In the High Court of South Africa
(Western Cape Division, Cape Town)

[*REPORTABLE*]

Case No: 20960/2019

In the matter between:

ZURENAH SMIT	Plaintiff
and	
THE MASTER OF THE HIGH COURT, WESTERN CAPE	First Respondent
MARTINE SMIT	Second Respondent
LOUIE SMIT	Third Respondent

JUDGMENT DELIVERED ON 26 APRIL 2022

MANTAME J

Introduction

[1] The maxim "*de bloedige hand neemt geen erf*" (the bloody hand does not inherit) was revisited after the applicant, the widow of the deceased, Wynand Stephanus Smit, initially approached this Court on an urgent basis on 21 November 2019 seeking an order that the first respondent accept and register the documented dated 12 January 2019 as the last will and testament of Wynand Stephanus Smit *("the deceased")* in

terms of Section 8(4) of the Administration of Estates Act 66 of 1965 ("*the AE Act*"). Section 8(4) states that:

> *"If it appears to the Master that any such document, being or purporting to be a will, is for any reason invalid, he may, notwithstanding registration thereof in terms of subsection (3), refuse to accept it for the purposes of this Act until the validity thereof has been determined by the Court".*

[2] The first respondent filed a notice to abide by the decision of this Court.

[3] This application was opposed by the second and third respondents ("*the respondents / the daughters of the deceased*") from the first marriage on the basis that such document was fraudulent, it was neither drawn by their late father nor signed by him.

[4] The opposition resulted in a dispute of facts and the daughters approached this Court regarding the supplementation and referral of the matter for oral evidence. On 8 September 2021, Fortuin J granted the supplementation and referred the matter for oral evidence on seven (7) points as follows:

4.1 Whether the contested documents allegedly signed by the deceased, Wynand Stephanus Smit, after 9 December 2018 are authentic;

4.2 Whether the applicant was involved in the forgery of the deceased's mother's will in 2014;

4.3 Whether the applicant should be declared unfit to inherit or receive any benefit from the deceased based on her complicity in his murder on 2 June 2019;

4.4 Whether the applicant should be declared unworthy to inherit or receive any benefit from the estate of the deceased;

4.5 Whether the applicant should be interdicted to act as executrix in the estate of the deceased;

4.6 Whether the applicant should be interdicted to act as a trustee in either or both trusts, namely, the W.S. Smit Watergang Trust IT1112/92) and the Ribbok Heuwels Trust (IT 1624/92);

4.7 An appropriate order regarding costs.

Application for postponement of trial

[5] When the matter served before this Court on 22 February 2022, an attorney for the applicant, Ms Jansen requested the Court to postpone the matter. However, she was not willing to formally place herself on record as she has not yet received financial instructions from her client. The Court therefore excused her from the matter having been unable to place herself on record for the Court to consider this request.

[6] The applicant therefore appeared in court unrepresented and requested for the postponement of the matter as she was still raising funds for Ms Jansen to represent her. Her explanation was that she has been let down by one, Mr Fourie who previously represented her. At the end of January 2022, she consulted with Mr Fourie who

advised her that he would be assisting her, but was still awaiting a documentation from the Legal Bar *(sic)* to enable him to proceed to act for her. It was only on the week of 14 February 2022 that he advised her that he would no longer be representing her. The applicant therefore requested the Court to postpone the matter for an unstipulated period.

[7] Mr Raubenheimer, who represented the daughters of the deceased, opposed this application on the basis that the applicant initiated this matter by filing an urgent application in this Court as long ago as 21 November 2019. Due to the urgency being common cause from the parties, on 8 September 2021 when the matter last appeared in Court it was allocated a preferential date for trial, that is, 22 February 2022. That was some five (5) months ago.

[8] It was postulated that since the commencement of this matter, the applicant has changed her attorneys at least five (5) times. Although she was first served with a notice of set down for 8 September 2021 on 30 July 2021, she somehow appeared in person on 8 September 2021 and requested a postponement. This was despite the fact that a full set of papers was made available by Mr Van Staden (the deceased daughter's lawyer) to Mr Widré Fourie, the applicant's erstwhile attorney on 26 August 2021. He subsequently withdrew himself from the matter.

[9] When the matter served before Court on 8 September 2021, Fortuin J impressed upon the applicant to timeously obtain legal representation and liaise with Mr Van

Staden should she require any further assistance. Despite Mr Van Staden's inquiries, the applicant ignored him. Further, when Ms Jansen came on board, Mr Van Staden made a full set of papers available to her. The said attorney confirmed that she read all the papers. However, she was not secured with financial instructions.

