



**IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL LOCAL DIVISION, DURBAN)**

CASE NO.: 2025-132522

Reportable	YES
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In the matter between:

JONNA CHRISTINE HOPLEY N.O

First Applicant

RICHARD MICHAEL HOPLEY N.O

Second Applicant

and

JOHN VICTOR DUA N.O

First Respondent

JOHN VICTOR DUA

Second Respondent

THE MASTER OF THE HIGH COURT

Third Respondent

SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Fourth Respondent

ORDER

The following order shall issue:

1. The First Respondent is removed as co-executor of the estate of the late Michael David Hopley (Master's Reference 004488/2022PMB) in terms of section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965.
2. The First Respondent is directed to return his letters of executorship to the Third Respondent forthwith upon service of this order in terms of section 54(5) of the Administration of Estates Act 66 of 1965.
3. The Third Respondent, namely the Master of the High Court, Pietermaritzburg, is directed to issue fresh letters of executorship to the Applicants removing the name of the First Respondent therefrom.
4. The First and Second Respondents are directed to forthwith upon service of this order:
 - 4.1 hand over and deliver to the attorneys of record for the Applicants, De Villiers Evans & Petit, all original estate files, documents, records, and correspondence relating to the administration of the estate of the late Michael David Hopley under Master's reference number 004488/2022PMB;
 - 4.2 provide a complete written accounting of all trust monies, receipts, and disbursements received, made or held by the First Respondent and/or the Second Respondent in connection with the winding up of the estate;
 - 4.3 pay over to the estate late account with Nedbank (as per annexure "Q4" to the Founding Affidavit) all funds held in trust in relation to the estate, which are common cause, and any related

entities, including Seariver Investments (Pty) Ltd and The Crossbow Trust, as authorised by annexures "Q2" and "Q3" to the founding affidavit or have been established on the papers, to be monies of the estate of the late Michael David Hopley. For the avoidance of doubt, this paragraph does not determine the ownership of any monies held on behalf of Seariver Investments (Pty) Ltd or The Crossbow Trust, and no such monies are to be transferred to the estate account unless the estate's entitlement thereto is common cause or has otherwise been lawfully established;

- 4.4 the First Respondent is directed to deposit all monies that are not determined, which are related to the late Mr Hopley, to the trust account of the Applicant's attorneys and the Applicant's attorneys shall keep records of such monies that they would have received from the First Respondent.
5. The First and Second Respondents are interdicted and restrained from taking any further steps in the administration of the estate of the late Michael David Hopley.
6. The Applicants or their attorney are directed to, within 5 (five) days, furnish the First and Second Respondents with the details of the estate banking account if the account referred to in annexure "Q4" to the Founding Affidavit has changed.

7. The First and Second Respondents are directed to immediately thereafter deposit into that account all monies held by them on behalf of the deceased estate, subject to paragraphs 4.3 and 4.4 above.
8. The First and Second Respondents are directed to immediately prepare a statement of account reflecting the work performed by Mr Dua in his capacity as co-executor of the estate late Michael David Hopley, together with any fees and disbursements claimed in relation thereto. The aforesaid statement must be submitted to the Applicants' attorneys for assessment and, in the event of a dispute, to the Master of the High Court, Pietermaritzburg, for determination in accordance with the applicable law or, the relevant competent body that is tasked with the assessment of the attorneys' fees.
9. The Second Respondent shall pay the costs of this application on scale C of the tariff referred to in Rule 67A of the Uniform Rules of Court, including the costs of two counsel where so employed.

JUDGMENT

NOTYESI AJ

Introduction

[1] The first applicant, Mrs Jonna Christine Hopley NO, is the surviving spouse, sole beneficiary and co-executrix of the Estate Late Michael David Hopley (the estate). The second applicant, Mr Richard Michael Hopley NO, is the son of the first applicant

(collectively referred to as the applicants). The first respondent, Mr John Victor Dua NO (Mr Dua) is an attorney and appointed co-executor of the estate and is cited in both his personal and official capacity as a co-executor of the estate. The third respondent is the Master of the High Court, Pietermaritzburg. The fourth respondent is the South African Legal Practice Council.

[2] The dispute concerns Mr Dua's administration of the estate, particularly the alleged delay in its finalisation and the breakdown in his relationship with the co-executors and beneficiaries.

[3] Relying on section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965¹ (the Act), the Applicants seek an order removing Mr Dua as co-executor, together with consequential relief and personal costs orders. The Applicants contend that his continued appointment is undesirable and no longer in the best interests of the estate. The application is brought in their personal capacities and in their capacities as executrix, beneficiary and co-executor of the estate.

[4] Mr Dua is opposing the application. His initial technical objections were not pursued, and the parties agreed that the matter should be determined on its merits. Mr Dua contends that the Applicants have failed to establish grounds for his removal in terms of section 54(1)(a)(v). In particular, he points out that there are no allegations that he was dishonest, misappropriated funds nor committed acts of maladministration of the estate or other acts of wrongdoing. He contends that the Applicants bear the

¹ Administration of Estates Act 66 of 1965 : section 54(1)(a)(v) provides that 'An executor may at any time be removed from his office (a) by the Court (v) if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned'

onus of establishing a complete breakdown of trust, rather than a mere disagreement or conflict, and that the existence of a dispute between heirs and executors does not, in itself, justify his removal. He further contends that the Applicants have failed to demonstrate that the interests of the estate and its heirs would be served by his removal.

Background facts

[5] The material facts are largely common cause or not seriously disputed. Mr Michael David Hopley (the deceased) died on 28 August 2021. He is survived by the Applicants. The surviving spouse is 81 years of age. In terms of the deceased's will, the surviving spouse, Mrs Hopley, is the sole beneficiary, and the Applicants and Mr Dua were appointed as co-executors of the estate. The Applicants' case is set out below.

[6] On 8 December 2022, the Applicants executed a power of attorney authorising Mr Dua to act as their agent in the winding-up of the estate. According to Mrs Hopley, following the appointment of Mr Dua, there was little progress or communication regarding the administration and finalisation of the estate. She experienced difficulty in obtaining information from him. She also alleges that Mr Dua failed to return her telephone calls or to properly account for the estate. These delays and the lack of communication resulted in a breakdown of trust, leading the Applicants to appoint De Villiers Evans & Petit (the attorneys) to act on their behalf.

[7] The delays ultimately led to the institution of these proceedings. According to the Applicants, Mr Dua only furnished a draft liquidation and distribution account (L & D account) on 30 July 2024. When questioned about certain transactions and items reflected in the account, he allegedly became infuriated and avoided communication.

Mrs Hopley had also questioned Mr Dua regarding his demands for certain documents and information, which were not in her possession. She also raised concerns regarding the inclusion of an amount of R25 million in the L & D account. The amount is part of the estate's claim against Dr Pillay. That case has not been finalised.

