

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Number: 2024/108497

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
12/4/2026	_____
DATE	SIGNATURE

In the matter between:

D[...] S[...] R[...]

Applicant

and

P[...] M[...] N.O.

First Respondent

P[...] M[...]

Second Respondent

THE MASTER OF THE HIGH COURT, JOHANNESBURG

Third Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] The Applicant, Ms D[...] S[...] R[...], approaches this Court as the mother and natural guardian of the minor child, N[...] R[...] (“N[...]”). The late T[...] J[...] M[...] (“the deceased”) is the acknowledged father of N[...]. The deceased died intestate on 2 July 2021. The First Respondent, Ms P[...] M[...], is the daughter of the deceased and the duly appointed Executrix of his deceased estate. The Second Respondent is cited in her personal capacity. The Third Respondent is the Master of the High Court, Johannesburg (“the Master”).

- [2] The Applicant seeks a declaratory order to compel the Executrix to accept a maintenance claim on behalf of N[...] for inclusion in the estate's Liquidation and Distribution ("L&D") account, and to compel the Master to withdraw its objection and grant consent for the payment of arrear and interim maintenance in terms of section 26(1A) of the Administration of Estates Act 66 of 1965 ("the Estates Act").
- [3] The application raises important questions concerning the rights of minor children to claim maintenance from deceased estates, the proper interpretation of section 26(1A) of the Estates Act, the powers and duties of the Master, and the procedural routes available to a claimant who is aggrieved by a decision of the Master.

The parties

- [4] The Applicant is the biological mother of N..., a minor child born on 20 April 2013. He is nearly 13 years old. The Applicant and the deceased were in a long-term relationship from approximately 2009 until the deceased's death.
- [5] The First Respondent is the daughter of the deceased and was appointed as the Executrix of the deceased's estate on 26 July 2023. She is an admitted attorney employed by Cheadle Thompson & Haysom Inc. The Second Respondent is cited in her personal capacity for purposes of the costs order sought against her.
- [6] The Third Respondent is the Master of the High Court, Johannesburg, cited because of its statutory interest in the administration of deceased estates and is also the subject of the declaratory relief sought. The Master has elected to abide the decision of the Court.

Factual background

- [7] The deceased and the Applicant commenced a romantic relationship during or about 2009. Their son N[...] was born on 20 April 2013 and is now almost 13 years old.

- [8] The deceased was employed by Sasol and stationed in Secunda during his working life. He contributed financially to the Applicant's household, including buying groceries, paying for electricity and gas, buying clothes, school uniforms, and paying school fees. After N[...]s birth, the maintenance contribution paid by the deceased to the Applicant increased.
- [9] The deceased retired during or about March 2021. A substantial payment was received from his employer upon his retirement, as reflected in the L&D account.
- [10] The deceased became ill around the middle of June 2021 and passed away from COVID-19 on 2 July 2021. The deceased died without leaving a will. The laws of intestate succession accordingly apply to the distribution of his estate.
- [11] During or about November 2021, the Applicant provided the Master with her consent regarding the appointment of the First Respondent as executrix.
- [12] Since the deceased's death, the Applicant has been solely responsible for N[...]s maintenance. She states that she finds herself in dire financial straits. She is in arrears with school fees and municipal accounts. She says that N[...] is teased at school because of the holes in his clothes and shoes. The Applicant has downgraded her medical aid cover and has been forced to rent out her house at R2,000 per month to pay school fees.
- [13] During or about 2023, the Applicant instructed her attorney to assist with a maintenance claim against the estate. An actuarial report was obtained from Mr Gregory Whittaker of Algorithm Actuaries, dated 1 September 2023, calculating the capitalised value of N[...]s future maintenance requirements at R696,321.00. This report was submitted to the Master on 5 September 2023.
- [14] For an extended period, the Master was unable to locate the estate file, despite repeated submissions and enquiries. Correspondence was addressed to the Master on 31 January 2023 (received on 7 December 2023). Following a request for intervention by the Office of the Master Pretoria during or about February 2024, the matter was finally progressed. A letter dated 22 February 2024 was addressed to the Master and the Applicant was informed to

communicate with officials in the Group 2 examination section at the Master Johannesburg, as per a letter from Ms Van Wyk dated 20 March 2024.

