

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

(1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 28 March 2026

Case 2026-055761

In the matter between:

N[...] B[...] Z[...]

First Applicant

SAMKELISIWE FIONA MASHININI

Second Applicant

And

T[...] S[...] Z[...]

First Respondent

THE MASTER OF THE HIGH COURT

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this urgent application, the first and second applicants, the children of the late Mr M[...] S[...] Z[...], are seeking a final interdict and the removal of the first respondent as executrix, with an order to be appointed in her place, together with other relief. The first respondent was duly appointed by the Master and has letters of executorship.

[2] The applicants submit that the respondent is not administering the estate in the best interests of all beneficiaries and contend that she reported the estate and

secured her appointment without properly involving the other beneficiaries, by misrepresenting herself as the deceased's only child. She also failed to open an estate banking account and has been collecting rental income from estate properties into her personal accounts. They allege that she has threatened to cut off utilities and to “disinherit” the applicants, and that she is neglecting the estate properties. On this basis, they argue the matter is urgent and that her continued tenure as executrix is untenable.

[3] The first respondent disputes these allegations. She maintains that she was properly appointed by the Master, that there have already been meetings under the supervision of the Master to address the position of the heirs, and that the Master is actively seized with issues in the estate. She denies misappropriating estate rentals, contends that any rentals received were in the course of her duties as executrix, and points out that she will ultimately have to account in a liquidation and distribution account. She raises a point in limine that the matter is not urgent, contending that the applicants have not shown that they will not obtain substantial redress in due course through the ordinary processes of the Master’s office.

[4] It is common cause that the first respondent holds valid letters of executorship issued by the Master and that there is, at least to some extent, an ongoing process at the Master’s office. The applicants sent a complaint to the Master in January, for which no substantive written reply has yet been received. There were at least two meetings convened with or through the Master, one of which the first applicant left prematurely. The last recorded engagement with the Master appears to have been early this year, with no clear indication of what, if any, remedial steps the Master has taken since.

[5] Removal of an executor is a drastic measure.¹ Section 54(1) of the Administration of Estates Act² empowers the Master or the court to remove an executor in specified circumstances, but the authorities emphasise that the remedy is not punitive and is reserved for cases where the continued holding of office is

¹ *Börner v Brand* [2025] 1 All SA 102 (WCC) para 109.

² 66 of 1965.

clearly incompatible with the proper administration of the estate and the protection of beneficiaries' interests. The court must be satisfied, on cogent evidence, that it is undesirable that the executor should remain in office.

[6] There is a stark dispute over whether the first respondent has been misappropriating the rental or merely receiving it in the course of her duties as executrix, and over the inferences to be drawn from her use of personal banking arrangements and the absence of a separate estate account. What is lacking on the papers is a full, coherent accounting trail that demonstrates what rental was received when, into which accounts it flowed, and how it was applied, so that the actual extent of any financial prejudice to the estate cannot yet be determined, and not in the urgent court.

[7] That said, even on her own version, there is no dedicated estate bank account, rental is being channelled through her personal banking arrangements, and she has not provided a coherent, documented account of the estate's income and expenditure. This falls short of what is expected of an executor and justifies a firm conclusion that she has, at the very least, administered the estate irresponsibly to date. *Börner v Brand*³ stated

“It is untenable for an executor who sacrifices his fiduciary functions, which requires the exercise of utmost good faith, to pursue a line dictated in favour of his own interests. A party occupying a fiduciary position must not engage in a transaction by which he will personally acquire an interest adverse to his duty. Where a person stands to another in a position of confidence involving a duty to protect the interests of that other, he is not allowed to make a secret profit at the other's expense or place himself in a position where his interests conflict with his duty. The latter principle underlies an extensive field of legal relationships, eg, a guardian to his ward, an attorney to his client, and an agent to his principal. If a trustee is a beneficiary and acts in such a way as to benefit himself at the expense of other beneficiaries, his acts will be narrowly scrutinised. Executors and administrators will not be permitted to derive a personal benefit from how they transact the business or manage the estate's assets.”

³ [2025] 1 All SA 102 (WCC) para 114.

[8] In the face of disputes and unattended meetings, the drastic step of removal on an urgent basis, and the substitution of one or both applicants as executors, remains inappropriate on this record and in this instance. The proper course is to place the administration under tighter interim controls and to require the Master, who is institutionally charged with supervising executors, to investigate the complaints and to decide, in a reasoned written decision, whether the first respondent should remain in office.

