

**IN THE HIGH COURT OF SOUTH AFRICA  
FREE STATE DIVISION, BLOEMFONTEIN**

**Not reportable**  
Case no: 46/2025

In the matter between:

**HERMANUS NICOLAAS BOTHA N O**

**FIRST APPLICANT**

**FLORIS JOHANNES BEUKES**

**SECOND APPLICANT**

and

**JURIE HENDRIK WYNAND BEUKES**

**FIRST RESPONDENT**

**HELENA PIETERSE  
RESPONDENT**

**SECOND**

**ISABELLA MARGARETHA BEUKES**

**THIRD RESPONDENT**

**Neutral citation:** *Botha N O and Another v Beukes and Others* (46/2025) [2026]  
ZAFSHC 278 (17 April 2026)

**Coram:** NTSHULANA AJ

**Heard:** 31 July 2025

**Delivered:** 17 April 2026

**Summary:** Non-joinder – direct and substantial interest – Master of the High Court – deceased estate – validity of unsigned will – Administration of Estates Act 66 of 1965 – s 2(3) of the Wills Act 7 of 1953.

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## ORDER

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1 The point *in limine* as raised by the first and second respondents on the issue of the non-joinder of the Master of the High Court succeeds, and the applicants are directed to join the Master of the High Court as an interested party to these proceedings.

2 Costs are reserved on this issue *in limine*.

3 The matter is to be re-enrolled on the opposed roll for argument on the further issues for determination contained in the notice of motion.

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## JUDGMENT

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**Ntshulana AJ**

[1] This is an application in which the first applicant, in his capacity as the duly appointed executor in the estate late of Floris Johannes Beukes Senior (the deceased), applies for:

- (a) An interdict, prohibiting the first and second respondents from conducting farming activities on a farm which belongs to the deceased estate, and
- (b) Declaratory relief pertaining to the rights which the deceased has bequeathed to the first and second respondent.

[2] This application is opposed and the first and second respondents have applied by way of a counter-application for an order declaring that an unsigned will and testament of the deceased, be declared to be the deceased's last will and testament as contemplated in s 2(3) of the Wills Act 7 of 1953 (Wills Act). Accordingly, there are two wills before this Court. In their counter application the first and second respondents are also seeking the following reliefs:

- (a) That the time prescribed by rule 6(5)(d)(ii) be extended to allow the first and second respondents to serve and file their answering affidavits and to condone their non-compliance with rules.

(b) That the unsigned will and testament of the deceased, which he has caused to be drafted by the first applicant and which is in the possession of the first applicant, be declared to be his last will and testament under estate number 001817/2024 as contemplated in s 2(3) of the Wills Act, as amended.

(c) That Hermanus Nicolaas Botha be ordered to surrender all the relevant documentation pertaining to the estate of the deceased, including the unsigned will and testament referred to in paragraph 2 above, to the Master of the High Court, Bloemfontein, Free State (the Master), pending the appointment of an executor in accordance with the unsigned will.

(d) The Master be directed to accept the unsigned will and testament referred to in paragraph 2 above, as the last will and testament of the deceased for the purposes of the Administration of Estates Act 66 of 1965, as amended (Administration of Estates Act).

(e) The Master be directed to remove the first applicant as the executor of the estate of the deceased and to appoint the person nominated in the unsigned will and testament referred to in paragraph 2 above (if any) alternatively, an independent person be appointed as executor.

(f) The first applicant be ordered to fully account to the Master for what he has done in his capacity as executor in the administration of the estate of the deceased from the date of his appointment to date of this order.

(g) That the applicants be directed to jointly and severally to pay the costs of this application.

[3] It is convenient for the purpose of this judgment to refer to the relief sought by the applicants as the main application and to the relief sought by the first and second respondents as the counter application.

### **The parties**

[4] The first applicant is Hermanus Nicolaas Botha N O, a practicing attorney, and duly appointed Executor in the estate late Floris Johannes Beukes Senior and in respect of whom Letters of Executorship has been issued by the Master under estate number 001817/2024. The second applicant is Floris Johannes Beukes Junior, who is the sole heir of the deceased.

[5] The first respondent is Jurie Hendrik Wynand Beukes, a retiree residing on the farm Aus, District Frankfort 9830, Free State (Aus), the de facto holder of the right to occupy a dwelling *ex testamento* on the farm Aus. The second respondent is Helena Pieterse, who is the life partner of first respondent. The third respondent is Isabella Beukes, who is married to the first respondent out of community of property. No relief is sought against the third respondent who was cited as an interested party from an abundance of caution point of view.

