REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: NO (3) REVISED: YES 8 JUNE 2026 [redacted] DATE SIGNATURE

Case No: 085950/2023

In the matter between:

MPUTSA ROSE MOLAPO **Applicant**

and

MASTER OF THE HIGH COURT, PRETORIA **1st Respondent**

SIMON MADLENKOSI MNGUNI N. O. **2nd Respondent**

(In his capacity as the appointed Executor in the Deceased Estate of the Late Julia Thembani Nkosi)

SIMON MADLENKOSI MNGUNI **3rd Respondent**

(In his personal capacity)

LUCAS KHEITHI MNGUNI	**4th Respondent**
BONGANI RICHARD MNGUNI	**5th Respondent**
STANDARD BANK TRUST LIMITED	**6th Respondent**

JUDGMENT

(The matter was heard in open court on 19 March 2026. Judgment was reserved and the written judgment was uploaded onto the electronic file of the matter on CaseLines. The date of uploading of the judgment onto CaseLines in deemed to be the date of the judgment).

BEFORE: HOLLAND-MUTER J:

[1] The application to be adjudicated concerns the validity of a purported will of the deceased, the late Julia Thembani Nkosi ("the Deceased").

[2] The applicant is Mputsa Rose Molapo, purportedly nominated beneficiary in the last will of the deceased. Her application is opposed by the second, third and fourth respondents.

[3] The applicant moves for relief that the court declare the last Will of the deceased dated 9 March 2021 valid in terms of section 2(3) of the Wills Act no 7 of 1953 as amended ***("the Act")*** despite the non-compliance thereof regarding the absence of the required certificate by the commissioners regarding the signing thereof in their presence.

[4] The relief sought is that the court condone the non-compliance supra of the deceased's will regarding the absent certificate that should be prove of the deceased signing of the will by the deceased by placing a mark on the will.

[5] The signing of a will with a mark (thumb print as was the situation here), is regulated by section 2(1)(a)(v) of the Act. The section requires that: *"a commissioner of oaths certifies that he satisfied himself as to the identity of the testator and that the will so signed is the will of the testator, and each page of the will, excluding the page on which his certificate appears, is also signed anywhere on the page, by the commissioner of oaths who so certifies: Provided that (aa) the will is signed in the presence of the commissioner of oaths in terms of subparagraphs (i), (iii) and (iv) and the certificate concerned is made as soon as possible after the will has been so signed".*

[6] Section 2(3) of the Act provides that a court may condone any non-compliance with the Act ***if*** the court is satisfied that the document was executed by a deceased but who has died since the execution thereof without as in the present matter, the existence of the certificate of the commissioner of oaths as required certifying that the signing of the will did take place in the presence of the commissioner. See **Ex Parte Williams Estate: In re Williams Estate 2000 (4) SA 168 (T) at 179 A.** The court reaffirmed the sanctity of a testator's last wishes if clear from the circumstances.

[7] This was confirmed by the Supreme Court of Appeal (SCA) in **Van Wetten & Another v Bosch & Others 2004 (1) SA 348 SCA para [14]** where it was held *"That section 2(3) of the Wills Act is clear: The court must direct the Master to accept the document in issue as a will once certain requirements are satisfied. First the document must have been drafted or executed by a person who has died and secondly the document must have been intended by the deceased to have been his or her will".* The court may grant condonation if the requirements referred to in the Act was not complied with ***and*** the version presented by an applicant must be the reasonable acceptable version if an opposing version

different versions be placed before the court, the court, in following the rugged Plascon-Evans Rule, will accept the most preferable version where the versions are mutually destructive.

[8] In **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)** it was held that the court will determine whether a true dispute of facts on affidavit exists that can be determined on paper or whether the dispute ought to be referred for oral evidence if a real dispute of facts exist. Should the court be satisfied that the dispute can be determined on the affidavits the court will, after weighing the mutually destructive versions, decide which version is the most likely to be accepted.

[9] With the established rule in mind, the court will approach the two destructive versions in this matter.

[10] The second, third and fourth respondents opposes the application asserting that the application should be dismissed for not complying with the requirements under section 2(1)(a)(v) of the Act. In *casu* the will was not accompanied by the Commissioner's certificate as prescribed. It is further a fact that no such certificate as obtained later (or as soon as possible after the will was signed at all). The later obtained affidavits by the police officers and the view of the late obtaining thereof, the court is of the view that this omission cannot be cured. The reason will follow below.

[11] It was argued on behalf of the applicant that the police officers, not acquainted with the requirements of the Act, did not know that the certificate declaring that the will was signed with a thumb print by the testator must be annexed to the will certifying it was done in their presence. This is unlikely to be the case. The police officers' confirmatory affidavits were only obtained long after the alleged signing of the will and only after it was required for the litigation. It will be discussed below as part of the improbabilities of this version.

[12] It is a fact that the deceased never had children of her own. It is however also a fact that the two young respondents, Lucas and Bongani resided with the deceased at some point and regarded her as the extended mother.

[13] The applicant is an employee of Standard Bank, the sixth respondent in the application. The applicant is employed by the Bank in its department that specialises in financial planning and advising clients on financial issues, a different department than the department dealing with wills and trusts. It is reasonable to accept that she, in view of her appointment, will be aware of the requirements regarding completing a will as part of financial planning for clients.