[15] During or about May 2024, the Applicant obtained a copy of the L&D account from the Master .

[16] On 13 May 2024, the Applicant's attorney addressed correspondence to the Executrix requesting:

- a. that N[...]’s claim for maintenance in the amount of R696,321.00, supported by the actuarial report, be included in the L&D account; and
- b. that the Executrix apply to the Master in terms of section 26(1A) of the Estates Act for consent to make payment in respect of arrears maintenance in the amount of R85,000.00 for the period 2 July 2021 to date.

[17] On 16 May 2024, the Applicant's attorney addressed further correspondence to the Executrix and the Master. On 21 May 2024, the Master responded stating:

- a. that it would be in the best interest of the administration of the estate to award the estate equally to all the children, which the Master considered to be fair, just and equitable;
- b. that the inclusion of the maintenance claim would result in the other beneficiaries being prejudiced financially and not be entitled to inherit;
- c. that the Master considered itself the upper guardian of inter alia minor children;
- d. that there was no dispute regarding the paternity of N[...];
- e. that there was no court order for maintenance prior to the demise of the deceased;
- f. that the provisions of the law of intestate succession should be applied; and

- g. that section 26(1A) cannot operate or apply retrospectively, and therefore the request for an interim payment of arrear maintenance was rejected.

[18] On 22 May 2024, the Applicant's attorney responded to the Master in detail contending *inter alia*:

- a. that the Master does not have the locus standi to decide on a fair and equitable distribution of an estate;
- b. that it falls outside the scope of the Master's powers to consider the merits of a maintenance claim on the basis of prejudice or who is entitled to inherit;
- c. that the Executrix, as both executrix and beneficiary, may not act impartially;
- d. that section 26(1A) does not preclude a claim for arrear maintenance;
- e. that there would be no prejudice to the estate as there is sufficient cash for distribution; and
- f. that a maintenance claim is a preferent claim, not a concurrent claim.

[19] On 28 June 2024, the Executrix responded stating:

- a. that section 26(1A) was designed to alleviate family hardship pending the winding up of the estate;
- b. that section 26(1A) does not make provision for the payment of arrear maintenance;
- c. that the estate does not have sufficient funds available to pay a maintenance claim of R696,321.00 without prejudicing the other beneficiaries and creditors;
- d. that she agreed with the contents of the letter from the Master; and

- e. that the requirement of consent from the Master is a jurisdictional requirement, and in the absence of consent, the executor is precluded from releasing money out of the estate.

[20] The Applicant thereafter launched the present application on 11 September 2024.

[21] The relief sought was subsequently amended. The Applicant now prays for an order:

- a. compelling the First and Second Respondents to accept the maintenance claim in the total amount of R878,091.00 (increased from the original R696,321.00);
- b. compelling the Executrix to withdraw her objection to the maintenance claim;
- c. compelling the Executrix to request the permission of the Master in terms of section 26(1A) to proceed with payment of arrear maintenance for the period 2021 to 2024 and interim maintenance pending the winding up of the estate;
- d. compelling the Executrix to pay R337,726.00 in respect of arrear and interim maintenance within 3 days of the Master providing its consent;
- e. compelling the Executrix to pay the remaining balance of R540,365.00 within 5 days following the last day of the period during which the account has lain for inspection without objection;
- f. compelling the Master to withdraw its objection to the maintenance claim and consent to the request for payment; and
- g. costs on the attorney-client scale *de bonis propriis* against the Second Respondent.

The respondents case

[22] The First and Second Respondents oppose the application on several grounds, both procedural and substantive. The procedural points have been raised as points *in limine*.

[23] The primary procedural point is that the Applicant has failed to review the decision of the Master. The Executrix contends that the Master's decision to refuse consent stands until set aside, and that this Court cannot simply order the Master to change its mind.