[10] Mr Raubenheimer contended that in *National Police Service Union and Others v Minister of Safety and Security and Others* [1], Mokgoro J stated that a postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court and such postponement will not be granted unless this Court is satisfied that it is in the interest of justice to do so. In this respect, the applicant must show that there is a good cause for the postponement. In order to satisfy the Court that good cause does exist it will be necessary to furnish a full and satisfactory explanation of the circumstances that gave rise to the application. The argument went further to say, in exercising its discretion this Court will take into account a number of factors – but not limited to:

10.1 Whether the application was timeously made;

10.2 Whether the applicant's explanation is full and satisfactory;

10.3 Whether there is prejudice to any of the parties; and

10.4 Whether the application is opposed.

[1] 2000 (4) SA 1110 CC at para 4

[11] The Constitutional Court has since added to these factors in *Psychological Society of SA vs Qwelane and Others*[2] and stated that:

> "*In exercising its discretion, a court will consider whether the application has been timeously made, whether the explanation for the postponement is full and satisfactory, whether there is prejudice to any of the parties and whether the application is opposed. All these factors will be weighed to determine whether it is in the interests of justice to grant the postponement. And, importantly, this Court has added to the mix. It has been said that what is in the interests of justice is determined not only by what is in the interests of the immediate parties, but also by what is in the broader public interest.*"

[12] It is therefore common cause that the applicant did not bring a substantive application. Besides the fact that the family was in the process of raising funds for her to afford the legal representation, it appears that the same reason was proffered before Fortuin J on 8 September 2021 when the matter was postponed to 22 February 2022. In any event, there was no time frame on which the postponement should be granted. In September 2021 already, Fortuin J advised that the matter was postponed for the last time. The applicant should utilize the further five (5) months to secure her legal representative as the matter will proceed to oral evidence on 22 February 2022.

[13] It was argued that the applicant indicated before Fortuin J that she had legal aid attorneys. However, when the matter resumed before this Court there was no mention of legal aid's legal assistance. The only excuse was that Mr Fourie left her in the lurch on the week of 14 February 2022. As early as December 2021 to January 2022, Mr

[2] 2017 (8) BCLR 1039 CC para 31

Van Staden communicated with the applicant for her to clarify her position on her legal representation, but such inquiries were ignored by the applicant.

[14] In my view, the applicant has not tendered a reasonable explanation why she did not secure legal representation timeously. This matter was postponed for five (5) months before it resumed for hearing in this Court. This period constituted more than a reasonable period to prepare herself adequately at the resumption of the hearing. The applicant's behaviour leads me to conclude that her repeated application for postponement is none other than dilatory. As a person who initiated these proceedings before this Court on an urgent basis, in my view she should have been the proactive one in ensuring that the proceedings are concluded without delay. However, her actions prove to be the opposite. The applicant came across as a very intelligent woman who understood her constitutional rights including her right to legal representation in her submissions. Her remissness in my opinion, was deliberate to say the least.

[15] The applicant simply requested a postponement of an undisclosed period for her family to raise funds to instruct legal representative. In *S v Swanepoel*[3], the Court considered a request for postponement of several months (at least seven months) in order to enable the accused to earn and save sufficient funds to secure the services of a particular advocate to defend the accused. This was in the context of a trial that had been set down for hearing. It was therefore stated that the right to be represented by a legal representative of the accused's own choice does not include a right to have an

[3] 2000 (7) BCLR 818 (0)

ongoing trial postponed for a lengthy period in order to allow an accused an opportunity to earn and save sufficient income to secure the services of a particular legal representative of their choice, since this may go beyond the bounds of reasonableness.

[16] In circumstances where this 'urgent' matter has been delayed for more than two (2) years three (3) months, it was not open for the applicant to further delay the proceedings for an undisclosed period, having been afforded ample opportunity to secure legal representative on previous sittings. It was for this reason that the court granted the following order:

16.1 The applicant's application for postponement is dismissed;

16.2 The evidence on behalf of the second and third respondents (the daughters) will be adduced first;

16.3 The applicant is ordered to pay the costs occasioned by this application for postponement.

The daughters of the deceased did not testify in these proceedings as it was reported that they had a heightened fear as a result of the manner in which their father died.

Background Facts

[17] After the fatal shooting of Wynand Stephan Smit, the deceased at his home on the farm Louisenhof ("*Louisenhof*") Stellenbosch on 2 June 2019, the applicant went to live with Sophia Christina Lubbe Buys ("*Ms Buys*") as she stated that she was too emotional and traumatised to remain on the farm. She stayed with Ms Buys, who was

the Smit's family friend for some forty-five (45) years, for four (4) weeks before reverting to Louisenhof farm.

