

REPUBLIC OF SOUTH AFRICA



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

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

CASE NO: 46368/2018

27/8/2019  
DATE

*[Signature]*  
SIGNATURE

In the matter between:

**LAWRENSON: JUSTIN**

APPLICANT

and

**STANDARD TRUST LIMITED, NO**

**PETERSON: ISOBEL, NO**

**NEL: ELLEN JULIA**

**TYRRELL: SALOME**

**JACOBS: LEON**

**VAN DEVENTER: JACQUES JOHANNES**

**VAN DEVENTER: DANIEL BENJAMIN**

**MASTER OF THE HIGH COURT**

FIRST RESPONDENT  
SECOND RESPONDENT  
THIRD RESPONDENT  
FOURTH RESPONDENT  
FIFTH RESPONDENT  
SIXTH RESPONDENT  
SEVENTH RESPONDENT  
EIGHTH RESPONDENT

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JUDGMENT

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**DREYER AJ:**

[1] The Applicant was involved in an intimate relationship with the late Maria Magdalena van Deventer ("the deceased"). At the time of the deceased's death, the relationship had terminated. The First Respondent is the employer of the Second to Fifth Respondents. The Second Respondent is the duly appointed and authorised executor of the deceased. The Third to Fifth Respondents were involved in the administration of the estate of the deceased.

[2] This matter concerns the refusal by the Second Respondent of two claims the Applicant lodged against the estate of the deceased in relation to the return of an engagement ring with a value of R165 000,00 and a loan of R505 000,00 advanced by the Applicant to the deceased.

[3] The Second Respondent did not accede to these claims. As a result, the Applicant lodged an objection with the Eighth Respondent ("the Master") against the Second Respondent's refusal to accede to these claims.

[4] The relief the Applicant seeks, is that the decision by the Master to refuse the objection by the Applicant against the liquidation and distribution account in respect of these two items, is reviewed and set aside and that the Second Respondent is ordered and directed to amend the liquidation and distribution account by inclusion of the loan amount in the sum of R505 000,00 and that the ring is removed as the movable property asset in the estate of the deceased, *alternatively* that the Applicant is paid the value of that ring in the sum of R165 000.

[5] It is undisputed that the deceased died on 26 September 2015, that the liquidation and distribution account was submitted to the Master on 17 May 2017 and that within 21 days thereafter, the Applicant lodged an objection against the liquidation and distribution account ("the L&D account").

[6] On 21 June 2017, notice of the objection was provided to the Master. This is also common cause.

[7] Neither the founding affidavit, nor the replying affidavit, state when the Master took a decision in respect of the objection. The highwater mark of the Applicant's case, as stated in the founding affidavit, is that:

*"15. After receiving comments from the First Respondent in terms of Section 35(8) of the Act, the First Respondent refused the objection. I annex hereto confirmation of the refusal of the objection by the First Respondent, annexure 'C'.*

*16. In terms of Section 35(1) of the Act I now seek this refusal by the First Respondent to uphold my objection to be reviewed and set aside with this Honourable Court to direct the First Respondent, duly represented to amend the account accordingly."*

[8] The landscape of the Administration of Estates Act, 66 of 1965, is as follows:

[8.1] firstly, the executor gives public notice in the Gazette and in newspapers circulating in the district where the deceased was ordinarily resident, or where its property is situated, calling on persons having claims against the estate, to lodge claims within a period [Section 29];

- [8.2] where an executor rejects a claim, reasons should be given for the rejection [Section 33];
- [8.3] the executor must submit the liquidation and distribution account to the Master to lie open for inspection [Section 35(1)], which, after examination by the Master, lies open for inspection [Section 35(4)];
- [8.4] any person interested in the estate may, within the period allowed for the inspection, lodge with the Master in duplicate any objection, together with reasons for the objection, and provide a copy to the executor [Section 35(7)];
- [8.5] the executor is required, within 14 days after receipt of the objection, to provide his/her comments to the Master [Section 35(8)];
- [8.6] if the Master, after consideration of the objection and the comments from the executor, is of the opinion that the objection is well-founded, or for any other reason is of the opinion that the account is incorrect and should be amended, direct the executor to do so, or give such other directions as the Master may deem fit [Section 35(9)];
- [8.7] any person aggrieved by the decision of the Master, or the refusal of the Master to sustain an objection, may apply by motion to the Court, within 30 days after such direction or refusal, for an order to set aside the Master's decision, and the Court may make an order as it may deem fit [Section 35(10)].

