

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

**CASE NO: 66520/2018**

REPORTABLE: **NO**  
OF INTEREST TO OTHER JUDGES: **NO**

REVISED: **NO**

Date: **21 April 2022**

In the matter between:

**JOCELYN DE BRUYN**

**Applicant**

And

**THE MASTER OF THE HIGH COURT, PRETORIA**

**1<sup>st</sup> Respondent**

**MARTHA JOHANNA PRINSLOO N.O.**

**2<sup>nd</sup> Respondent**

(In her capacity as executor of the Late Estate of  
Johannes Jacob Prinsloo, ID: [...]) [Master's Ref: 002246/2015]

**MARTHA JOHANNA PRINSLOO**

**3<sup>rd</sup> Respondent**

**MARCO KOTZE**

**4<sup>th</sup> Respondent**

**MARIUS KOTZE**

**5<sup>th</sup> Respondent**

**MARELIE VAN ROOYEN**

**6<sup>th</sup> Respondent**

**JUDGMENT**

## **NYATHI J**

### **A. INTRODUCTION**

[1] This is an application in terms of section 35 (10) of the Administration of Estates Act 66 of 1965 (“the Estates Act”) for an order setting aside the First Respondent’s decision to refuse the Applicant’s objections against the Second Respondent’s first and final liquidation and distribution account.

[2] The Applicant also seeks the removal of the Second Respondent as executrix in the late estate of Johannes Jacob Prinsloo (“the deceased”).

### **B. BACKGROUND**

[3] The deceased passed away on 19 January 2015 and his estate was registered with the First Respondent under Master’s Reference No.: 002246/2015.

[4] The Second Respondent was nominated and appointed as executrix in the estate in terms of the deceased’s last will and testament.

[5] On 13 June 2017 the Second Respondent published a provisional liquidation and distribution account, which was later followed by an amended first and final liquidation and distribution account (collectively “the L&D Accounts”).

[6] Both L&D accounts reflect a claim by the Second Respondent in terms of the Maintenance of Survival Spouses Act, 27 of 1990 (“the Surviving Spouses Act”).

[7] In settlement of her maintenance claim, the Second Respondent awarded the immovable property known as Erf 1424 Wonderboom Extension 01, (“the immovable property”) to herself.

[8] In terms of the deceased’s last will and testament:

(1) The immovable property was bequeathed to the Applicant;

(2) The Second Respondent was bequeathed a lifelong *usufruct* in respect of the immovable property.

**[9]** The Applicant lodged an objection to the liquidation and distribution account on the 20 February 2018.

**[10]** On 24 January 2019, the First Respondent rejected the Applicant's objection, principally on the basis that the actuarial report (which motivated the Second Respondent's claim) complies with the Surviving Spouses Act.

### **C. ISSUES TO BE DETERMINED**

**[11]** The issues for determination are:

11.1 Whether the lateness of the application ought to be condoned.

11.2 Whether the Applicant's objection to the L&D accounts should be sustained. This involves a determination of whether the Second Respondent has complied with the provisions of sections 2 and 3 of the Surviving Spouses Act, 27 of 1990.

11.3 Whether the Second Respondent ought to be removed as executrix in terms of section 54 of the Estates Act.

### **D. APPLICATION FOR CONDONATION**

**[12]** The application for condonation is the first relief which the Applicant seeks. For some strange and unexplained reason, however, that is the last aspect she chose to address in her Founding Affidavit. She does so in sweeping statements which attempt to cast the blame for her delay on the Second Respondent and to her alleged appointed

actuary, one Mr Pieter Gericke, for delaying with a report regarding the sustainability of the Second Respondent's claim for maintenance<sup>1</sup>.

**[13]** In terms of section 35(10) of the Act, the Applicant was obliged to apply for the Master's decision to be set aside within thirty days after the date of such direction or refusal.

