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

CASE NUMBER: 38984/21

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED: NO

9 December 2022

In the matter between:

EASTSIDE COMMUNITY CHURCH t/a NEW DAY CHURCH Applicant

and

**THE MASTER OF THE HIGH COURT
(JOHANNESBURG)** 1st Respondent

SAHIBDEW, PRANITHA N.O. 2nd Respondent

SAHIBDEW, PRANITHA 3rd Respondent

THE SOUTH AFRICA REVENUE SERVICE 4th Respondent

THE BASE CHURCH 5th Respondent

JUDGMENT

Mazibuko AJ

INTRODUCTION

1. The applicant is the Eastside Community Church, hereinafter referred to as “the church”, a voluntary association carrying out its ministry under the name and style of New Day Church at Edenvale.
2. The first respondent is the Master of the High Court, Johannesburg, and shall be referred to as “the Master” duly appointed in terms of the Administration of Estates Act. The Master administers the estate, which forms part of the subject of this application under reference number: 006306/2020/JHB.
3. The second and third respondent is Mrs Pranitha Sahibdew and shall be referred to as “Mrs Sahibdew,” cited in her personal capacity and her capacity as duly appointed executrix of the estate of the late Nitesh Sahibdew (“the deceased”), which estate is registered with the Master with reference number: 006306/2020/JHB.
4. No relief is sought against the fourth respondent, and it did not participate in this application.
5. The fifth respondent, hereinafter referred to as “the Base church”, was established by the applicant. On 17 August 2021, it ceded all of its rights, interests and claims to the applicant.
6. The applicant seeks an order in the following terms:
 - 6.1. Reviewing and setting aside the Master’s failure to decide in relation to the merits of the applicant’s claim in the estate.
 - 6.2. Removing Mrs Sahibdew as executrix of the deceased’s estate and replacing her with Jan Lodewickus Jordaan, hereinafter referred to as ‘Mr Jordaan’. The Master is to appoint him as executor once the necessary security is received.

6.3. Declaring that Mrs Sahibdew is not entitled to recover any executor's fees for her part in the deceased's estate management.

6.4. Directing the Master to provide the directions¹ to Mr Jordaan in terms of Section 35(9) of the Act.

FACTUAL BACKGROUND

7. In January 2003, Mrs Sahibdew and the deceased joined the church and became involved in serving and leading the ministries. She served as a volunteer with other volunteers in the church's children, youth and hospitality ministries.

8. The deceased was a logistics manager at the time. In April 2005, he was offered a job at the church. On 28 July 2013, he was ordained as an Elder/Pastor of the applicant. He served as an elder, employee, and office manager, overseeing staff and all other operational functions. He was a personal assistant to the lead Pastor/Elder at the church on a personal and professional level. Together with five others on the finance committee, he assisted with the church's finances until his demise.

9. Between January and February 2020, the applicant discovered shortcomings in the accounting and administration of its activities. The applicant and the deceased had a meeting where the deceased had to explain the discrepancies. A follow-up meeting was scheduled. On 20 February 2020, the deceased committed suicide.

¹ "Having considered the L & D account submitted to me and having considered the objections raised by Eastside Community Church t/a New Day Church ("the church"), I make the following directions in terms of s35(9) of the Administration of Estate Act 66 of 1965: a) There prima facie appears to be merit to the church's claims, and you are directed to investigate these claims and, insofar as is necessary, to incorporate such claims in a new L & D account to be submitted in due course; b) There appears to be merit to the allegations that the former executrix failed to include large portions of the joint estate, including a bank account in her name (account number 4061456848) and shares in an entity known as Exodus Original (Pty) Ltd (registration number 2015/011288/07). You are directed to investigate the extent of the former executrix's assets and to what extent these assets form part of the joint estate between her and the estate and, to the extent necessary, to include such assets in a new L & D account to be submitted in due course; c) In light of the church's claim, you are directed to consider to what extent, if at all, the estate is insolvent and the applicability of s34 of the Act under the circumstances."

