IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 2476/2025

In the matter between:

MARIA MAGDALENA ERASMUS	**FIRST APPLICANT**
YVONNE GOUWS	**SECOND APPLICANT**
CLAUDIA BERYL LIEBENBERG	**THIRD APPLICANT**
BAREND CHRISTIAAN VAN ROOYEN N.O.	**FOURTH APPLICANT**
[In his capacity as executor of the estate of the late Hercules Johannes Bester and surviving spouse Claudia Beryl Bester, estate number 1555/2015]	

And

CHRISTENE DE VOS	**FIRST RESPONDENT**
MARIZANNE DE BEER	**SECOND RESPONDENT**
CLAUDIA BERYL VENTER	**THIRD RESPONDENT**
HERKLAAS DE VOS	**FOURTH RESPONDENT**
WOUTER DEVOS	**FIFTH RESPONDENT**
CLAUDIA BERYL VENTER N.O.	**SIXTH RESPONDENT**
[In her capacity as executrix in the estate of the late Claudia Beryl Bester, estate number 5898/2024]	
MASTER OF THE HIGH COURT, BLOEMFONTEIN	**SEVENTH RESPONDENT**
MASTER OF THE HIGH COURT, POLOKWANE	**EIGHT RESPONDENT**
REGISTRAR OF DEEDS, FREE STATE PROVINCE	**NINTH RESPONDENT**

Neutral citation: *Erasmus and Others v De Vos and Others* (2476/2025) [2026] ZAFSHC 86 (5 March 2026)

Coram: DANISO J

Heard: 11 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 1600 on 05 March 2026

Summary: Wills – requirements statutory massing – formalities for adiation – survivor not accepting benefits – survivor entitled to revoke will and make another.

ORDER

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1 The application is dismissed.

2 The first, second and third applicants shall pay the costs of this application jointly and severally the one paying the other to be absolved including the costs of counsel on scale B.

JUDGMENT

Daniso J

[1] Mrs Claudia Bester died a widow on 17 July 2024 at Naboomspruit, Limpopo Province leaving a last will and testament dated 20 November 2020 (the 2020 will). In terms of the provisions of the 2020 will, financial bequests were made to her children, the first to third applicants (the applicants) and the first respondent. The remainder of the estate was bequeathed in equal shares to her grandchildren born from the first respondent namely, the second to fifth respondents.

[2] The applicants are aggrieved that the estate of the late Mrs Bester is to be administered and distributed on the basis of her 2020 will instead of the mutual will she executed with their late father, Mr Hercules Johannes Bester, on 27 June 2014 in terms of which they consolidated their joint estate for the purpose of a joint disposition, subject to a *fideicommissum* in favour of their children. Mrs Bester, as the surviving spouse,

adiated (accepted) the benefits arising from the mutual will to the effect that massing of the assets of their joint estate occurred therefore, she was not entitled to execute the 2020 will to dispose of the joint assets contrary to the provisions of the mutual will. It is in that regard that the applicants seek a declarator against the sixth respondent in her capacity as executrix of Mrs Bester's deceased estate on the following terms, that:

' 1.1. The will made on 27 June 2014 ("*the 27 June 2014 will*") by the late Hercules Johannes Bester, identity number 31[…] (*the late Mr Bester*") and the late Claudia Beryl Bester, identity number 33[…] ("*the late Mrs Bester*"), constitutes a joint will in terms of which the late Mr Bester and the late Mrs Bester massed their respective estates;

1.2. The late Mrs Bester accepted the benefits in terms of the 27 June 2014 will subject to the provisions of the 27 June 2014 will;

1.3. Upon the acceptance of the benefits in terms of the 27 June 2014 will by the late Mrs Bester, massing of the estates of the late Mr Bester and the and late Mr Bester occurred subject to the provisions of clauses 4 to 6 of the 27 June 2014 will;

1.4. In terms of clauses 4 and 5 of the 27 June 2014 will, a fideicommissum was created in favour of the first to third applicants and the first respondent, in terms of which the late Mrs Bester was the fiduciary and first to third applicants and first respondent are the fideicommissaries in respect of the assets which formed part of the respective estates of the late Mr Bester and the late Mr Bester on 27 January 2015;

1.5. The massed estate of the late Mr Bester and the late Mrs Bester, which also comprise the fideicommissary assets in terms of the fideicommissum referred to in paragraph 1.4 above, comprise of the following assets:

