

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

Case No: 40294/2018

Reportable: No
Of interest to other Judges: No
Revised: No

SIGNATURE

Date: 29 April 2026

In the matter between:

G KOTZE

Applicant

and

NATASJA MELINDA ROODT N.O.

1st Respondent

FREDA VENTER

2nd Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

3rd Respondent

JUDGEMENT

MOOKI J

- 1 The applicant seeks relief stemming from the court having authorised the appointment of a referee to determine the monetary value of an interest in a partnership.
- 2 The court appointed the second respondent as referee in terms of section 38 of the Superior Courts Act, 10 of 2013. The terms of appointment are detailed in the court order of 13 November 2020. The essence of the appointment was that the referee determines the monetary value of the interest of the applicant's partner in a partnership between the applicant and the late Mr Wessel Cornelius Mostert (the deceased/decedent), now represented in these proceedings by the first respondent as executor of his estate.
- 3 The referee prepared the report as contemplated in the 13 November 2020 court order. The report is dated 17 September 2021. The referee determined that the value of the deceased's interest in the partnership was R387 196.00. The applicant disagreed with the valuation. The applicant thereafter appointed Mr J J Rossouw to appraise the decedent's interest in the partnership. This was a unilateral appointment. Mr Rossouw prepared a report dated 3 July 2024. He determined in that report that the decedent's interest in the partnership was "a negative R481 285,62."
- 4 The applicant seeks the following relief:

- 4.1 That the report by the second respondent be adopted in part or with modifications.
- 4.2 That the monetary value of the late Mr Wessel Cornelius Mostert's interest in a partnership between him and the applicant be declared to be minus R 481 285.62, and that the first respondent be ordered to pay the applicant the amount of R 481 285.62, with interest.
- 4.3 Alternative relief that:
- 4.3.1 The report by the second respondent be set aside and be replaced by a report prepared by Mr J J Rossouw.
- 4.3.2 A declaration that the deceased's interest in the partnership be found to be minus R 481 285.62, as determined in the report prepared by Mr J J Rossouw.
- 4.3.3 the first respondent be ordered to pay the applicant the amount of R 481 285.62; with interest.
- 4.4 Further alternative relief that the report by the second respondent be remitted to the referee for further enquiry and/or further report and/or for the consideration, with reference to several considerations as detailed in the founding affidavit. Those considerations include the court order of 13 November 2020 and the written partnership agreement between the applicant and the deceased.
- 4.5 The executor be ordered to pay the applicant the amount of R600 000.00, together with interest.

- 5 The applicant essentially seek relief on the bases that the executor is to pay the applicant the amount of R 481 285.62, being the value arising from the valuation of the deceased's interest in the partnership. The applicant also seeks payment in the amount of R600 000.00 as proceeds of a policy which the deceased took as contemplated in the partnership. The applicant contends that the partnership prescribed that the proceeds of the policy be paid to the applicant.
- 6 The second respondent, the referee, did not participate in the proceedings. The first respondent, who was appointed executor of the estate of the late Mr Wessel Cornelius Mostert, opposes the relief being sought.
- 7 The executor agrees that the referee made some errors in her report. The executor made a tender to the applicant, before the applicant instituted the proceedings, that the parties jointly instruct the referee to adjust her report. The applicant rejected the proposal. The executor contends that the offer would essentially accommodate the applicant's relief that the report be remitted to the referee, to make corrections as agreed by the parties.
- 8 The executor's primary objection to the relief sought is that Mr Rossouw is a unilateral appointment by the applicant. This was contrary to the court order, namely that the interests in the partnership be determined by an expert agreed to by both parties. The executor also contends that Mr Rossouw made several fundamental errors in his computations. Those errors are said to be due to the applicant not having instructed Mr Rossouw in accordance with the proper terms of the partnership agreement.

9 The relief that the applicant be paid the amount of R481 285,62, together with interest, is premised on the court accepting the findings in the report by Mr Rossouw. This relief is sought by way of a declarator. Declaratory relief is discretionary relief on the part of a court. The limits and nature of the power are regulated by s 21(1)(c) of the Superior Courts Act 10 of 2013.

