

**IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG DIVISION, PRETORIA**

Case No: 26743/09

DATE: 4/2/2014

BOITUMELO MARIA LEBUDI

Applicant

and

MAMASHABA MARY LEBUDI

First Respondent

JEFFREY NGAKWANA LEFOWA

Second Respondent

GOITSEMANG MARTHA MAKAGARA MOGALA

Third Respondent

NEDBANK LTD

Fourth Respondent

SHAI ANDREW MATLOU

Fifth Respondent

STANDARD BANK OF SOUTH AFRICA

Sixth Respondent

THE MASTER OF THE HIGH COURT

Seventh Respondent

THE REGISTRAR OF DEEDS

Eighth Respondent

JUDGMENT

DE KLERK AJ

[1] The Applicant seeks the following relief:

1. That she be declared the only lawful executrix in the estate of the late N E Lebudi.
2. That the transfer of the immovable property known as house number 7....., B....., M....., registered under deed of transfer no T 2..... be declared valid.
3. That the transfer of the same immovable property registered under deed of transfer no. T2..... be declared invalid.
4. Costs in the event of opposition.

[2] The gist of the Applicant's case is that she as the mother of the deceased is the only lawfully appointed executrix. This she

based on the provisions of Section 7 of the Administration of Estates Act 66 of 1965.

[3] The Applicant argued that because there was no surviving spouse the nearest relative had to be appointed as executrix. Consequently, her argument runs that she, as the mother of the deceased was so appointed by the Master, and that the appointment of the First Respondent (not being the surviving spouse) was unlawful.

[4] In her capacity as executrix she was entitled to sell the immovable property known as house number 7....., B..... U....., M..... (forming part of the deceased estate). The First Respondent, on the other hand could not have transferred more rights than she had.

[5] Council for the First Respondent argued that the First Respondent's appointment by the Master was lawful.

[6] He further argued that the Applicant was appointed in terms of the provisions of Section 18 (3) of the Administration of the Estates Act 66 of 1965. Section 18 (3) of the Act provides that the Master (if the value of the estate does not exceed R125 000) may dispense with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed.

[7] In the light of the aforesaid, the argument runs that the Applicant has never been appointed as executrix and could therefore not be declared to be the only lawful executrix of the deceased estate.

[8] In terms of the letter of authority the Applicant has been authorised to take control of the assets of the estate, pay the debts, and to transfer the residue of the estate to the heirs entitled thereto by law.

[9] It was further argued that the Applicant was not authorised to sell the said immovable property and no averment was made

by her that she had to sell same to pay the debts of the estate.

[10] It was finally argued on behalf of the First Respondent that in the event of a person dying intestate, the criteria for the appointment of an executor as set out in Section 18 (1) are that the Master shall appoint such person or persons whom he may deem fit and proper to be the executor of the estate of the deceased.

[11] **The common cause facts are:**

1. The deceased passed away on the 29th of September 2005;
2. He died intestate;
3. His estate comprised of an immovable property known as house no. 7..., B.... U..., M.....;

4. Letters of authority in terms of the provisions of Section 18 (3) of the Administration of Estates Act were issued by the Master to the Applicant and the First Respondent;
5. The Applicant sold the said immovable property on or about 9 November 2007 for a purchase consideration of R240 000;
6. The First Respondent sold the same property on or about the 4th of October 2007 for an amount of R230 000.

[12] The gist of the dispute is whom of the Applicant or the First Respondent, is the lawfully appointed executrix.

[13] The answer to this question will also determine the validity of the sale and transfer of the immovable property.

[14] The Applicant based her argument that she is the only lawfully appointed executrix squarely on the provisions of Section 7 of the Administration of Estates Act.

[15] Section 7 is in my view not applicable as it deals with death notices.

[16] Section 7 reads as follows:

“Death Notices:

Whenever any person dies within the Republic leaving any property or any document being or purporting to be a will therein- a) the surviving spouse of such a person or more than one surviving spouse jointly or if there is no surviving spouse, his or her nearest relative shall within 14 days thereafter give a notice of death to the master.”

[17] Consequently same does not support the Applicant's contentions in this regard. Section 18(1) of the Act provides for the appointment of an executor in the event where the deceased died without having, by will, nominated any person to be his executor.

[18] Section 18 (1) reads as follows: "The Master shall, subject to the provisions of subsection (3), (5) and (6) (a) if any person has died without having by will nominated any person to be his executor, appoint and grant letters of executorship to such person or persons whom he may deem fit and proper to be executor or executors of the estate of the deceased."

[19] Section 18 (3) of the Act provides that if the value of any estate does not exceed the amount determined by the Minister by notice in the gazette, the Master may dispense with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed.

Conclusion:

[20] The deceased died intestate. The Master, in terms of the provisions of Section 18 (3) of the Administration of Estates Act 66 of 1965 issued letters of authority to the Applicant and the First Respondent. The Applicant based her case as to why she

should be declared the only lawful executrix in the estate of her late son squarely on the provisions of Section 7 of the Act. In the light of the evidence and the applicable law the court finds that the Applicant has not discharged the onus of proof resting on her.

Accordingly the order is as follows:

The Applicant's application is dismissed with costs.

Signed at _____ on this _____ day of _____ 2014.

Judge De Klerk AJ
The Honourable Judge of the
High Court of Pretoria