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

CASE NUMBER: 040656/2024

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:-

DANIEL PIETER VAN DEVENTER

Applicant

and

NATASJA MELINDA ROODT N.O.

(in her capacity as *executrix* of the estate late
Johannes Francois Goosen)

1st Respondent

**THE MASTER OF THE HIGH COURT,
PRETORIA**

2nd Respondent

ALLICIA GOOSEN

3rd Respondent

ELSIE MARIS MAGRIETA GOOSEN

4th Respondent

JUDGMENT

Reid J

Introduction

[1] This is an application in which the applicant seeks an order declaring a copy of a last will and testament purportedly executed by the late Johannes Francois Goosen ("the deceased") on 27 November 2018 to be the last will and testament of the deceased, and that the Master of the High Court be ordered to accept such document for the purposes of administering the deceased's estate.

Background

[2] The deceased passed away on 1 February 2024. He was survived by his life partner of approximately 22 years, the applicant, his mother (the fourth respondent), and his sister (the third respondent). The third and fourth respondents are the deceased's sister and mother respectively, and they oppose the relief sought.

[3] The first respondent is cited in her capacity as the executrix of the deceased's estate. The second respondent is the Master of the High Court, Pretoria.

[4] The central dispute concerns which document constitutes the deceased's last will and testament. The applicant contends that the deceased validly executed a will on 27 November 2018 which revoked

all previous wills, including a will dated 13 February 1992.

[5] Only a copy of the 2018 will survives. It is common cause that the original will cannot be located. More significantly, it is common cause that it is unknown who had possession of the will at the time of the deceased's demise.

[6] The respondents oppose the application on two main grounds:

6.1. first, that the 2018 will does not comply with the formalities prescribed in section 2 of the *Wills Act 7* of 1953; and

6.2. second, that it was not the deceased's intention to have the 2018 document operate as his last will. This argument is based on the "rebuttal principle" which will be discussed here under.

[7] The applicant and the deceased resided together as life partners from March 2003 until the deceased's death. During their relationship, they shared a home situated at 1[...] V[...] Street, Capital Park, Pretoria, which was purchased by the deceased in November 2004.

[8] Following the deceased's passing, the applicant searched their home for important documents. He discovered a book containing passwords and documents, which included a last will and testament bearing the First National Bank ("FNB") logo.

[9] The applicant sent this document to FNB to initiate the administration process. In May 2024, he was informed that the deceased's Ford bakkie faced repossession by Wesbank due to unpaid instalments. With no executor appointed at that stage, the applicant personally paid R8,202.39 towards an instalment and R124,785.31 to settle the outstanding loan.

[10] On 24 June 2024, the applicant and third respondent received correspondence from Mpho Netshirembe, an estate specialist at FNB, indicating that FNB did not have the 2018 will in its custody. Internal FNB correspondence revealed:

"We have checked our records and confirm that the 2018 Will is not in safe custody. According to our records the Will was drafted in 2018 but signed Will was never received for safe custody."

[11] The applicant thereafter accessed the deceased's email account and discovered a trail of correspondence between the deceased and FNB employees regarding the amendment of his will. The material emails may be summarised as follows:

11.1. On 5 January 2018, FNB sent the deceased a Will Application form.

- 11.2. On 11 January 2018, the deceased returned the signed application, requesting assistance in amending his will.
- 11.3. On 8 March 2018, Albert Chiripanyanga of FNB requested details of the heirs as discussed.
- 11.4. On 12 March 2018, the deceased provided the names and identity numbers of his mother, sister, and the applicant.
- 11.5. On 12 March 2018, a draft will was sent to the deceased for his perusal.
- 11.6. On 13 March 2018, the deceased requested changes, specifying that his flat be left to his sister, his house and car to the applicant, and that liquid assets be split 70% to the applicant and 15% each to his mother and sister.
- 11.7. On 27 November 2018, the deceased sent an email to FNB's fiduciary department and Mr Chiripanyanga stating: "*Signed will attached.*"
- 11.8. On 27 November 2018, Mr Chiripanyanga replied, acknowledging receipt of the signed will and requesting that the original be sent to FNB's offices for safe custody.
- 11.9. On 28 November 2018, the deceased responded: "*I will forward as soon as I am able. Please ensure the copy is uploaded on my*

profile in the meantime."

