

REPUBLIC OF SOUTH AFRICA



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

Case Number: 64458/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>7/5/2026</u>	<u>[Signature]</u>
DATE	SIGNATURE

In the matter between:

RABIA WILLIAMS

Applicant

and

REARD BUNTING

First Respondent

ABBAY BUNTING

Second Respondent

RASMIDA LOUISE BUNTING

Third Respondent

MATER OF THE HIGH COURT, JOHANNESBURG

Fourth Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

- [1] This is an opposed application in which the applicant seeks orders appointing her as executrix in the intestate estates of the late Hazel Buntting and the late Michael Buntting. She also seeks orders directing the Master to issue letters of executorship to her, authorising a private valuator to value estate property, granting access for that purpose, directing that the immovable properties be sold, and directing equal distribution of the proceeds among the four children of the deceased (being the applicant and the first, second and third respondents). For convenience I will refer to the first second and third respondents collectively as “the respondents” and will refer to the fourth respondent simply as “the Master.”
- [2] The respondents oppose the relief on the grounds that the application is premature, incompetent, affected by non-joinder, and unsupported on the merits.

Background

- [3] The applicant and the respondents are siblings and children of Hazel Buntting and Michael Buntting, who were married in community of property. Immovable properties in Rabie Ridge Extension 2, Kaalfontein Extension 7 and Erf 446 form part of their deceased estate.
- [4] Hazel Buntting died on 18 April 2017 and Michael Buntting died on 21 December 2023, both intestate. This fact has a material bearing upon the estate duties due to the South African Revenue Services.
- [5] The respondents admit that no steps were taken to report their parents’ deceased estates to the Master, notwithstanding the lapse of seven years since the death of their parents. They claim not to have been aware of their reporting duties or how to do so. However their reporting obligations were trenchantly raised in a letter from the applicant’s attorney on 30 September 2024, as was the need to meet to agree on who should be nominated as the executor. This letter was sent some seven years after the death of Hazel Buntting and nine months after the passing of Michael Buntting.
- [6] This request was in the main ignored by the respondents and no steps were taken whatsoever to comply with their obligations to report their deceased parents’ intestate estates to the Master.
- [7] This precipitated the launching of the current application by the applicant on 8 April 2025, some six months after seeking the co-operation of the respondents to no avail.

- [8] The respondents had to be compelled to deliver an answering affidavit that was only filed on 30 October 2025, some six months after the application had been launched. Even then, more than a year after having been asked to report the deceased estates and despite this having been explicitly raised in the applicant's founding papers, the respondents had not reported the deceased estates, and merely stated in their answering affidavit that they had now given instructions to their attorney to report the deceased estates. Still it took the respondents a further six months to attend to their reporting obligations, which they only did on 1 April 2026 under references 027513/2025 and 027521/2025, but a month before the application was heard.
- [9] This was a year after the application was launched and a year and a half after the applicant's attorney had advised them of their reporting obligations. There can be absolutely no excuse for this recalcitrance.
- [10] The respondents then filed a supplementary answering affidavit on 29 April 2026 dealing with the fact that the deceased's estates had now been reported, indicating that the Master was now seized of the matter, bolstering their argument that the court lacked jurisdiction to entertain the applicant's application as to do so would usurp the power of the Master and the executor or executrix to be appointed. This was nearly a month after the deceased's estates had been reported.
- [11] In doing so, the respondents clearly sought to steal a march on the applicant, who had in these proceedings sought an order that she be appointed as the executrix of the deceased estates by nominating the third respondent as the executrix of the deceased estates, a nomination supported by all the respondents, thereby outvoting the applicant, and knowing that this would cement the outing of the jurisdiction of this court.
- [12] I say this well aware that it is the respondents' case that the court in any event never had the jurisdiction to entertain the applicant's application to have herself appointed as the executrix of the deceased estates as at the time of launching the application, the deceased's estates had to the knowledge of the applicant not been reported. It was further emphasised in argument that there was nothing to preclude the applicant hearing reporting the deceased's intestate estates. But, the fact remains that the respondents' conduct in this matter leaves much to be desired and its cavalier attitude to its statutory reporting obligations warrants censure from this court.
- [13] Before dealing with the *in limine* issues raised by the applicant it is necessary also to point out that in the respondents' answering affidavit, the respondents raise a further potentially fatal point: It is alleged that their mother, Hazel Bunting, had a child prior to

her marriage to their father, Michael Buntting, namely Fazel Simmers, who has since died and is survived by a spouse and children, and that those persons may have an interest in Hazel Buntting's estate and ought to have been joined to the current proceedings.

