



**IN HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

**CASE NO: 2205/2016P**

**In the matter between:**

**AZGAR ALLY KHAN N.O.**

**APPLICANT**

**and**

**THE MASTER OF THE HIGH COURT**

**FIRST RESPONDENT**

**SABIR AYOOB**

**SECOND RESPONDENT**

**ZELEKA HASSEN**

**THIRD RESPONDENT**

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**JUDGMENT**

**Date Delivered: 06 October 2016**

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**MBATHA J:**

[1] The applicant sought an order restraining and interdicting the first respondent (The Master of the High Court) from removing him as executor in the estate late Ayoob Meeran. The application is opposed by the first and second respondents and the Master of the High Court has furnished his reports regarding the application.

[2] At the hearing of the matter, the applicant handed in a draft order, he now seeks the order. He now seeks in the following terms:

- (a) that, the second respondent's appointment as executor in the estate late Ayoob Meeran (Estate No. 25246/2014 PMB) be declared to be irregular and is set aside;
- (b) that the applicant be and is hereby reinstated as the executor in the estate late Ayoob Meeran (Estate No. 25246/2014 PMB); and
- (c) that the second respondent and any other respondent opposing the relief sought be directed to pay the costs of this application on an attorney and client scale.

[3] I must state at this stage that the amended order refers or seeks relief in terms of Rule 53 of the Uniform Rules of Court. He seeks an order which is not supported by his founding affidavit. Lastly, he tries to make out a case for his amended order in the replying affidavit, which is contrary to the rules of this court

[4] I have considered the points in *limine* raised by the respondents in this application jointly as they are closely related. The respondents stated that the applicant lacks authority to bring the application for an interdict as his application was brought after his removal as an executor of the joint estate. Therefore he lacks the authority to act in terms of section 54 (2) of the Administration of Estates Act<sup>1</sup>.

The relief sought by the applicant is academic for the same reasons stated above. It is my view that the issue that relates to the time frames and the interpretation of the provisions of the Act regarding his removal are to be considered in another application.

[5] I also make an order that he should pay costs of the second and third respondents in his personal capacity. When he set the matter down for hearing he

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<sup>1</sup> Act 66 of 1965

was already aware of his removal, as this is confirmed in a letter dated 29 March 2016 which he addressed to the creditors advising them of his removal. However, he still persisted with the application instead of withdrawing it and proceeding with an application for review of the Master's decision. He has filed a replying affidavit which I consider to be irrelevant as he had already been removed as an executor of the deceased estate, a replying affidavit which is of no assistance to the relief sought in the founding papers.

[6] I find his amended draft order to be mischievous, to say the least, when he seeks an order which is not founded in his application papers. It is misleading to the court. I therefore make an order that he pay the costs in his personal capacity, as his conduct is not for the benefit of the estate, instead it is to the prejudice of the estate.

[7] Accordingly, I make the following order:

The application is dismissed with costs, costs to be paid by the applicant in his personal capacity.

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MBATHA J

Date of hearing : 15 September 2016  
Date delivered : October 2016

**Appearances:**

For the Applicant : Adv M Maharaj

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For the Respondents : Adv S Jasat

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