[18] Ms Buys then assisted the applicant with preparations for the funeral, which took place on 14 June 2019. Mr Jacques De Villiers ("*Mr De Villiers*"), the deceased's financial adviser (who has since died from a Covid 19 related illness) arranged for the reading of the will shortly after the funeral as one of the deceased's daughters had to return overseas. The applicant then advised Ms Buys that she was not attending the reading of the will as the one in possession of Mr De Villiers is the incorrect will. She was still looking for the latest copy and the correct one. The applicant ended up not attending the reading of the will, so said Ms Buys.

[19] Ms Buys sort of picked up some contradictory aspects with regard to the issue of the applicant's will as she kept on giving her different versions. She first advised her that she found the real will in a drawer. This was strange to Ms Buys as the deceased is a punctilious person. In his lifetime, he never left important documents lying around. The deceased he knew was meticulous and orderly. Later on, the applicant told her friend, Peter Oosthuizen ("*Mr Oosthuizen*") that the police came with the contents of the safe and they put them on the table in front of her lawyer. Mr De Villiers turned red in his face after learning that she was nominated by the will as the executor. Ms Buys also heard that the applicant found the latest will in the deceased's Bible and in the presence of the *dominee*, she also read about that in the media. She somehow dismissed that version because she was present at all times. Ms Buys, the applicant

and the *dominee* were all together arranging the funeral. The applicant did not say a word during that time about the discovery of the will in the Bible.

[20] The applicant, in her urgent application that was filed in November 2019, stated that as the deceased had a habit of copying phrases to his diary after reading the Bible. When she perused the diary to look at such phrases, she came across a one-page document. She gave a cursory glance at such document and noticed that it constituted a further original will and testament that was signed by the deceased, being the last will. She did not read the will at that time, she simply replaced it in the diary. As she did not have sight of the other wills that were removed from the deceased's safe by SAPS *("police")*, she needed to establish whether the will in her possession and had just discovered dated 12 January 2019 constituted the deceased's last will. When she presented this will to the investigating officer, Sergeant Stephen Omega Adams ("*Sergeant Adams*") he advised her to consult an attorney.

[21] The applicant stated that she discovered the will dated 12 January 2019 in a drawer at the office in Louisenhof. She further stated that she discovered a document donating the vast portion of the deceased estate and trusts to her. This document was dated 01 February 2018 and she found it tucked in their travel documents. The highlight of the 12 January 2019 will is that she was appointed as the executor of the entire estate. That was so because the deceased in his lifetime expressed dissatisfaction with the services he received from Mr De Villiers. The deceased further bequeathed to her a sum of R7 million and he did that in the donation document. Further, the deceased nominated her as trustee of both Watergang Trust and Ribbok

Trust. Furthermore, the deceased gave her power of attorney to act as director of the companies.

[22] Having been evicted from Louisenhof by the trustees of the trust, she has been without an income for the past three (3) years. During their marriage, she helped her husband to manage the farm and drew a salary of R10 000.00 per month. Her removal from her home left her without an income. It was therefore of paramount importance that these proceedings should be concluded as soon as possible so as to bring normalcy at the farm. The Court should therefore recognise the will dated 12 January 2019 as the deceased's last will and testament.

[23] Sergeant Adams gave another perspective to this matter in his capacity as an investigating officer in the criminal matter. He testified that the applicant, and the two (2) security personnel of the Smit's family have been charged for murder (of the deceased), fraud, illegal possession of firearms and defeating the ends of justice.

[24] The upshot of his arrival at the scene on that evening after the assassination of the deceased in his farm, Louisenhof could be described as a smoking gun affair. The relevant *dramatis personae* were present acting their various and / or exculpatory roles perfectly. At the gate was Steven James Damon ("*Mr Damon*") (Accused No. 2 in the criminal matter) who had his paintball rifle, now in his role as a security gatekeeper. On entering the premises, he was met with Bradley Van Eyslend ("*Bradley*") (the Section 204 of the Criminal Procedure Act *("the CPA")* witness in the criminal matter) the head

of security at Louisenhof farm who was residing in the same house as the Smit family and a few meters from where the deceased was fatally shot. Bradley appeared out of breath and visibly shaken. His version was that he was at his room with Karel Derek Sait ("*Mr Sait*") and Mr Damon watching television. They did not hear the three (3) gunshots that finished the deceased. These people were just less than 10 meters from the scene.

