



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

Case No: M541/23

In the matter between:

MARTHINUS HENDRIK JOHAN LOMBARD

Applicant

and

ETHEL LAURA ELIZABETH VAN DER MERWE

First Respondent

JOHANNES JOSIAS LOMBARD

Second Respondent

THE MASTER OF THE HIGH COURT, MAHIKENG Third Respondent

GERHARDUS MARTHINUS VAN DER BANK

Fourth Respondent

LIZELLE HILLIGENN

Fifth Respondent

Coram: Reddy J

Heard: 31 July 2025

Judgment reserved: 31 July 2025

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 24 March 2026 at 10h00.

Summary: Wills — Validity — Wills Act 7 of 1953, s 2(1)(a) — Statutory formalities — Requirement that testator and witnesses sign in each other's presence — Testator signing in Matlosana while witnesses signed in Bloemfontein (350km away) — Complete failure of simultaneous presence rendering the will invalid *ab initio*.

Wills — *Animus testandi* — Absence of intention — Testator 93 years old and cognitively vulnerable — Use of coercive language by drafter — Discrepancy between testator's expressed wishes and named heir in the document ("Swanepoel enigma") — Evidence establishing testator did not approve or understand the contents.

Succession — Unworthiness to inherit — Broader doctrine of *indignitas* — Maxim *de bloedige hand neemt geen erf* — Principles extending beyond homicide to serious moral wrongs — Financial abuse of estate and reliance on fabricated evidence in court proceedings — First Respondent declared unworthy to inherit.

Practice — Condonation — Standard for granting indulgence — *Grootboom v National Prosecuting Authority* applied — Interests of justice as the overarching standard. Interrelated factors including degree of lateness and adequacy of explanation — Condonation refused where explanation was founded on a demonstrably fabricated document.

Costs — *De bonis propriis* — Conduct of legal practitioner — Attorney deposing to an affidavit asserting the existence of a non-existent document — Breach of duty as an officer of the court — *Audi alteram partem* — Attorney afforded opportunity to show cause why a personal costs order should not be finalized.

JUDGMENT

REDDY J

Introduction

[1] This application focuses on the validity of the last will and testament of the late Jan Hendrik Lombard (“the deceased or “the testator”). The gravamen of the dispute is two testamentary documents; a joint will executed by the testator and his late wife, Rita Lombard (“the testatrix”), on 27 January 2022 (“Will 1”), and a document purportedly executed solely by the testator on 1 November 2022 (“Will 2”).

[2] The applicant, Marthinus Hendrik Johan Lombard, a son of the deceased who resides in the People’s Republic of China, moves for an order declaring Will 2 null and void, reviving Will 1 as the valid testamentary instrument. Further directing the Master of the High Court to accept Will 1 for the purposes of the Administration of Estates Act 66 of 1965. Finally removing the first respondent, Ethel Laura Elizabeth van der Merwe, a daughter of the deceased as executrix who is the primary beneficiary under Will 2 and appointing himself as executor in her place. The first respondent opposes the application.

[3] Before the merits of the main application can be engaged, this Court must determine several interlocutory applications that have accumulated in the shadow of the first respondent's procedural defaults. The applicant also moves, on the basis of the first respondent's conduct, for an order declaring her unworthy to inherit under the principle embodied in the maxim *de bloedige hand neemt geen erf*¹, and a punitive costs order against her attorney, Mr Loxton, *de bonis propriis*².

The parties

[4] The testator was 93 years of age at the time Will 2 was allegedly executed. His wife, the testatrix, had died shortly before the execution of Will 2. The second respondent, Johannes Josias Lombard, is a son of the deceased.

[5] The third respondent, the Master of the High Court, Mahikeng, has an interest in the relief sought in so far as Will 1 is to be accepted for administration. The fourth respondent, Gerhardus Marthinus van der Bank, is the person who drafted and allegedly witnessed Will 2. The fifth respondent, Lizelle Hilligenn, is cited in connection with the execution of Will 2.

[6] Will 1, the joint will of the testator and testatrix, was executed on 27 January 2022. Under Will 1 the estate would devolve in a manner consistent with what the applicant contends is consistent with the testator's true wishes. Will 2, by contrast, names the first respondent as the primary beneficiary and as executrix of the deceased estate. The applicant alleges that Will 2 is the product of fraud, forgery, undue influence, and fundamental non-compliance with the statutory formalities ensconced by the Wills Act 7 of 1953.