- [14] The applicant disputes that those persons, who I will refer to as “the potential heirs,” are necessary parties at this stage, contending that any interest they may have is contingent and only arises at the stage when the funds in their parents’ respective deceased estates fall to be distributed.

In limine issues

- [15] The facts now placed before the court by the respondents in their answering and supplementary answering affidavit outlined above have serious implications for the applicant’s case. Understandably therefor, at the beginning of the hearing the applicant’s counsel sought to have both affidavits struck out and/or disregarded as constituting irregular steps as points *in limine*: With regard to the answering affidavit this was sought because it was delivered three months late without an accompanying condonation application; in the case of the supplementary answering affidavit this was sought because it was filed without the leave of the court.

- [16] The applicant’s counsel stressed that although the applicant had raised the fact that condonation was required before the court could have regard to the respondent’s answering affidavit, no attempt was made to seek condonation. He also stressed that the supplementary affidavit had only been filed on 29 April 2026 shortly before this matter was due to be heard on 5 May 2026.

- [17] In answering these contentions, the respondents’ counsel argued that:

- a. The applicant impermissibly asked the court to disregard and treat the answering affidavit and the supplementary affidavit as a nullity and ought properly have brought an application in terms of Rule 30 to have these affidavits set aside or struck out; no such application was brought;
- b. It was not necessary for the respondents to have sought condonation for the late filing of the answering affidavit as it was filed in compliance with a Rule 30A application brought by the applicant to compel the respondents to file an answering affidavit; and in any event condonation was sought in the supplementary answering affidavit.

- c. The respondents were permitted to file a supplementary affidavit in order to bring new relevant facts to the court's attention, namely that the deceased estates had now been reported to the Master. This had a significant bearing upon the court's jurisdiction to entertain the present application.
- d. In any event, the fact that the deceased estates were to be reported was foreshadowed in the answering affidavit (where it had been said that the respondents had now instructed their attorney to report the estates) and in the respondents' counsel's practice note filed in December 2025 (where it was stated that should the deceased estates be reported by the time of the hearing of the current application, this would be drawn to the attention of the court in a supplementary affidavit).
- e. The applicant had not suffered any prejudice in the filing of the answering affidavit late or the filing of the supplementary answering affidavit as she had responded to both affidavits; the prejudice suffered by the applicant in view of the deleterious effect of these affidavits on the merits of the applicants case is not the sort of prejudice considered by the court in deciding whether or not to permit the belated filing of affidavits or the filing of further affidavits.

[18] The applicant's counsel urged me to have regard to the judgment of the Constitutional Court in *Van Wyk v Unitas Hospital* 2008 (2) SA 472 (CC), at par 33, where the court remarked:

"...There is now a growing trend for litigants in this Court to disregard time limits without seeking condonation. Last term alone, in eight out of ten matters, litigants did not comply with the time limits or the directions setting out the time limits. In some cases, litigants either did not apply for condonation at all or if they did, they put up flimsy explanations. This non-compliance with the time limits or the Rules of Court resulted in one matter being postponed and the other being struck from the roll. This is undesirable. This practice must be stopped in its tracks."

[19] The applicant's counsel stressed that on 30 September 2024 her attorney had written a comprehensive letter to the respondents indicating that they were obliged to report the deceased estates and suggesting that a round-table meeting be held by the siblings to determine who should be nominated as the executor of both deceased estates. This request was simply ignored and no steps whatsoever were taken to report the estates until 1 April 2026, long after the application had been brought and the answering affidavit had been filed. This it was said was dilatory conduct that should not be countenanced.