[24] The second procedural point is that the Applicant has not exhausted internal remedies; the Applicant has not filed an objection to the L&D account under section 35(7) of the Estates Act, has not applied to the Chief Master for a review under section 95(1), and has not launched an application to review and set aside the Master's decision of 21 May 2024.

[25] On the merits, the Executrix contends:

- a. that the Applicant has not, as a matter of fact, lodged a formal claim for maintenance with the Executrix;
- b. that section 26(1A) does not provide for arrear maintenance;
- c. that the estate does not have sufficient funds to pay the maintenance claim without prejudicing the other beneficiaries;
- d. that the Executrix has not rejected the claim but has merely requested the statutory basis for the claim for arrear maintenance;
- e. that the Executrix is precluded from releasing funds without the Master's consent; and
- f. that the Master has already exercised its discretion and declined to grant consent.

[26] The Executrix also points out that her brother, S[...] M[...], is not self-supporting but is unemployed and resides in the immovable property that forms part of the estate. A confirmatory affidavit from S[...] M[...] was filed.

[27] The Executrix further notes that the Second and Final Liquidation and Distribution Account shows a cash surplus of R1,436,467.91 for distribution equally amongst the three heirs, with N[...]’s share being R478,822.63. The Executrix contends that the maintenance claim can only be permitted up to the amount of R478,822.63.

[28] The Master has filed a notice to abide and has not actively participated in the proceedings. However, the Master’s decision of 21 May 2024 stands as a clear refusal to grant consent under section 26(1A).

The issues to be determined

[33] The following issues arise for determination:

- a. Whether the application is fatally defective because the Applicant has failed to review the Master’s decision in terms of sections 35(10) or 95 of the Estates Act.
- b. Whether the Applicant has *locus standi* to bring the present application.
- c. Whether section 26(1A) of the Estates Act permits a claim for arrear maintenance.
- d. Whether the Master’s claim to be the "upper guardian" of minor children is correct and whether the Master has the power to decide on the merits of a maintenance claim.
- e. Whether a maintenance claim against a deceased estate is a preferent claim that must be satisfied before distribution to heirs.
- f. Whether the Executrix has acted improperly or in conflict with her duties.
- g. Whether the Applicant has made out a case for the relief sought.
- h. What the appropriate costs order should be.

Analysis of the points in limine

[29] I deal first with the procedural points raised by the Respondents, as a finding on these points may be dispositive of the entire matter.

[30] Section 26(1A) of the Estates Act provides:

“The executor may before the account has lain open for inspection in terms of section 35(4), with the consent of the Master release such amount of money and such property out of the estate as in the executor's opinion are sufficient to provide for the subsistence of the deceased's family or household.”

[31] The consent of the Master is a mandatory jurisdictional requirement. Without it, an executor cannot lawfully release funds from the estate for maintenance purposes. The Executrix in this matter has consistently maintained this position, and she is correct in law.

[32] The Master, in a letter dated 21 May 2024, clearly and unambiguously refused to grant its consent. The Master gave reasons for its refusal, including that section 26(1A) cannot operate retrospectively and that the inclusion of the maintenance claim would prejudice the other beneficiaries.

[33] The question that arises is: What is the proper remedy for a person aggrieved by the Master's decision? Section 35(10) of the Estates Act provides:

“Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged, may apply by motion to the Court within thirty days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit.”

[34] Section 95 of the Estates Act provides for an internal review mechanism:

“95. Review of Master's appointments etc.

(1) The Chief Master may review any appointment of an executor, curator or interim curator, and every decision, ruling, order, direction or taxation made by the Master, after taking into consideration representations from an executor, curator, interim curator, beneficiary or any other person whom the Chief Master

considers relevant, and the Chief Master may confirm, set aside or vary the appointment, decision, ruling, order, direction or taxation, as the case may be.

...

(3) A decision of the Chief Master taken in terms of subsection (1) shall be subject to appeal or review by the Court upon motion at the instance of any person aggrieved thereby, and the Court may on any such appeal or review confirm, set aside or vary the appointment, decision, ruling, order, direction or taxation, as the case may be."