[8] In response to Mrs Hopley's queries regarding the L & D account, Mr Dua sent an email on 14 February 2025 in which he expressed his intention to resign as the co-executor. The relevant portions read:

'...While I do understand that the legal side has cost more than we would like, it is simply not possible for me to work under the conditions that you mention, ie with no fees and some form of guaranteed outcome. There are other issues as well which have impacted my trust significantly, not the least of which is the production of a share register now, which shows that the estate is not vested with the shares in SeaRiver. I am not going to comment at this time, but I need to reiterate that I am not able, nor prepared, to continue like this.

I suggest that we agree that I resign.....'

[9] Following this email and further unsuccessful attempts to contact Mr Dua, the Applicants instructed their attorney of record to enquire into the progress of the estate. The attorneys addressed a letter to Mr Dua, to which he responded by email on 10 May 2025. The relevant portion of that email reads:

'I will respond to you during the course of next week. I will not include Mrs Hopley in the reply for reasons which will become obvious as they unfold. Save to say, however, that any suggestions that I have in any fashion delayed the estate are disputed. Please would you in the interim provide me with written authority that I am able to communicate with you on her behalf.'

[10] The requested proof of authorisation and mandate was provided to Mr Dua on 15 May 2025 by the attorneys. Unquestionably, the Applicants had expected Mr Dua to provide the progress report regarding the administration and the winding up of the

estate. Such report was not furnished by Mr Dua.

[11] On 22 May 2025, Mr Dua sent a further email to the Applicants' attorneys, stating, *inter alia*:

'I am preparing the files and will make them available for collection, and am resigning. If arrangements have not been made as to the accounts for receipt of the funds, then I will transfer the funds into the Guardians Fund.'

[12] The email in question concludes as follows:

'Accordingly, all I await from you is

1. your consent that you will take up the appointment as executor, or not;
2. resolutions from the Company and Trust (to the extent that they are validly appointed) as to transfer the funds;
3. an estate late account, duly FICA'd to deposit the funds.

I will also be effecting a fee for the work done and a pro rata fee for the executor's fee, calculated on the value of the estate.'

[13] On 29 May 2025, Mr Dua was provided with the requested information to facilitate his resignation and the handover of the file. Surprisingly, Mr Dua, in his response, after receipt of the correspondence and proof of authority, reneged on his earlier position and stated that he would not release the files until his estate fees had been resolved and demanded that the Applicants propose a settlement fee. In response, the Applicants' attorneys confirmed that Mr Dua would be paid his fees upon taxation. They further offered that Mr Dua retain sufficient funds in his trust account to cover his fees and disbursements pending such taxation.

[14] Mr Dua's response by way of an email was that:

'It would appear that you are conflating the role of executor and attorney in this matter. My capacity as executor is not governed by the Legal Council, and is governed by the Master and my appointment as executor. The estate fees are not governed by a tariff as you suggest, save that they will be calculated as a percentage of the assets of the estate. This is where the difficulty arises because your client has deliberately understated the assets to dilute the fee. It was on this basis that, as co-executor, not as an attorney, I suggested that your client propose a reasonable figure...'

[15] Following receipt of this email, the Applicants instructed their attorneys to institute legal proceedings. On 2 June 2025, the Applicants' attorneys formally notified Mr Dua of their intention to approach the court for relief. The relevant portion reads:

'...I must now formally advise you that unless we are in receipt of the information and documentation relating to this estate and any work you may have done for the Hopley family by Tuesday, 17 June 2025, we shall reluctantly have no alternative but to bring an appropriate application to the High Court and to refer this matter to the Legal Practice Council for investigation...'

[16] On 17 June 2025, Mr Dua delivered a further lengthy email. The relevant portion states:

'Resignation

I confirm it is my intention to resign as Co-Executor, and in respect of which I will be applying to the Master to be discharged from my duties and resign (provided appropriate measures are taken to safeguard my professional interests and statutory obligations as are outlined below). I will address you separately in this regard, but the purpose of this mail is to call upon the co-executors, through you, representing them, to respond to the various aspects which may form part of my report to the Master, and potentially any reporting to the authorities. If it is your intention not to respond or not to provide a reply to the questions asked, then I will file my report without the benefit of such information.'

[17] Despite the exchange of correspondence, Mr Dua neither delivered the estate files to the Applicants' attorneys, as he had promised, nor formally resigned as co-executor. According to the Applicants, Mr Dua had provided different reasons for the delay in effecting his stated intention to resign. In the meantime, the winding-up of the estate remained in limbo, with no accounting report regarding the progress made. This remained a principal concern of the First Applicant.

[18] On 18 June 2025, the Applicants' attorneys reminded Mr Dua that the continuing exchange of correspondence was contributing to the delay in finalising the estate. They pointed out that approximately three years had passed without the estate being finalised and informed him that his mandate to wind up the estate had been withdrawn or terminated. He was also advised that the Applicants had appointed a new attorney to assist with finalisation of the estate.

[19] On 19 June 2025, Mr Dua responded with further allegations concerning the estate and threatened to transfer estate funds to the Guardians Fund. In paragraphs 4 and 5 of that email, he stated:

'4. Indemnity and Trust Funds

I have outlined the basis upon which funds may be disbursed: namely, that ownership is clarified, and an appropriate joint indemnity is furnished. I am also willing to transfer these funds to the Guardians Fund or to an independent attorney's trust account subject to an agreement that the funds will not be released until regulatory matters are resolved. This proposal balances protection of the estate with your client's interest in expediency.

5. Demand for Compliance

If I do not receive a comprehensive response addressing the substantive issues previously raised by tomorrow, I will be compelled to proceed as follows:

- (a) Transfer estate funds to the Guardians Fund;
- (b) Transfer company-related funds to your trust account with caveats regarding disputed ownership;
- (c) Submit reports to the Financial Intelligence Centre (FIC), SARS, and SARB;
- (d) Finalise estate accounts based on known and undeclared assets;
- (e) Lodge a formal resignation with the Master including my concerns regarding non-

disclosure and obfuscation.'

[20] In response to the notice of intended litigation, Mr Dua stated that he had decided to defer his resignation until the matter was before court. In an email dated 25 June 2025, he stated:

'In light of this development, I have decided to defer my resignation as co-executor until such time as your application is formally served and placed before the court. This will ensure that I am able to respond in my statutory capacity as co-executor and provide the court with a complete and accurate account of the facts, including the fiduciary issues that have arisen and the lack of cooperation received from your client to date. I confirm that I remain willing to resign in due course, but not in circumstances where that resignation may be mischaracterised (*sic*) as a concession to your client's allegations or as an admission of wrongdoing.'

[21] The Applicants contend that Mr Dua breached his duties as executor by failing to identify and take control of estate assets promptly and by failing to administer the estate with the requisite diligence. They further allege that he failed to provide proper accounts, deliver the estate files and trust funds, maintain proper accounting records, and deposit all estate monies into the separate estate banking account as required by section 28 of the Act.

[22] On the contrary, Mr Dua denies delaying the finalisation of the estate and denies failing to fulfil his duties as co-executor. He contends that there are no legitimate grounds for his removal. His allegations are summarised below.