[20] The dilatory nature of the respondents' conduct cannot be disputed and has already been dealt with by me in this judgment. That being said, it is trite that technical objections should not be permitted to obscure the real merits where no material prejudice is shown.¹

[21] In truth, the applicant has not been prejudiced by the late filing of the answering affidavit or the filing of the supplementary affidavit as she has had an opportunity to answer both affidavits and indeed has done so. Moreover, it would be wrong for the court to disregard the answering affidavit filed and effectively hear the matter as if it were unopposed as this will deprive the respondents of the right to be heard and prevent this court deciding the true issues before the court. In addition, the supplementary answering affidavit places a crucial fact before this court, namely that the deceased estates have now been reported that has been acknowledged by the Master (who has raised queries) which has a significant bearing upon the jurisdiction of this court. The answering affidavit raises the potentially fatal non-joinder of the potential heirs.

[22] The fact that the issues raised in these affidavits may have deleterious consequences to the applicant's case is not a basis for me to disregard them; this is not the sort of prejudice contemplated.²

[23] I am also mindful that there was nothing precluding the applicant herself reporting the deceased estates to the Master or bringing an application to compel the respondents to do so.

[24] I thus made an *ex tempora* ruling dismissing the points raised *in limine* by the applicant.

The preliminary procedural issues raised by the respondents

[25] Before dealing the merits of the applicant's application, it is incumbent upon me to decide the following preliminary procedural issues:

- a. Whether the relief sought is incompetent because it infringes upon the statutory powers and discretion of the Master to appoint an executor.
- b. Whether the relief sought is incompetent in that it infringes upon the discretion of the executor or executrix to be appointed (subject to the oversight of the Master)

¹ *Masisi v Makgothi* 1932 OPD 68; *Van Loggerenberg v Lydenburg Municipal Council* 1939 TPD 180; *Bredenkamp v Dart* 1960 (3) SA 106 (0); *Theron v Coetzee* 1970 (4) SA 37 (T); 6. *Hill NO and Another v Brown* (3069/20) [2020] ZAWCHC 61 (3 July 2020); *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) 56

² *supra*

to determine how the deceased's estates are to be wound up and the funds remaining (after the payment of creditors and estate duty) are to be distributed.

- c. Whether the application was premature when launched because the deceased's estates had not yet been reported and the statutory process before the Master had not yet commenced or run its course.
- d. Whether there has been a non-joinder of interested parties arising from the possible rights of Fazel Simmers's estate, spouse and descendants in Hazel Buntting's estate.
- e. Whether there has been a fatal non-joinder of the Master inasmuch as the application was not served on the Master by Sheriff at the time the application was launched.

[26] Only in the event of these procedural issues not disposing of the matter, will it be incumbent upon me to determine whether the applicant has made out a case on the merits for the relief sought.

The competence of the relief sought

a. The Master's statutory role in the winding up of deceased estates

[27] The notice of motion expressly seeks orders appointing the applicant as executrix of both deceased estates and directing the Master to issue letters of executorship to her.³ That relief goes beyond compelling the reporting of estates or directing the Master to perform a statutory duty after a process has run its course. It seeks, in substance, to secure a judicially mandated appointment of a particular person to an office that the Administration of Estates Act 66 of 1965 ("the Act") entrusts to the Master.

[28] The respondents rely on *Nieman v Master of the High Court and Others*⁴ for the proposition that the power to grant or refuse letters of executorship rests upon the Master and that the Court cannot usurp that function. They also cite *Thomas v Clover NO*,⁵ *Hoofar Investments v Loonat*,⁶ *Mlunguza v Master of the High Court*⁷, and *Bankorp Trust*

³ Prayers 1-3 of the notice of motion

⁴ *Nieman v Master of the High Court and Others* (UM 228/2023) [2024] ZANWHC 173 (10 July 2024)

⁵ *Thomas and Another v Clover NO and Others* 2002 (3) SA 85 (N)

⁶ *Hoofar Investments (Pty) Ltd v Loonat and Another* 1991 (2) SA 222 (N) 121

⁷ *Mlunguza and Another v Master of the High Court and Another* (21755/2018) [2020] ZAWCHC 6 (11 February 2020) 126

*Bpk v Pienaar*⁸ in support of the principle that the Court should not bypass the statutory scheme by pre-emptively directing who must be appointed.