¹ The bloody hand takes no inheritance.

² Literal translation from one's own property or straight from the pocket.

Background facts

[7] The applicant launched the main application in September 2023. The initial notice of motion contained incorrect time periods for opposition. On 14 November 2023, the first respondent filed a notice of intention to oppose. Her answering affidavit fell due on 5 December 2023. She did not acquiesce with this timeline. Subsequent to this, the litigation was marked by a multiplicity of interlocutory motions, the particulars of which are delineated below.

[8] For purposes of brevity these procedural controversies are appositely organized under five primary headings. The first and second are the first respondent's rule 30 and rule 47 notices, each filed out of time. The third and fourth are the first respondent's applications for condonation of the late filing of her answering affidavits. The fifth is the applicant's application for condonation of the citation of rule 23(2) instead of rule 6(15) in his striking-out notice.

Interlocutory applications

The first and second matters: the obsolete Rule 30 and Rule 47 notices

[9] On 11 December 2023, twenty-three (23) court days after the first respondent's answering affidavit fell due, her attorneys filed a rule 47 notice calling on the applicant to furnish security for costs. On 14 December 2023, thirty(30) court days after the answering affidavit fell due, a rule 30 notice was filed objecting to alleged irregularities in the applicant's notice of motion. Neither notice was followed by any substantive application. Both applications were lodged in wilful disregard of the mandated timeframes, in breach of the applicable rules of court.

[10] To my mind these notices were not *bona fide*³ procedural steps directed at remedying identified irregularities. What stands out from these purported procedural steps is that these were mechanisms deployed to create a paper trail for a specific procedural defence. I find that the probabilities lean toward the use of these notices as justification for the first respondent's failure to file her answering affidavit timeously. Put differently these notices are obsolete and without any legal effect. The first respondent is denuded of placing any store on them to explain her delay.

The third and fourth matters: the first respondent's applications for condonation

[11] The first respondent filed her first answering affidavit in the main application on 28 February 2024, eighty-four (84) days after it fell due, coincidentally on the day the matter was enrolled for hearing on the unopposed roll. A second answering affidavit was filed on 6 May 2024. In each instance she applied for condonation.

[12] The principles governing condonation are well settled. In *Melane v Santam Insurance Co Ltd*, Holmes⁴ JA stated:

"In considering applications for condonation, the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case. Ordinarily these facts are interrelated: they are not individually decisive, for it is the cumulative effect which must be considered."

³ Literal meaning "Good" (bona) and "faith" or "trust" ("fides").

⁴ 1962 (4) SA 531 (A) at 532C–E.

[13] While the factors set out in *Melane* remain fundamental, the apex Court in *Grootboom v National Prosecuting Authority*⁵ has clarified that the overarching standard is the interests of justice. This determination requires a balancing act of all relevant factors to determine what justice requires in the specific circumstances of the case.

[14] This was expressed in the following way in *Grootboom*⁶:

“In this Court the test for determining whether condonation should be granted or refused is the interests of justice. If it is in the interests of justice that condonation be granted, it will be granted. If it is not in the interests of justice to do so, it will not be granted. The factors that are taken into account in that inquiry include:

- (a) the length of the delay;
- (b) the explanation for, or cause for, the delay;
- (c) the prospects of success for the party seeking condonation;
- (d) the importance of the issue(s) that the matter raises;
- (e) the prejudice to the other party or parties; and
- (f) the effect of the delay on the administration of justice.

Although the existence of the prospects of success in favour of the party seeking condonation is not decisive, it is an important factor in favour of granting condonation.

The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of

⁵ (CCT 08/13) [2013] ZACC 37; 2014 (2) SA 68 (CC); 2014 (1) BCLR 65 (CC); [2014] 1 BLLR 1 (CC); (2014) 35 ILJ 121 (CC) (21 October 2013)

⁶ Ibid paragraph 50-51

success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.’

