

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

Case Number: 8468/2022

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

18 February 2026

In the matter between:

Z[...] M[...] First Applicant
(Identity Number: 7[...])

N[...] B[...] Second Applicant
(Identity Number: 8[...])

L[...] C[...] M[...] Third Applicant
(Identity Number: 7[...])

I[...] P[...] M[...] Fourth Applicant
(Identity Number: 8[...])

P[...] S[...] Z[...] Fifth Applicant
(Identity Number: 8[...])

And

C[...] T[...] M[...] N.O First Respondent
(Identity Number: 7[...])

**THE MASTER OF THE HIGH COURT,
JOHANNESBURG** Second Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT** Third Respondent

JUDGMENT

MALINDI, J

Introduction

- [1] The first applicant is Z[...] M[...], an adult female person, who resides in Johannesburg, Sandown.
- [2] The second applicant is N[...] B[...], an adult female person, employed in Johannesburg, Edenvale. She is the mother of M[...] T[...] B[...], a minor male child born on 11 September 2011, a child she shared with the deceased, and on whose behalf, she is a co-applicant herein.
- [3] The third applicant is L[...] C[...] M[...], an adult female person, who is employed in Johannesburg, Sandown. She is the mother to T[...] K[...] P[...] M[...], a minor female child born on 22 October 2009, a child she shared with the deceased, and on whose behalf, she is a co-applicant herein.
- [4] The fourth applicant is I[...] P[...] M[...], an adult female person, employed in Johannesburg, Randburg. She is the mother of O[...] N[...] M[...], a minor female child born on 18 May 2010. She shared the child with the deceased, and on whose behalf, she is a co-applicant herein.
- [5] The fifth applicant is P[...] S[...] Z[...], an adult female person who resides in the province of KwaZulu Natal, in Amanzimtoti. She is the mother to O[...] M[...] Z[...], a minor female child born on 9 August 2016, a child she shared with the deceased, and on whose behalf, she is a co-applicant herein.
- [6] The first respondent is Carol Thandi M[...], an adult female person currently residing in Mondeor, Johannesburg. She is being sued in her capacity as the appointed executor of the estate of the late B[...] M[...] M[...] (the deceased), who died on 24 June 2018. The first respondent holds letters of authority, issued by the Master of the High Court, Johannesburg, appointing her as executor of the deceased estate.
- [7] The second respondent is the Master of the High Court, Johannesburg, and no relief is sought against him/her, except as would be required by law if the order prayed for is granted.
- [8] The third respondent is the Minister of Justice & Constitutional Development, against whom no relief is sought.

Purpose of the Application

[9] The applicants aver that they have minor children, who have an interest in this matter, and on whose behalf the first applicant deposes to the founding affidavit, with confirmatory affidavits by the other four co-applicants. They represent the minor children, as the minor children's legal guardians. The first applicant is the mother of G[...] K[...] M[...], a minor child born on 31 March 2006, a child she shares with B[...] M[...] M[...] (the deceased), who passed away on 24 June 2018.

Background

[10] The first respondent and the deceased were married to each other, on or about, 5 December 1992 in Dobsonville, Johannesburg. They were married in community of property, and three children were born of the marriage, namely, Obakeng Tiro M[...], born on 14 May 1989, M[...] T[...] M[...], born on 28 October 1994, and M[...] M[...], a female born on 15 December 1997.

[11] The deceased died intestate and therefore his estate is to be distributed in terms of section 1 of the Intestate Succession Act 81 of 1987.

[12] Although the first respondent and the deceased were married as aforesaid, the two had been separated for a period of 14 years preceding the death of the deceased. During those 14 years of separation, the deceased was involved in two other customary marriages with Ms S[...] Z[...] and Ms I[...] M[...].

[13] From these two customary marriages, two more children were born, being O[...] M[...] Z[...] and O[...] N[...] M[...]. The deceased and the first applicant had a relationship from which two more children were born, being K[...] L[...] M[...], born on 28 April 2002, and G[...] K[...] M[...], born on 31 March 2006. In total, the deceased had 11 children with several other women, of which the first respondent was aware of.

Applicants' Contentions

[14] The applicants contend that:

14.1. When the deceased died, the first respondent was tasked with reporting the death and ultimately the estate of the deceased to the

Master's office in Johannesburg. However, the first respondent omitted certain information when applying for the letter of executorship in that she only reported her three children and left out the other eight children of the deceased.