- [29] In his heads of argument, the applicant's counsel seek to recast the relief as merely directing the Master to issue letters of executorship once the statutory requirements are met, but that is not what is stated or prayed for in the notice of motion. The applicant's reliance on cases like *Beukman v Pieterse NO*,⁹ *Mthembu v Mlambe*,¹⁰ *Goss v Bennett*¹¹ and related cases dealing with removal, substitution, or supervision of executors in special circumstances. But those authorities concern materially different situations, namely cases where an executor has already been appointed, where misconduct, dereliction of duty, bias or negligence has been established, or where the Master has already taken an administrative decision capable of judicial oversight or review. This case does not fit that mould.
- [30] Section 18 of the Act contemplates that, where the value of the estate warrants it, the Master appoints an executor and issues letters of executorship after the estate is reported and the necessary documents are lodged. At the time that the present application was launched, no deceased estate had been reported, no nomination process had taken place to appoint an executor to the deceased estates, and no decision by the Master appointing an executor or executrix existed for review or correction by this court.
- [31] The statutory reporting process, the nomination of an executor or executrix by the heirs and the decision by the Master as to who to appoint needed to all have taken place before this court could be asked, on proper grounds to review the decision taken by the Master or remove the executor or executrix so appointed on the grounds of misconduct, dereliction of duty, bias or negligence.
- [32] The Court undoubtedly has supervisory powers in appropriate cases, but those powers do not justify directing the appointment of a particular executor or executrix where the statutory functionary infused with that power has not yet been afforded the opportunity to exercise his/her discretion conferred by statute to appoint an executor or executrix.

⁸ *Bankorp Trust Bpk v Pienaar en 'n Ander* 1993 (4) SA 98 (A) 132

⁹ *Beukman v Pieterse N.O and Others* (2526/2024) [2024] ZAWCHC 391 (26 November 2024)

¹⁰ *Mthembu v Mlambe and Others* (17373 / 2019) [2025] ZAGPJHC 109 (7 March 2025)

¹¹ *Goss v Bennett* (A5021/2022) [2023] ZAGPJHC 556 (31 May 2023) at para 16.

[33] On this basis alone, prayers 1 to 3 of the notice of motion are incompetent and fall to be dismissed.

b. The usurpation of the power of the executor yet to be appointed

[34] There is also a fundamental difficulty with the relief sought in paragraphs 4, 5 and 7 of the notice of motion. Here the applicant seeks that a named private valuator, Mogalekwena Valuers, to value the properties in the deceased's estates, that such valuator be granted access to the properties in order to do so and that the properties be sold and the proceeds distributed equally amongst the four children of the deceased (namely the applicant and the respondents).

[35] These are all functions that need to be performed by the executor or executrix once appointed and fall within the purview of such person appointed in course of the winding up of the deceased estates, obviously subject to the overall oversight of the Master over the process. Only if and when the person so appointed abuses his/her power or misconducts himself in the winding of the deceased's estates could a court be called upon to intervene. The applicant has no power to dictate at this stage how to wind up the deceased's estates or to direct that the properties be valued and sold at this stage.

[36] The relief sought also pays no heed at all to the fact that no distribution can be made to heirs until creditors' rights have been accounted for and intestate estate duties have been paid.

[37] The relief sought in prayers 4,5 and 7 is thus also on the face of it incompetent and fall to be dismissed.

Prematurity of the application

[38] The prematurity and incompetency preliminary points are interrelated.

[39] The prematurity point is, in this Court's view, decisive. At the time the application was instituted, both deceased estates were admittedly unreported. The application was accordingly premature because the applicant had not first reported the estates to the Master and allowed the statutory process regarding executorship to unfold.

[40] The applicant's reply is that the estates could not be reported because the respondents failed to cooperate and to provide information and documentation, and that the respondents' eventual reporting of the estates on 1 April 2026 proves that the application was necessary to secure the reporting of the deceased estates.