[35] The Applicant has not invoked either of these statutory remedies. She has not lodged an objection to the L&D account under section 35(7). She has not applied to the Chief Master for a review under section 95(1). She has not launched an application to review and set aside the Master's decision of 21 May 2024.

[36] Instead, the Applicant seeks a declaratory order and a mandamus compelling the Master to withdraw its objection and grant its consent. This is, in substance, an attempt to overturn the Master's decision without following the prescribed statutory procedures.

[37] The legal principle is trite. In *Oudekraal Estates (Pty) Ltd v City of Cape Town*¹, the Supreme Court of Appeal held:

"Although the [decision] might have been invalid, it nevertheless existed and was capable of being enforced until it was set aside by a competent court. For as long as it was not set aside, it had legal consequences that could not simply be ignored."

[38] This principle applies with equal force to decisions of the Master under the Estates Act. The Master's decision stands until it is set aside on review. The Applicant cannot simply ignore it and seek to bypass the review process by way of a declaratory order.

¹ 2004 (6) SA 222 (SCA) at paragraph 26

[39] The Applicant's reliance on *CP v Krügel NO and Others* ² is misplaced. In that case, the executor and the Master had not made a decision at all; they simply failed to respond to requests. The court found that the applicant was entitled to approach the court for assistance where there was a failure to exercise a discretion. In the present matter, the Master and the Executrix did not fail to act. They acted. They made a decision. The Master explicitly refused consent. This is not a case of inaction or a failure to exercise discretion. It is a case where the Applicant dislikes the decision that was made. Her remedy is to review that decision, not to seek a declaratory order from the court.

[40] The Applicant's reliance on *Nedbank Ltd v Steyn and Others* ³ is also misplaced. That case supports the proposition that a creditor is not precluded by the Estates Act from instituting a common law action against a deceased estate for the recovery of a debt. However, the present matter is not a simple debt recovery. It involves the exercise of a statutory discretion by the Master, and the Applicant seeks to compel the Master to exercise that discretion in her favour. That is fundamentally different from a creditor's common law right of action.

[41] The points *in limine* is upheld: First, the application is fatally defective because the Applicant has failed to exhaust the statutory remedies available to her under sections 35(10) and 95 of the Estates Act. Second, the Master's decision of 21 May 2024 stands until it is set aside on review and must be complied with.

[42] This is dispositive of the matter.

[43] However, out of an abundance of caution and because the matter concerns the best interests of a minor child, I will also address the merits of the application.

The merits

a. The nature of a maintenance claim

[44] It is well established in our law that the duty of a parent to maintain a child does not cease upon the parent's death but is transmitted to the deceased estate. In

² 2022 JDR 1933 (MN)

³ 2016 (2) SA 416 (SCA)

Carelse v Estate de Vries (1906) 23 SC 532,⁴ the court held that a child has a claim against the estate of a deceased parent for maintenance. This principle has been consistently followed. In *Du Toit NO v Thomas NO* ⁵the court stated:

“It has become settled law that the duty of a parent to maintain a child does not cease upon a parent’s death, but is transmissible and becomes a debt resting upon the deceased estate. The correlative right of a child to such maintenance does not arise out of any principle of inheritance, but out of the family relationship between parent and child.”

[45] I accept this as the correct statement of the law. N[...]has a claim for maintenance against the deceased estate. The Executrix does not dispute this. The dispute concerns the quantification of that claim, whether it can include arrear maintenance, and the procedural mechanisms for enforcing it.

b. *Section 26(1A) and arrear maintenance*

[46] The central substantive dispute is whether section 26(1A) permits a claim for arrear maintenance.

[47] The Executrix and the Master contend that it does not. They point to the wording of the section, which refers to releasing money “*to provide for the subsistence of the deceased’s family or household*”. They argue that this is forward-looking and does not contemplate payment for past maintenance.

[48] The Applicant contends that section 26(1A) does not preclude a claim for arrear maintenance and that such an interpretation would defeat the purpose of the section, which is to alleviate family hardship.

[49] I have considered this issue carefully. The purpose of section 26(1A) is clear from its terms and from the case law. It creates a mechanism for interim support; it does not create a substantive maintenance claim. What it does is allow advances from estate funds for the maintenance of dependents prior to the final distribution of the estate.

