applicant's version, by contrast, is replete with contradictions and is not corroborated by any credible evidence. I cannot find that Absa's version is so far-fetched or untenable that it can be rejected on the papers.
- [11] Moreover, the Applicant's reliance on the principle in *Oudekraal Estates (Pty) Ltd v City of Cape Town*², that an administrative act stands until set aside by a court – is misplaced in these circumstances. As ABSA correctly points out, a collateral challenge to the lawfulness of the Applicant's demand is permissible, especially where there is prima facie evidence of fraud.³
- [12] The Applicant has chosen to proceed by way of motion, despite the glaring disputes of fact. He did not seek a referral to oral evidence. In the circumstances, the application must be determined on the papers as they stand.
- [13] Having regard to the evidence presented by Absa, I am satisfied that there are sufficient grounds to doubt the bona fides of the Applicant's appointment. In particular, the contradictions regarding the date and circumstances of Ms

¹ 1984 (3) SA 623 (A) at 634F-I.

² 2004 (6) SA 222 (SCA) at para 27.

³ See *Recycling and Economic Development Initiative of South Africa NPC v Tutestone (Pty) Ltd* 2022 JDR 2088 (WCC) at para 41 and *City of Tshwane Metropolitan Municipality v Cable City (Pty) Ltd* 2010 (3) SA 589 (SCA) at para 13.

Musgrove's death, the questionable will and identity document, and the lack of any credible proof of a relationship between the Applicant and the deceased, all point to a real possibility of fraud. The basis of this view is supported by the history of this estate and the previous attempts by an alleged fraudster arrested by the police together with the officials in the Master's Office in Mpumalanga High Court. Importantly, other than the fact that the estate was reported in Mpumalanga because of the alleged fraud, there is no basis that the estate's file should still continue to be administered in Mpumalanga when factually, there is no evidence to suggest that the deceased had anything to do with that province. The submission on behalf of the applicant that the file is kept at that office because of the what is referred to as the insistence by the Master of the High Court in Gauteng, which is the province where the deceased ordinarily resided raises serious concerns.

- [14] In light of these serious concerns, it would be inappropriate to grant a mandatory interdict that would effectively hand over approximately R2.1 million to the Applicant. The interests of justice and the protection of the estate require that these issues be properly investigated before any distribution is made.

THE COUNTER-APPLICATION

- [15] Absa's counter-application seeks the appointment of a curator (*pro- amico*) to investigate the issues raised in the affidavits and report back to the court. This relief is sought in terms of the court's inherent jurisdiction under section 173 of the Constitution.
- [16] Given the serious and unresolved allegations of fraud, and the fact that the estate has already been victimised by one fraudster, I am of the view that the

appointment of a curator is both necessary and appropriate. The curator will be empowered to investigate the validity of the Applicant's appointment and the will, and to make recommendations to the court. This will ensure that the estate is protected and that the court is able to make an informed decision.

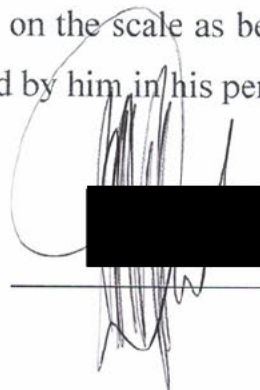
Costs

[17] Absa seeks a costs order against the Applicant in his personal capacity. In my view, this is justified. The Applicant has pursued this application in the face of overwhelming evidence casting doubt on his bona fides. His replying affidavit failed to engage meaningfully with the allegations and instead raised unfounded allegations of racism. In these circumstances, it is appropriate that he bears the costs personally.

Order

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

- (a) The Applicant's application is dismissed.
- (b) The Applicant is ordered to pay the costs of the application, including the costs of counsel, on the scale as between attorney and client, such costs to be paid by him in his personal capacity.

A handwritten signature in black ink, appearing to be 'Senyatsi J', is written over a horizontal line. A black rectangular redaction box covers the middle portion of the signature.

SENYATSI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 02 February 2026

DATE JUDGMENT HANDED DOWN: 17 February 2026

APPEARANCES

Counsel for the Applicant: Advocate V Mukwevho

Instructed by: Kganare Attorneys

Counsel for the Respondent: Advocate R Scholtz

Instructed by: Lowndes Dlamini Attorneys