[14] The deceased, on the applicant's version, executed the purported will dated 9 March 2021 at the bank but it was not signed at the bank but it was signed at the police in Mamelodi. The deceased returned the signed will to the bank for safe keeping as the nominated executors. It is the version of the applicant that the deceased completed the will at Standard Bank (most probable at the wills department), taken the unsigned will to the police, have it signed with a mark (and not certified by the commissioner) and returned to the wills department at Standard Bank for safe keeping (as nominated executrix); the question arises that why did the trained bank employees not have the mark signing done at the bank (whose function if is) because of the bank's appointment as executrix. The more probing problem with this version was how did the applicant know exactly what transpired with the completing of the will? It is reasonable to infer that she was most likely the drafter of the will.

[15] The version of the applicant fails the test for reasonableness for the following:

- Standard Bank as bank of the deceased would have assisted her in the drafting and finalisation thereof. It is highly unlikely that, taken that the Bank is nominated as executor, will assist the deceased to complete her last will ***but*** before having it signed and commissioned, refer her to the police to do the commissioning, only to accept it later when returned. If this was true, the employees of the bank in the will's department would have noticed the absence of the certificate and would have taken steps tp cure the non-compliance for their client.

- The complexity of the will justifies the inference that someone in the Bank ***with*** knowledge what should be in a will, assisted or actually drafted the will for the deceased. This would not have been employees of the bank in the wills division but someone with the necessary knowledge and skill.

- The applicant is employed at the bank in a division where clients are advised on financial aspects. She most likely drafted the will for the deceased and then directed her to have it signed at the police before submitting it to the wills department. An outsider would not have all the information what should be in a will but the applicant most likely would have.

- The wills department would not have accepted the signed will without the certificate when submitted to them by the deceased after it was signed.

- Standard Bank would not have relinquished their appointment if they were the original drafters thereof but when requested by the applicant and informed of the dispute with the Master, relinquished their appointment.

[16] The argument on behalf of the applicant regarding the late registration of the customary union between the deceased and the third respondent is not convincing. The legislator made it possible for late registration of customary unions and there is no convincing evidence swaying the court not to accept the version of the respondent.

[17] The applicant admitted that the deceased and the third respondent was living together at some stage after such lobola negotiations and that the fourth and fifth respondents also resided with the deceased and third respondent earlier. There is no reason why the court should not accept the version of the third respondent in this regard. His version that there was lobola negotiations earlier with the family of the deceased is not farfetched nor denied at all. The applicant was aware of the negotiations.

[18] The applicant avers that the deceased announced to some relatives that she (the deceased) was to draft a will with the assistance of Standard Bank in which she wanted to bequeath her estate to the applicant. The deceased made this intention known to the applicant during March 2021. This intention was also made to some family members. Although some confirmatory affidavits were annexed, it is clear from these affidavits that they are genetic the same, this is an indication that it was drafted by the same person. A shadow of doubt should hang over these affidavits. A red herring is afloat.

[19] The deceased further informed the applicant that she went to Standard Bank to assist her whereafter she went to the Mamelodi Police station where police officers assisted her with signatures as witnesses. This was because the deceased signed the will by a mark and she returned to Standard Bank with the now signed will for safe keeping, but as set out above, it casts a doubt over the truth thereof. Logic dictates that the designated employees at the bank working with will would have done everything and not send the deceased to the police to have the will signed.

[20] The deceased passed away on 19 October 2022 and the applicant informed Standard Bank that she was the next of kin of the deceased and contact person regarding the will, only to be informed that the will was already reported by the third respondent. This was some time after the deceased died.

[21] Standard Bank informed the Master of the Pretoria High Court on 18 November 2022 that it renounced its right to act as executor to the estate due to cost implications and the size of the estate. The bank further informed the Master to contact the applicant and for further appointment of the executor.

[22] After hearing nothing from the Master the applicant contacted the Master on 3 January 2023, only to be informed that the bank renounced their appointment as executor of the estate and that the fourth and fifth respondents as biological sons of the deceased reported the estate. This was misleading because the deceased never had any children of her own. The explanation regarding the fourth and fifth respondents as extended family is acceptable.

[23] Missing from the last will was the certificate by the commissioners of oath certifying that the testator signed the purported will in the presence of the commissioner of oaths. The accepted fact is that there was never a certificate made by the members of the Mamelodi Police when the will was attested to by the deceased in the presence of the police officers.

[24] When comparing the two destructive versions with the other, the court is of the view that the version of the third respondent is more likely to be accepted over that of the applicant. The applicant faced with the burden to prove on a balance of probabilities, failed to discharge the burden and did not convince the court to accept her version in stead of the version of the third respondent.

COSTS:

[25] Costs is in the discretion of the court. When deciding the issue of costs, the court will, unless good cause exist not the follow the normal rule that costs should follow success, award the successful party with a cost order in its favour. There is no reason why this general rule should not be followed when considering the various versions.

[26] There is further no reason to impose a punitive cost order against the unsuccessful party. When considering imposing a punitive cost order, the court will consider the conduct of such a party and only when the court is of the view that the conduct of a representative was reprehensible justifying the court to vent its disapproval with such conduct. See **Taxation of Costs in the Higher and Lower Courts: A Practical Guide Lexis-Nexis, Albert Kruger and Wilma Mostert** p 8-9. There is no such conduct present in this matter.

ORDER:

The application is dismissed with costs on a party and party scale "B".

[redacted]

HOLLAND-MUTER J

Judge of the Pretoria High Court

8 June 2026

Appearances:

Applicant: Adv N Mohlala

Respondents: (2nd, 3rd & 4th Respondents): Adv M Sithole

Matter was heard on 19 March 2026

Judgment handed down on 8 June 2026