[23] Mr Dua states that he had a longstanding relationship with the deceased, who was both his client and friend. He was aware that the deceased had various business interests, including "soft" loans to various parties, including his firm, a client/friend, Robbie Labron, among others. He further states that the deceased owned shares in, at least, SeaRiver, CANAF, a Canadian company, and LFH Incorporated, a firm of

accountants, as well as various other assets.

[24] According to Mr Dua, after being nominated as co-executor in terms of the will, he began compiling a list of the deceased's principal assets and made enquiries regarding his financial records, laptop and other storage devices. Upon receiving the bank statements from the Applicants, it appeared to him that the deceased was reflected as impecunious, which he considered unusual given that the deceased had recently purchased a property on the Thames River for £1 million.

[25] Mr Dua states that he nevertheless proceeded to compile a list of assets in terms of section 26 of the Act. The letters of executorship of the respective executors were issued only on 10 June 2022. Between September 2021 and June 2022, he ascertained that the deceased owned various assets, including a computer.

[26] He alleges that the Applicants had refused him access to the computer and would not permit him to back up its hard drive. According to him, the Applicants were nevertheless able to ascertain from the computer that the deceased had loaned substantial amounts of money to, inter alia, Dr Pillay personally, as well as to trusts of which Dr Pillay was a trustee.

[27] Mr Dua states that, in relation to the substantial amounts allegedly loaned to Dr Pillay et al, the executors had decided to institute legal proceedings. According to him, the action is pending before the Durban High Court and the disputed amounts constitute assets of the estate. He further states that he was instructed by Cedric Petit of the Applicants' present attorneys to withdraw as attorney of record.

[28] Mr Dua also states that he made further enquiries concerning juristic entities, apart from SeaRiver, in which the deceased could have had interests and whether the

deceased owned shares which would constitute assets of the estate.

[29] According to Mr Dua, the ownership of the SeaRiver shareholding had remained uncertain. He states that the shareholding does not correspond with records and that he was unable to trace any transactional history and expressed the view that the shares could belong to the deceased estate. He further established that Crossbow is a discretionary trust of which the deceased was the founder and the Applicants are the current trustees.

[30] Mr Dua disputes that he had delayed the finalisation of the estate. He attributes the delays to difficulties encountered in identifying and taking control of the estate assets. He alleges that these difficulties included uncertainty regarding the estate assets, changes to the SeaRiver share register, non-disclosure of material assets and payments allegedly made directly to Mrs Hopley of monies due to the estate. He further states that these issues led him to express an intention to resign and that he was unable to pursue the Durban High Court action in the absence of instructions which, he alleges, were deliberately withheld by the Applicants.

[31] Mr Dua alleged that he communicated these difficulties to Mr Petit, the Applicants' attorney. He further alleges that the deceased may have incurred tax obligations during his lifetime which were not fulfilled and that these issues required resolution.

[32] He denies the allegation that he failed to communicate with the First Applicant. He attributes the delay in winding up the estate, in part, to what he describes as the *"vacillation of the Applicants in respect of the Durban High Court action."*

[33] Mr Dua further alleges that the issues concerning foreign currency transactions,

the SeaRiver shareholding, monies allegedly owed to the trust arising from the cancellation of the Horizon property transaction, and potentially undisclosed rental income from the deceased's UK properties warranted reporting to the Master of the High Court, Financial Intelligence Centre (FIC) and/or other relevant authorities, including South African Revenue Service (SARS).

[34] Mr Dua denies failing to account to the Applicants. He maintains that the estate could not be finalised until the queries he had raised were addressed and the High Court proceedings were concluded. He states that he was obliged to engage with SARS regarding certain transactions. Notwithstanding these issues, he remains willing to resign as executor, provided that he is indemnified against any consequences arising from the matters identified in the execution of his duties, including transactions concerning any understatement of the deceased's income for tax purposes.

[35] In summary, Mr Dua attributes the delay in finalising the estate to the Applicants and the pending High Court litigation. He denies that he acted dilatorily in winding up the estate and seeks dismissal of the application with a punitive costs order against the Applicants.

The issues before this Court

[36] This Court must determine the following issues:

36.1 Whether it is undesirable that Mr Dua should continue to act as co-executor of the estate of the late Mr Hopley in terms of section 54(1)(a)(v);

36.2 The costs of the application.

The parties' submissions

[37] It was submitted on behalf of the Applicants that it was no longer in the interest of the estate and the heirs that Mr Dua should continue as a co-executor of the estate. In this regard, counsel for the Applicants urged the court to act in terms of section 54(1)(a)(v) and terminate his appointment. Counsel conceded that the test to be applied is whether the continuance of the executor in office will prejudicially affect the future welfare of the estate, with the dominant consideration being the interest of the estate and of the heirs.

[38] The Applicants' counsel had stressed the breakdown of the relationship between Mr Dua and the Applicants and the sole heir. As I understand it, the contention of the Applicants' counsel is that the disintegration of the relationship is not based on mere disagreements or mere conflicts. The submission in essence was that the breakdown of the relationship is material to the continuation of Mr Dua's appointment as co-executor. In support of this submission, counsel pointed to factors such as the delay in the finalisation of the estate for approximately three years from the date of appointment of Mr Dua; lack of accountability; and the fact that Mr Dua had expressed his intention to resign and that there were no communications with the heirs and the other co-executors by Mr Dua.

[39] The Applicants' counsel had bolstered his submission by heavy reliance on Mr Dua's expressed wish to, and his undertaking to, resign as a co-executor, and his conduct of suddenly refusing to effect such expressed and unequivocal wish to resign. The court was also urged, by the Applicants' counsel, to consider the current state of affairs where Mr Dua has not proposed or outlined any plan for the progression of the administration of the estate and instead, simply described the present position as an

impasse.

[40] It was also highlighted that Mr Dua has shown an apparent conflict of interest, which on its own is a further ground for his removal. This submission was premised on the basis that although Mr Dua had expressly stated that he wished to resign as a co-executor, he had placed conditions on such resignation. These conditions included payment of his fees and other indemnity demands which would free him from liability for claims that may arise against him out of his conduct whilst in office as a co-executor. It was pointed out on behalf of the Applicants that by this conduct, Mr Dua had allowed himself to be conflicted.

[41] This Court was also urged by the Applicants' counsel to consider what is termed to be unlawful conduct or threats of unlawful conduct by Mr Dua. In advancing this submission, counsel pointed out that Mr Dua had not deposited some monies due to the estate in the estate account and instead, he kept monies of the estate in the attorneys' trust account. Regarding threats, counsel pointed to the emails of Mr Dua in which he threatened to pay estate funds to the Guardians Fund. This Court was also urged to consider the failure by Mr Dua to provide regular or prompt accounting to the heirs and co-executors.

[42] In a nutshell, counsel contended that Mr Dua's continuation in office is undesirable.