### **Factual matrix**

[6] The deceased passed away on 23 January 2024, having left a will in the care and custody of the first applicant, his attorney at the time of death. In the will the testator has bequeathed his fixed property in trust to his two sons Andries Gouws Beukes, who is now deceased, and the second applicant as beneficiaries. The estate was duly reported to the Master including the lodgement of the duly signed will and testament of the testator and as result the first applicant was appointed executor to administer the estate.

[7] At paragraph H of the deceased's signed will and testament, the deceased recorded that:

'My trustees sal verplig wees om die reg deur my verleen aan Jurie Hendrik Wynand Beukes Identiteits Nommer: 58[...] [the first respondent] en Isabel Margaretha Beukes [the third respondent] Identiteits Nommer: 56[...] om 'n huis te bou op my plaas soos uitgewys en dit te bewoon tot hul afsterwe gestand te doen. Die plaas waarop die huis opgerug word nie voor hulle afsterwe verkoop word nie.'

The deceased thus sought to confirm in his will and testament that the first and third respondents had previously acquired a personal servitude which he recorded in his last will and testament.

[8] The first respondent resides in a portion of the farm and conducts small scale farming operations consisting of livestock of about 9 cows. The first respondent and his spouse obtained permission from the testator to build a house on the farm Aus which they occupied. The first and second respondent also raised the issue of non-joinder of the Master in their papers. I then issued an order that the issue of non-joinder be first decided before the issue of orders 1 and 2 of the main application is adjudicated.

[9] The third respondent does not oppose the main application and actually deposed to an affidavit in which she confirms that she shall abide by the decision of the court. The first and second respondent are opposing the main application and even raise points *in limine*.

### **The applicant case**

[10] The first applicant argues that he is an attorney and duly appointed as executor of the deceased estate and therefore has full rights to take control of the property of the estate. He argues further that the personal servitude which had ostensibly been granted by the deceased to the first and third respondents, amounts to a right of habitation, a right of occupation only and not to conduct small-scale farming operations on the farm. He submitted further that, such personal servitude shall, if registered, constitutes a limited real right and that s 6A of the Subdivision of Agricultural Land Act 70 of 1970 determines inter alia that a servitude over agricultural land may not be registered without ministerial consent unless such servitude is one of the exceptions listed in the section.

[11] The first applicant argues that as the duly appointed executor, he is vested with the *dominium* of the farm and is obliged *ex-lege* to take into his custody or under his control all property in the deceased estate. On that basis, the first applicant applies for an order that the first and second respondents be interdicted and restrained from performing any farming activities on the farm and to remove their livestock from the farm and for declaratory relief regarding the first, second and third applicant's rights in relation to the farm. The first applicant submits that, the farm, which had always been utilised as a commercial unit and which was leased out by the deceased during his lifetime, cannot be released to third parties, whilst the first respondent conducts his small-scale farming operations on the farm.

### **The respondent's opposition**

[12] The third respondent does not oppose the relief sought by the applicants in the main application and elected to abide by the decision of the court. The first and second respondents opposes the main application and raises the following points:

- (a) The first and second respondents aver that the application falls desperately short of meeting the requirements for an interdict, as prayed for and the unassailable facts that have risen on the papers, which could and should have been foreseen, render the application incapable of hearing by way of motion proceedings.
- (b) The first and second respondents contend that the application is highly prejudicial as the applicants seek to impair and restrict the respondents' rights as heirs and/or beneficiaries, which restriction would ultimately cripple the respondents' ability to earn a livelihood.
- (c) The first and second respondents aver that the signed will dated 27 November 2015 is not the deceased's final will and testament and point toward the drafting of a second, unsigned will that was marked for signature by the deceased prior to his death. The unsigned will should be regarded and accepted by the Master and the estate should be finalised in accordance with the provisions of the unsigned will. The unsigned will properly deals with the inheritances of the first respondent, second applicant as well as the daughter of the deceased. This is the essence of the first and second respondents counter claim.
- (d) The existence of the second unsigned will is common cause and the will was ready for signature. The evidence on the papers before this Court suggests that the deceased had every intention of signing it.
- (e) The first and second respondents deny that their rights amount to merely limited tenure. In their counter application, respondents have applied for an order declaring the unsigned will of the deceased be declared the last will and testament as contemplated in s 2(3) of the Wills Act and also seek an order for the removal of first applicant as the executor of the deceased's Estate.
- (f) The deceased caused the second unsigned will to be drafted by the first applicant during or about April 2023, which he attempted to sign and, on that basis, that the unsigned will and testament should be accepted as the deceased's true last will and testament.
- (g) During or about May 2023, the deceased and the first and second respondents entered into a partnership. The partnership was established to conduct cattle farming operations and the death of the deceased did not dissolve such partnership; they have a right to continue with their farming on the portion of the forum.