[9] That does not mean the status quo should simply be left to continue unchanged. The allegations raised are serious. If it is true that rental income is not being kept in a separate estate account, that beneficiaries have been threatened rather than engaged, and that there is no transparent accounting to the Master and the beneficiaries, then the interests of the estate and all heirs are clearly at risk. At the same time, the statutory scheme places the Master at the centre of supervising executors. This is not the appropriate forum to replace the Master's functions, to review the Master's appointment of the first respondent, or to implement a final change in control over the estate. What is needed is a holding arrangement: limited protective measures to stabilise the administration, and a clear instruction to the Master to address the complaints in writing within specified time frames.

[10] As to urgency, the complaint is that rental income is being collected and applied now, and that properties may be neglected, without adequate transparency or oversight. If the applicants are correct, ongoing harm may be difficult to reverse ex post facto. Even if the evidence of misappropriation is not yet sufficiently clear to justify removal, the risk inherent in the continued, unregulated receipt and application of estate income justifies limited, urgent intervention to ensure that rentals are ring-fenced and that the Master's processes are not left to drift indefinitely. I am accordingly satisfied that the matter warrants being dealt with as urgent to craft interim protective relief.

[11] Balancing the seriousness of the allegations, the disputed factual matrix, the drastic nature of the relief sought, and the important institutional role of the Master, the just course is to decline, at this stage, to remove the first respondent or to

appoint any of the applicants as executor, and rather to grant interim, regulatory relief aimed at ensuring that estate income is properly ring fenced and accounted for, and to require the Master to investigate and to communicate their position in writing within a fixed period. This will not preclude any party from approaching the Master with further representations, or from seeking further relief in this court once the Master has had a proper opportunity to exercise the statutory functions entrusted to that office.

[12] In relation to costs, the applicants have secured significant urgent relief through interdictory and regulatory orders aimed at safeguarding the estate and initiating a proper investigation by the Master. These orders stem from the first respondent's irresponsible administrative decisions, including her use of personal banking arrangements for estate rentals and her failure to provide a proper written account. Given these circumstances, it is fair that she bears the costs of this urgent application.

Order

[13] As a result, the following order is made:

1. The matter is enrolled as urgent in terms of Rule 6(12).
2. Pending a written decision by the Master of the High Court:
 - a. The first respondent is interdicted and restrained from receiving any rental income or other income derived from immovable properties forming part of the estate of the late M[...] S[...] Z[...] into any bank account held in her personal name.
 - b. The first respondent is interdicted and restrained from selling, encumbering or otherwise disposing of any immovable property forming part of the estate, and from making any distribution of estate funds or assets to herself or to any beneficiary, save with the prior written consent of all adult beneficiaries or with the written approval of the Master of the High Court.

3. All rental payments and other income arising from immovable properties forming part of the estate shall, with effect from the date of this order, be paid into:
 - a. a banking account opened in the name of "Estate Late M[...] S[...] Z[...]," the details of which shall be notified in writing to the Master and to the applicants' attorneys within 10 (ten) days of this order; or, failing the prompt opening of such an account, an attorneys' trust account designated in writing by the parties' legal representatives for the benefit of the estate, and such funds shall not be withdrawn or applied except for necessary expenses of administering and preserving the estate.
4. The first respondent is directed, within 20 (twenty) court days of this order:
 - a. to deliver to the Master, with a copy to the applicants' attorneys, a written account, on affidavit, of all rental and other income received in respect of estate properties from the date of her appointment as executrix to the date of this order;
 - b. to annex to such affidavit copies of bank statements for any account into which such income has been paid, together with a schedule listing all payments made from such income and the purposes of such payments.
5. The Master of the High Court (second respondent) is directed:
 - a. to consider the applicants' complaints, the first respondent's response, and the accounting furnished in terms of paragraph 4;
 - b. to investigate, in terms of the Administration of Estates Act 66 of 1965 and any other applicable law, the administration of the estate of the late M[...] S[...] Z[...], including the handling of rental income and other estate assets; and
 - c. within 60 (sixty) days of receipt of the accounting referred to in paragraph 4, to communicate to the parties in writing the outcome of such investigation and any decision taken

concerning the continued appointment or possible removal of the first respondent, furnishing brief written reasons.

6. Any party is granted leave, on the same papers duly amplified, to approach this court for further relief, including but not limited to relief arising from or consequent upon the Master's written decision contemplated in paragraph 5.
7. The respondent is to pay the costs of this application, on scale B.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	26 March 2026
Date of judgment:	28 March 2026
For the applicant:	TL Rachidi instructed by AS Raseroka Attorneys
For the respondent:	BZH Madonsela of BZH Madonsela Attorneys