[43] On the contrary, it was submitted on behalf of Mr Dua that the Applicants had not made out a case for the removal of Mr Dua in terms of section 54(1)(a)(v). In this regard, counsel for Mr Dua submitted that there was no alleged wrongdoing on his part, and in such an instance, the Court must scrutinise with particular care whether the asserted "undesirability" is real, or whether it has been constructed by the very

parties who seek to rely upon it. In this case, counsel submitted that the alleged undesirability is self-created by the Applicants.

[44] The essence of the submission on behalf of Mr Dua was that a co-executor cannot manufacture an impasse by instructing the executor to stop work, by withholding information, and by refusing every neutral mechanism or resolution and then present that impasse to the Court as the ground of removal. Counsel had stressed that to permit such conduct would be to substitute the executor's preference for the testator's choice, and to reduce section 54(1)(a)(v) to removal at the instance of whoever wants the executor to be removed. The thrust of these submissions, as I understand, was that the asserted undesirability is as a result of Mrs Hopley refusing (a) to provide access to the pc; (b) to grant Mr Dua permission to make a backup of the hard drive; (c) instructing Mr Dua to proceed with the action; (d) information about the shareholding register; and (e) to deal with the unresolved tax issues, and non-disclosures, including providing the information that were requested.

[45] It was submitted on behalf of Mr Dua that this is such a classical case where Mrs Hopley had obstructed Mr Dua in the performance of his duties and now seeks to have Mr Dua removed. The submission was that, in such circumstances, the delays in the finalisation of the estate were caused by the Applicants themselves and not Mr Dua, and therefore, it was not available for the Applicants to seek for the removal of Mr Dua for their own actions and omissions.

[46] It was contended that the breakdown of the relationship had only commenced when Mr Dua had raised legitimate queries concerning undisclosed assets, unexplained share transfers, offshore transactions and the deceased's tax compliance. Counsel contended that a breakdown in relations between executors is

not, without more, a ground for removal and that something more is required. This Court was referred to the authority of *Oberholzer NO and Others v Richter*²; counsel submitted that there were no objective facts demonstrating that the estate's welfare is prejudiced by Mr Dua's continuance. The submission was that Mr Dua had performed his duties and was willing to continue with his duties as an executor.

[47] Regarding the alleged conflict of interest and the demand for indemnity, counsel contended that the Applicants' "conflict of interest" ground is not a "conflict" at all and instead, it is a characterisation of Mr Dua's settlement proposal contained in his correspondence. In this regard, counsel contended that the court should view the tender of resignation and the conditions attached thereto as part of a settlement proposal.

[48] The submission was that the Applicants simply misinterpret or misunderstand the indemnity sought. Regarding payment to the Guardians Fund, it was contended on behalf of Mr Dua that there was no payment made to the Guardians Fund and that the statement was merely a conditional position in the correspondence made expressly in the alternative, namely payment into an independent attorneys' trust account pending resolution of the ownership queries. The submission is that the context was protective, and not dissipative.

[49] On the question of the failure to account, it was submitted, on behalf of Mr Dua, that monthly statements were rendered by Mr Dua to the Applicants in respect of both the litigation and the estate funds under Mr Dua's control. It was also submitted that a draft liquidation and distribution account was prepared by Mr Dua and furnished to the Applicants. In this regard, it was submitted that the final liquidation and distribution

² *Oberholzer NO and Others v Richter* [2013] 3 All SA 205 (GNP)

account is dependent upon the finalisation of the pending case against Dr Pillay and the outstanding asset queries, including sources of funds.

[50] Regarding the resignation by Mr Dua, counsel submitted that Mr Dua had only expressed a willingness to resign on orderly terms and that should not be misconstrued to be an admission that his continuation in office is undesirable.

Legal framework

[51] Section 54(1)(a)(v) confers a discretion on the court to remove an executor if it is satisfied that it is undesirable that such an executor should continue to act as an executor of the estate concerned.³ Significantly, the discretion that the court possesses under section 54(1)(a)(v) needs to be stated. The distinction of the type of discretion has been developed with reference to two cases as observed by the Constitutional Court in *Trencon; Mahomed v Kazi's Agencies (Pty) Ltd and Others*⁴ (Mahomed) and *Ex Parte Neethling and Others*⁵ (Ex parte Neethling).

[52] In *Mahomed*, the court held that:

'... [T]he truth of the matter is that no general principle can be formulated which will govern all cases where the exercise of a discretion is brought on appeal. For discretions vary infinitely in their nature. On the one hand there are discretions such as that dealt with in *Rex v Zackey* (1945 AD 505), viz. the discretion vested in the presiding judicial officer to deal with an application for an adjournment. One can well imagine that the appellant in such a case would find it difficult to persuade the Court of Appeal to upset a decision of a judicial officer as to the conduct of business in his own court. Not the least of his difficulties would be to recreate in the Appeal Court the atmosphere in which the application for an adjournment was made. On the

³ *ibid* footnote 1

⁴ 1949 (1) SA 1162 (N) at 1168-9

⁵ 1951 (4) SA 331 (A)

other hand there are cases like the present where we have before us all the material which was before the lower Court and where we are in as good a position to decide the matter as that Court was; indeed, it may well be that we are in a better position, for the longer time available to counsel for investigation has probably given us the benefit of a more elaborate and helpful argument than could be presented to the lower Court. I should be very sorry to find that the cases required us to restrict the field of enquiry on appeal to a consideration of the fairness and honesty of the Judge in the Court below. Fortunately they do not. In *Amod v Khan* (1947 (2), S.A.L.R. 432) this Court heard an appeal from an order of a single Judge setting aside a provisional order of sequestration. HATHORN, J.P., said at p. 434:

"There can be no doubt that it is a full appeal, that is, a retrial of the case, and that this Court is in exactly the same position as was the Court below, and that the discretion . . . which was imposed in the learned Judge, is now imposed in this Court."

[53] In *Ex parte Neethling*, the Appellate Division, held that:

'... [I] think, therefore, that, if an appeal lies, this Court would be entitled to interfere, not on the ground that in its opinion the contract was in the interests of the minors, because if it did so it would be substituting its discretion for that of the upper guardian, but only if it came to the conclusion that the Court *a quo* had not exercised a judicial discretion. *Rex v Zackey*, 1945 AD 505, dealt with the question of an appeal court's power to overrule a lower court's decision where the decision had been on a matter within the discretion of such lower court and three classes of such cases were referred to, viz. decisions on the question of costs, on a postponement and on an amendment of pleadings in the lower court. To these might be added the question of an alteration of sentence on appeal (see *Rex v Ramanka*, 1949 (1) SA 417). I see no distinction in principle between these and the present case ...'

[54] In *Trencon Construction v Industrial Development Corporation of South Africa Limited and Another*,⁶ the distinction in the types of the court's discretion was stated as follows:

⁶ (CCT198/14) [2015] ZACC 22; 2015 (5) SA 245 (CC) paras 85 and 86.

[85] A discretion in the true sense is found where the lower court has a wide range of equally permissible options available to it. This type of discretion has been found by this Court in many instances, including matters of costs, damages and in the award of a remedy in terms of section 35 of their Restitution of Land Rights Act. It is “true” in that the lower court has an election of which option it will apply and any option can never be said to be wrong as each is entirely permissible.