⁴ 2016 (2) SA 416 (SCA)

⁵ 2015 JDR 1050 (WCC) at paragraph 17

[50] In *Du Toit NO v Thomas NO*⁶, the court stated at paragraph 21

“I respectfully agree with the remark of Stretch J in NB v Maintenance Officer, Butterworth and Others 2014 (6) SA 116 (ECM), to the effect that section 26(1A) was specifically designed to alleviate family hardship pending the winding up of the estate.”

[51] The court in *Du Toit* further stated at paragraph 22:

“The use of the word ‘may’ in section 26(1A) is not intended to confer the executor with a discretion. Instead, it suggests that the section is intended to enable an executor to do what he would not otherwise be authorised to do.”

[52] However, neither *Du Toit* nor any other case cited to me directly addresses the question of whether section 26(1A) permits the payment of arrear maintenance. The section speaks of providing for “*subsistence*” – a forward-looking concept. Arrear maintenance, by contrast, is a retrospective claim for expenses already incurred.

[53] The wording is prospective; by maintenance of dependents the section seeks to cater for the current and ongoing needs of the deceased’s dependents pending the finalisation of the estate to prevent hardship. The applicant’s child would have such a claim.

[54] There is a conceptual difficulty with claiming arrear maintenance under section 26(1A). The section is designed to provide for ongoing subsistence pending the final winding up of the estate. It is not a debt-enforcement mechanisms; it is not designed to compensate a claimant for expenses incurred before the claim was made. The proper mechanism for claiming arrear maintenance would be to lodge a claim against the estate as a creditor, to have that claim adjudicated, and, if successful, to have it paid out of the estate in the ordinary course, subject to the preference that maintenance claims enjoy.

[55] Unless this is done, there is no liquidated claim against the estate.

⁶ supra

[56] I am therefore of the view that the Master and the Executrix were correct in their interpretation of section 26(1A). The section does not provide for the payment of arrear maintenance. It is designed to alleviate ongoing hardship, not to compensate for past hardship.

[57] This does not mean that N[...]has no claim for arrear maintenance. He does. But that claim must be lodged and proved as a creditor's claim against the estate, in accordance with sections 29 to 35 of the Estates Act. It cannot be claimed under section 26(1A).

c. *The master's alleged powers as the "upper guardian" of minor children and to do what is just and equitable.*

[58] The Applicant contends that the Master exceeded its powers by deciding on the merits of the maintenance claim and by claiming to be the "*upper guardian*" of minor children.

[59] On this point, I agree with the Applicant. The Master's functions under the Estates Act are supervisory. The Master is not a court and does not have the power to adjudicate on the merits of a maintenance claim. The Master's role under section 26(1A) is to protect the interests of the estate and its creditors. The Master may refuse consent if the release of funds would prejudice creditors. However, the Master should not decide the merits of the underlying maintenance claim. That is a matter for the executor in the first instance, and ultimately for the court.

[60] In this case, the Master's letter of 21 May 2024 went beyond its proper role. The Master stated that it would be "*fair, just and equitable*" to award the estate equally to all children and that the inclusion of the maintenance claim would result in the other beneficiaries being prejudiced. These are not proper considerations for the Master under section 26(1A). The Master's concern should be limited to whether the release of funds would prejudice creditors, not whether it would prejudice heirs.

[61] The Master's claim to be the "*upper guardian*" of minor children is also questionable. The High Court is the upper guardian of all minor children. The

Master is an administrative official with statutory functions. While the Master must consider the best interests of minor children in exercising his or her functions, the Master is not the upper guardian.

[62] However, the fact that the Master may have exceeded its powers or made an incorrect decision does not entitle the Applicant to bypass the review process. As stated in *Oudekraal*, an invalid decision remains binding until it is set aside. The Applicant's remedy was to review the Master's decision, not to ignore it.

d. *The preferent nature of maintenance claims*

[63] The Applicant contends that a maintenance claim is a preferent claim that ranks ahead of distribution to heirs. This is correct as a general proposition. In *Van Zyl v Serfontein*,⁷ the court confirmed that a child's claim for maintenance enjoys preference vis-a-vis inheritances and legacies.