10. In terms of the deceased's will, Mrs Sahibdew is the sole beneficiary. Mrs Sahibdew was appointed as executrix to the deceased's estate. The will made a provision that where she did not accept, Javashree Naidoo, hereinafter referred to as "Naidoo", was to act as executor. None of the appointed, including the alternative appointee, was required to furnish security.

11. The deceased was employed by the applicant and would assist the Base church as their bookkeeper and general administrator. The applicant's members approached her, alleging that the deceased defrauded the applicant with just less than R3 million. They sought to recover the amounts claimed and for her to formally accept the applicant's claim against the deceased's estate. She provided the deceased's laptop and bank statements to the applicant to assist the applicant in its investigation.

12. On 3 March 2020, she requested a meeting with the applicant's office bearers, elders and finance committee. She sought clarity on the veracity of the claims since the applicant had a two-tier authenticating and authorising system before a payment was made. Further, the deceased was a member of a finance committee of five people. She stated that the theft or fraud would not go on for that long due to the applicant's finance processes and systems in place.

13. On 3 July 2020, they held a further meeting wherein she requested minutes of its finance meetings and information about the roles and responsibilities of the deceased and members of the finance committee. She also enquired about the persons tasked with making online payments. She learnt that payments were not made by the deceased into his account; in fact, other people made such payments into his account.

14. On 1 October 2021, she, through her attorneys, requested information and documentation supporting the applicant's claim of fraud and theft against the deceased. The material requested included minutes of meetings, financial reports at these meetings, resolutions taken regarding the church finances, annual financial reports, tasks, duties and responsibilities of the deceased during the period of employment, and all supporting documents that would prove the claims against the

estate. The request was not adhered to. However, the applicant insisted on the allegations holding a view that the estate was liable. Mrs Sahibdew rejected the claim.

15. The applicant sought the master's intervention, drawing the master's attention to the said allegations. It requested the master to act in terms of section 54(b)(v)² of the Act, as it alleged that Mrs Sahibdew was biased.

16. Correspondence between the master and Mrs Sahibdew ensued on the applicant's allegations. The master responded to the applicant and advised them to approach the court.

ISSUES

17. The issues for determination may be summarised as; (a) Whether the master's decision to direct that a court of law hear the matter was a competent direction. (b) Whether Mrs Sahibdew was entitled to executrix's fees for managing the deceased's estate. (c) Has the applicant made out a case for the removal of Mrs Sahibdew as the executrix in terms of section 54(1)(a) of the Act?

THE APPLICANT'S SUBMISSION

18. After the applicant objected to Mrs Sahibdew's claim rejection, the master referred the applicant to court. Aggrieved by the election of the master, the applicant brought its application on the grounds that the master may only refer the factual disputes to court once the master has formed an opinion that Mrs Sahibdew's objection is well-founded or that part of the account is incorrect. In this regard, it relied on *Friedrich and others v Smit NO and others*³ and *Broodryk v Die Meester en 'n ander*.⁴

² Administration of Estates Act 66 of 1965

³ *Friedrich and others v Smit NO and others* [2015] 4 All SA 805 (GP).

⁴ *Broodryk v Die Meester en 'n ander* 46 46 [1991] 3 All SA 348 (C) at 349

19. In its affidavit, in summary, the applicant avers that the deceased defrauded it of just under R3 million. Mrs Sahibdew has an inherent conflict of interest as she was married in community of property to the deceased and a sole heir in the deceased's estate. By rejecting the applicant's claim, she stands to benefit about R3 million personally.

20. The applicant argued that she was biased and obstructive as she did not comply with the Act's requirements. In that, she has breached her fiduciary position as executrix and abused her position as executrix to frustrate the applicant's claim. She has failed to either comply with her obligations as executrix or to include her share of the joint estate in the liquidation and distribution account. The request for further information and documentation is not reasonable as it had provided bank account statements indicating monies leaving its account into the deceased's account. She favours her interest over those of the estate.