10 The exercise of this power requires a two-stage approach:

During the first leg of the inquiry the Court must be satisfied that the applicant has an interest in an “existing, future or contingent right or obligation”. At this stage the focus is only upon establishing that the necessary conditions precedent for the exercise of the Court’s discretion exist. If the Court is satisfied that the existence of such conditions has been proved, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration of whether or not to grant the order constitutes the second leg of the enquiry.¹

11 An applicant for declaratory relief must satisfy a court that their interest pertains to the legal right or obligation to which the order will relate.² I accept that the applicant has the requisite interests that must be shown

¹ Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd 2005 (6) SA 205 (SCA), para 18.

² Preston v Vredendal Co-operative Winery Ltd and Another 2001 (1) SA 244 (ECD) at 249 A-D and the cases cited therein

when a court is asked to consider granting declaratory relief. The applicant satisfies the first leg to the test as stated above.

- 12 The applicant has not met the second leg to the test for the grant of declaratory relief. The dispute between the parties pertains to the valuation of an interest in the partnership. The parties agreed that the second respondent be appointed the referee for purposes of establishing that value. The second respondent was a joint appointment endorsed by the court. The applicant would then have the court grant relief based on a valuation arising from a unilateral appointment.
- 13 There is simply no basis upon which this court could give its imprimatur on a unilateral report, when the court previously ordered that the valuation of the parties' respective interests be conducted by a person approved jointly by parties to a dispute.
- 14 The executor contends for various flaws in Mr Rossouw's report. It is unnecessary to address this complaint, given the relief which I intend to grant. The applicant has not made-out a case for relief that the executor be ordered to pay the applicant an amount of money based on the valuation by Mr Russouw.
- 15 I now consider the relief that the applicant be paid the amount of R600,000.00. The applicant made his case as follows. The partners agreed to obtain life insurance policies against their respective lives and to cede the proceeds of those policies to each other. The policies were to benefit the surviving partner. The deceased took out a policy with ABSA, valued at

R600,000.00. The ABSA policy was intended to fulfil the obligations of the deceased under the partnership agreement. The policy, according to the applicant, was wrongly made payable to the estate of the deceased. The applicant contends that the proceeds of the policy cannot be distributed amongst beneficiaries of his then partner's estate.

- 16 The executor raised several defences to this claim. The partnership agreement called for the respective partners to each take a policy and to cede such policy to the other partner. The ABSA policy was not a policy contemplated in the partnership agreement. The executor also contended that the applicant's claim under the policy had prescribed, pointing out that the deceased died on 4 November 2012 and that ABSA paid the policy to the estate on 5 December 2013. The executor contended that the period within which the applicant may have had a claim expired by June 2016, whereas the applicant claimed for the first time on 18 October 2024.
- 17 The issue of whether the applicant is entitled to proceeds of the policy is intrinsically tied to a determination of the deceased's interest in the partnership. This question must be dealt together with the whole mandate extended to a referee pursuant to the previous court order. This is to avoid a piecemeal determination of issues arising essentially from the same framework, namely, the proprietary consequences of the partnership between the applicant and the deceased. I therefore decline to exercise my discretion to grant declaratory relief on this point.
- 18 Both parties agree that the referee made errors in the report. The applicant sought as further alternative relief that the report be remitted to the

referee to address the errors agreed to by the parties. The court will grant this relief. I must mention that the applicant does not impute *mala fides* or any objectionable behaviour or conduct by the second respondent that would disqualify the second respondent from further involvement in the determination of the value of the deceased interest in the partnership. Remitting the matter to the second respondent has the further benefit, to the advantage of both parties, that the second respondent is familiar with the dispute and that, with the parties jointly having identified errors made by the second respondent, those errors would be more easily addressed. Furthermore, remitting to the second respondent will have the benefit of expedition.

19 The applicant ought to bear the costs in the application. The executor succeeds in the main part in this application, in having resisted the relief that the court adopt the findings in the report by Mr Rossouw. I also had regard to the executor having tendered that the matter be remitted to the second respondent, given part of the relief sought by the applicant.

20 I make the following order:

- (1) The matter is remitted to the second respondent for consideration.
- (2) The parties are to submit a joint statement to the referee, as to their respective agreement as set out in the papers.
- (3) The referee is to have regard to the joint statement for purposes of the evaluation as ordered on 13 November 2020.

(4) The second respondent, as part of the consideration by the second respondent, shall report on the proceeds of the ABSA policy; namely whether such constitute part of the partnership.

(5) The applicant is ordered to pay costs, on scale B.

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JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicant:

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Instructed by:

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Counsel for the first respondent:

H van Der Vyver

Instructed by:

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Date heard:

11 March 2026

Date of judgment:

29 April 2026