[25] While Sergeant Adams was investigating the scene, Mr Sait was standing in the passage and later on drove out of the premises with his motor vehicle. He proceeded to the house, he found the applicant and Emilia Allerman ("*Ms Allerman*") in the bedroom. Sergeant Adams did not want the scene to be contaminated. Bradley suggested that they move the two (2) women to his side of the house. Bradley opened the passage door and assisted Sergeant Adams to cordon off the scene. The deceased was lying in his dining room floor with three bullet wounds.

[26] Sergeant Adams attempted to ascertain as to what happened from the applicant. The applicant was too emotional to give a version. When the ambulance arrived, she was then taken to the ambulance with Ms Allerman. Ms Allerman stated that she was invited for dinner that evening. After the meal, the applicant cleared the table. The applicant was still standing in the kitchen making tea when the three (3) male persons came running inside the dining room from the kitchen door at approximately 18h40. Their faces were covered with masks. The deceased's back was facing the kitchen door. Without any demands from the assailants, two (2) gunshots were fired. The deceased fell to the ground. She realised that he had been shot. After a while, she

heard a third gunshot. After a while, it became quiet. She realised that the applicant was also on the floor next to her.

[27] Ms Allerman and the applicant then ran to the passage and hammered the door leading to Bradley's suite and shouted for Bradley to come out. When Bradley appeared, Ms Allerman questioned him on where he has been as he was responsible for the safety of the deceased. Ms Allerman became suspicious when Bradley advised her that he did not hear the three (3) gunshots that happened a few meters away. The assailants left with Ms Allerman's bag and wrist watch.

[28] Sergeant Adams, Captain Kock and Warrant Officer Avontuur from the forensic team viewed the surveillance camera footage and no suspects could be seen entering or leaving Louisenhof farm. A 9mm cartridge was found next to a chair in the dining room and a projectile underneath the coffee table. Sergeant Adams found it strange that there were two (2) firearms that were on top of the table in the adjacent office of the deceased and they were not stolen by the assailants. On being questioned by Sergeant Adams, Bradley confirmed that the two (2) firearms belonged to the deceased. Further investigation revealed that there was no forced entry to the house and the security fencing around the farm had not been disturbed.

[29] Sergeant Adams went back to the applicant for a further probing and gentle conversation whilst she was in the ambulance. The applicant mentioned that four (4) men entered the house. She screamed and then sat down on the floor. One of the

men demanded her cell phone in English. She took him to the bedroom and handed her cell phone to him. He then took her back to the dining room and placed her next to Emilia (Ms Allerman). She then heard one (1) loud gunshot and the suspects fled the scene.

[30] In his mind, Sergeant Adams was convinced that this is not a normal house robbery. There were discrepancies in the statements that were given to him and there was no forced entry in this security conscious household. The security fencing was untampered with and a will dated January 2019 brought him to a conclusion that there was a complicity to the murder of the deceased.

[31] His later investigations revealed that the robbers took the safe's keys from the deceased's moon bag that he always kept around his waist. However, the safe was left untouched. Sergeant Adams testified that he made use of the locksmith to open the deceased's safe. That is where all the family wills and big amounts of cash were kept, including the deceased's mother's will. There was no donation document to the applicant dated 01 February 2018 and there was no deceased's will dated 12 January 2019. The last Will that was on the safe was dated December 2018.

[32] The police having been unable to arrest any suspect for the death of the deceased, and after a year and a half, Bradley made a confession to the police and later turned a state witness (Section 204 witness in terms of CPA). Sergeant Adams learnt from Bradley that the donation document was a creation of the applicant who

later signed it purporting to be the deceased after the death of the deceased. In other words, the applicant forged the deceased signature in the donation document and handed it to Bradley to be signed and backdated at Cloetesville Police Station. Bradley approached Mr Ryan Langdon *("Mr Langdon")* who used to work at the farm as the security personnel and was subsequently employed at SAPS Cloetesville to arrange for a police officer to backdate the document. It is for this reason that this document would be later on be referred to as the *"Cloetesville document"* in this judgment.

[33] Sergeant Adams also learnt that the applicant drugged the deceased in November 2018 for the applicant and Bradley to lay their hands on the deceased's safe and steal cash and a firearm from the said safe while he was unconscious. Sergeant Adams stated that the firearm that was allegedly stolen at Louisenhof in November 2018 and the one that was given to Bradley by the deceased (which belonged to the deceased's mother) were eventually found in Mr Sait's safe. Bradley stated that both firearms were in his safe, but he handed them to Mr Sait at the planning phase of the deceased's murder to be used in the deceased's assassination.