[86] In contrast, where a court has a discretion in the loose sense, it does not necessarily have a choice between equally permissible options. Instead, as described in *Knox*, a discretion in the loose sense “means no more than that the court is entitled to have regard to a number of disparate and incommensurable features in coming to a decision”

[55] What is important in this case is to first understand the nature of the discretion conferred by section 54(1)(a)(v). The answer must be found in *Gory v Kolver NO and Others*⁷ (*Starke and Others Intervening*) where it was stated:

‘The discretion vested in the High Court by s 54(1)(a)(v) is a discretion in the strict sense and an appellate court will ordinarily only interfere with the exercise of that discretion in limited circumstances; for example if it is shown that the High Court did not act judicially in exercising its discretion, or based the exercise of that discretion on a misdirection on the material facts or on wrong principles of law. I am of the view that this Court should not interfere with the exercise by the High Court of its discretion in this regard.’ (Footnote omitted).

[56] The parties, in their respective submissions, seem not to lock horns on the nature of the discretion conferred by section 54(1)(a)(v). The parties agree that the test to be used should be the one formulated in *Die Meester v Meyer*,⁸ cited with approval by the Constitutional Court in *Gory v Kolver NO and Others*⁹ (*Starke and Others Intervening*), where Van Heerden AJ articulated the principle as follows (the

⁷ 2007 (4) SA 97 (CC) para 57.

⁸ 1975 (2) SA 1 (T)

⁹ *Gory v Kolver NO and Others* (*Starke and Others Intervening*) supra fn 7.

English translation being taken from the headnote of *Die Meester v Meyer*.

'[Whatever the position may be] (u)nder the common law and according to the authorities under the old Administration of Estates Act 24 of 1913, the Court is now empowered in terms of s 54(1)(a)(v) of the present Administration of Estates Act 66 of 1965, to remove an executor from office if it is undesirable that he should act as executor of the estate concerned. The Court has a discretion and the predominating consideration remains the interests of the estate and of the beneficiaries.'

[57] The removal of an executor under section 54(1)(a)(v) is a general one relating to the desirability of the executor continuing to act. The mere disagreement or breakdown of the relationship between the executor and the heirs is not sufficient reason to warrant the removal of an executor. The enquiry is whether the executor's continued tenure, viewed objectively, threatens the proper administration of the estate or the interests of its beneficiary.

[58] I agree with Mr Dua's counsel in this regard and Oberholzer is the correct authority. The removal of an executor is a very drastic step which the court will not grant lightly. Under the repealed Act, the Administration of Estates Act 24 of 1913, the court had the power to remove an executor if it was satisfied that by reason of good cause, the interest of the estate would be furthered by his removal. The sections under the Act and the repealed Act do not repeal or remove the common-law power of the court to remove an executor. It may be useful and at times relevant to refer to some of the circumstances under which the court exercised its power under the repealed Act as well as the Act.¹⁰

[59] The essential enquiry is therefore not confined to whether the executor has

¹⁰ On the removal of an executor in terms of s54(1)(a)(v), see generally Meyerowitz Administration of Estates and their taxation – 2023 Edition at p 119–120; Oberholzer NO and Others v Richter [2013] 3 All SA 205 (GNP)

committed a particular act of misconduct. The Court must determine whether, in all the circumstances, it is undesirable for Mr Dua to continue acting as executor of the estate. The discretion is a judicial discretion, with the interest of the estate paramount.¹¹ The focus is therefore on the practical consequences of continued office, rather than on moral blame or proof of misconduct as a prerequisite to removal.

[60] This Court, therefore, is required to conduct an overriding enquiry under s54(1)(a)(v) and determine whether, having regard to all the circumstances, the continued appointment of Mr Dua is in the interest of the proper administration of the late Mr Hopley's estate and the beneficiaries. This Court derives its support from cases such as:

(a) *Van Niekerk v Van Niekerk and Another*¹² where the court held that:

'[4] Before exploring any further the disputes between the applicant and the respondent, it is appropriate to have regard to the statutory provision under which this application is brought. Section 54(1)(a)(v) reads as follows:

"An executor may at any time be removed from his office —

(a) by the Court —

...

(v) if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned . . ."

In considering an application under this section the court is vested with a discretion, and in the exercise of that discretion the predominant consideration will be the interests of the estate and those of the beneficiaries.

...

[12] ... [H]owever, where it is apparent from the executor's conduct that it is their purpose and intent to use their office to resist all claims, or all claims from a particular source, irrespective of their merits and without any fair-minded consideration thereof, that may, in my view, constitute good cause for their removal in terms of s 54(1)(a)(v). That view would be strengthened where the motive was to secure personal financial benefit in their capacity as heir. The office of executor should not be used in order to pursue a private agenda.'

¹¹ *Die Meester v Meyer en Andere* 1975 (2) SA 1 (T); See also *Gory v Kolver NO and Others (Starke and Others Intervening)* supra at p122 para 57

¹² 2011 (2) SA 145 (KZP)

(b) In *Oberholzer*¹³, the court held that:

'13. Margo J, at p 17B, also referred to the matter of *Volkwyn, N. O. v Clarke & Damant*, 1946 (WLD) 456 where Murray J said the following on p 464:

"Both the statute and the case cited (*Letterstedt v Broers*) indicate that the sufficiency of the cause for removal is to be tested by a consideration of the interests of the estate. It must therefore appear, I think, that the particular circumstances of the acts complained of are such as to stamp the executor or administrator as a dishonest, grossly inefficient or untrustworthy person, whose future conduct can be expected to be such as to expose the estate to risk of actual loss or of administration in a way not contemplated by the trust instrument."

...

16. In the matter of *Gory v Kolver NO and Others* [2006] ZAGPHC 28; 2006 (5) SA 145 (T) in paragraph [27] Hartzenberg J said the following:

"... [S]ection 54 of the Administration of Estates Act deals with circumstances under which an executor may be removed from office. In terms of s 2(b)(i) the Master may remove an executor who has been nominated by will after the will has been declared void. The first respondent was not nominated by will but he was nominated by intestate heirs who were not heirs. In my view, that is one factor pointing to his removal. Because of the way in which he treated the applicant, I am of the view that it is desirable that he be removed in terms of s 54(1)(a)(v)."

The court found that the executor was, inter alia, obstructive and that he tried his best to steamroller the administration of the estate through on a basis that the applicant's claim be negated. In this the executor was aided and abetted by the second and the third respondents who were not nominated as heirs in the will. The court also found that the executor ought not to be remunerated for his services with the administration of the estate or to be reimbursed for expenses.