[12] Attached to the email of 27 November 2018 was a scanned document purporting to be the deceased's last will and testament. The document comprises four pages. Page 4 bears what appear to be the signatures of the deceased and two witnesses, Dennis Chetty and Yogan Covidasanny. Each page is initialled.

[13] Despite diligent searches, the original of this document has not been located. The applicant searched the family home, and the fourth respondent also conducted a thorough search. On 24 September 2024, the fourth respondent addressed a letter to the Master stating:

"I have been informed that I am required to submit the original last will and testament of my son. Unfortunately, despite diligent efforts, only a copy of the will, dated 27/04/2018, could be located. A copy of the will is attached as annexure 'A'. The original was held with FNB, but they have confirmed that the document has been lost, and only a copy remains."

[14] Confirmatory affidavits have been obtained from both witnesses who signed the 2018 will. Dennis Chetty deposed to an affidavit confirming that he witnessed the deceased's signature on the 2018 will. Yogan Covidasanny deposed to a confirmatory affidavit on 28 May 2025, in which he confirms that on 27 November 2018, the deceased asked him to witness his last will and testament; that the deceased signed a four-

page document, initialling each page and signing on the last page; and that he thereafter initialled and signed the document in the presence of the deceased and Dennis Chetty.

[15] The fourth respondent opposes the application. Her opposing affidavit raises the following contentions:

- 15.1. The application is based on hearsay evidence and should be dismissed.
- 15.2. There exists a "glaring dispute of fact" which should be resolved by way of *viva voce* evidence.
- 15.3. The 2018 document does not meet the formal requirements of section 2 of the Wills Act.
- 15.4. The deceased may have contemplated changing his will but never finalised such changes.
- 15.5. The fourth respondent enjoyed a close relationship with her son and they often discussed his last wishes. She contends that the deceased intended the 1992 will to be his final will.
- 15.6. The letter she wrote to the Master in September 2024 was written under "pretence" that the applicant unduly induced and bullied her during a period of grieving, and she now denies its contents.

[16] The third respondent, the deceased's sister, supports the fourth respondent's opposition.

The issues

[17] The issues for determination before this Court are:

- 17.1. Whether there exists a genuine dispute of fact requiring referral to oral evidence.
- 17.2. Whether the hearsay evidence tendered by the applicant should be admitted.
- 17.3. Whether the 2018 document, though only a copy, should be declared the deceased's last will and testament.
- 17.4. Whether the presumption of revocation arising from the non-production of the original will has been rebutted.

Evaluation

Dispute of fact

[18] The respondents contend that there is a "glaring dispute of fact" necessitating a referral to *viva voce* evidence. However, they fail to articulate with any precision what the disputed facts are.

[19] In *Wightman t/a JW Construction v Headfour (Pty) Ltd and*

Another 2008 (3) SA 371 (SCA) at paragraph [13], the Supreme Court of Appeal held:

"A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence), if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court would generally have difficulty in finding that the test is satisfied..."

[20] The respondents have not "seriously and unambiguously" addressed the facts said to be in dispute. The fourth respondent makes vague allegations about discussions with the deceased but provides no particulars of when, where, or what was discussed. She claims the 2018 will is missing pages and lacks witness signatures, yet the copy before court comprises four complete pages bearing three signatures, two of which appear under the witnesses' heading. Both witnesses have confirmed under oath that they signed the document in the presence of the deceased.

[21] As held in *Robert Victor Benyon v Rhodes University and Another* 2017 4 BLLR 423 (ECG) at paragraph [29], it is undesirable for a court to take all disputes of fact at face value where this would enable a respondent to raise fictitious issues in avoidance. The court must

examine whether the alleged disputes are real or can be resolved without oral evidence. This was phrased as follows:

“It should be emphasised that whilst generally undesirable to attempt to decide an application on affidavit where there are material facts in dispute, it is equally undesirable for a court to take all disputes of fact that the face value which would enable a respondent to raise fictitious issues of fact in avoidance. It is necessary then to examine the alleged disputes and determine whether they are real or can be satisfactorily resolved without the aid of oral evidence.”

[22] Taking into account all the facts mentioned in paragraphs 7 to 16 above, I am satisfied that no genuine dispute of fact exists that requires referral to oral evidence. The respondents' contentions are either bald denials, palpably implausible, or contradicted by the objective documentary evidence.