**[14]** The Applicant failed to bring her application within the prescribed thirty days.

**[15]** Although the Applicant indicated in her founding affidavit that the report from Mr Gericke will be made available to the Court by way of a supplementary affidavit, such report has not been made available, despite the Second Respondent requesting such by way of a Rule 35(12) notice.

**[16]** This is an instance where circumstances call upon this Court to exercise its discretion whether to grant or refuse the application for condonation.

**[17]** I sought guidance of the Supreme Court of Appeal in *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others*,<sup>2</sup> where Ponnar JA held that in order to obtain condonation, several factors come into play and "...include the degree of non-compliance, the explanation therefor, the importance of the case, a respondent's interest in the finality of the judgment of the court below, the convenience of this court and the avoidance of unnecessary delay in the administration of justice (per Holmes JA in *Federated Employers Fire & General Insurance Co Ltd & Another v McKenzie* 1969 (3) SA 360 (A) at 362F-G)."

**[18]** In the present case, it is undeniable that the major delay rests at the door of the Applicant herself, and that her attempts at explaining same is wanting. The

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<sup>1</sup> See Applicant's founding affidavit Par u31.

<sup>22</sup> *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Ltd and Others* [2013] 2 All SA 251 (SCA) para 11; [2013] ZASCA 5;

Respondent's interest in the finality of the judgment on the merits of the matter, the convenience of the court and the avoidance of unnecessary delay in the administration of justice persuades me to grant the condonation sought and to decide the merits of the main application.

#### **E. APPLICANT'S CASE/SUBMISSIONS**

[19] The Applicant bases her objection to the L&D accounts primarily because the Second Respondent has included therein a maintenance claim in terms of the Surviving Spouses Act and has, in settlement of the said claim, awarded to herself the immovable property. This maintenance claim is objected to.

[20] The Applicant alleges that the Second Respondent's maintenance claim was motivated and supported by an actuarial report the basis of whose calculations were provided by the Respondent.

[21] The Second Respondent's maintenance claim does not comply with the requirements of the Surviving Spouses Act. The Applicant then sets out the relevant statutory provisions and some case law on which she relies in support of her contentions regarding the non-compliance with the Surviving Spouses Act.<sup>3</sup>

#### **F. SECOND RESPONDENT'S CASE/SUBMISSIONS**

[22] Second Respondent has deposed to an answering affidavit in which she laid out the history of her marital relationship with the deceased.

[23] Second Respondent states that she always regarded the Applicant, who is the deceased's daughter from his previous wife, as her own.

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<sup>3</sup> Paragraph 7 of the Founding Affidavit.

[24] The Applicant and her husband, Adriaan Venter du Bruyn moved into the property of the deceased and the Second Respondent during December 2009 whilst the deceased and the Second Respondent were on holiday, and have been there ever since. The Applicant, her husband and two children have been residing on the property for free. Before his passing, the deceased gave the Applicant a Mazda Drifter vehicle as well as a caravan.<sup>4</sup>

[25] The Second Respondent further narrates her financial situation in fine detail. It becomes clear that having regard to her standard of living during the lifetime of her deceased husband as compared to now, she is basically destitute.

[26] The Second Respondent is due to the conduct of the Applicant and her husband, further hamstrung from fully exercising her right of *usufruct* over the property to obtain income. Further complaints listed by the Second Respondent are set out in the Second Respondent's Answering affidavit as quoted from paragraph 5.17 to 5.26 as follows:

“5.17 During the course of our marriage, the Deceased and I enjoyed a fairly large bedroom with an en-suite bathroom being about 100 square metres, I decided to allow Marco and his wife to live in my bedroom as they are a married couple and required the privacy. I consequently moved into one of the spare bedrooms, but unfortunately, I do not have the benefit of an en-suite bathroom.

5.18 Until June 2018, the Applicant also insisted to still use my portion of the resident's kitchen, despite her having her own kitchen. I requested the Applicant to make use of her own kitchen to enable Marco and his wife and I to use the kitchen in my portion of the residence. The Applicant, however, complained that she did not have a stove and I consequently gave her the stove that was in the main residence. Marco purchased himself another stove.

