



**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTHERN CAPE DIVISION, KIMBERLEY)**

**Reportable/ Not Reportable**

Case no: 2044/2023

In the matter between:

NICOLETTE MARSHA DANIELS N. O

Plaintiff/Applicant

and

OWEN PALM N.O

1<sup>st</sup> Defendant/1<sup>st</sup> Respondent

MICHELLE VILENTIA BOTH

2<sup>nd</sup> Defendant/2<sup>nd</sup> Respondent

THE MASTER OF THE HIGH COURT  
KIMBERLEY

3<sup>rd</sup> Defendant/3<sup>rd</sup> Respondent

**Coram:** WILLIAMS J

**Heard:** 06-06-2025.

**Delivered:** 27-02-2026

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## ORDER

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1. The first and second defendants' plea is struck out with costs on scale A.

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## JUDGMENT

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### Williams J

- [1] This is an application in terms of Rule 30A. The applicant, plaintiff in the action, is Ms Nicolette Daniels NO in her official capacity as executor of the estate of the late Ms Constance Louise King. The following relief is sought:

- "1. That the 1<sup>st</sup> and 2<sup>nd</sup> defendants' plea, dated 17 January 2024 to the plaintiff's particulars of claim be struck out; and*
- 2. Costs of the application."*

- [2] The first defendant (first respondent) is Mr Owen Palm NO, in his capacity as executor to be appointed in terms of the purported last will and testament of the late Mr Stalin King dated 29 June 2022, represented by attorney Kenneth Juries & Associates as his appointed agent.

- [3] The second defendant (second respondent) is Ms Michelle Botha, an heir in terms of the will of the late Mr King.

- [4] The third defendant is the Master of the High Court, Kimberley.

### Background

- [5] The late Mr and Mrs King signed a massed will dated 18 June 2009, in which the plaintiff was appointed as executor.
- [6] Mrs King predeceased Mr King and after Mr King's death on 31 October 2022, the Master issued letters of executorship to the plaintiff on 17 January 2023.
- [7] It is alleged that during June/July 2023, the first and/or second defendant, represented by attorney Kenneth Juries, presented the Master with a new will signed by the late Mr King, dated 29 June 2022, in which *inter alia*, the first defendant is appointed executor.
- [8] The Master thereafter, on 17 July 2023 revoked the letters of executorship of the plaintiff.
- [9] The plaintiff alleges, for various reasons, that the will signed by the late Mr King on 29 June 2022 is null and void. She claims in the summons orders *inter alia* that the will dated 29 June 2022 be declared void, an order declaring that the massed will of 18 June 2009 be declared to be the last will and testament of the deceased and an order reinstating the letters of executorship pertaining to her.
- [10] The first and second defendants filed a plea dated 17 January 2024, signed by Mr Kenneth Juries alone, in which they deny that the requirements for a massed will had been complied with and that the will of the late Mr King dated 29 June 2022 was null and void and, in their plea, claimed the following:
- "1. Dismissal of Plaintiff's action
  2. An order declaring the will dated 29 June 2022 to be the last will and testament of the deceased.
  3. An order declaring that the will dated 18 June 2009 were never massed.
  4. Further and/or alternative relief."

### **The Rule 30A application**

- [11] The plaintiff's application in terms of Rule 30A was filed on 9 April 2024 and is brought on the following grounds:
- 11.1 The first and second defendants failed to file a separate counterclaim for the relief sought; and
  - 11.2 The plea was not signed by an attorney with right of appearance in the High Court, which renders the plea invalid.
- [12] The plaintiff filed a notice alerting the defendants to the non-compliance with the Rules and requested the defendants to rectify such within 15 days. The defendants, however failed to rectify the non-compliance.
- [13] In their opposing affidavit, deposed to by Mr Juries, first and second defendants contend that; (i) they are not required to file a separate counterclaim and that in any event the allegations made in the plea warrant the relief sought and (ii) Mr Juries does have right of appearance and was issued with the relevant certificate by the Registrar on 27 March 2023, as such he has the legal authority to sign all High Court documents. He attached the certificate of right of appearance to the affidavit.