Hearsay evidence

[23] The applicant concedes that portions of his evidence, particularly the email correspondence, constitute hearsay. He invokes section 3 of the *Law of Evidence Amendment Act 45 of 1988*, which provides that hearsay evidence may be admitted if the court, having regard to various factors, considers it in the interest of justice to do so.

[24] The relevant factors include the nature of the proceedings, the nature and probative value of the evidence, the reason why the evidence is not given by the person upon whose credibility its value depends, and any prejudice to a party.

- [25] In this matter, the email correspondence is of considerable probative value. It reveals a clear trajectory: the deceased initiated the process of amending his will in January 2018; he provided detailed instructions regarding the distribution of his assets in March 2018; and on 27 November 2018, he expressly stated the words "(that the) Signed will (is) attached" and forwarded a scanned copy of the executed document to First National Bank (FNB).
- [26] The reason the author of the emails cannot testify is self-evident: the deceased has passed away. The FNB employee, Mr Chiripanyanga, is no longer with the bank and his whereabouts are unknown.
- [27] The respondents' suggestion that the emails might be the product of artificial intelligence is speculative and unsupported by any evidence.
- [28] The correspondence forms part of a coherent chain spanning several months, with consistent references to the deceased's personal circumstances and relationship with the applicant. There is no factual basis to doubt its authenticity.
- [29] In my view, it is manifestly in the interest of justice to admit the hearsay evidence. The respondents suffer no prejudice beyond the legitimate forensic disadvantage of being unable to cross-examine the

deceased—a disadvantage inherent in any application of this nature. In addition, the fourth respondent's own affidavit is replete with hearsay regarding alleged conversations with the deceased.

The validity of the 2018 will

[30] Section 2(1) of the *Wills Act 7 of 1953* prescribes the formalities for a valid will as follows:

“2 Formalities required in the execution of a will.

(1) Subject to the provisions of section 3bis-

(a) no will executed on or after the first day of January, 1954, shall be valid unless-

(i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other person, in the presence also of such other person; and

(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person anywhere on the page; and

...

(3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in

subsection (1).

[31] The document considered by the respondents as the deceased's valid will, namely the 2018 will, are compliant with these formalities: it is signed at the end by the testator; each page is signed or initialled; and two witnesses have attested and signed in the presence of the testator and each other, as confirmed by their affidavits.

[32] Section 2(3) of the *Wills Act 7* of 1953 further provides a power of condonation:

"2A Power of court to declare a will to be revoked

If a court is satisfied that a testator has-

- (a) made a written indication on his will or before his death caused such indication to be made;*
- (b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or*
- (c) drafted another document or before his death caused such document to be drafted, by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked."*

[33] The enquiry under section 2(3) is whether the deceased intended the document to be his will. This requirement was clearly set out by the Supreme Court of Appeal in *De Reszke v Maras and Others* 2006 (2) SA 277 (SCA) at paragraph 11 as follows:

"[11] Section 2(3) lays down the requirements which a document which does not comply with the formalities for the execution of a

will has to meet before a court will order the Master to accept it as a will. The effect of an order under s 2(3) is that a document which is not a will for want of compliance with certain prescribed formalities but purports to be a will is given effect to if the requirements of the section have been met. For the grant of relief under s 2(3) a court must be satisfied that the deceased person who drafted or executed the document intended it to be his will. That intention, in my view, must have existed concurrently with the execution or drafting of the document (Harlow v Becker NO and Others 1998 (4) SA 639 (D). It is with this exposition of the legal position that I return to the facts.”

[34] The evidence that the deceased intended the 2018 document to be his will is overwhelming. He initiated the process, provided detailed instructions, reviewed drafts, requested amendments, and ultimately communicated to FNB that the signed will was attached. The document itself reflects his signature and those of two witnesses. The witnesses have confirmed the circumstances of execution under oath.

[35] The respondents' contention that the deceased "*never went through with making the final alterations*" is contradicted by the deceased's email of 27 November 2018, which attached the signed will. The fact that the original was never received by FNB for safe custody does not negate the deceased's intention at the time of execution. The deceased instructed FNB to upload the copy to his profile "*in the meantime*", indicating his expectation that the document would be given effect pending delivery of the original.