- [41] However, nothing prevented the applicant from herself reporting the deceased estates and she clearly had the documentation annexed to the founding affidavit in order to do so. This includes the death certificates of the deceased, deeds searches with regard to the properties in the estates, and municipal valuations thereof. And, in so far as this information was not sufficient and the applicant required the respondents' co-operation, she could have compelled the respondents to provide such information or documentation, or compelled the respondents to report the deceased estates. The fact that there was clearly no consensus amongst the living siblings of the deceased, does not mean that the applicant was legally disabled from initiating the reporting process.
- [42] The respondents insist is that they were initially ignorant of the procedure, not that they were hell bent on sabotaging the administration of the deceased's estates.
- [43] In motion proceedings, where factual disputes arise on affidavit, the *Plascon-Evans* approach generally requires final relief to be determined on the respondents' version together with the admitted facts, unless that version is so far-fetched or untenable that it can be rejected on the papers.
- [44] I must say that I find the respondents' version improbable but cannot on these papers find that it is so far-fetched and untenable to justify my dismissing it out of hand. But I would have thought that at least one of the respondents would have been aware that legal obligations arose to secure the winding up of deceased estates and even if they did not know what exact steps to take, they ought properly to have made inquiries or sought legal advice. I find it hard to believe that in seven years since the passing of their mother this did not occur to any of respondents. They were all certainly aware of their reporting obligations when after the passing of their father in December 2023, the applicant's attorney advised them of their obligations in a letter dated 30 September 2024.
- [45] The applicant thus correctly points out that for more than a year prior to bringing the application, she had been trying for a year (in fact a year and a half) to obtain the respondents' co-operation and to secure the reporting of the deceased estates. The applicant's papers do not justify their in-action and it does not really lie in their mouths to say that the applicant could herself have reported the deceased estates of their parents.
- [46] Be that as it may, the later reporting of the estates by the respondents does not retrospectively validate relief that was premature when sought. On the contrary, it illustrates that the statutory machinery was capable of being invoked and has now been

invoked. This means that the Master is now seized of the matter; the Master's query sheets show that the process of considering documentation, marital status, nominations, and appointment requirements is underway. It would be inappropriate for the Court now to intervene by selecting an executor, authorising valuation and sale of the properties in the deceased's joint estates, or pre-empting decisions the Master is still to make.

[47] The applicant contends that the respondents acted only because of the litigation, and that belated compliance cannot defeat the application. In this respect, reliance was placed on the decision of the Supreme Court of Appeal in *Road Accident Fund v Mothupi*¹² to the effect that a litigant may not rely on their own dereliction of duty as a defence. The applicant points to the fact that the respondents ignored multiple letters and emails to report the deceased estates and sit around a table to decide who should be nominated as the executor or executrix of the estates. The applicant argues that the respondents' own conduct in ultimately reporting the deceased estates on 1 April 2026 was only done because she had brought the current application and constitutes a tacit admission that the application was both necessary and justified. It was also stressed that a litigant cannot render proceedings "*premature*" by belatedly performing obligations that were long overdue.

[48] Even if that is partly or even wholly true, it does not answer the central difficulty that the relief sought was incorrectly framed in the sense that it seeks to put the cart before the horse. As I have said, the remedy was either for the applicant to report the estate herself and nominate herself as the executrix and then await the decision of the Master before bringing the current application, or to compel the respondents to report the estate and nominate an executor or executrix.

[49] Moreover, the relief sought remains framed so as to intrude upon a statutory process that was incomplete when proceedings were started and remains incomplete as the Master is still to make a decision who to appoint as the executor or executrix to the deceased's estates.

Non-joinder

[50] The non-joinder point taken is twofold and concerns the non-joinder of the spouse and descendants of Hazel Buntting's predeceased child, who may stand to inherit from her deceased estate, as well the improper joinder of the Master to the current proceedings at the time that the application was brought.

¹² *Road Accident Fund v Mothupi* 2000 (4) SA 38 (SCA).

a. *The non-joinder of Hazel Buntting's spouse and descendants*

[51] The applicant denies that the potential heirs have a direct and substantial interest in the present application, contending that any possible entitlement is contingent and relevant only at the stage of distribution.

[52] I disagree with this contention. If the potential heirs have an interest in the distribution of the Hazel Bunting's deceased estate, they would certainly have a right to nominate who should act as an executor or executrix to the estate. They would also have a cardinal interest in the relief sought by the applicant in prayer 7 of her notice of motion that the properties in the deceased estates be sold and the proceeds divided only between the applicant and the respondents.

[53] It is trite that a party must be joined where that party has a direct and substantial legal interest in the subject matter of the litigation that may be prejudicially affected by the judgment. If Fazel Simmers may have a transmissible interest in Hazel Buntting's estate, an order predetermining sale and equal distribution among only the four surviving children could plainly prejudice these potential heirs.