17. The aforesaid authorities confirm that mere disagreement between an heir and the executor of a deceased estate, or a breakdown in the relationship between one of the heirs and the executor, is insufficient for the discharge of the executor in terms of section 54(1)(a)(v) of the Act. In order to achieve that result, it must be shown that the executor conducted himself in such a manner that it actually imperilled his proper administration of the estate. Bad relations between an executor and an heir cannot lead to the removal of the executor unless it is probable that the administration of the estate would be prevented as a result. But, in my view, even in such event, the respective actions of the heir and the executor must be considered, for an heir cannot be allowed to frustrate, through unreasonable and wrong conduct, the actions of an executor which is beyond reproach. A disgruntled heir cannot be allowed to circumvent the administration process by improperly pressurizing the executor to accede to his demands. To remove an executor in such circumstances would not serve any purpose for the same lot would befall the next executor as well. It is not necessary to discuss this issue any further since in the

¹³ [2013] 3 All SA 205 (GNP)

present matter I hold the view that the relationship between the respondent and the appellant is not such that it would prevent the administration of the estate.'

[61] In order for the Applicants to succeed in their request for the removal of Mr Dua as the co-executor, they are required to place facts before this Court which would have the effect of convincing this Court to come to such a decision. On the other hand, this Court is required to scrupulously scrutinise the facts. In other words, the onus rests with the Applicants for the court to grant the relief. In this regard, the submissions on behalf of Mr Dua were correctly made.

[62] In evaluating whether Mr Dua's continued appointment as co-executor is undesirable within the meaning of section 54(1)(a)(v) of the Act, this Court must consider the totality of the evidence, taking into account the following interrelated factors:

- 62.1 The duration and nature of the delay in winding up the estate;
- 62.2 The extent of the breakdown in trust and working relationship between the co-executors and the sole beneficiary;
- 62.3 The positions adopted by Mr Dua regarding his conditional offers to resign, fee demands, and assertions of indemnity;
- 62.4 The handling of estate funds and compliance with the statutory framework governing estate administration; and
- 62.5 The ultimate interest of the estate and its sole beneficiary.

[63] While a mere disagreement between executors, or between an executor and a beneficiary, will not ordinarily justify removal, a different position may arise where the

conflict has practical consequences for the administration of the estate. The question is whether the objective facts, assessed under the applicable motion-proceedings rule, establish an inability to administer the estate effectively, expeditiously and in an orderly manner. That enquiry must be undertaken without treating the mere loss of trust, on its own, as decisive.

[64] Particular caution is required because a number of material allegations are disputed, including the causes of the delay, the Applicants' alleged failure to provide information, the basis upon which funds were retained in trust, and the purpose of the indemnity and Guardian's Fund proposals. Those disputes cannot be resolved simply by preferring the Applicants' version on probabilities. Their significance must be assessed consistently with the rule applicable to final relief in motion proceedings.

[65] Against that legal framework, and before considering the evidence in detail, it is necessary to state the evidential rule applicable to these proceedings.

Discussion and evaluation

[66] These being motion proceedings, this Court is obliged to apply the principles enunciated in *National Director of Public Prosecutions v Zuma*,¹⁴ where the court held:

'[26] Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's (Mr Zuma's) affidavits, which have been admitted by the respondent (NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent's version

¹⁴ 2009 (2) SA 277 (SCA) para 26.

consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.' (Footnote omitted).

[67] I was urged by counsel for the Applicants to consider the effect of Mr Dua's expressed intention to resign, as conveyed in various emails addressed to the First Applicant, the Applicants' attorneys and the Applicants themselves. The submission was that, should this Court find that Mr Dua had in fact resigned, *cadit quaestio*: his resignation, or, alternatively, his unequivocally expressed intention to resign, would, on its own, establish the undesirability of the estate being administered by a person who had communicated his unwillingness to continue in office. In my view, the submission carries considerable weight and warrants close scrutiny of the relevant correspondence.

[68] Before considering the correspondence relied upon by the applicants, it is necessary to determine the meaning and effect of the language employed therein. The proper interpretation of documents is governed by the now-settled principles articulated by the SCA in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.¹⁵

[69] It is therefore necessary to examine the emails exchanged and, in particular, the language employed by Mr Dua when communicating his position regarding his continued appointment as co-executor. The first email relied upon by the Applicants was addressed to Mrs Hopley. The heading of the email is styled "Subject: re: Resignation". In this email, Mr Dua states:

¹⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) para 18.

"I suggest we agree that I resign. I will prepare a brief advising you what needs to be done to finish the process of winding up the estate."

[70] On a proper interpretation of this email, Mr Dua had not, at this stage, resigned. The language employed is that of a proposal rather than an unequivocal act of resignation. In particular, the words "I suggest we agree that I resign" indicate that Mr Dua was proposing that the parties agree to his resignation. The proposal was therefore, at least on the face of the email, subject to agreement. It cannot, in my view, reasonably be construed as an unequivocal communication that he had already relinquished the office of co-executor. Self-evidently, reliance cannot be placed on the email of 14 February 2025, standing alone, for the conclusion that Mr Dua had resigned as co-executor. More is required for such inference to be drawn.

[71] The position is materially different when regard is had to the subsequent correspondence, and in particular the email of 22 May 2025. The background to that email is the correspondence exchanged on 9, 14 and 15 May 2025. In the email of 9 May 2025, Mr Petit, acting on behalf of the First Applicant, recorded the concerns that had arisen regarding the administration of the estate. The relevant portion reads:

'We have been consulted by Mrs Hopley, your co-executor and sole beneficiary in the estate of her late husband, Michael. Our client has become concerned that she has been unable for some time to obtain any information from you as to the progress of the winding up of this estate. Mrs Hopley has furnished us with a copy of the draft liquidation and distribution account prepared by you together with a summons and plea involving Dr Das Pillay under case number D5192/2023. ... We would also be grateful if you would kindly let us have a reconciliation of all amounts received and disbursed by your firm in connection with these various matters.'

[72] On 14 May 2025, the First Applicant addressed an email to Mr Dua in which she stated:

'As you are aware I am the sole beneficiary of my late husband's estate as well as a joint executor. Please will you supply attorneys De Villiers Evans & Petit who act on my behalf, with all the information that they may require relating to this estate and to my late husband's affairs.'

[73] On 15 May 2025, Mr Petit addressed a further email to Mr Dua. The relevant portion of that email reads:

'I refer to previous correspondence and annex hereto a copy of a letter of authority duly signed by Mrs Jonna Hopley. Please will you now let me have the initial information requested in my letter of the 9th of May 2025. In the interim, our client has furnished us with a copy of your email to her of the 14th of February 2025, and we enquire whether you intend continuing to deal with the estate and related matters.'

[74] This email is significant. Unlike the earlier correspondence, it put a direct and pertinent question to Mr Dua: whether he intended to continue dealing with the estate and related matters. The enquiry therefore required Mr Dua to clarify his position regarding his continued involvement in the administration of the estate. It was against this background that Mr Dua furnished his response of 22 May 2025.

[75] The response of 22 May 2025 is, in my view, of considerable significance. It is no longer couched in the tentative language employed in the email of 14 February 2025. In response to the direct enquiry whether he intended to continue to deal with the estate and related matters, Mr Dua stated, in unequivocal terms, "and am resigning". The relevant portion of his email reads:

'I am preparing the files and will make them available for collection, and am resigning. If arrangements have not been made as to the accounts for receipt of the funds then I will transfer the funds into the Guardians Fund.'