- 14.2. The first respondent failed to report all the assets, movable and immovable, of the deceased on the inventory form, knowing that the deceased had more than just one immovable property.
- 14.3. The first respondent has not performed her duties as executor diligently, as she has failed to collect or take into custody, or under her control, all the property, books, and documents in the estate. The applicants allege that all the first respondent has done, is sell off the assets, which were easily accessible to her, and squandered the proceeds thereof, in contravention of Act 81 of 1987, and Act 66 of 1965, being the Administration of Deceased Estates Act.
- 14.4. The first respondent should be removed from her role as the executor of the estate of the late B[...] M[...] M[...], as she has failed to discharge her duties and functions as required.
- 14.5. The first applicant states that, to her knowledge, she is aware of one estate bank account referred to in paragraph 31 of the founding affidavit, which is the bank account into which a portion of the proceeds from the sale of the property situated in Bassonia, were received. She believes that the first respondent keeps opening various bank accounts in the name of the estate, using the letter of executorship in order to conceal estate assets.
- 14.6. A section 29 notice to creditors was never published in either a local newspaper of the district of where the deceased was resident, or in the Government Gazette. Therefore, since no creditors' claims have been registered, it is difficult to determine the solvency of the estate in terms of section 34 of the Act.
- 14.7. The J85 form states that the liquidation and distribution account was due on or before 12 January 2019, yet to date no liquidation and distribution has been lodged, and no communication to the Master of the High Court has been made with regards to a possible extension.

[15] The applicants seek the removal of the first respondent as executor of the late estate, relying on section 54(1)(a)(i) and section 54(1)(a)(v) to have the first respondent removed as the executor of the estate. The amended notice of motion, dated 6 February 2023, reads as follows:

- 15.1. That the first respondent be, and is hereby removed as the executor, as per section 54 of the Administration of Estates Act 66 of 1965, in the late estate of B[...] M[...] M[...];
- 15.2. That the first respondent account for every action and money that she has taken in an effort to 'wind up' the estate;
- 15.3. Should it be found that the first respondent misappropriated any funds, or misused funds of the estate, such amount misappropriated, or misused, be forfeited from the first respondent's half share, and/or child's share in the estate;
- 15.4. That the first respondent is to hand over all documents and books and assets belonging to the estate to the newly appointed executor;
- 15.5. That the applicants be allowed, and authorised to nominate two executors amongst themselves to administer the estate of B[...] M[...] M[...];
- 15.6. The first respondent is ordered to pay the costs of this application on attorney and on client scale;
- 15.7. Further and/or alternative relief as the honourable Court deems fit.

[16] The application is opposed by the first respondent.

[17] The existence of the applicants' children is not disputed, including that they were not listed as deceased's descendants with the Master of the High Court by the first respondent.

[18] The respondent contends that section 53 of Act 66 of 1965, that is the Administration of Estates Act, has been repealed and cannot be relied upon.

Conclusion

[19] In conclusion, I am satisfied that it, being common cause that the applicants' children are not listed as the deceased's children, and that the first respondent has not executed her duties and function, as executor of the deceased estate, she stands to be removed as prayed for.

[20] I therefore make the following order in terms of the draft order provided by the applicants:

1. The first respondent in her capacity of the executor in the estate of B[...] M[...] M[...], is removed, in terms of section 54 of the Administration of Estates Act 66 of 1965.
2. The first respondent in her capacity as the executor, is ordered to account for all monies and assets, and/or books that she took into her possession for the duration when she acted as the executor, and transfer all accounts to a new executor, who will be appointed by the Master of the High Court, within five days of the new executor being appointed.
3. If it is found, after the accounting, that the first respondent misappropriated money or assets of the estate, the first respondent's share in the estate, by virtue of marriage in community of property to the deceased, will be forfeited in full or partially to the extent necessary in order to make good of all the money or assets so misappropriated.
4. The applicants are allowed and authorised to nominate two executors amongst themselves to administer the estate of B[...] M[...] M[...].
5. The first respondent is ordered to pay the costs of this application, including the costs of counsel, where employed, on Scale B.

G MALINDI

Judge of the High Court of South Africa,
Gauteng Local Division, Johannesburg

Appearances

For the Applicant: Adv MB Mhango
Instructed by: Bazuka and Company Inc

For the 1st Respondent: Adv P Mafu
Instructed by: SW Nkala Attorneys

For the 2nd and 3rd

Respondents:

Date of hearing:

Date of judgment:

Notice to abide filed

11 March 2024

18 February 2026