[34] Colonel Damon Jacobus Beneke ("*Colonel Beneke*") testified that he knew Bradley from the years he was stationed in Khayelitsha as a police officer. At the time of this incident, he was Detective Commander of the Stellenbosch Detective Branch. He knew Bradley in those years as Warrant Officer, Crime Prevention as he was the Area Head of Detectives.

[35] Colonel Beneke met Bradley once more in 2018 when he came to introduce himself at the police station that he was rendering security services at Louisenhof farm and they exchanged cell phone numbers. His portfolio was said to be a close protector of the deceased. During his appointment as security head at Louisenhof farm, he attended frequently at the police station and one time he came to make a complaint that there were tyres burnt at the entrance of Louisenhof. On the second occasion, he was accompanied by his brother, Mr Sait who was introduced as a person in charge of the intelligence at Louisenhof farm. On this occasion, the applicant was also present. The applicant appeared more concerned and traumatised about the threats to the Smit family that Bradley referred to and that emanated from Azania (an informal settlement responsible for land grabs in their farm). As a result, Mr Smit abused alcohol. Bradley impressed upon the police to do something about these threats.

[36] It came as a shock on the evening of 2 June 2019, that Colonel Beneke was phoned by Bradley out of breath and with a high pitched voice advising that Mr Smit has been shot dead. Colonel Beneke started to make further inquiries about Mr Smit and Bradley was unable to tell whether he was dead or alive. He then asked Bradley as an ex-police officer to safeguard the scene. He further activated other role-players to attend to the scene, after asking Sergeant Adams to quickly attend to the scene.

[37] He immediately drove from Paarl Medical Centre to the scene. On arrival at the gate at Louisenhof, he could not access the scene as Bradley gave him the wrong access code. However, he eventually managed to get inside the premises. Bradley could not give a version of what happened as he was too emotional. He then decided

to calm him down. Similarly, the applicant did not give him a version as she was in an emotional state. A considerable amount of time went by without any arrests being made.

[38] On 30 September 2020 at 00:05, he woke up with a revelation and walked to his braai room. He picked up a full page and started writing about what was revealed to him in his sleep about this case. Essentially, he needed to address the core people which included Bradley and the applicant. On 1 October 2020, he went to Louisenhof with Captain Le Grange. He did not advise Bradley that he had a revelation the night before. He addressed him in a calm manner and impressed upon him to tell the truth of what happened in this case. He made it clear to him that he was not there to arrest him. He went on to explain the options he had if he told the truth – like the witness protection benefits. Bradley's wife wanted to interfere in their conversation, but he and Bradley managed to keep her out of their conversation.

[39] A week or two later, Bradley opened up to Sergeant Adams. Sergeant Adams arranged for his Section 204 statement to be obtained and was put to witness protection. It was only after Colonel Beneke read Bradley's Section 204 statement that he realised that he was played by Bradley, the applicant and Mr Sait when they attended at the police with their made up complaints. In his mind, it was clear that they wanted to sanitize their plan to murder the deceased by getting a high ranking police officer like him to get involved in their fictitious complaints.

[40] Bradley testified that he was an ex-police officer. He left the services of SAPS in 2006. When he resigned, he was a Captain. He confirmed that he was a Section 204 witness in the pending criminal matter where the applicant is Accused No. 3. He then left the police services and concentrated on doing private security work. He confirmed that he made a statement to the police as a Section 204 witness. In this statement, he incriminated himself in the planning and execution of the murder of the deceased with the applicant.

[41] In September 2018, he met the applicant's daughter who introduced him to her parents who had security issues at the time at their farm. During that period, Bradley owned Uluvo Holdings, which employed a staff compliment of between 40 – 45 security guards. Mr Smit took him over with his personnel to guard him and his property on a contractual basis. He was allocated a living area in the main house separated only by a door in the dining room area.

[42] His assignment was to guard the wine cellars at Watergang adjacent to Kayamandi due to land grabs that were taking place at the time. He was then appointed as the applicant's bodyguard and driver. Their relationship improved with time and they had confidential discussions every now and then. The applicant complained about her unhappy marriage with the deceased. These discussions culminated in her request for his assistance to have him killed. Immediately after that discussion, the applicant started showering him with gifts, i.e. cash of approximately R50 000, clothes from Cape Union Mart in Stellenbosch, cologne worth R3 000.00, a cell phone worth R18 000.00 and so on. Bradley knew immediately that these gifts

were to soften his heart as they came pouring after the applicant asked him if he could kill the deceased.