21. The applicant, through its counsel, submitted that it suggested a nomination of Mr Jordaan, an attorney with experience in winding up estates or any reputable attorney in the Johannesburg area. In response to this, though, she still submitted that she was fit to continue as executrix; she stated her nomination as Naidoo, who, according to the will, was the alternate choice for the deceased. The applicant argues that absent the acceptance by Naidoo and details of security being dealt with, the only option would be a nomination of an attorney, as suggested.

THE FIRST RESPONDENT'S SUBMISSION

22. The master, through its counsel, argued that its decision to refer the applicant to the court regarding the merits and factual disputes concerning the claim against the estate that was within its powers.

23. It was further submitted that the master considered the applicant's objection and Mrs Sahibdew's response. The master's conclusion was that:

- a) It (the master) did not have sufficient documentation at its disposal or the expertise to find that the applicant's objection was well founded or whether it should be upheld.

- b) The nature of the allegations required testing in court with the assistance of expert witnesses and evidence, where necessary. The court was the appropriate forum to decide on the applicant's claims and the allegations of theft and fraud made.
- c) The master was not empowered to conduct investigations.
- d) It was only after the court proceedings' finalisation and considering the court's findings as to the merit of the applicant's claims that the master would be in a position to determine the applicant's objection.
- e) Considering the information at its disposal, the master could not find that Mrs Sahibdew's conduct was such that it merited her removal as executrix.

THE SECOND AND THIRD RESPONDENTS' SUBMISSION

24. Mrs Sahibdew aligned herself with the master's submissions in that a trial court would be better suited to determine the applicant's claim and the allegations of theft and fraud as raised.

25. It was submitted on her behalf that if this court grants an order directing the master to provide the directions as sought by the applicant, that would be compelling the master to investigate the applicant's claim to incorporate same into the liquidation and distribution account. Such relief is not just and equitable and will have no practical or legal effect as the master has already stated that it is not equipped to determine the objection.

26. Ms Sahibdew, in her answering affidavit, denied that she was conflicted. She stated that after she was informed that her late husband was involved in theft and had defrauded the applicant, she did not believe that such would have gone unnoticed for such a considerable period, as the deceased was working with other people in the finance committee.

27. It was submitted on her behalf that before the Base church's cession of its rights to the applicant on 17 August 2021, the applicant's actions were invalid and illegal when it purported to act on behalf of the Base church. Such actions were that of (a) lodging the Base church's claims against the estate, (b) lodging its objection to the liquidation and distribution account with the master on 7 January 2021 and (c) responding to the master's response to the objection on 7 April 2021 and (d) responding when the master made its decision on 19 July 2021, which decision is subject of the review.

28. It was further argued that her request for the information and documentation was reasonable. The applicant and the Base church are separate and self-standing legal entities, each existing in its own right. They would be expected to keep separate compliance information and documentation in terms of the Non-Profit Organisations Act 71 of 1997.

29. In making the request, she fulfilled her duties as executrix by investigating the applicant's claim. These investigations brought, in summary, the following findings:

29.1. Once logged into the Base Church's internet banking profile, the persons effecting payment on the profile would be given the option to verify the banking details of any of the permanent beneficiaries stored therein.

29.2. The deceased was not in control of the applicant's finances alone but with the finance committee, including the deponent in the applicant's founding affidavit, Mr Du Toit, a chartered accountant who had been in the said committee since 2017. The applicant also had a two-tier online banking authorisation system which required that no less than two persons authorise any payments on its behalf. Therefore, the deceased could not act alone in effecting payments as alleged.

29.3. The Base church's claim should be pursued against the applicant, since the deceased was the applicant's elder/Pastor and employee, who

also assisted the Base Church in such capacity when he allegedly saved his FNB savings account details under the beneficiary “Newday”.

29.4. The applicant had willingly and by agreement with the deceased paid money into the deceased’s FNB Private Wealth account on numerous occasions. The applicant was incorrect in stating that the deceased had made payments into his bank accounts without the applicant’s knowledge. The bank statements did not *ex facie* show the true underlying agreement under which funds were actually paid to the deceased. The applicant proffered no explanation as to why it could not open an account in its name to transfer funds globally when there was an obvious need to do so.