[15] The explanation offered by the first respondent for the delay rests on a single premise; that the applicant filed a “Notice of Amendment” to his notice of motion subsequent to the first respondent’s rule 30 notice, which she says rendered it necessary to obtain a fresh copy of the amended notice of motion before she could file her answering affidavit. That explanation is untenable. The objective evidence confirms that the applicant never filed such “Notice of Amendment.” It is clear that this was specifically designed to justify a significant procedural lapse. The first respondent’s reliance on a document that does not exist constitutes a serious abuse of the court process. It is a fabrication that cannot be condoned under the guise of an “administrative oversight”. To accept such an explanation would be to allow a litigant to manufacture facts to suit their procedural failures, thereby undermining the integrity of the judicial system. It is a fabrication. Reliance under oath on a non-existent document to justify a three-month procedural default constitutes a serious abuse of the processes of this Court. In *Darries v Sheriff, Magistrate’s Court, Wynberg*⁷, the court affirmed that condonation is not a mere formality and requires a full and accurate account of the circumstances. Where the explanation offered is demonstrably false, no proper explanation exists, and the condonation application must fail⁸. Furthermore, the first respondent’s failure to take timeous steps to verify the status of the record before deposing to such an assertion demonstrates a reckless disregard for the duty of candour owed to this Court. Consequently, the

⁷1998 (3) SA 34 (SCA) at 41H.

⁸ *National Union of Mineworkers v Council for Mineral Technology* 1986 (4) SA 579 (W).

explanation provided is found to be *mala fide*⁹ and intended to mislead this Court into granting a discretion that is not warranted by the facts.

[16] Accordingly, I decline to exercise the condonation discretion in favour of the first respondent. Both her applications for condonation, for the late filing of her first answering affidavit dated 28 February 2024 and her second answering affidavit dated 6 May 2024, are dismissed. The failure to exercise my discretion in favour of the first respondent has a specific legal outcome. To this end, it axiomatically follows that the first respondent has no properly filed answering affidavit in the main application, and the merits of the main application fall to be determined on the basis of the applicant's founding affidavit and such evidence as is properly before this Court.

The fifth matter: the applicant's condonation application

[17] On 14 March 2024, the applicant served a notice of application to strike out certain portions of the first respondent's answering affidavit. The notice was titled as being brought "in terms of rule 23(2)". Rule 23(2) governs the striking out of matter from pleadings. Rule 6(15) is the correct procedural vehicle for striking out scandalous, vexatious or irrelevant matter from an affidavit in motion proceedings.

[18] On 12 July 2024, the applicant served a notice of intention to amend the citation from rule 23(2) to rule 6(15) in terms of Rule 28. No objection was received within the prescribed ten days. The applicant's attorney nevertheless failed to formally complete the amendment as required by rule 28(7), an oversight she attributes to travel commitments and an administrative error. The error was

⁹ Literal meaning "in bad faith" or "dishonest intent."

identified when preparing the court file for the hearing. The applicant then brought the present condonation application.

[19] The correction sought is, in substance, a cosmetic one. The content and scope of the striking-out application remain entirely unchanged. The first respondent was placed on notice of the intended correction as far back as July 2024 and did not object to it substantively. She will not be required to rework any affidavit as a consequence of the correction. In the absence of material prejudice, an explicable administrative oversight, and given the importance of allowing the substantive dispute to be resolved on the merits, I am satisfied that good cause for the condonation has been shown¹⁰.

[20] The applicant's condonation is accordingly granted. The striking-out notice dated 14 March 2024 is deemed to have been brought in terms of Rule 6(15) of the Uniform Rules of Court.

[21] A matter of serious concern arose in the replying affidavit filed on the applicant's behalf. That affidavit was deposed to not by the applicant but by his attorney, Ms Thaga, who made contentious factual allegations and personal attacks against the first respondent and her attorney. An attorney may depose to an affidavit on behalf of a client only in exceptional circumstances and only in respect of formal or procedural matters within her personal knowledge.¹¹ The portions of the replying affidavit that constitute contentious factual allegations, legal argument, or matter lying outside the personal knowledge of the deponent are disregarded. The procedural irregularity is reflected in the costs order.

¹⁰ *Uitenhage Transitional Local Council v South African Revenue Service* 2004 (1) SA 292 (SCA) at para 6.

¹¹ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163

[22] While the Court has granted the applicant's condonation, it must express its remissness regarding the replying affidavit deposed to by Ms. Thaga. It is a well-established practice that legal practitioners should refrain from deposing to affidavits that contain contentious factual allegations or personal vitriol against opposing parties. An attorney's role is that of a facilitator of legal argument, not a primary witness to the merits of the dispute. While this procedural lapse does not upset the applicant's case on the merits which is founded on objective documentary evidence it is a practice that the Court must deprecate.