1.5.1. Subdivision 1 of the farm Erfdeel no. 1[…], district Kroonstad, held by deed of transfer T6723/2015;

1.5.2. Remaining extent of the farm Erfdeel no. 1[…], district Kroonstad, held by deed of transfer T6723/2015;

1.5.3. Portion 4 of 1 of the farm Elandsrand no. 2[…], district Kroonstad, held by deed of transfer T7293/2015; and

1.5.4. The amount of **R750 000.00**, namely the proceeds of Erf 6[…], district Kroonstad, also known as 2[…] B[…] Street, Elandia, Kroonstad, previously held by deed of transfer T2918/2003.

1.6. The assets referred to in paragraph 1.5 above do not form part of the estate of the late Mrs Bester for purposes of the administration of the estate of the late Mrs Bester in terms of the will made by the Mrs Bester on 20 November 2020, alternatively, the assets referred to in paragraph 1.5 above are excluded from the provisions of the will made by the late Mrs Bester on 20 November 2020; and

1.7. The assets referred to in paragraph 1.5 above must be administered, sold and the proceeds paid in equal shares to the first to third applicants and the first respondent in terms of the provisions of clause 5 of the 27 June 2014 will by the fourth applicant under estate number 1555/2015; alternatively, by the sixth respondent under estate number 5898/2024.

2. Alternatively to paragraphs 1 to 1.7 above, that it be declared and ordered that:

2.2. In terms of the provisions of clause 5 of will made on 27 June 2014 ("*the 27 June 2014 will*") by the late Hercules Johannes Bester, identity number 31[…] (*the late Mr Bester*") and the late Claudia Beryl Bester, identity number 33[…] ("*the late Mrs Bester*") the 27 June 2014 will, a fideicommissum was created in favour of the first to third applicants and the first respondent in respect of the late Mr Bester undivided half shares in the following assets:

2.2.1. Subdivision 1 of the farm Erfdeel no. 1[…], district Kroonstad, held by deed of transfer T6723/2015;

2.2.2. Remaining extent of the farm Erfdeel no. 1[…], district Kroonstad, held by deed of transfer T6723/2015;

2.2.3. Portion 4 of 1 of the farm Elandsrand no. 2[…], district Kroonstad, held by deed of transfer T7293/2015; and

2.2.4. Erf 6[…], district Kroonstad, also known as 2[…] B[…] Street, Elandia, Kroonstad, previously held by deed of transfer T2918/2003, which was sold by the late Mrs Bester for the amount of **R750 000.00**.

2.3. The first to third applicants and the first respondent are entitled to enforce clause 5 of the 27 June 2014 will in respect of the late Mrs Bester's undivided shares in the immovable properties referred to in paragraphs 2.1.1 to 2.1.3 above and the amount of R375 000.00, namely 50% of the proceeds of the immovable property referred to in paragraph 2.1.4 above, against the estate of the late Mrs Bester; and

2.4. The sixth respondent is directed to give effect to the provisions of the fideicommissum in accordance with the provisions of clause 5 of the 27 June 2014 will in respect of the assets referred to in paragraph 2.2 above and to:

2.4.1. Award and distribute 50% of the proceeds of the immovable properties referred to in paragraphs 2.1.1 to 2.1.3 in equal shares to the first to third applicants and the first respondent; and

2.4.2. Award and distribute the amount of **R375 000.00** in equal shares to the first to third applicants and the first respondent.

3. That the sixth respondent be ordered to pay the costs of the application.
4. That in the event that the application is opposed by any of the other respondents, that such respondent be ordered to pay the costs of the application, jointly and severally, with the sixth respondent . . .'

[4] The facts pertinent to the determination of this dispute are common cause: during her lifetime, Mrs Bester was married in community of property to Mr Bester. They lived in Kroonstad, in the Free State Province until Mr Bester passed away on 27 January 2015. The relevant parts of the mutual will provide as follows:

'2.

ONS benoem en stel hiermee aan as Eksekuteur van ons boedel ons Prokureur BAREND CHRISTIAAN VAN ROOYEN van die firma GRIEMBEEK VAN ROOYEN & VENNOTE ING, Presidentstraat 4[…] KROONSTAD, met al die magte in die Wet toegelaat en veral die mag van assumpsie en op die uitdruklike voorwaarde dat dit nie vir my Eksekuteur sal nodig sal wees om enige sekuriteit te lewer aan die Meester van die Hoogeregshof of enige ander bevoegde amptenaar vir die behoorlike uitvoering van sy pligte onder die amp voormeld nie.