[13] Other than the counter application, the first and second respondents raise several points *in limine* resisting the interdict application and followed by their *ad seriatim* response thereafter. The points *in limine* raised by the first and second respondents are as follows:

- (a) The first applicant's failure to join the Master is fatal because the Master has a direct and substantial interest in the matter.
- (b) The first applicant has not brought a substantive application on notice of motion and supported by affidavit in terms of the rules.
- (c) The first and second respondents contend that there are factual disputes and counterclaims, regarding the alleged factual basis and the specific relief sought by the applicants. The first and second respondents contend further that the case as pleaded in the applicant's founding affidavit, it is clear that a factual dispute should or could have been foreseen, and first applicant's claim should have been prosecuted by means of action procedure, instead of application proceedings.

[14] As there were two wills before the court and the first and second respondents were raising certain points *in limine*, I directed the parties to first argue the *point in limine* on the non-joinder of the Master, as such would have serious ramifications to the future conduct of the proceedings. On the 31 July 2025 the parties then argued only the point *in limine* of non-joinder and I made the following order:

- '1. The legal point of non-joinder raised by the First and Second Respondent is separated from the remainder of the disputes between the parties and dealt with *in limine*.
- 2. The parties shall file heads of argument on the point of non-joinder as well as costs on or before 12 August 2025.
- 3. Judgment in the point *in limine* regarding the non-joinder of the Master of the High Court is reserved.'

### **Point *in limine* on non-joinder**

[15] The first and second respondent argued that the relief sought by the applicants is highly prejudicial to them, as the applicants seek to impair and restrict their rights as heirs and/or beneficiaries drastically, therefore the Master has a direct and substantial interest in these proceedings because the Master is responsible for administration of deceased estates. Further, the Master has many powers when it

comes to administering deceased estates, including appointing and protecting the interests of heirs or beneficiaries in deceased estates. They were aware that they needed to join the Master but failed to do so in the main application.

[16] The respondents submit further that it was imperative that the Master be joined in these proceedings in order to ensure that this matter is ventilated properly before this Honourable Court, especially in view of the issue related to the validity and acceptability of the will and testament of the deceased. The first and second respondents requested the court to dismiss the main application on this ground alone or alternatively stay the proceedings until the Master has been joined as a party to these proceedings. They argue further that the joinder of the Master is necessary because the Master's rights, duties or functions as defined by legislation would be affected by the Court's decision in this matter.

[17] The respondents take the view that since these proceedings concern the interpretation and validity of two wills and a request to declare a subsequent will the final will of the deceased, the applicants should have foreseen these issues before bringing the application. This is especially so in view of the letter dated 22 February 2024, in which the respondents' attorneys clearly outline that the respondents dispute the extent of the rights afforded to them in terms of the signed will. They further pointed out issues with the administration of the estate, specifically that the estate includes immovable property, which should vest in the control of the Master until such time as an executor is appointed in accordance with the provisions of s 11(1)(a) and (b) of the Administration of Estates Act, and indicated that the second applicant's conduct at the time was in contravention thereof.

[18] The first and second respondents argue strongly that the above scenario should have raised alarm bells that a clear dispute in terms of the administration of the estate exists and any subsequent legal proceedings would require the joinder of the Master. The respondents also oppose the assertion by the applicants that the joinder of the Master is only necessitated by the relief sought in the counterclaim, and submit that it holds no water as these issues were raised well before the applicants decided to approach this Honourable Court.

[19] The respondents further take the view that should the Court declare the unsigned will the final will and testament of the deceased, the Master would be required to give effect to the administration of the estate in terms of the newly validated will, a fact which the applicants cannot escape. This ultimately falls within the purview of s 2(3) of the Wills Act which states that should the court be satisfied that a document executed by the deceased was intended to be his or her will, the court shall order the Master to accept that document. That this scenario alone renders the Master's joinder essential as the Master would then be called upon to administer the estate in terms of the newly validated will.

[20] The applicant's counsel conceded that the relief in the counter claim necessitated joinder of the Master, however, suggested that it falls on the respondents to effect such joinder. This is incompatible with facts before this Court, especially in light of paragraph 7.3 of the founding affidavit, read with the respondents' letter dated 22 February 2024. The applicants were unwilling to agree to a joinder of the Master which would have expedited the process and been more cost effective, must be considered. In light of this argument, the respondents request this Honourable Court to uphold the point *in limine* of non-joinder and dismiss the application with costs alternatively to stay the proceedings in order for the applicants to join the Master by in terms of rule 15 and for the applicants to bear the costs occasioned by the postponement to effect the joinder.

[21] The applicants argued strongly that there was no need to join the Master in the application because the Master has no direct and substantial interests in the matter and referred the Court to several previous decisions in support of its contention.