[64] However, this preference does not mean that the maintenance claim can simply be paid out of the estate without following the proper procedures. The claim must still be lodged, proved, and, if disputed, adjudicated. The preference only becomes relevant when the estate is being distributed to ensure that the maintenance claim is satisfied before the heirs receive their shares.

[65] In the present case, the L&D account shows a cash surplus of R1,436,467.91. The Executrix has calculated N[...]s share at R478,822.63. The Applicant claims maintenance of R878,091.00. If the maintenance claim were to be established, it would exhaust most of N[...]s inheritance. However, the preference would not entitle N[...] to be paid from the shares of the other heirs. The preference means that the maintenance claim must be satisfied from the estate before any distribution to heirs. If the estate has sufficient assets, the maintenance claim is paid in full, and the remaining assets are distributed to the heirs. If the estate has insufficient assets, the heirs may receive nothing.

[66] In this case, the estate appears to have sufficient cash to pay the maintenance claim if it is established. However, the Executrix disputes the quantum and the basis of the claim. That dispute must be resolved through the proper channels.

⁷ 1989 (4) SA 475 (C) at 477

e. *The executrix's conduct*

[67] The Applicant seeks a costs order *de bonis propriis* against the Second Respondent (the Executrix in her personal capacity), alleging that she has acted improperly and in conflict with her duties.

[68] I have considered the Executrix's conduct carefully. The Executrix is both the executor of the estate and a beneficiary. This creates a potential conflict of interest. The Executrix acknowledged this in her correspondence and sought the protection of the Master's consent before releasing any funds.

[69] In my view, the Executrix acted properly. She did not reject the maintenance claim outright. She requested the statutory basis for the claim for arrear maintenance. She correctly pointed out that she could not release funds without the Master's consent. She was willing to engage with the Applicant's attorneys to ascertain the extent of the subsistence required. She acted cautiously, as any prudent executor should when there is a potential conflict of interest.

[70] There is no evidence that the Executrix acted *mala fide* or in bad faith. Her interpretation of section 26(1A) may be narrow, but it is not unreasonable. The fact that she agreed with the Master's letter does not demonstrate partiality; it demonstrates a proper regard for the statutory requirement of Master's consent.

[71] The application for a costs order *de bonis propriis* against the Second Respondent is without merit and is dismissed.

f. *The maintenance claim as a preferent claim*

[72] The Applicant contends that a maintenance claim is a preferent claim that must be satisfied before distribution to heirs. This is correct as a general proposition of law. In *Van Zyl v Serfontein*,⁸ the court confirmed that a child's claim for maintenance enjoys preference over inheritances and legacies. In *Du Toit*, the court stated at paragraph 26:

⁸ 1989 (4) SA 475 (C)

“A child's maintenance claim is a debt sui generis. It does not compete with the claims of creditors. On the other hand, such a claim is preferred to the claims of heirs and legatees whose claims in the event of competition would have to abate proportionately.”

[73] However, this preference does not mean that the maintenance claim can be paid without proper proof. The claim must still be lodged, substantiated, and, if disputed, proved. The preference only becomes relevant at the stage of distribution, to ensure that the maintenance claim is satisfied before heirs receive their shares.

[74] In the present case, the Executrix has not rejected the maintenance claim. She has simply requested the statutory basis for the arrear maintenance component. This is a reasonable request. The Applicant should provide the requested information and, if the Executrix persists in her refusal, lodge a formal objection with the Master or institute proceedings to establish the claim.

g. *The quantum of the claim*

[75] The Applicant originally claimed R696,321.00 based on the actuarial report. The claim was later amended to R878,091.00. No updated actuarial report was provided to explain the increase.

[76] The Executrix disputes the quantum of the claim. She also points out that the estate's cash surplus is R1,436,467.91 and that N[...]’s share is R478,822.63. She contends that the maintenance claim can only be permitted up to that amount.

[77] This is not correct as the Applicant’s maintenance claim is a preferent claim.