29.5. The first act of the alleged fraud against the Base church was committed on 13 February 2017. The Base church ceded its debt to the applicant in August 2021. As a result, no valid claim was lodged by the Base church against the estate, and almost half of its claims had been prescribed to date.

29.6. The applicant had not proved its claim and had instead sought to rely on a series of unauthenticated bank statements supported by hearsay evidence. Mr Du Toit’s forensic report was highly suspect since he confirmed therein that he had insufficient information to make a proper finding in the matter.

29.7. The transactions dated 3 February 2020 reflecting the recipient reference “PRANI PRANITHA SAHI ...” (an apparent reference to Mrs Sahibdew) related to the payment of funds to the deceased’s bank account number [...] were clearly carried out willingly by the applicant.

29.8. On the applicant’s version, the transfer of funds to the deceased’s bank account (under the guise of the deceased’s salary) was intended to defraud the fourth respondent by intending to convey to the fourth respondent that the payments made to the deceased fell to be deducted from the applicant’s income as a taxable expense whereas same was not a taxable expense. In

such a case, the *par delictum* rule would disentitle the applicant from claiming the funds purportedly misappropriated because of the illegal transaction.

30. It was submitted that in matters where the interests of the estate and beneficiaries are sought to be jealously guarded against untested claims of creditors such as the applicant, the court should find that Mrs Sahibdew is the ideal candidate as executrix and should not be removed.

LAW AND DISCUSSION

31. Section 35 of the Administration of Estates Act⁵ provides that:

(7) “Any person interested in the estate may at any time before the expiry of the period allowed for inspection lodge with the Master in duplicate any objection, with the reasons therefor, to any such account and the Master shall deliver or transmit by registered post to the executor a copy of any such objection together with copies of any documents which such person may have submitted to the Master in support thereof.”

(8) “The executor shall, within 14 days after receipt by him of the copy of the objection, transmit two copies of his comments thereon to the Master.”

(10) “Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged may apply by motion to the Court within 30 days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master’s decision and the Court may make such order as it may think fit.”

32. The matter concerns the application of sections 54 and 35 of the Act.⁶ It is the case of the applicant that the master has the power to decide on its claims’ merits as

⁵ The Act (*supra*) at [2]

⁶ The Act (*supra*) at [2]

it has prima facie proven its claim against the deceased's estate. Further, the executrix, Mrs Sahibdew, must be removed as executrix as she is biased as she stood to benefit about R3 million more as a sole beneficiary of the deceased's estate.

33. Regarding the master's rights and duties concerning consideration of objections against the applicant's claim. Section 35 regulates the lodging with the master any objections with the reasons therefor by the interested persons to the Liquidation and distribution account, hereinafter referred to as "the L & D account".

Section 35(9) of the Administration of Estates Act⁷ provides that:

(9) "If, after consideration of such objection, the comments of the executor and such further particulars as the Master may require, the Master is of the opinion that such objection is well-founded or if, apart from any objection, he is of opinion that the account is in any respect incorrect and should be amended, he may direct the executor to amend the account or may give such other direction in connection therewith as he may think fit."

34. Considering the applicant's objection and Mrs Sahibdew's rejection, the master had several options, as provided in section 35(9).

35. In this regard, the master's case is that after receiving the applicant's objection to the L & D account, it drew Mrs Sahibdew's attention to same. She responded and complied satisfactorily. The master referred the applicant to court as the objection, or the serious allegations it made, were without any evidential material and beyond the master's investigative capacity.

36. In the matter of *Faro v Bingham No and Others*,⁸ It was said:

⁷ The Act (*supra*) at [2]

⁸ (4466/2013)[2013]ZAWC 159 (25 October 2013).