3.

ONS bepaal dat die boedels van die eersstenrwende van ons en die langslewende van ons saamgesmelt moet word en beredder word as een boedel.

4.

ONS bemaak die geheel van die saamgesmelte boedel aan fie langslewende van ons, onderworpe aan die bepalings van toepassing by die afsterwe van die langslewende soos hierinlater uiteengesit.

5.

ONS bepaal dat by die afsterwe van die langslewende van ons, of indien ons gelyktydig te sterwe sou kom, al ons bates te gelde gemaak moet word. Ons erfgename het egter 'n voorkoosreg om enige van die bates te koop teen markwaarde, indien enigeen van hul sou belangstel. Die opbrengs daarvan sal as volg verdeel word:-

5.1. Aan ons dogter YVONNE GOUWS 25%

5.2. Aan ons dogter CHRISTENE DE VOS 25%

5.3. Aan ons dogter CLAUDIA BERYL LIEBENBERG 25%

5.4. Aan ons dogter MARIA MAGDALENA ERASMUS 25%

6.

ENIGE person aan wie enige erfenis onder hierdie Testament mag toekom, sal sodanige erfenis of vrugte daarop of toekomstige vrugte daarop ontvang en geniet as sy haar vrye, uitsluitlike en onbelemmerde eiendom, vry van die skulde, immenging, beheer en bystand van enige eggenoot of eggenote, met wie hy of sy in die huwelik getree het in die toekoms mag tree en sodanige erfenis of vrugte daarop sal uitgesluit wees van enige gemeenskap van goed of aanwas in terme van die aanwasbedeling volgens die Wet op Huweliksgoedere 88 van 1984, met sodanige eggenoot/eggenote. Verder word die maritale mag wat die eggenoot van 'n vroulike erfgenaam mag besit as gevolg van sy huwelik met sodanige vroulike.'

[5] The *fideicommissary* assets as contemplated in clauses 4 and 5 comprise of the following assets:

i) Subdivision 1 of the farm Erfdeel no. 1[…], district Kroonstad, held by deed of transfer T6723/2015;

ii) Remaining extent of the farm Erfdeel no. 1[…], district Kroonstad, held by deed of transfer T6723/2015;

iii) Portion 4 of 1 of the farm Elandsrand no. 2[…], district Kroonstad, held by deed of transfer T7293/2015; and

iv) The amount of R750 000 being the proceeds of the sale of erf 6[…], district Kroonstad, also known as 2[…] B[…] Street, Elandia, Kroonstad, previously held by deed of transfer T29181/2003.

[6] In sum, it is the applicant's case that it is clear from the provisions of the mutual will that the late Mr and Mrs Bester intended to mass their estates arising from their marriage in community of property for the purpose of a joint disposition subject to a *fideicommissum* in favour of their children. The mutual will further stipulates that upon their respective or simultaneous deaths, the estate shall devolve upon their children in equal shares. Following Mr Bester's death, the fourth applicant in his capacity as the appointed executor duly explained to Mrs Bester the conditions and benefits of the mutual will essentially that, if she adiates she cannot at a later stage revoke those conditions. Mrs Bester confirmed that she understood the implications and provided a verbal adiation as such there is no written adiation.

[7] In a letter dated 1 November 2024 addressed to the respondents' attorneys, the Master in Bloemfontein alluded to the fact that a letter was transmitted to the fourth applicant on 1 March 2016 in terms of which the fourth applicant was directed to lodge Mrs Bester's election in respect of the *fideicommissum*. It is the fourth applicant's submission that, indeed, he did not reply to the letter as he did not receive it. In any event, Mrs Bester's acceptance was verbal.

[8] Mr Pienaar, on behalf of the applicants, submitted that neither s 37 of the Administration of Estates Act 66 of 1965 (Estates Act) nor the common law requires adiation to be in writing. Upon Mrs Bester's acceptance of the benefits of the mutual will, which include taking possession of the movable assets and receiving transfer of the immovable properties, massing of Mr and Mrs Bester's estates occurred. In support of these submissions, Mr Pienaar referred to *Anderson v Du Plessis*[1] (*Anderson*) asserting that this authority confirms that the acceptance of any benefit under the will of the first

[1] *Anderson v Du Plessis NO* [2025] ZAWCHC 243 paras 40-42.

dying amounts to adiation.