The merits: validity of Will 2

[23] The first respondent having failed to place a properly filed answering affidavit before this Court, the merits of the main application are determined primarily on the applicant's version of the facts. This must not be interpreted to mean that there is an unequivocal acceptance of these facts. The applicant's version must in any event be assessed against the objective documentary and circumstantial evidence on record.

[24] The applicant advances three independent and, as this judgment will demonstrate, mutually reinforcing grounds for the invalidity of Will 2. These are, (i) non-compliance with the statutory formalities prescribed by s 2(1)(a) of the Wills Act 7 of 1953; (ii) absence of *animus testandi*; and (iii) fraud and undue influence.

Legal prescripts

[25] Section 2(1)(a) of the Wills Act 7 of 1953, ("the Act") provides, in relevant part, that no will shall be valid unless the will is signed at the end thereof by the

testator and in the presence of two or more competent witnesses present at the same time. The requirement that the testator sign in the presence of witnesses who are present simultaneously is not a technicality; it is the statutory mechanism by which the authenticity of the testamentary act is ensured.

[26] The concept of *animus testandi*¹² requires that the testator must have possessed both testamentary capacity and actual intention to test at the time of execution. The testator must understand the nature and effect of the document being signed and must act freely and voluntarily in signing it¹³. Undue influence vitiates testamentary capacity where the influence exerted is so overwhelming as to supplant the testator's own will and substitute the will of another for it.¹⁴

[27] Because the first respondent's answering affidavits were dismissed, the merits of the main application must be determined without a competing version of facts. While the *Plascon-Evans*¹⁵ rule technically operates in the Applicant's favour, this Court has nonetheless ensured that the relief granted is justified by the inherent probabilities and the objective documentary evidence on record. The undisputed facts regarding the signature timeline and the internal contradictions of Will 2 provide an unassailable basis for the orders sought.

Non-compliance with section 2(1)(a) of the Wills Act 7 of 1953 with reference to the irreconcilable timeline

¹² A Latin term meaning the "intention to make a will"

¹³ *Harlow v Becker* 1998 (4) SA 639 (W) at 643G–H; *Wills, Trusts and Estates* (De Waal & Schoeman-Malan, 5th ed) at 24–26.

¹⁴ *Spies v Smith* 1957 539 (A) at 543H–544A, *Katz v Katz* 1962 (3) SA 1 (A) at 5E–F

¹⁵ *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd.* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620.

[28] The foundational requirement of s2(1)(a) that the testator sign in the presence of witnesses who are simultaneously present was not met in respect of Will 2. The fourth respondent, who holds himself out as both the drafter and a witness of Will 2, has admitted that the testator did not sign the document in Bloemfontein on 1 November 2022 as the document purports on its face.

[29] The evidence establishes the following chronology: The testator signed what purports to be his signature on Will 2 in Matlosana (Klerksdorp) on or about 7 October 2022. The document was thereafter transported by the fourth respondent to Bloemfontein, approximately 350 kilometres away, where it was signed by the witnesses on 1 November 2022 in the complete absence of the testator. The testator was never in the same room as the witnesses when they appended their signatures. These unassailable facts result in one ineluctable legal conclusion: the witnesses were not present at the time the testator signed, and the testator was not present at the time the witnesses signed. This is not a technical defect but a total failure of the statutory ritual. The 350km separation represents a geographic impossibility of presence. This renders Will 2 invalid *ab initio*¹⁶.

[30] Given my finding as regards Will 2, I am also invited to consider whether s 2(3) of Act could rescue Will 2. This submission fails on three levels. First, no party has sought relief under s2(3). Second, and more fundamentally, the defect here is not merely one of form. The essential question is whether the document is authentic and whether the testator ever independently approved its contents. Third, the evidence of fraudulent procurement and the absence of *animus testandi* preclude any finding that the testator intended the document in the sense evinced

¹⁶ *Van der Merwe v Master of the High Court & another* 2010 (6) SA 544 (SCA) at paragraph 14, *Kidwell v The Master and Others* 1986 (4) SA 289 (W) At 291G – H

by s2(3). For the sake of completeness, the rescue provisions of s2(3) could find no purchase in these circumstances. Section 2(3) is designed to assist the *bona fide* testator who has made a technical error; it is not a sanctuary for those who have manufactured a testamentary document through deception or coercion.