“The Master's office, from the nature of things, is ill-equipped to determine disputed facts. The recognised procedure for settling disputed facts is by trial action. A Court is the obvious tribunal for the determination of such disputed matters. Grave injustice may be done to a litigant who is denied the ordinary procedure adopted in investigating the truth of conflicting allegations.

37. The master is not a judicial officer. There is a genuine dispute concerning the applicant's claim. It was correct of the master to refer the applicant to court for adjudication. In my view, it would not be in the interest of justice to expect it to adjudicate whether the applicant's claim emanating from allegations of theft and fraud, be allowed or rejected where an objection had been lodged and requested information and documentation have not been furnished. Such requires consideration of facts and the applicable law by a court.

38. The master was entitled to direct that the issues concerning the applicant's claim for its defrauded and stolen monies against the deceased's estate be referred to a court of law for adjudication. The factual dispute that arises in this matter is of the nature that warrants a direction of referral to oral evidence.

39. In the matter of Friedrich and others v Smit NO and others⁹, the court held that:

“[27] ... The Master is obliged to make a decision with regard to an objection to an admitted claim ... In Beard v Estate Beard, in relation to earlier legislation in pari materia, the court held that the power or discretion vested in the Master to sustain or overrule any objection raised to an account lodged by an executor in a deceased estate is judicial (or quasi-judicial) and not merely administrative. The Master is obliged to give full consideration to the evidence and arguments of both the claimant and the objector and then to give his decision. He must rule on the extent to which he is prepared to admit the claim by specifying the amount. A failure to do that could

⁹ Friedrich and others v Smit NO and others [2015] 4 All SA 805 (GP)

conceivably be regarded as an unlawful abdication of power or a failure to exercise a discretion.”

40. Even if this court was to follow Friedrich as referred to by the applicant, where it was held: *“the power or discretion vested in the Master to sustain or overrule any objection raised to an account lodged by an executor in a deceased estate is judicial (or quasi-judicial) and not merely administrative”*. Whether or not the deceased committed theft and fraud is material in adjudicating the applicant’s disputed claim.

41. The production of bank statements, the unique relationship; that went beyond that of an employer and employee, Elder/Pastor and the church or its leadership/management between the applicant and the deceased, but also of being a conduit between its local financial affairs and that of Malawi. Such a special relationship and undisputed unique history of transacting between the applicant and the deceased in funding the projects seem to suggest that evidence analysing the bank statements and the systems and processes of the applicant and the Base church must be presented to decide the applicant’s claim. The master gave full consideration to the submissions of both the applicant and executrix. By doing that, it properly exercised its discretion and decided that the matter be referred to a court of law. In my view, that direction by the master was competent in terms of section 35(9) of the Act.

42. Regarding the removal of Mrs Sahibdew as executrix, the specific wording of the applicable legislation must be considered. Section 54 regulates the conditions under which an executor may be removed from office.

Section 54 of the Administration of Estates Act provides that:

54(1)(a)(v) *“An executor may at any time be removed from his office by the court if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned.”*

Section 54(1)(b)(v) *“An executor may at any time be removed from his office by the Master if he fails to perform satisfactorily any duty imposed upon him by or under this Act or to comply with any lawful request of the Master.”*

43. In considering the applicant’s application for Mrs Sahibdew’s removal as executrix, the court must satisfy itself that it was undesirable that she should act as executrix of the deceased’s estate.

44. In the matter of Van Niekerk v Van Niekerk and Another¹⁰, the Court said:

“[10] ... The executor is not a mere agent for the heirs ... the executor must cause a notice to be published calling upon all persons having claims and, having done so, may dispute them (section 32) and reject them (section 33) ...

[11] In my view, the executor is obliged to exercise these powers bona fide and with a measure of objectivity. In dealing with a claim he or she should assess its merits on a fair consideration of the facts and its legal merits. To my mind, it is not proper for an executor to reject claims against the estate without some good reason to do so. Any other approach would enable the executor to abuse their position

[12] ... where it is apparent from the executor’s conduct that it is their purpose and intent to use the 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 section 54(1)(a)(v). That view would be strengthened where the motive was to secure personal financial benefit in their capacity as heirs. The office of executor should not be used to pursue a private agenda.”