[9] Mr Pienaar also referred to *Van den Heever N.O v Poulos*[2] (*Van den Heever*) and contended that the general rule is that a person is assumed to have adiated unless he expressly repudiates. Nothing express or explicit is required by way of acceptance accordingly, Mrs Bester was not entitled to execute the 2020 will to dispose of the joint estate, the estate must be disposed of in terms of the massed will.

[10] As regards the manner of distribution of the joint estate, it is acknowledged by the applicants that the liquidation and distribution account (the L&D account) lodged in terms of the mutual will makes no reference to a massed estate nor the provisions of s 37 of the Estates Act as required by regulation 5(1)*(a)*(vii) and 5(1)*(e)*(i) of the Estates Act. Furthermore, after the death of the late Mr Bester, the immovable properties of the joint estate were transferred to Mrs Bester in terms of s 45(1) of the Deeds Registries Act 47 of 1937. However, the *fideicommissum* conditions as stipulated in clause 5 of the mutual will were not recorded in the transfer documents (the s 45 transfer documents). The applicants attribute that the non-compliance with the apposite regulations, including the omission of the *fideicommissum* conditions from the s 45 transfer documents, to an oversight by both the fourth applicant and the transferring attorneys.

[11] The applicants further contend that the L&D account laid for inspection during the period 24 April 2015 to 15 May 2015 – no objections were lodged. It is the applicants' case that the L&D account can still be amended as the deceased estate has not been finalized. Based on all these reasons, it is their contention that they have made out a case for the relief they seek.

[12] The application is opposed by the sixth respondent. The Master: Bloemfontein, the Master Polokwane and the Registrar of Deeds (seventh to ninth respondents) are cited by virtue of their respective interest in the order sought, no relief is sought against them. The report filed by the Master, Bloemfontein, merely confirms the fourth applicant's appointment as executor to liquidate and distribute the estate of the late Mr Bester and

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[2] *Van den Heever N.O v Poulos* [2023] ZAPGPJHC 349 para 51.

the then surviving spouse, Mrs Bester.

[13] The sixth respondent is adamant that not all the requirements for statutory massing have been met. The estate must accordingly be dealt with in terms of the 2020 will. The fact that there is no written proof of Mrs Bester's adiation should be the end of the matter.

[14] Mr Prinsloo, on behalf of the sixth respondent argued that the administration of the late Mr Bester's estate involved two experienced legal practitioners who regularly dealt with estate and related matters therefore, the fact that the estate was not administered as a massed estate including the omission of the fideicommissum conditions from the s45 transfer documents was not due to some error. This circumstance, coupled with the fact that no written adiation was obtained from Mrs Bester until she passed away approximately eight years after Mr Bester's death is an indicator that Mrs Bester refused to sign the adiation as she did not accept the massing of the estates. Counsel added that it is also important to note that the Master, Bloemfontein's memorandum and certificate of inspection also refer to the deceased estate late HJ Bester and not a joint or massed estate.

[15] Mr Prinsloo disagreed that Mrs Bester's conduct by accepting the benefits under the mutual will amounted to adiation, as Mrs Bester was entitled to receive the benefits in terms of her marriage in community of property. That aside, the fact that she executed various wills after the death of Mr Bester, the last being the 2020 is an indicator that she regarded herself as entitled to dispose of her estate. The application must accordingly be dismissed with costs.

[16] I am in agreement with the sixth respondents' contentions. Section 37 of the Estates Act deals with massed estates. It provides as follows:

'If any two or more persons have by their mutual will massed the whole or any specific portion of their joint estate and disposed of the massed estate or of any portion thereof after the death of the survivor or survivors or the happening of any other event after the death of the first-dying, conferring upon the survivor or survivors any limited interest in respect of any property in the massed estate, then upon the death after the commencement of this Act of the first-dying, adiation by the survivor or survivors shall have the effect of conferring upon the persons in whose favour such disposition was made, such rights in respect of any property forming part of the share of the survivor or survivors of the massed estate as they would by law have possessed under the will if that property had belonged to the first-dying; and the executor shall frame his distribution account accordingly.'