[43] In November 2018, the applicant requested Bradley for Zofigen sleeping tablets to use on the deceased so that they can have access to his safe. She knew that Bradley had some sleeping difficulty due to depression. Bradley gave her ten (10) tablets. It was Bradley's testimony that the applicant gave the deceased seven (7) tablets and he saw the deceased sleeping in the lounge. The safe keys that the deceased always kept on his waist were now accessible. Both him and the applicant took the keys and went to open the safe in the tasting room. They removed an ADP pistol, belonging to the deceased's ex-wife, Mrs Esme Smit (that was eventually used in the murder of the deceased) and cash of approximately R250 000.00 – R300 000.00. Bradley took a share of R130 000.00 and the rest went to the applicant. There was a bit of foreign currency, however the applicant could not get the Kruger rands she was looking for. She handed the pistol over to Bradley. He then assumed the pistol was to be used for killing the deceased, even though there was no specific discussion on it. Bradley, on receiving his share of the loot, knew that the applicant was serious on getting her husband killed. He kept the pistol and cash in a safe in his room. According to Bradley, the loot occurred on Saturday evening.

[44] The applicant came up with a plan that if the deceased enquired about his moon bag and the safe keys (which they took) they would tell him that somebody from Bash restaurant (which is also on the premises) could have picked up the keys from the bag and opened the safe and cleaned it out. On Sunday, the deceased appeared tired and

groggy and realised that his moon bag was missing. The applicant convinced him that it must have fallen off and picked up by people from Bash restaurant and that individual must have opened up the safe.

[45] On Monday, the deceased came to advise Bradley that his moon bag was missing and the safe had been broken into and all the money that was in the safe was missing. Bradley advised him to open a case at the police station. On the other hand, the applicant remained persistent and made frequent inquiries on when the deceased would be eliminated. Bradley promised that he would discuss the matter with his step-brother, Mr Sait, who was an ex-policeman and has since resigned and established his private investigation business. Mr Sait then saw an opportunity for his business. He wanted to meet the deceased and the applicant at the farm. He then got appointed to do some investigations surrounding the land grabs on Louisenhof Farm.

[46] Subsequent to that incident, the deceased approached Bradley about a .22 calibre pistol that was in his possession and belonged to his late mother. This pistol appeared the same as the one that Bradley and the applicant removed from the safe and handed to Bradley in November 2018. However, on the latter pistol, the serial number was filed off. Bradley advised the deceased to hand over the firearm at the police station under amnesty. The deceased handed it to him to take care of it. It then transpired during the testimony that these were the two (2) firearms that were used in the murder of the deceased on 2 June 2019.

[47] In the planning for the murder of the deceased, Bradley testified on a string of meetings that took place at different hotels in Cape Town paid for by the applicant. This was done not to create suspicion from the deceased. The first was at Radisson Blue, Mouille Point. The applicant did not have patience at this meeting. She demanded to know when the execution of the deceased was to be implemented and she wanted to be updated on how, where, when, and who would be involved. Bradley promised to discuss the specifics with Mr Sait. The applicant suggested that since the deceased is a heavy drinker, the assassination should happen on the road, so that it looks like an accident. Bradley did not agree with her plan as that would be too messy. Since there are other road users, there would be witnesses to the accident. Bradley suggested that the murder of the deceased be executed at Louisenhof farm because it is quiet. The time went by and there were no details on this plot.

[48] The applicant convened a second meeting at Lord Charles Hotel in Somerset West. At this point, the applicant was edgy, frustrated and demanded to know when the assassination would take place. Bradley decided to meet Mr Sait the next day. He told Mr Sait that this whole thing is getting out of hand and he had intentions to leave the farm as he had cold feet on this plan. Mr Sait stated that he wanted to get involved and would discuss the planning with the applicant. Mr Sait's stance was that if they do not execute the plan, somebody else would and that person would stand to benefit.

[49] At that time, the threats had subsided on the farm, the deceased decided to cut the security personnel considerably. Bradley decided to activate new threats on the farm by creating fictitious cell phone text messages to the deceased. The deceased

showed him these messages in the presence of the applicant. The applicant would be very much concerned about their safety in front of the deceased. Bradley on the other hand knew that she was putting on an act. That happened roughly between March - April 2019.

[50] On the other hand, Bradley suffered a blow since he lost a contract on the farm and that would impact on his cash flow. He arranged with one of his employees to burn some tyres at the entrance of the estate. The idea was to instil more fear on the deceased so that his security contract would be re-instated. Bradley advised the deceased to report these threats with the police.