45. Mrs Sahibdew’s case is that following the applicant’s claim, she convened meetings with the applicant’s office bearers, elders and finance committee on 3

¹⁰ (2011) 2 All SA 635 KZP

March 2020 and 3 July 2020, respectively. In October 2020, the applicant was requested to substantiate their claim by providing information and documentation. The applicant did not provide same, and their claim was rejected. She averred that she, through assistance, conducted an investigation of the said claim and contended that a trial court would be better suited to determine the claim and related issues.

46. The applicant's averments are that; Mrs Sahibdew was biased and obstructive as she was not complying with the Act's requirements. She has an inherent conflict of interest as she was married in community of property to the deceased and a sole heir in the deceased's estate. By rejecting the applicant's claim, she benefits from about R3 million personally.

47. The applicant further contended that she has breached her fiduciary position as executrix and has been abusing her position as executrix to frustrate the applicant's claim and has failed to either comply with her obligations as executrix or to include her share of the joint estate in her liquidation and distribution account.

48. The applicant's complaint about the executrix's refusal to grant them more time to gather the information and documentation to substantiate their claim comes from correspondence between the applicant's attorneys and those of Mrs Sahibdew.

49. On 1 October 2020, Mrs Sahibdew, through her attorneys, requested more information and documentation as follows:

"Our instructions are that:-

1. The documents purport to be proof that money was transferred out of the Standard Bank account of Newday from time to time and received into the First National Bank account of the deceased.

2. The First National Bank account of the deceased also reflects various transfers of different amounts after receipt of the money, to the extent that minimum amounts were left as a balance at the end of each month.

3. It is common cause that the deceased was tasked with managing the finances of Newday Church.

4. It cannot be ruled out, as a possibility, that the transactions reflected in the First National Bank Account were for the benefit of Newday Church.

As such, the documentation received is not enough to prove a claim against the estate. In an effort to consider your client's claim, the Executrix kindly requests a complete set of facts to support the claim. In this regard, the Executrix requests minutes of meetings, financial reports at these meetings, resolutions taken regarding the Church finances, annual financial reports of the Newday Church, the task duties and responsibilities of the deceased during the period of employment with Newday Church, together with all supporting documents that would prove a claim against the estate."

Should we not receive the requested information by close of business on the 16th of October 2020, our instructions are to proceed with lodging the liquidation and distribution account with the exclusion of your client's claim."

50. On 14 October 2020, the applicant, through their attorneys, requested until 30 October 2020 to gather the said information and documentation and provide it to the executrix.

51. On 16 October 2020, Mrs Sahibdew's attorneys refused the extension to 30 October 2020. They contended that the applicant had known about the request since July 2020. Further, if they do not hear from the applicant by 16 October 2020, they will lodge the L & D account at the master's office and communicate the master's response. On 23 October 2020, the applicant lodged the L & D account at the master's office.

52. On 27 October 2020, Bennett McNaughton of Bennett McNaughton Attorneys, the applicant's attorneys, dispatched a letter to Mrs Sahibdew's attorneys; the relevant paragraphs read:

“13.writer travelled on Monday, 19 October 2020 and returned to the office to return to the office to receive your response.”

14. The lead party assisting our client in the investigation and assembly of the claims and who is familiar with all the evidence, Mr Du Toit, travelled the week of October the 19th on a scheduled break in the bushveld and only returned over the weekend of 24-25 October. Writer managed to get a message conveyed to him, he travelled to an area with no cell phone signal and consulted briefly with writer on the afternoon of 22 October 2020 to obtain instructions and prepare this letter. This letter could only be reviewed over the weekend of 24-25 October 2020, and the instruction to proceed with a letter was received today, 27 October 2020.”

53. Considering the whole evidence in this regard, no cogent facts were presented that Mrs Sahibdew was refusing or avoiding the applicant's claim. There is no justification for the removal of the executrix on the basis that she was biased, hypocritical and incompetent in her administering the deceased's estate, as suggested by the applicant in their affidavits. It seems the applicant missed the communication due to its and its attorneys' unavailability to respond to the applicant's attorneys.