[54] It is unnecessary to decide the full extent of these potential heir's eventual rights; it is sufficient that the form of relief sought may affect them and that they have not been joined or shown to have waived any right to be joined.

[55] The non-joinder of these potential heirs is thus fatal to the applicant's application.

b. *The non-joinder of the Master at the inception of the proceedings*

[56] In *Mthembu v Mlambe and others*,¹³ Snyman AJ sitting in this division was concerned with a disputed will and found that the failure to serve the application on the Master, although cited as a respondent, amounted to a fatal non-joinder of the Master. It was said:

"[25] It however turns out that the application was never served on the Master. The first respondent pertinently raised this point, and it was not disputed by the applicant that this was indeed the case I have also carefully considered all the returns of service of the application provided by the applicant, as uploaded on CaseLines, and the only proofs of service that exist is service of the application on the first, second and third respondents.

[26] The failure to serve the application on the Master effectively means that there is non-joinder of the Master in this case. Whilst it may be so that the Master is cited as a respondent party, that does not join him to the proceedings by simple reference. The Master must be brought into the proceedings as a party, and this can only happen if the process is served on him. This was

¹³ *Mthembu v Mlambe and Others* (17373/2019) [2025] ZAGP JHC 269 (7 March 2025)

made clear in the judgment in National Union of Metalworkers of SA v Intervale (Pty) Ltd and Others. That case dealt with dispute referrals under the LRA, which referrals function in exactly the same way in instituting employment disputes, as a notice of motion and founding affidavit would in the case of applications before this Court. It was found in that case, on the facts, that some of the parties who sought to be joined to the proceedings at a later stage were not served with the referrals. The Court had the following to say about this:

'... The objectives of service are both substantial and formal. Formal service puts the recipient on notice that it is liable to the consequences of enmeshment in the ensuing legal process. This demands the directness of an arrow. One cannot receive notice of liability to legal process through oblique or informal acquaintance with it. ...'

[27] *The Court in Vilakazi v Commission for Conciliation, Mediation and Arbitration and Others* adopted the same approach where it came to the failure to serve a review application on a party to the review, where the Court said:

'It follows from the above that a referral to this court of a review application in terms of rule 7A only exists when a notice of motion and founding affidavit is validly served on the respondent parties, and then filed in court. There is no delivery of the review application until such time as both the service and the filing requirements have been fulfilled.

There is an important reason why service on the respondent parties must always be effected in compliance with the requirements stipulated by law. It is this service that places the respondent parties on notice that there exist legal proceedings against them, and then calls on such respondent parties to engage ...'

[28] *Another example can be found in Safcor Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission. The case dealt with the question whether a review application had to actually be served on a magistrate involved in the decision making. The Court held as follows:*

'... Consequently where Rule 53 speaks of the notice of motion having to be 'delivered' to, inter alios, the magistrate, it means service upon him of a copy of the notice of motion. And when the Rule speaks of the notice of motion having to be 'directed' to the magistrate it must mean that the magistrate must be cited as a party to the review proceedings. The word 'directed' is not defined in the Rules, but it seems to me to be an appropriate word to describe the process whereby a respondent is cited in motion proceedings. Notice of motion is, after all, a procedure whereby an applicant institutes proceedings by giving notice thereof to any person against whom he claims relief, and to the Registrar of the Court. ...'

[29] *In sum, it is my view that the Master should have been called to Court, not only because of his interest in the matter, but also because the applicant herself contemplated this was necessary. However, and by not serving him with the application, the applicant failed to bring him to Court. That failure is fatal, on the basis of it constituting a non-joinder.'* (footnotes omitted)

[57] In the course of argument the applicant's counsel conceded that there had been no service on the Master by Sheriff as required by Rule 4. However, the applicant's counsel informed me that the application had personally hand delivered to the Master on 14 April

2026 and that the notice of set down had been hand-delivered to the Master on 17 April 2025; this was well after the application was launched.

- [58] On the basis of *Mthembu v Mlambe* and the cases therein cited, this is fatal to the applicant's application as it constitutes an improper non-joinder of the Master; this cannot be cured by the hand delivery of the application to the Master but a few weeks before the application was due to be heard.