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<sup>4</sup> Respondent's answering affidavit paragraph 5. As they are a married couple and required the privacy. I consequently

5.19 The Applicant then complained that they did not have a living room and I consequently reduced the space in my portion of the house with dry-walling and relinquished my lounge as well as my family room. The family room is used by the Applicant and her husband as an office from which to run their business.

5.20 The Applicant further also complained that they did not have a guest toilet and I also relinquished my guest toilet.

5.21 Z5.21 I gave the Applicant the following furniture:

5.21.1 office furniture to the value of about R30,000.00;

5.21.2 a lounge suite;

5.21.3 a gas stove;

5.21.4 four paintings.

5.22 The Applicant's husband is also making use of the deceased's Nissan Hard body vehicle with registration number RHK 321 GP, which is used in running their business.

5.23 On the premises where I reside, and in respect of which I have a lifelong right of *usufructus*, there is also a storage facility which is about 300 square metres of which the Applicant and her husband have sole and exclusive use.

5.24 Despite me, as Executor of the estate, demanding rental from the Applicant and her husband, the Applicant simply fails to pay any rent for using the property which is my sole and only source of a possible income. I attach hereto a letter from my agent, Pretoria Estate Administrators (Pty) Ltd dated 18 February 2020 marked as "E".

5.25 I attach hereto a schedule prepared in respect of the value of the benefits received by the Applicant and her husband from the Deceased estate and the property

of which I have obtained a lifelong right of usufructus, which benefit is valued at about R819,000.00 since 1 February 2015 up until January 2020. I attach the calculation hereto marked as annexure 'F'.

5.26 I can rent out the property in respect of which I have a right of usufructus to students studying at Onderstepoort. I can rent out the accommodation portion of the premises for an amount of R16,500.00 per month. The aforesaid excludes the storage facility on the premises.”

The above quotation is just a slim sample of the demands made by the Applicant against property and assets of the deceased estate on an ongoing basis without due regard to the provisions of the deceased's testament and to the role of the Second Respondent as executrix.

## **G. ANALYSIS AND CONCLUSION**

**[27]** Applicant bases her opposition to the Second Respondent's claim for maintenance as being non-compliant with the Surviving Spouses Act.

**[28]** The factors to be taken into account before a claim in terms of the Surviving Spouses Act can be sustained are:

28.1 the amount available in the deceased estate for distribution,

28.2 earning capacity of the surviving spouse,

28.3 the standard of living of the surviving spouse during the subsistence of the marriage and his or her age.



**[29]** In addressing the above three requirements, the applicant makes broad sweeping allegations that Second Respondent owns a luxury holiday flat on the South Coast of Kwa-Zulu Natal, without any proof whatsoever.<sup>5</sup>

**[30]** Applicant further takes issue with the calculation of Second Respondent's actuary Mr. AC Strydom. She however has not given any counter view except to state that she has appointed her own actuary, Mr. Pieter Gericke, to interrogate the calculations made by Mr. Strydom. However, no report of her actuary is forthcoming.<sup>6</sup>

**[31]** A comparative analysis of the facts deposed to in Applicant and Second Respondent's respective affidavits betray avaricious demands by Applicant without regard to the needs and expectations of any or the rest of the testamentary beneficiaries.

**[32]** I am not persuaded that there is any merit in Applicant's objections and desire to have Second Respondent removed from her appointment as executrix of the deceased estate. I therefore make the following order:

The application is dismissed. Applicant to pay Second Respondent's costs on an attorney and client scale.

J.S. NYATHI  
Judge of the High Court  
Gauteng Division, Pretoria

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<sup>5</sup> Applicant's Founding Affidavit Paragraph 24.5

<sup>6</sup> Applicant's Founding Affidavit Paragraph 26.9, 28 up to 30.

Date of Judgment: 21 April 2022

Appearances:

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