### **Discussion**

- [14] Rule 24 (1) provides as follows:

***"24. Claim in reconvention***

*(1) A defendant who counterclaims shall, together with his plea, deliver a claim in reconvention setting out the material facts thereof in accordance with rules 18 and 20 unless the plaintiff agrees, or if he refuses, the court allows it to be delivered at a later stage. The claim in reconvention shall be set out either in a separate document or in a portion of the document containing the plea, but headed "Claim in Reconvention". It shall be unnecessary to repeat therein the names or descriptions of the parties to the proceedings in convention."*

- [15] The Rule is clear that a defendant who wishes to counterclaim has to set out his claim in reconvention either in a separate document or in the same document containing the plea but under the Heading "*claim in reconvention*,"
- [16] The first and second defendant have not only failed to set out their claim in reconvention distinct from the plea as required by Rule 24 (1), but have also failed to set out a clear and concise statement of the material facts upon which they rely for their claims as required in Rule 18. This situation has made it impossible for the plaintiff to deliver a plea to the claim in reconvention.
- [17] Mr Maluleka who appeared for the defendants argued that the defendants can not be forced to file a counterclaim and that Rule 22(1) in any event does not require of a defendant to file a counterclaim.
- Rule 22 (1) provides as follows:
- "22. Plea**  
*(1) Where a defendant has delivered notice of intention to defend, he shall within 20 days after the service upon him of a declaration or within 20 days after delivery of such notice in respect of a combined summons, deliver a plea with or without a claim in reconvention, or an exception with or without application to strike out."*
- [18] When it was pointed out to Mr Maluleka that the defendants were in fact claiming relief in prayers 2 and 3 of their plea which have not been based on material facts as the premises for the relief sought in the plea, he could not provide any meaningful or satisfactory answer.
- [19] The application should succeed on this basis. I will however, for the sake of completeness, deal with the issue of Mr Juries' right of appearance.

[20] **Right of appearance**  
**“Rule 18(1) provides as follows**

*(1) A combined summons, and every other pleading except a summons, shall be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), has the right of appearance in the High Court, only by such attorney or, if a party sues or defends personally, by that party.”*

(own highlighting)

[21] The argument on behalf of the defendants was that Mr Juries has the right of appearance in the High Court and that it was not a requirement in terms of Rule 18(1) that an attorney who signs a High Court pleading should indicate that he/she is an attorney with the right of appearance in the High Court.

[22] Mr Maluleka referred me in this regard to the matters of *Moloi v Municipal Manager, Fezi Dabi District Municipality* (504/2021) [2022] SAFSHC 67 (7 March 2022) and *Quill Associates (Pty) Limited v David Kruiper Local Municipality* (209/2020) [2020] ZANCHC 87 (20 November 2020). In these matters an attorney had signed the summons and the plea/counterclaim respectively. The pleadings did not reflect that the attorneys had the right of appearance in the High Court. Rule 30 applications were brought in both matters but the courts held that there was no irregularity in either case since the attorneys had the right of appearance in the High Court when they signed the High Court documents.

[23] *In casu* Mr Juries obtained his certificate of right of appearance some ten months before he had signed the plea. At the time of signing the plea he was thus entitled and authorized to sign such a pleading. Rule 18(1) does not support the argument by Mr Jankowitz that the plea should have been

signed twice, ie by an attorney with right of appearance (in the place of an advocate) and by an attorney. I agree however with Molitsoane J, where the learned Judge stated in paragraph 16 of the *Moloi* matter, that it is good practice that an attorney's right of appearance be reflected in pleadings in order to avoid unnecessary litigation in this regard.

- [24] The application must however succeed. The plea is fatally flawed and cannot be cured by way of an amendment.

### **Costs**

- [25] There is no reason why costs should not follow the result. Mr Jankowitz for the plaintiff, argued that the defendants should bear the costs of the application on a punitive scale. I however, do not consider such an order to be applicable in this matter. The normal order as to costs should apply.

The following order is made:

1. The first and second defendants' plea is struck out with costs on scale A.

  
C C WILLIAMS  
JUDGE OF THE HIGH COURT  
NORTHERN CAPE DIVISION

### **Appearances**

For the Plaintiff/Applicant:

Adv D Jankowitz

Instructed by:

Duncan & Rothman Attorneys

For the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/1<sup>st</sup> and 2<sup>nd</sup> Respondents: Adv. M Maluleka

Instructed by:

Kenneth Juries & Associates