[51] As promised, between April – May 2019, Mr Sait arranged a meeting with the applicant. This meeting was held at Protea Hotel, off Durban Road, Bellville. Bradley figured out during their discussions that the applicant and Mr Sait had been in contact about this planning of the murder of the deceased. A reward for the execution of the plan was discussed. The applicant stated that as soon as the deceased's estate paid out, each of them would receive R2 million rand. The applicant stated that they should execute this plan as a family unit as everybody stood to gain. For instance, Bradley would get the suite he had been using as his permanent home and Mr Sait would receive a tract of land on the farm. The applicant assured them that from what was contained in the deceased's will everybody would have enough. However, she was going to effect changes to it so that she and the deceased's daughters benefit from the will. Mr Sait suggested that his brother-in-law, Mr Damon be pulled into this planning to assist. Two days after this meeting, Mr Sait rented a unit in Louisenhof farm in order to

be central and to crystallise the plan. Mr Damon accompanied Mr Sait at all times during that period. It was agreed that the two (2) firearms that were in possession of Bradley would be handed over to Mr Sait as he was in charge of the planning.

[52] In order to explain Mr Sait's presence at Bradley's suite on the night of the murder, it was agreed that the deceased would be told that they were working on a case of an unlawful arrest. A day before the deceased's murder a meeting between the applicant, Bradley and Mr Sait was held to hatch a plan on how to exonerate the applicant from being part of the murder of the deceased. Mr Sait, suggested that it would be better if there would be an independent person who would corroborate her version. The applicant said she would invite her friend, Emilia Allerman for dinner for that purpose. From that meeting, it was discussed on how and when they would enter the deceased's house. Since the depth of the office is visible from Bradley's suite, it was agreed that the applicant would switch on the lights from the office when it is opportune for them to enter. Both the backdoor and the gate would be left open and unlocked for easy access. Once the killing process has been completed, the applicant should give them about three (3) to four (4) minutes to return to the suit and change to their normal clothes before screaming and raising alarm. Also, the dog should be kept in the office for it not to bite them and bleed and thereby leaving traces of DNA.

[53] The planning team also discussed the deceased's metal plate that was inserted in his head. The deceased once told Bradley that while studying overseas, he was involved in an accident and a metal plate was inserted in his head. The applicant did not want a gunshot on his head because of this metal plate since a ricochet bullet would

bounce and injure herself. It was agreed that the team would be careful and not shoot the deceased on the head.

[54] On the evening of the murder, Mr Sait came with the overalls, masks, latex gloves and firearms that they used. That is, the two (2) firearms that were handed over by Bradley to Mr Sait. That is, Mrs Smit and Esme Smit firearms and a revolver .38 or .357 that was handed over to Mr Damon. This third firearm was not discussed with Bradley. It came as a surprise to him. He knew only the two 9mm that were used by Bradley and Mr Sait. The applicant did her part as planned in terms of accessing the house and the full plan was executed.

[55] Days after the murder of the deceased, Bradley was requested by the applicant if he knew anybody in Cloetesville or any police station for that matter that could backdate a certification for her. Bradley asked Mr Ryan Langdon to organise a policeman in Cloetesville. Mr Langdon organised a certain, Mr Paulsen to backdate the document. Bradley then took the document to Mr Paulsen in Cloetesville. Mr Paulsen signed and stamped the document and gave it back to Bradley. Mr Langdon confirmed in his testimony that he organised for the backdating of the Cloetesville document. Ms Yvette Palm ("*Ms Palm*") a handwriting expert also confirmed in her testimony that when she received the specimen documents from the applicant for examination, the Cloetesville document was not commissioned. She only came to know about the commissioned documents when she went through the applicant's urgent application for the court to accept the will of 12 January 2019. Otherwise both the signed and unsigned

Cloetesville documents bearing the date 01 February 2018 were produced by Ms Palm when she gave evidence.

[56] Bradley testified further that while he was at Louisenhof, the applicant would always practice the deceased's signature on a piece of paper referencing from an original signature of the deceased. In making this effort, Bradley understood that the applicant was in the process of changing the will and the Cloetesville document to favour her. In their planning phase, the estate had to be wound up after the deceased's demise and everybody would get paid. However, it turned out that no one was paid in terms of the agreement reached with the applicant after they executed their mandate. Also, Bradley's company was re-instated immediately after the murder of the deceased and the applicant promised that his company will always have work on the farm. However, the applicant did not stick to her promises as his services remained unpaid.