Absence of *animus testandi*: the Swanepoel enigma

[31] Even were the formalities to be regarded as satisfied, the evidence establishes that the testator lacked *animus testandi* at the time Will 2 was executed. The testator was 93 years of age and was in a state of severe cognitive and emotional decline following his wife's death. The fourth respondent, who presented the document to him for signature, is said to have remarked: "*dit moet nou end kry*" ("this must end now"). This is the language of pressure, not dispassionate legal facilitation.

[32] Compelling objective evidence of the testator's failure to appreciate and approve the contents of Will 2 is furnished by the Swanepoel enigma. The first respondent has asserted that the testator wished to benefit her firstborn son, identified as "EH Swanepoel." Will 2, however, names "Johannes Gerhardus van der Merwe" as the heir the first respondent's other son, whom the testator barely knew. This discrepancy serves as a litmus test for testamentary capacity, providing objective proof that the testator did not, and could not, have known and approved the specific contents of the document he was pressured to sign. If the testator truly possessed the "actual intention to test," he would have identified the correct beneficiary.

[33] The Swanepoel enigma confirms the absence of *animus testandi* on a further ground. It demonstrates that the content of Will 2 did not represent what

the testator himself intended to bequeath. Consequently, the document cannot be said to represent the true expression of the deceased's will.

Undue influence and fraud

[34] The circumstances surrounding the execution of Will 2 are consistent with both undue influence and fraud. The testator was elderly, bereaved, and cognitively vulnerable. The fourth respondent who drafted Will 2 and supervised the process is the very person whose conduct is impugned. The execution took place in circumstances of secrecy, at a time and place diverging from what appears on the face of the document.

[35] The cumulative evidence established that the execution of Will 2 was not a free testamentary act. Given that the invalidity of Will 2 is established on the independent ground of non-compliance with s2(1)(a), definitive findings of criminal fraud are unnecessary, though the circumstances are concerning.

Unworthiness to inherit: *de bloedige hand neemt geen erf*

[36] The applicant seeks a declaration that the first respondent is unworthy to inherit from the deceased estate on the basis of the maxim *de bloedige hand neemt geen erf*. To fully grasp the import of this principle it is necessary to set out the scope of this principle before applying it to the facts.

[37] In its original and narrow formulation, the maxim applies specifically where a person has caused the death of the testator.¹⁷ Our law has, however, recognised a broader doctrine of unworthiness to inherit founded on the civil law *indignitas* or unworthy succession. The authorities disclose that unworthiness extends beyond homicide to cases involving serious moral wrongs against the

¹⁷ *Carelse v Estate De Vries* (1906) 23 SC 532.

testator, including suppressing, destroying or falsifying a will; fraudulently procuring a testamentary benefit; and conduct so reprehensible towards the testator or the administration of his estate as to bring the claimant within the reach of the common law rule.¹⁸

[38] The evidence establishes that the first respondent and the second respondent engaged in a campaign of financial abuse directed at the parents' estate, plundering bank accounts in 2021 without the testator's informed consent. Furthermore, the first respondent has relied on fabricated affidavit evidence the non-existent "Notice of Amendment" in these very proceedings. Her conduct encompasses both the procurement of a fraudulent testamentary document and the perpetuation of false evidence to resist the challenge to that document.

[39] I am satisfied that the first respondent's conduct falls squarely within the ambit of the broader doctrine of unworthiness. Her reliance upon a fabricated document to secure a procedural advantage is a grave transgression. To allow the first respondent to inherit after she has attempted to subvert the machinery of justice would be an affront to the principle of equity. She is *indigna* in the fullest sense of the term.

[40] The declaration of unworthiness applies to the first respondent individually. By fiction of law, she is deemed to have predeceased the testator. In

¹⁸ *Taylor v Pim* (1903) 24 NLR 484 (moral reprehensibility towards the testatrix), *Yassen v Yassen* 1965 (1) SA 438 (N) (concealment or suppression of a will), *Ex parte Steenkamp and Steenkamp* 1952 (1) SA 744 (T) (no benefit from one's own wrongdoing), *Pillay v Nagan* 2001 (1) SA 410 (D) (forgery of a will and fraudulent procurement of testamentary benefits), *Danielz NO v De Wet* 2009 (6) SA 42 (C) (grounds of unworthiness not static and developable in line with boni mores), and *Smit v Master of the High Court, Western Cape and Others* [2022] ZAWCHC 56 (fraudulent fabrication of a will and serious misconduct relating to estate administration rendering a claimant unworthy).

accordance with s2C(2) of the Act 7, her share of the estate does not simply lapse; it devolves upon her lawful descendants *per stirpes*, as if she had died immediately before the testator.