I am entitled to seek whatever opinion I wish, to the exclusion of your client, particularly when the conduct under scrutiny is that of your client and relates to my report to the Master or the authorities, including the Reserve Bank on transactions which have been questioned of your client and no answer given (hence my request for an opinion in relation to areas which are beyond my expertise on exchange control and various other issues). Your client can deal with the consequences of my report as necessary.

Accordingly, all I await from you is

1. your consent that you will take up the appointment as executor, or not;
2. resolutions from the Company and Trust (to the extent that they are validly appointed) as to transfer of the funds;
3. an estate late account, duly ficed to deposit the funds.

I will also be effecting a fee for the work done and a pro rata fee for the executor's fee, calculated on the value of the estate.'

[76] The language used in the email of 22 May 2025 admits of little ambiguity. Mr Dua did not state that he was considering resigning; that he intended to resign at some future stage or that he proposed that the parties agree to his resignation. He stated, plainly, "and am resigning". This statement must be considered in the context in which it was made, namely, in direct response to the enquiry whether he intended continuing to deal with the estate and related matters.

[77] The surrounding language reinforces that interpretation. Mr Dua stated that he was preparing the files and would make them available for collection; he contemplated the transfer of funds to the Guardians Fund; and he sought confirmation as to whether Mr Petit would take up the appointment as executor. These are not the statements of a person indicating a mere possibility that he may resign. They are statements consistent with an intention to bring his involvement in the administration of the estate to an end.

[78] There is, however, a distinction to be drawn between an unequivocal expression of an intention to resign and the legal consequences of such an expression. The office of executor is a statutory office and the resignation of an executor is regulated by the Administration of Estates Act. In particular, section 54(1)(b)(vi) contemplates an executor applying in writing to the Master to be released from office. It follows that the Court must distinguish between the question whether Mr Dua unequivocally communicated his intention to resign and the separate question whether, as a matter of law, he thereby ceased to hold office as executor.

[79] In my view, it is not necessary, for purposes of the enquiry under section 54(1)(a)(v), to conflate these two questions. Even if the email of 22 May 2025 did not, without more, have the legal effect of terminating Mr Dua's appointment as executor, it remains highly relevant to the question whether it is desirable for him to continue to administer the estate. The issue under section 54(1)(a)(v) is not confined to whether the executor has committed misconduct. The Court is required to consider whether, in the circumstances, it is desirable for that particular person to continue in office.

[80] Mr Dua's unequivocal statement that he was resigning, coupled with his conduct in preparing the estate file for collection and making arrangements concerning the funds of the estate, is therefore a relevant consideration in determining whether his continued appointment is desirable. His communication was not made in isolation. It followed a direct enquiry as to whether he intended continuing to deal with the estate and was accompanied by statements indicating that he was taking steps consistent with bringing his administration of the estate to an end.

[81] The significance of the statement is accordingly not dependent solely upon whether it constituted a completed resignation in the technical statutory sense. If Mr

Dua had, in fact, unequivocally communicated that he no longer intended to continue acting as executor, that fact is relevant to the Court's assessment of whether it is desirable that he should nevertheless remain entrusted with the administration of the estate. The Court must therefore consider the substance and effect of his communication, rather than merely the nomenclature attached to it.

[82] I accordingly distinguish between the email of 14 February 2025, which amounted to no more than a proposal that the parties agree to his resignation, and the email of 22 May 2025, in which Mr Dua expressly stated that he was resigning. The latter communication, viewed in its proper context and together with the conduct recorded therein, constitutes cogent evidence of his unequivocal intention not to continue administering the estate. Whether that intention was thereafter translated into a legally effective cessation of office in accordance with the statutory mechanism is a separate question. For purposes of section 54(1)(a)(v), however, the communication and the circumstances in which it was made are plainly relevant to the enquiry whether it is desirable for Mr Dua to remain in office.

[83] It is clear on the papers that the relationship between Mr Dua, on the one hand, and the First Applicant and the other co-executor, on the other, has broken down seriously. That fact is not, by itself, sufficient for removal. Its importance lies in its practical consequences. By June 2025 communications concerning the estate were being conducted through attorneys; the estate files had not been handed over notwithstanding the indication that they would be made available for collection; Mr Dua had stated that he was resigning and later deferred that resignation pending the litigation; and the parties had reached an acknowledged impasse. Even accepting Mr Dua's version that the asset, tax and regulatory enquiries he raised were legitimate,

the objective position was that the co-executors were no longer able to work together in a manner conducive to the orderly administration of the estate.

[84] I do not consider it necessary to find that Mr Dua's proposed resort to the Guardian's Fund was unlawful, or that it was intended to discourage the Applicants from demanding accountability. Mr Dua explains that his proposals were protective and were prompted by unresolved ownership and regulatory concerns. Applying the Plascon-Evans rule, that explanation must be taken into account. Even on that footing, however, the correspondence shows that the release of files and funds, the question of resignation, the payment of fees, the demand for indemnity and the regulatory concerns had become intertwined in a manner that left the administration stalled. The significance of the Guardian's Fund proposal is therefore not that it proves bad faith, but that it forms part of the objective evidence of the depth of the impasse.

[85] Nor do I treat Mr Dua's expressed intention to resign as a completed statutory resignation, or as an admission of wrongdoing. Its significance is more limited, but nevertheless material. He repeatedly communicated that he wished to relinquish the office, stated that he was preparing the files for collection, and thereafter deferred his resignation so that he could respond to the application in his statutory capacity. That sequence reinforces the conclusion that the existing co-executorship had ceased to function effectively.

[86] I have considered *Oberholzer NO and Others v Richter*. The principle that mere disagreement or hostility does not justify removal is accepted. The present matter, however, involves more than disagreement. The estate has remained unfinalised for more than three years; a draft liquidation and distribution account was furnished only on 30 July 2024; the parties became unable to agree on the handover of the files and

the treatment of funds; and no workable mechanism for continued joint administration is apparent from the papers. It is unnecessary to decide that the delay was entirely attributable to Mr Dua. Even accepting his explanation that unresolved assets, the pending action and tax questions required attention, his continued participation as co-executor has, in the circumstances now prevailing, become an impediment to the orderly finalisation of the estate.

[87] I accept that a testator's choice of executor is entitled to weight and is not to be overridden merely because a beneficiary or co-executor has lost confidence in that person. But that consideration is not decisive where the objective evidence demonstrates practical paralysis in the administration of the estate. The evidence does not establish that Mr Dua legally resigned from office. It does establish that he unequivocally communicated an intention to relinquish the office, later remained in office amidst unresolved disputes concerning files, funds, fees, indemnity and regulatory matters, and that the co-executors can no longer administer the estate together effectively. In those circumstances, the interests of the estate and its sole beneficiary outweigh the consideration that Mr Dua was chosen by the testator.