Merits

- [59] Even if the procedural and preliminary objections could be overcome, the applicant has not established a case for final relief in the form sought. The founding affidavit lacks sufficient particularity- Other than to explain that the applicant's parents had both died intestate, the non-co-operation of the respondents to report their deceased estates to the Master and that the estate consists of valuable properties, no proper basis is laid why the court should appoint the applicant as the executrix to the deceased's estates, rather than some other suitable person, and in substitution for the Master's statutory discretion to appoint an executor or executrix.
- [60] No legal basis is laid to justify why the Court should, prior to the winding up of the deceased's estates authorise a named valuator to value the properties in the deceased's estates and direct sale of these properties. Nor has any legal basis been provided for the court predetermining equal distribution of the proceeds of such sales amongst four of the applicant and her three siblings to the exclusion of their half-brother whose heirs may also stand to inherit- and without any regard to creditors' claims against the deceased's estates and the estate duties owing on intestate estates.
- [61] It is clearly premature to do this before the estates have been fully reported, liabilities identified, potential heirs established, and the Master-driven administration process completed. The relief sought by the applicant involves the very essence of estate administration and seeks the court to assume the very matters that the statutory process regulates.
- [62] The applicant's counsel sought to persuade me that the courts have wide remedial power to prevent injustice, citing the cases referred to in his heads of argument as well as the egregious conduct of the respondents including: the fact that they have been obstructive, their remedial action in reported in the deceased's estates has been belated, and their clear intent in circumventing the litigation through the belated reporting and

requiring that she sign the nomination form in which the third respondent, as opposed to the applicant, was nominated as the executrix as supporting factors.

[63] However, even if I agree with the applicant, the respondents' conduct does not provide a basis for the court to bypass the statutory framework, pre-empt the Master's role and usurp the executor's role to determine the sale and distribution of estate assets without the joinder of the potential heirs, and crucially the Master.

[64] The respondents have shown that the deceased's estates are now before the Master, that the Master has raised queries, and that the ordinary statutory process must now take its course. In those circumstances, the applicant has not shown that judicial intervention of the type sought is necessary, competent, or justified or just where the process of administering the winding up of the deceased's estates is yet to unfold.

[65] That is not to say that the applicant does not retain the power to seek the court's intervention to review the Master's decision who to appoint as the executor or executrix (provided grounds for review exist) or to challenge the actions of the person so appointed should misconduct, bias or negligence or other ground be demonstrated.

Costs

[66] I have already expressed my reservations about the manner in which the respondents have conducted themselves in the present matter, which I have said is deserving of censure. Accordingly, although the general rule is that costs follow the result and the respondents have been substantially successful in opposing the relief sought, in the exercise of my discretion I feel justified in departing from the normal rule and ordering that each party bear their own costs.

[67] There can be little doubt that the respondents would not have taken any steps to report the deceased's estates had it not been for the launching of this application by the applicant. They have now taken advantage of their majority in nominating the third respondent to the executrix and thereby, subject to confirmation by the Master, defeated relief sought by the applicant that she be so appointed.

[68] The applicant's counsel also sought to persuade me to ignore the fact that the deceased's estates had belatedly been reported to the Master, arguing that this was not competent whilst the applicant's current application was pending. I am afraid this cannot be correct as the applicant herself insisted that the estates be reported by the respondents. More importantly, the fact that the estates were not reported at the time

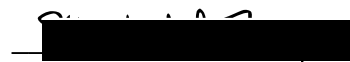
that the application was launched and have now been reported serves only to exclude the jurisdiction of the court to grant the orders sought.

[69] It is hoped that going forward the four siblings and the potential heirs can co-operate with one another and seek an equal distribution of their parents' estates. This is said bearing in mind the respondents' insistence in correspondence that the properties will never be sold. In cases such as these where the heirs are at loggerheads, this is generally the only way that their inheritance can be fairly divided. This court also recommends that an independent executor be nominated.

Order

[70] In the circumstances, the following order is made:

- (1). The respondents' answering affidavit and their supplementary affidavit are admitted.
- (2). The application is dismissed.
- (3). Each party is to bear their own costs.


WENTZEL-THOMPSON J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of the hearing: 5 May 2026

Date of the judgement: 7 May 2026

For the applicant: Bongani Mkhasibe (attorney) on behalf of Smith van der Watt Inc.

For the respondents: DG Whitcomb instructed by Jonathan Daniels Attorneys

