

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 16549/2021

(1)	<u>REPORTABLE: NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES: NO</u>
06 September 2023	...
DATE	SIGNATURE

In the matter between:

**SIZWE TALENT NGWENYA**

Applicant

and

**ZODWA NGWENYA (N.O.)**

First Respondent

**ZODWA NGWENYA**

Second Respondent

**THE MASTER OF THE HIGH COURT,**

Third Respondent

**JOHANNESBURG**

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**JUDGMENT**

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**MIA J:**

- [1] The applicant in the matter seeks an order removing the respondent as the executor in terms of section 54 of the administration of Estates Act. The previous application related to the applicant interdicting the first and second respondents from withdrawing and transferring funds from the estate late account of the deceased Jabulani Richard Ngwenya without prior written permission of the third respondent; further that they be interdicted from redirecting any funds to be deposited into the account of the estate late bank account of the deceased Jabulani Richard Ngwenya; that the first and second respondents be interdicted from collecting any funds from any individual or any institution any assets or funds for any purpose other than for the estate of the deceased Jabulani Richard Ngwenya. The applicant obtained an interim order granted by this court, on 22 April 2021. Subsequent to the order granted by Vally J, the parties pursued contempt of court proceedings removed the application from the roll and attempted to resolve the matter amicably. This has not been resolved. The applicant alleges that the respondent is dissipating assets in the estate which should be paid into the estate. The applicant thus seeks an order for the executors removal. The application is opposed by the respondents.
- [2] The applicant indicates that there were unwarranted withdrawals of funds from the deceased's Estate Late bank account. The respondent appointed herself as director of the companies which the deceased had operated and then utilised the funds from the deceased bank accounts to pay the employees rather than utilising the funds from the business operations to pay employees. She also paid the business expenses from the estate late account such as vaccinations for the chickens. She also paid for funeral expenses that were covered by his friend such as the slaughtering of the animals for the funeral. He further alleged that Sanlam Insurance paid out the money in respect of a vehicle which had been written off in an accident. These funds were also transferred to the respondents account rather than to the relevant account.

- [3] The applicant's concern is that he as the biological son as well as his siblings who stand to inherit by intestate succession will be prejudiced if the funds are not collected and accounted for properly. Their rights are prejudiced. They stand to suffer irreparable harm should the respondent remain in the position as executor and the funds are dissipated. This is clear where the fund are drawn from the estate bank account to pay salaries of employees where the respondent continues to run the companies which ought to be self sustaining by paying debts from the deceased banks account.
- [4] The applicant maintains that there is no alternative adequate remedy where the funds are dissipated to recover them from the respondent. In the circumstances it was submitted the balance of convenience favours the granting of the relief.
- [5] Counsel appearing for the respondent argued that the monies were fully accounted for as the respondent took over the businesses of the deceased. It is conceded that R500 000 was taken from the deceased's estate account to run the business. He explained that payment went into the respondents account and not into the business bank account or the deceased's estate account. There was no indication that the Master had approved the manner in which this was undertaken. It was also indicated that the taxi's were operated on a cash basis and there were no records in this regard. The respondent is unable to disclose the amounts made and daily takings as there was no proper record kept. It appears that this concession suggests that the respondent is not suitable to continue as the executor of the estate.
- [6] The Administration of Estates Act 66 of 1965 provides in section 54:
- (1) An executor may at any time be removed from his office-
- (a) by the Court-
- (i) .....
- [Sub-para. (i) deleted by s. 16 (a) of Act 86 of 1983 (wef 6 July 1983).]

- (ii) if he has at any time been a party to an agreement or arrangement whereby he has undertaken that he will, in his capacity as executor, grant or endeavour to grant to, or obtain or endeavour to obtain for any heir, debtor or creditor of the estate, any benefit to which he is not entitled; or
- (iii) if he has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to vote for his recommendation to the Master as executor or to effect or to assist in effecting such recommendation; or
- (iv) if he has accepted or expressed his willingness to accept from any person any benefit whatsoever in consideration of such person being engaged to perform any work on behalf of the estate; or
- (v) ***if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned; and***"

- [7] Having regard to the conduct of the executor I am satisfied that the applicant has made out a case for an interim interdict. In view of the respondent's conduct and the manner in which she manages the assets the applicant's concerns have a basis. The concession that the taxi daily earnings are not recorded are a clear cause for concern. The applicants and heirs will not know to what extent they have been deprived of an income.
- [8] For the reasons above I am of the view that the applicant is entitled to the relief he seeks on the papers.
- [9] The conduct complained of is attributable to the respondent. The costs should not be recovered from the estate where the respondent could have sought legal assistance with the winding up of the estate. The conduct indicates that the second respondent should be responsible for the costs herein.
- [10] Consequently, I grant the order below

1. The respondent is removed as the executor of the estate in terms of section 54(1)(a) (v) of the Administration of Estates Act 66 of 1965.
2. The second respondent shall pay the costs of the application.

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**S C MIA**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

For the Applicant:

Adv. VJ Chabane  
Instructed by Sithi & Thabela  
Attorneys

For the Respondent:

Adv. T. Mhlanga  
Instructed by Mohanoe Inc. Attorneys

Heard: 26 July 2023

Delivered: 06 September 2023