[17] Having regards to the provisions of s 37 for massing to take effect, there must be a mutual will in terms of which the parties consolidate their estates into one mass for the purpose of a joint disposition after the death of the survivor. The mutual will must confer only a limited interest on the survivor, which in this matter is a fiduciary right. The survivor must adiate upon the death of the first-dying,[3] who must have died or before the Estates Act was promulgated.[4]

[18] The effect of clause 3 including the proper construction of the mutual will in its entirety is that the late Mr and Mrs Bester intended to consolidate their estates into one mass for the purpose of a joint disposition after the death of the survivor (Mrs Bester), subject to a *fideicommissum* in favour of their children. On the facts germane to this matter, it is the requirement pertaining to adiation that is in dispute.

[19] As correctly pointed out by the applicants, s 37 of the Estates Act does not require that adiation must be in writing. However, as much as the Estates Act is silent on how adiation must be effected or proven where verbal adiation is asserted, it must be corroborated by the surrounding factors which include the conduct of the survivor after the death of the first-dying, the manner in which the estate was administered and the documentary evidence in order to arrive at the conclusion that massing has been established.

[20] In terms of s 37 of the Estates Act, where there has been massing and adiation the executor must frame his L&D account accordingly. Except for Mrs Bester's

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[3] *Rosenberg v Dry's Executors and Others* 1911 AD 679; *Strauss v Strauss and Others* [2023] ZAGPJHC 377 para 14; *Kruger v Terblanche* 1978 (2) SA 198 (T) 205A to 206A.
[4] On or before 2 October 1967.

undisputed acceptance of the benefits under the mutual will, on the applicants' own submission, the estate was not administered as a massed estate in that the L&D account makes no reference to a massed estate and the *fideicommissum* condition was not recorded on the s 45 transfer documents.

[21] Regulation 5 of the Estates Act deals with the formalities pertaining to L&D accounts. Regulations 5(1)*(a)*(vii), 5(1)*(e)*(i) and (5(1)*(g)*(i) prescribe that the L&D account must disclose the provisions of the will relating to massing and also require the executor's account to specify under Fiduciary Assets Account the fiduciary assets held by the deceased as fiduciary.[5]

[22] Mrs Bester's adiation is also not borne out by the s 45 transfer documents. The fact that the *fideicommissum* condition as contemplated in the mutual will (clause 5) was not inserted in the s 45 transfer documents puts paid to the applicants' contention that Mrs Bester adiated her conditional limitation of ownership of the immovable properties (the fideicommissary assets). Absent the recordal of this clause, it cannot be said that when she made the election, she had full knowledge of the consequences of her election.

[23] It must be borne in mind that as opposed to ordinary testamentary bequests where the survivor upon adiation simply accepts a gift, with regard to adiation in the context of massing, the acceptance of a gift is accompanied with an irrevocable obligation. Once the survivor adiates, she loses her testamentary freedom in that, she is prohibited from disposing of the massed estate which includes her own assets. In my view, these stringent consequences behooves the court to scrutinize verifiable documentary evidence and not only rely on a bare verbal adiation.

[24] For the reasons that I have alluded to above, I have to come to the conclusion that the reliance on *Anderson* and *Van den Heever* does not provide refuge to the applicants. It is important to also point out that in *Anderson* the survivor had filed a sworn statement detailing the circumstances surrounding his acceptance of the benefits.[6] I am not persuaded that Mrs Bester adiated the benefits arising from the mutual will following the

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[5] D Meyerowitz and P H Cilliers *Meyerowitz, Administration of Estates and Their Taxation* 2 ed (2023) at 218-223.

[6] Footnote 1 paras 5 and 43.

death of Mr Bester. The result is that there was no massing of their respective estates. In the premises, the estate of the late Mrs Bester must be administered and distributed on the basis of her last will and testament dated 20 November 2020.

Costs

[22] There is no reason why the costs should not follow the result

Order

[23] I make the following order:

1 The application is dismissed.

2 The first, second and third applicants shall pay the costs of this application jointly and severally the one paying the other to be absolved including the costs of counsel on scale B.

NS DANISO
JUDGE OF THE HIGH COURT

Appearances

For the applicants: C D Pienaar SC
Instructed by: Rosendorff Reitz, Attorneys, Bloemfontein

For the 6th respondent: WJ Prinsloo
Instructed by: JB Cornelius Attorneys, Naboomspruit
Pieter Skein Attorneys, Bloemfontein.