[9] The Sixth and Seventh Respondents contend that the Applicant has not brought itself within the parameters of Section 35(10) in that there is no decision by the Master to sustain or refuse the objection against the liquidation and distribution accounts referred to in the papers.

[10] I agree.

[11] The content of paragraph 15 quoted above, contends that the First Respondent refused the Applicant's objection and reference is made to a letter referred to as annexure "C". Annexure "C" is a letter from the First Respondent to the Applicant's attorneys of record wherein the executor accepts claims of approximately R40 000,00, stating that these would be included in the second and final liquidation and distribution account. The Second Respondent refutes that payment of the sum of R105 000,00 was paid to the deceased by the Applicant and that the wedding ring was a gift to the deceased and, consequently, fell within her estate and refutes that there was a loan agreement between the Applicant and the deceased in the sum of R505 000,00.

[12] It is this objection that the Applicant states in paragraph 16 of the founding affidavit is to be reviewed and set aside.

[13] What is pertinently clear from a consideration of paragraphs 15 and 16 of the founding affidavit, read with annexure "C", is that the *"refusal of the objection"* is a refusal by the executor and/or employees of the First Respondent to accede to the claims made by the Applicant against the L&D of the deceased. This is not a decision made by the Master. At best for the Applicant, the letter (annexure "C"),

dated 3 January 2018, can be considered as the comments of the executor in respect of an objection, as envisaged in terms of Section 35(8).

[14] When specifically requested, counsel for the Applicant was unable to identify any evidence in the papers indicating a decision by the Master to refuse the objection. Section 35(10) grants to an aggrieved party the right to apply to Court on motion against either a direction by the Master to the executor to amend an account, or a refusal by the Master to sustain an objection.

[15] Absent any decision by the Master, there is no administrative decision to review and set aside.<sup>1</sup>

[16] The Applicant has failed to bring itself within the parameters of Section 35(10) of the Administration of Estates Act.

[17] In the result, the application is still borne.

[18] I do not in these circumstances need to consider the merits of the application, namely whether the two items forming the basis of the objection, should have been taken into consideration by the executor. In any event, there were numerous and various disputes of fact, which could not have been settled on the papers.<sup>2</sup> The Applicant did not bring an application either for the referral of the disputes to oral

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<sup>1</sup> An administrative act is defined in section 1 of the Promotion of Access to Justice Act 3 of 2000 as an organ of state, when-


(ii) exercising a public power or performing a public function in terms of any legislation; or which adversely affects the rights of any person and which has a direct, external legal effect

<sup>2</sup> **National Scrap Metal (Cape Town) (Pty) Ltd and Another v Murray & Roberts Ltd and Others** 2012(5) SA 300 (SCA), at paras [21] and [22]

evidence, or for the referral of the matter to trial. This is not a matter I can consider *mero moto*.<sup>3</sup>

[19] In the result, I make the following order:

1. *The application is dismissed with costs.*

  
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**C.J. DREYER**  
Acting Judge of the High Court of  
South Africa  
Gauteng Local Division  
Johannesburg

APPEARANCES:

Date of hearing: 22 August 2019

Date of judgment: 27 August 2019

Counsel for the Applicant: ADV. C.E. THOMPSON  
Instructed by: HANNELIE SWART ATTORNEYS

Counsel for the Sixth and  
Seventh Respondents: ADV. W. WANNENBERG  
Instructed by: SWANEPOEL ATTORNEYS

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<sup>3</sup> **Minister of Land Affairs & Agriculture v D&F Wevell Trust** 2008(2) SA 184 (SCA), at 207  
**Miloc Financial Solutions (Pty) Ltd v Logistics Technologies (Pty) Ltd** 2008(4) SA 325  
(SCA) at 340 D-E