The presumption of revocation

[36] The respondents rely on the common law presumption that when a will last known to be in the testator's possession cannot be found, the testator is presumed to have destroyed it with the intention of revoking it.

[37] This presumption was considered by the Supreme Court of Appeal in *Theart v Scheibert and Others* [2012] 4 All SA 278 (SCA). At page 288 the following was held in paragraphs [25] to [27]:

“[25] The second respondent’s Counsel relied on the rebuttable presumption that when a will that was last known to be in the testator’s possession cannot be found, the testator is presumed to have destroyed it with the intention of revoking it: In re Beresford, Ex parte Graham (1883) 2 SC 303; Ex parte Slade 1922 TPD 220; Ex parte Warren 1955 (4) SA 326 (W) [also reported at [1955] 4 All SA 352 (W) – Ed]. But the argument falls to be rejected on both the facts and the law.

[26] So far as the facts are concerned, in order to be effective, revocation would have had to take place before the testatrix’s death. But there is no apparent reason for her to have done so. On the contrary, the evidence points the other way. According to the appellant, the relationship between her and the testatrix “was de facto that of a mother and daughter. It was a close and loving relationship, and remained so until her death”. This evidence is supported by the evidence of the appellant’s erstwhile sister-in-law, who deposed to an affidavit in which she stated:

...

The appellant has admitted that some two years after the testatrix’s death, her relationship with the testator did deteriorate. The second respondent has attempted to put

the date earlier by asserting that the appellant's relationship with both the testator and the testatrix had deteriorated during the testatrix's lifetime; but according to the appellant, he was not in a position to comment on her relationship with the testatrix, because he only started visiting the testator after the testatrix had died. The affidavits of other persons on which the second respondent relies, also relate to the period after the testatrix had died. There is, accordingly, no conflict of fact on this point and the evidence of the appellant stands uncontroverted. In addition, there are the following facts. The appellant was, on the death of her brother, the testatrix's only surviving descendant. The testatrix gave the appellant a copy of the mutual will at about the time it was executed. Having made a will, there is no apparent reason why she would have decided to disinherit the appellant and to die intestate. On the other hand, there was every reason why the testator would seek to destroy the will after the testatrix's death because he did not wish the appellant to inherit anything – and that state of mind may explain the late filing of the death notices and the inventory with their incorrect contents, and may further explain why the testator did not disclose the existence of the mutual will to the persons who drew up his three subsequent wills.

[27] *For these reasons, even if the presumption applied, it was in my view (and contrary to the tentative view of the High Court) clearly rebutted. But in order for the presumption to apply, it must be established that the will was last known to be in the testator's possession – because the presumption, according to the first and third authorities to which I have already referred in paragraph 25 above, does not apply if the will was in the hands of a third party. The High Court held that:*

...

*But the first passage quoted by the High Court from the letter sent by the appellant's attorneys is preceded by the words: "To the best of our client's knowledge". Those words clearly indicate that the appellant was unable to say one way or the other what the actual position was. **There was simply no evidence to indicate who was in***

possession of the mutual will before the testatrix's death. The presumption, accordingly, did not arise.
(own emphasis)

[38] In the present case, there is no evidence as to who was in possession of the original will directly before, or at the time of, the deceased's death. The presumption of revocation does accordingly not arise.

[39] Further factors taken into account against the presumption of revocation, is that the deceased's email indicates that the signed will was in his possession on 27 November 2018 when he attached it to his email. He clearly had the intention to draw a new will.

[40] What became of the will thereafter is unknown. It may have been dispatched to FNB and lost in transit; it may have been misplaced; it may have been destroyed without the deceased's knowledge. The fourth respondent herself, in her letter to the Master, indicated that FNB had confirmed the document was lost and only a copy remains.

[41] In *Ex Parte Ntuli* 1970 (2) SA 278 (W), the court accepted that an original will was irretrievably lost and issued a *rule nisi* calling upon interested parties to show cause why a draft should not be accepted. The approach in the *Ntuli* matter recognises that the non-production of an original will does not automatically defeat a claim for the acceptance of the will where the evidence establishes that the testator had the intention to change the original will.