54. I respectfully do not consider the unfolding of events through the correspondence exchanged in this regard as amounting to a refusal or avoidance of the claim because she stands to gain. She requested information and documentation for her to decide on the claim and indicated that the L & D account would be lodged if such is not received on a specific date.

55. Further, the evidence is that by the time the applicant responded on 27 October 2020 to the applicant's correspondence of 16 October 2020, the L & D account had already been lodged at the master's office. The applicant's attorneys' letter went further and detailed how they interpreted Mrs Sahiddew's refusal to grant them an extension. They questioned the master's conduct in urgently appointing the executrix during the lockdown. I do not intend to deal with the rest of the said correspondence. In my respectful reading of the correspondence, it seems to

suggest that the executrix wanted to commit fraud or illegal action while being assisted by the master. With the evidence presented before me, I could not find that the executrix had conducted herself in a manner that qualified her to be removed as executrix in terms of the Act.

56. No compelling facts were presented before me justifying such a drastic action of removing the executrix. In my view, when she requested the information and documentation, she was justified to do so to make an informed decision in evaluating the veracity of the applicant's claim.

57. I can't entirely agree with the applicant that it has prima facie proven its claim. Regarding the bank statements as referred to, there are transactions where the applicant voluntarily and with the deceased's permission made into the deceased's account. There are disputed issues of locus standi and prescription that a court of law is required to decide on.

58. In my view, the applicant has not made out a case for the removal of Mrs Sahibdew as the executrix in terms of section 54(1)(a) of the Act. The fact that she was married to the deceased and a sole beneficiary in the deceased's estate does not disqualify her as executrix. This includes her conduct in defending the estate against alleged unproven claims against the estate. I could not find any malice even in the errors that might have been committed in her estate management, be it not including her part of her company financials nor disclosing the loan against such company.

59. The question of the alternative to replace her, either Mr Jordaan or Naidoo, does not arise as I respectfully find no fault in the conduct of the executrix, Mrs Sahibdew.

60. I respectfully disagree with the submission that the executrix is biased and should be removed. A trial court would be better placed to adjudicate the issues raised by both parties. This Court will not consider exercising its discretion to simplify the matter by accepting the applicant's claims as it does not believe that the issues were extensively ventilated to avoid future litigation or disputes. I'm also not

convinced that it would be in the best interest to appoint anyone other than the executrix, as I found no cogent evidence suggesting that Mrs Sahibdew was not objective and acting in the estate's best interest.

61. Where there are any other further investigations to be conducted, I found her able to manage same in the interest of the estate. In my view, she can investigate what accounts the estate had and draw statements and evaluate the applicant's claim and any other claim against the estate. No compelling facts were presented before me that she could not fulfil her role as executrix. Further, she continues to be entitled to executrix's fees as I found her capable of the deceased's estate administration.

62. Consequently, I find that the master's decision directing the applicant to refer its claim to a court of law competent. Mrs Sahibdew is entitled to executrix's fees for the deceased's estate's management. Also, I found no cogent reasons in terms of the Act to remove Mrs Sahibdew as executrix in the deceased's estate. The request to have her replaced is not justified. Therefore, the application cannot succeed.

63. In the premise, the following order is made;

Order

1. The applicant's application is dismissed with costs.

N. MAZIBUKO AJ
Acting Judge of the High Court of South Africa
Gauteng Division, Pretoria

This Judgment is digitally submitted by uploading it onto Caselines and emailing it to the parties.

Representation

Counsel for the Applicant:

Mr A Campbell

Instructed by: Bennett McNaughton Inc

For the First Respondent:

Mr A Bleki

Instructed By:

The State Attorney

For the Second & Third Respondents:

Mr A Khan

Instructed By:

Anthoo Marion & Associates

Heard On:

24 October 2022

Judgment delivered on:

9 December 2022