## **Findings**

[22] As a point of law, it is to be noted that a person has a direct and substantial interest in an order that is sought in proceedings if the order would directly affect such a person's rights or interests. Such interests will be prejudicially affected by the ultimate judgment affecting that person's rights or interests, having been given without affording that person an opportunity to be heard. One of the most fundamental principles of our legal system, as a general rule, is that no court may

make an order against anyone without giving that person the opportunity to be heard.

[23] There are two tests in determining whether a third party has a direct and substantial interest in the outcome of litigation:

(a) The first is to consider whether the third party would have *locus standi* to claim relief concerning the same subject matter;

(b) The second is to examine whether a situation could arise in which, because the third party had not been joined, any order the court might make would not be *res judicata* against him, entitling him to approach the courts again concerning the same subject matter and possibly obtain an order irreconcilable with the order made in the first instance.

See: *Snyders and Others v De Jager* (Joinder) 2017 (5) SA 405 (CC) paras 6-10.

[24] In the case of *Minister of Public Service and Administration and Another v Public Servants Association and Others* 2018 BLLR 7 (LAC) para 18, it was confirmed that the best proof of a direct and substantial interest is that the order, if granted, cannot be given effect to without the party seeking joinder being subject to the order of court. In my view, the facts of this case involve the Master centrally in these proceedings. If any order is granted in this matter, it cannot be given effect to without the party seeking to be joined being subject to the order of the court. In light hereof, the Master ought to have been joined as a party to the proceedings at the outset taking into regard the powers and/or duties of the Master in terms of the Administration of Estate Act.

[25] One of the factual disputes as raised by the second respondent is the issue of the second unsigned will, the existence of which appears to be common cause. The first and second respondents in their counter-claim argue that the deceased made or attempted several times to sign or arranged to sign the second or unsigned will, but the first applicant frustrated or delayed the process until the deceased passed away. This is one of the factual disputes which intimately requires the Master to be part of these proceedings in order to assist the court in adjudicating this matter. I am unable to conceive or conclude why the Master of the High Court was not joined, especially

in a matter such as this, where there is allegedly two wills, before the court. In my view it is of utmost importance that the Master be joined in these proceedings.

[26] I am satisfied that the law is clear that the domain of administrative powers vests in the hands of the applicant but the allegation of a second will and its ramifications properly needs to be ventilated, otherwise the rights of all concerned could be infringed and the Master is thus central to this. It is trite that a party with direct and substantial interest in the matter and any potential relief to be granted, ought to be joined to the proceedings in question.

[27] In *City of Johannesburg and Others v South African Local Authorities Pension Fund and Others* [2015] ZASCA 4; [2015] JOL 32956 (SCA) para 9 (*City of Johannesburg*), Brand JA held, inter alia, that a court must refrain from deciding a dispute unless and until all persons who have a direct and substantial interest in both the subject matter and outcome of the litigation have been joined as parties. Given that the judgment will inevitably bind the Master, it has a direct and substantial interest in the matter. This court cannot consider and/or entertain this matter until such time all interested parties are joined as parties. This is especially so when consideration is given to the fact that non-joinder is a dilatory plea, in order to avoid prejudice and/or the situation as occurred in *City of Johannesburg*, the practical solution would thus be to join the Master before any other issue is determined by this Court. This will cure all other issues and judgment will be binding to all parties.

[28] The legal importance of joinder should not be mistaken with service of more papers to that particular party. Joinder has a separate legal consequence in that it finds that particular party by the outcome or judgment of the particular proceedings. The Master is central to the administration of the estate and especially implementation of the order and its interpretation. Consequently, I find that the Master has a direct and substantial interest in the matter and therefore must be joined as a party to these proceedings.

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

1 The point *in limine* as raised by the first and second respondents on the issue

of non-joinder of the Master of the High Court succeeds and the applicants are directed to join the Master of the High Court as an interested party to these proceedings.

2 Costs are reserved on this issue *in limine*.

3 The matter is to be re-enrolled on the opposed roll for argument on the further issues for determination contained in the notice of motion.

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**X NTSHULANA**  
**ACTING JUDGE OF THE HIGH COURT**

**Appearances**

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|--------------------------------------|----------------------------------------------------------------------------------------------|
| For the applicants:                  | R van der Merwe                                                                              |
| Instructed by:                       | Charl van der Merwe Attorneys,<br>Johannesburg<br>c/o Badenhorst Attorneys,<br>Bloemfontein. |
| For the first and second respondents | S Viljoen                                                                                    |
| Instructed by:                       | Pienaar Kemp Attorneys,<br>Pretoria<br>c/o Diedericks Verster Attorneys,<br>Bloemfontein     |
| For the third respondent:            | No appearance.                                                                               |