[42] Moreover, the following circumstances surrounding the 1992 will fortify the conclusion that the deceased intended the 2018 will to be operative:

42.1. The 1992 will was executed when the deceased was 19 years old. His father, Pieter Johannes Goosen, who is named in that will, passed away in 2017.

42.2. It is inherently improbable that the deceased, having lived with the applicant for nearly 22 years and acquired significant assets during that period, would have intended his estate to be administered in terms of a will executed in his youth, particularly after he had taken active steps to amend it.

[43] The respondents' reliance on the presumption is further undermined by the fourth respondent's own conduct. In September 2024, she wrote to the Master requesting that the copy of the 2018 will be accepted. Her subsequent attempt to resile from that letter on the basis that she was "induced" and "bullied" by the applicant is unconvincing.

[44] The letter was written seven months after the deceased's passing. It is a formal communication to the Master, not a hastily composed note. If the fourth respondent genuinely believed the 1992 will represented her son's last wishes, she would not have requested the Master to accept the 2018 copy.

[45] The respondents also rely on the full court decision set out in *Westerhuis and Another v Westerhuis and Others* (A276/2017) [2018] ZAWCHC 85 (27 June 2018) for the proposition that the party alleging intention must show unequivocally that the intention existed concurrently with the execution or drafting of the document.

[46] In this matter, the applicant has done precisely that. The deceased's intention at the time of execution is established by the document itself, the confirmatory affidavits of the witnesses, and the contemporaneous email correspondence.

[47] In *Du Plessis v Reniers and Another* (952/2024) [2025] ZAMPMBHC 39 (16 May 2025) the court declared the latest will invalid on the basis that it could not be established whether the deceased was indeed personally involved in the drafting of the will. It is distinguishable from this case *in casu* as the deceased is not disputed to be the author of the last will. Here, the deceased's personal involvement is amply demonstrated by the email trail spanning several months and the confirmatory affidavits of the attesting witnesses. The following was held in the *Du Plessis* matter:

“[25] My understanding of the above is that once a court finds that the document was not personally drafted by the testator, its powers to condone an invalid will are automatically excluded. The second leg inquiry on whether the testator intended the document to be his last

will shall therefore fall away. The Legislature found no excuse for any document the testator caused to be drafted, not to comply fully with the formalities of a valid will.”

[48] I am satisfied that the deceased intended the document executed on 27 November 2018 to be his last will and testament. The document complies with the formalities prescribed in section 2(1) of the Wills Act. The absence of the original is satisfactorily explained by the diligent but unsuccessful searches conducted, and the presumption of revocation has been rebutted by the totality of the evidence.

Conclusion

[49] The applicant has made out a proper case for the relief sought. I am satisfied that the 2018 will represents the deceased's last testamentary wishes.

[50] It would be unjust to permit his estate to be administered in terms of a will executed when he was 19 years old, particularly when the evidence demonstrates that he took deliberate and considered steps to give effect to his changed circumstances and relationships in the 2018 will.

Costs

[51] In relation to costs, the general rule is that costs follow the result.

[52] However, the second respondent (the Master) has adopted a neutral

stance and should not be burdened with costs.

[53] The first respondent, as *executrix*, is obliged to administer the estate in accordance with the valid will. I hold the view that she and the deceased's sister did not oppose the application with *mala fide* intentions, but with the intention to ensure that the correct will is executed.

[54] The opposition by the third and fourth respondents has necessitated this application. In normal opposed applications it would attract a cost order and normally the unsuccessful parties should bear the costs incurred in the application.

[55] It is important to remember that the loved ones of the deceased might have a relationship that exceeds the life of the deceased. As such, and in consistency with the practice in matters of this nature, I make an order that the costs of the application should be costs in the estate.

ORDER

[56] In the instance, I make the following order:

- (i) The last will and testament made and signed by the late Johannes Francois Goosen on 27 November 2018, a copy of which is annexed to the founding affidavit as "FA9", is declared

to be the last will and testament of the late Johannes Francois Goosen.

(ii) The Master of the High Court, Pretoria, is ordered to accept the said document as the last will and testament of the late Johannes Francois Goosen for the purposes of the Administration of Estates Act 66 of 1965.

(iii) The costs of this application shall be costs in the estate of the late Johannes Francois Goosen.

**FMM REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

DATE ARGUED: 2026-02-10

DATE OF JUDGMENT: 2026-06-10

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