Findings

[88] To summarise, I am satisfied that it is undesirable for Mr Dua to remain a co-executor of the estate. That conclusion does not rest on the breakdown of the relationship alone, nor on the proposition that his emails constituted a completed resignation. It rests on the cumulative effect of the prolonged non-finalisation of the estate, the serious and mutual breakdown in the working relationship between the co-executors, Mr Dua's repeated and unequivocal indication that he wished to relinquish office, the failure thereafter to achieve an effective handover, and the manner in which

disputes concerning files, funds, fees, indemnity and regulatory issues have become inseparable from the continued administration of the estate. Viewed objectively, the existing co-executorship has reached a state in which its continuation prejudices the orderly administration and finalisation of the estate.

[89] The chronology concerning the liquidation and distribution account is a relevant part of that overall picture. The draft L&D account was delivered on 30 July 2024, more than two years after the letters of executorship were issued on 10 June 2022 and approximately nineteen months after the power of attorney of 8 December 2022. The delay cannot, without more, determine the application, particularly in the light of the disputes concerning assets and the pending litigation. It is nevertheless relevant when considered with the remaining circumstances. The correspondence also indicates that monies said to be estate monies were held in an attorney's trust account. Section 28 of the Administration of Estates Act regulates the banking of estate monies and provides that:

'(1) An executor-

(a) shall, unless the Master otherwise directs, as soon as he or she has in hand moneys in the estate in excess of R1 000, open a cheque account in the name of the estate with a bank in the Republic and shall deposit therein the moneys which he or she has in hand and such other moneys as he or she may from time to time receive for the estate.'

[90] In *Van Niekerk v Van Niekerk and Another*¹⁶, the court observed that the executor of an estate has broader responsibilities. The executor is given the custody and control of all the property in the estate (s26(1) of the Act). The executor is not a mere agent for the heirs. That statutory responsibility underscores why the enquiry under section 54(1)(a)(v) is directed to the proper administration of the estate rather

¹⁶ Fn 12 Supra.

than to assigning moral blame between the parties.

Conclusions

[91] I am satisfied that the Applicants have made out a case for the grant of the principal relief sought. Counsel for Mr Dua urged the court not to make a personal costs order against him. That question must be considered separately from the merits of the removal itself.

[92] Mr Dua's opposition was not devoid of legal substance merely because he had previously indicated a willingness to resign. He was entitled to place his explanation for the delays and the unresolved estate issues before the Court. The relevant consideration for costs is, however, that by the time these proceedings became necessary he had repeatedly indicated that he would relinquish office and hand over the files, yet no effective resignation or handover followed and the administration remained at an impasse. The Applicants were therefore reasonably driven to seek an order resolving the position. It is common cause that Mr Dua remains entitled to such executor's fees and disbursements as are properly due, subject to the applicable process for their determination.

[93] The Applicants cited Mr Dua in both his official and personal capacities and sought costs in the notice of motion. There is no reason for the estate to bear the costs occasioned by litigation required to resolve an impasse in which Mr Dua's personal claims to fees and indemnity had become intertwined with the question whether he would relinquish office. Costs should therefore follow the result against Mr Dua personally. The matter was sufficiently complex to justify costs on scale C of the tariff, including the costs of two counsel where so employed.

[94] The personal costs order is not punitive. It reflects the conclusion that the financial burden of obtaining the removal and handover necessary to restore the orderly administration of the estate should not fall upon the estate or its sole beneficiary.

Order

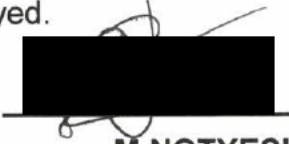
[95] In the result, the following order shall issue:

1. The First Respondent is removed as co-executor of the estate of the late Michael David Hopley (Master's Reference 004488/2022PMB) in terms of section 54(1)(a)(v) of the Administration of Estates Act 66 of 1965.
2. The First Respondent is directed to return his letters of executorship to the Third Respondent forthwith upon service of this order in terms of section 54(5) of the Administration of Estates Act 66 of 1965.
3. The Third Respondent, namely the Master of the High Court, Pietermaritzburg, is directed to issue fresh letters of executorship to the Applicants removing the name of the First Respondent therefrom.
4. The First and Second Respondents are directed to forthwith upon service of this order:
 - 4.1 hand over and deliver to the attorneys of record for the Applicants, De Villiers Evans & Petit, all original estate files, documents, records, and correspondence relating to the administration of the estate of the late Michael David Hopley under Master's reference number 004488/2022PMB;
 - 4.2 provide a complete written accounting of all trust monies, receipts, and disbursements received, made or held by the First Respondent and/or the Second Respondent in connection with the winding up of the estate;

- 4.3 pay over to the estate late account with Nedbank (as per annexure "Q4" to the Founding Affidavit) all funds held in trust in relation to the estate, which are common cause, and any related entities, including Seariver Investments (Pty) Ltd and The Crossbow Trust, as authorised by annexures "Q2" and "Q3" to the founding affidavit or have been established on the papers, to be monies of the estate of the late Michael David Hopley. For the avoidance of doubt, this paragraph does not determine the ownership of any monies held on behalf of Seariver Investments (Pty) Ltd or The Crossbow Trust, and no such monies are to be transferred to the estate account unless the estate's entitlement thereto is common cause or has otherwise been lawfully established;
- 4.4 the First Respondent is directed to deposit all monies that are not determined, which are related to the late Mr Hopley, to the trust account of the Applicant's attorneys and the Applicant's attorneys shall keep records of such monies that they would have received from the First Respondent.
5. The First and Second Respondents are interdicted and restrained from taking any further steps in the administration of the estate of the late Michael David Hopley.
6. The Applicants or their attorney are directed to, within 5 (five) days, furnish the First and Second Respondents with the details of the estate banking account if the account referred to in annexure "Q4" to the Founding Affidavit has changed.
7. The First and Second Respondents are directed to immediately thereafter deposit into that account all monies held by them on behalf of the deceased estate, subject to paragraphs 4.3 and 4.4 above.
8. The First and Second Respondents are directed to immediately prepare a statement of account reflecting the work performed by Mr Dua in his capacity as co-executor of the estate late Michael David Hopley,

together with any fees and disbursements claimed in relation thereto. The aforesaid statement must be submitted to the Applicants' attorneys for assessment and, in the event of a dispute, to the Master of the High Court, Pietermaritzburg, for determination in accordance with the applicable law or, the relevant competent body that is tasked with the assessment of the attorneys' fees.

9. The Second Respondent shall pay the costs of this application on scale C of the tariff referred to in Rule 67A of the Uniform Rules of Court, including the costs of two counsel where so employed.


M NOTYESI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the applicants	:	Adv Alan Lamplough SC
Attorneys for the Applicants	:	De Villiers Evans & Petit Durban
Counsel for the 1 ST and 2 ND Respondents	:	A de Beer SC
Instructed by	:	John Dua Attorneys Pinetown
Date Heard	:	7 August 2026
Date Delivered	:	16 September 2026