Removal of the first respondent as executrix

[41] Having been declared unworthy to inherit, it logically follows that the first respondent cannot retain her appointment as executrix. Her position was derived from Will 2, which is now declared invalid. She is accordingly removed as executrix.

[42] The applicant's appointment as executor is appropriate and is so directed, subject to the Master's statutory functions under the Administration of Estates Act 66 of 1965.

Costs

[43] The applicant has succeeded on all fronts. Will 2 has been declared invalid on multiple independent grounds. In principle, costs follow the result.

[44] The conduct of the first respondent warrants a costs order on the attorney and client scale. Her explanation for procedural default was found to be fabricated and she tendered false evidence under oath. This constitutes an abuse of the processes of this Court.

[45] The second respondent is also liable for costs due to his role in the dissipation of the deceased's bank accounts. A party and party costs order against him is appropriate.

[46] Regarding Mr Loxton, an attorney who deposes to an affidavit asserting the existence of a document he knew or ought to have known had never been filed

is not explained by inadvertence. This suggests gross negligence or bad faith. However, to satisfy the principle of *audi alteram partem*¹⁹, he must be afforded a meaningful opportunity to be heard before a *de bonis propriis* order is finalized. Accordingly, this Court will issue a 'show cause' directive, staying the finality of the cost order against Mr. Loxton to allow for an explanatory affidavit.

Order

[47] In the result, the following order is made:

1. The Applicant's non-compliance in citing Rule 23(2) instead of Rule 6(15) is condoned.
2. The First Respondent's applications for condonation are dismissed.
3. The document purporting to be the last will and testament of the late Jan Hendrik Lombard, dated 1 November 2022 ("Will 2"), is declared null and void and of no force or effect.
4. The joint will executed by the late Jan Hendrik Lombard and the late Rita Lombard on 27 January 2022 ("Will 1") is declared to be the valid and subsisting last will and testament. Because Will 2 is void *ab initio*, its revocation clause is of no effect.
5. The Master of the High Court, Mahikeng, is directed to accept Will 1 as the operative testamentary instrument.
6. The First Respondent, Ethel Laura Elizabeth van der Merwe, is declared unworthy to inherit (*indigna*) and is deemed to have predeceased the testator. Her share shall devolve upon her lawful descendants *per stirpes* in accordance with the law of succession.

¹⁹ A Latin maxim meaning "let the other side be heard".

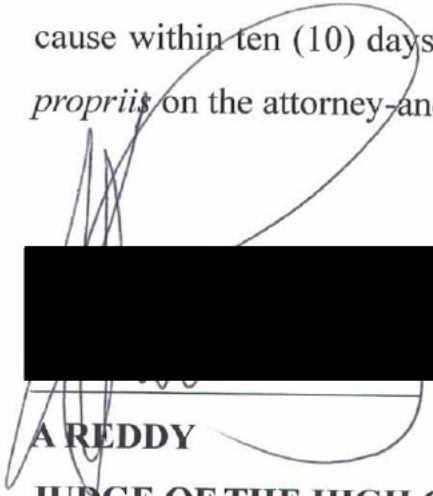
7. The First Respondent is removed as executrix of the estate with immediate effect.

8. The Applicant, Marthinus Hendrik Johan Lombard, is appointed as executor.

9. The First Respondent is ordered to pay costs on the attorney-and-client scale.

10. The Second Respondent is ordered to pay costs on a party-and-party scale.

11. Mr. Lion-Cachet Loxton of Bruce Loxton Inc. is hereby called upon to show cause within ten (10) days why he should not be ordered to pay costs *de bonis propriis* on the attorney-and-client scale.



A REDDY

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicant: Adv E Steyn

Instructed by: Thaga Attorneys, Mahikeng

For the First Respondent: Adv B Riley

Instructed by: Bruce Loxton Inc, Mahikeng