[78] However, the determination of the quantum of a maintenance claim is a factual enquiry that requires evidence. The actuarial report provides a basis, but it is not binding on the Executrix or the court. The Applicant would need to provide supporting documentation, such as school accounts, medical expenses, and other actual expenditures, to substantiate the claim.

[79] The dispute over quantum cannot be resolved on the papers. It would require oral evidence or a referral to evidence. This is another reason why the present application is not the appropriate vehicle for quantifying the Applicant's maintenance claim.

h. *The best interests of the minor child*

[80] Section 28(2) of the Constitution provides that "*a child's best interests are of paramount importance in every matter concerning the child.*"

[81] I am acutely conscious of this constitutional imperative. N[...] is almost 13 years old and has lost his father. His mother is struggling financially. He is entitled to maintenance from his father's estate where his father's paternity is not disputed.

[82] However, the best interests of the child do not entitle this Court to ignore the prescribed statutory procedures for claiming maintenance against a deceased estate. There is no reason why they could not be followed. The statutory procedures exist to protect all interested parties, including the child. They ensure that claims are properly investigated, that creditors are not prejudiced, and that the estate is distributed fairly. They also ensure that dependents can receive interim advance payments for their subsistence pending the finalisation of the deceased estate.

[83] Such a claim should have been brought expeditiously; instead a claim for arrear maintenance was sought claiming the lion's share of the deceased estate. Had the Applicant's attorney sought subsistence maintenance expeditiously, the hardship of the Applicant and her child might have been at least partially alleviated.

[84] Regrettably, the Applicant's attorney has not followed those procedures. The result is that the Applicant has not lodged a formal claim for maintenance with the Executrix. She has not filed an objection to the L&D account. She has not sought a review of the Master's decision. Instead, the Applicant's attorney has sought to enable the Applicant bypass these procedures by way of a declaratory order.

[85] This Court cannot condone such an approach, no matter how sympathetic the underlying circumstances may be. To do so would undermine the statutory scheme established by the Estates Act and would create uncertainty for all executors and beneficiaries.

[86] That said, the delays in this matter have been considerable. The deceased passed away in July 2021. It is now nearly five years later, and N[...] has not received any maintenance from the estate. This is unacceptable. The Executrix and the Master have a duty to ensure that the estate is wound up efficiently and that the legitimate claims of dependants are addressed promptly. N[...] is entitled to be paid a subsistence amount pending the winding up of the estate and I trust that this will be dealt with as a matter of the utmost urgency.

[87] I thus am compelled to dismiss the application both procedurally and on the merits.

[88] That being said, the Executrix is encouraged to engage constructively with the Applicant to determine an appropriate interim maintenance amount that can be paid with the Master's consent to the Applicant, pending the finalisation of the estate. The purpose of section 26(1A) is to alleviate hardship. The Executrix should not interpret the section so narrowly as to defeat its purpose.

[89] The Master is also reminded that its role under section 26(1A) is to protect the interests of creditors, not to decide the merits of maintenance claims or to protect the interests of adult heirs. The Master should consider any claim made for the subsistence of N[...] in light of the purpose behind section 26(1A) of the Estates Act, namely to prevent hardship being experienced by dependents pending the final winding up of the deceased's estate.

[90] This could perhaps avoid further litigation and serve the best interests of N[...].

Costs

[91] The general rule is that costs follow the result. The Applicant has been unsuccessful in her application. The First and Second Respondents have been forced to oppose a procedurally flawed application.

[92] However, the Applicant is a single mother who has been attempting to secure maintenance for her child. The Executrix is a beneficiary of the estate, and there is a potential conflict of interest. The Master's decision was not beyond criticism. In these circumstances, I do not believe a cost order against the applicant is warranted.

Order

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

1. The application is dismissed.
2. No order as to costs is made.

WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: Adv. A Scott

Instructed by: MC Kruger Attorneys

For the First and Second Respondent: Adv. Suldulker

Instructed by: Cheadle Thompson and Haysom Inc.

Date of the hearing: 26 January 2026

Date of the judgment: 13 April 2026