[57] Martha Elizabeth Viljoen ("*Mrs Viljoen*") testified that she is the deceased's sister. Their mother Martha Elizabeth Smit ("*Mrs Smit*") passed away on 25 June 2015. The will of their mother was drawn by the deceased's financial adviser, Peter Steenkamp ("*Mr Steenkamp*") and signed by their mother on 16 March 2014. Shortly after their mother passed on, Mr Steenkamp received a strange document that was sent to him by snail mail. The envelope at the back was marked as originating from Elsabe Brink ("*Ms Brink*") in Gezina. Ms Brink is their cousin who resides and practiced as an attorney in Pretoria. The document was dated 31 March 2014 and purported to be a will that was drawn up by Mrs Smit that bequeathed her entire estate to the applicant and

R150 000.00 to each of her four (4) grandchildren. Mrs Smit's estate was worth about R7.6 million.

[58] Mr Steenkamp in his affidavit described the document as "suspicious" as it was sent to him without a covering letter and "a fraudulent cut-and-paste attempt by a novice." On having sight of the document, Mrs Viljoen and her husband appointed a handwriting expert, Ms Yvette Palm to examine the authenticity of the document. Ms Palm concluded that the document is a cut and paste process with several classical errors. Her findings were that the document was forged and not authentic.

[59] Ms Brink confirmed in her testimony that Mrs Smit was her aunt and the deceased and Mrs Viljoen her cousins. She is an attorney practising in Pretoria and resided in Gezina. The document dated 31 March 2014 was brought to her attention by Mr Steenkamp. She initially thought that it was a *joke* as the person who drafted it could not even spell her proper name, Elizabeth. It was unlike her precise aunt to have drawn up such document, having been surrounded by professionals in her entire life.

[60] Ms Brink denied ever seeing nor posting that document to Mr Steenkamp. At the time of the posting of such documents she was in Turkey. Her passport stamps indicated that she entered Turkey on 29 July 2015 and exited on 6 August 2015. It was not possible for her to have posted the document in South Africa on 5 August 2015. However, it was her testimony that the applicant knew her personal details at the time. She knew further that she travelled overseas.

[61] When this document was submitted to the Master of the High Court, it rejected this document as a will. As the applicant stood to benefit significantly in this document, Mr Steenkamp informed and encouraged her to obtain legal advice should she intend to object against the finding of the Master. At that stage, Mr Steenkamp had already filed the will of 16 March 2014 with the Master and it was accepted and registered as the last will of Mrs. Smit.

[62] Mrs Viljoen stated that the handwritten part on the document was clearly an attempt by the applicant to bolster the authenticity thereof. Her opinion was that the cut and paste portion must have come from a gift card that her mother sent to the applicant, as it was in her mother's nature to send messages like that. The applicant in her cross-examination of Mrs Viljoen suggested that the document that was found to be fraudulent by Ms Palm was not a will, but rather a "wish list" by Mrs Smit.

[63] Mrs Viljoen further corroborated the version of Bradley, on the incident in November 2018. On the day the deceased was drugged by the applicant with the tablets he was due to attend a family gathering at Mrs Viljoen's invitation. Mrs Viljoen's family celebrated her son who acquired his honours degree at Volkskombuis that weekend. The deceased, a punctual man was supposed to be in attendance, but he did not pitch. Mrs Viljoen contacted him on his cell phone and it was answered by the applicant who conveyed a message that he was tired and asleep.

[64] With regard to the two (2) documents, i.e. the Cloetesville document dated 01 February 2018 and the will dated 12 January 2019 that were relied to by the applicant in support of her entitlement to be appointed as an executrix, the two (2) independent handwriting experts concluded that both are forged documents. The applicant's handwriting expert did not substantiate his findings, though it supported the applicant's version. Her expert did not testify in these proceedings.

[65] Warrant Officer Susanne Mariesa Smit ("*Warrant Officer Smit*"), an analyst at the South African Police Services testified that she is an expert in identification of forgeries and alterations. On 25 June 2019, she received some exhibits, i.e. a copy of the will dated 12 January 2019, the specimen signatures belonging to the deceased, and a will dated 7 December 2018 from Sergeant Adams who is the investigating officer in a criminal case to examine these documents and make a finding on whether these documents were signed by the same person.

[66] In executing this task, she employed the ACE methodology i.e. **A** – Analysis (establishes distinguishing features or discriminating elements in specimens); **C** – Comparison (having identified the features, one compares if the two groups of writings have things in common or differ from each other); and **E** – Evaluation (if differences or correspondences were found, one adds weight to such features and come to a conclusion).

[67] Warrant Officer Smit in her examination identified five (5) points of differences. Based on the distinguishing features or discriminating elements that were identified, it was her conclusion that it is improbable that the signature in question (12 January 2019 document) was executed by the deceased.

[68] At the time of her examination, it was not put to her attention that the deceased's thumb was immobilised with a plaster bandage on 12 January 2019 as the applicant suggested so to Ms Palm. However, if there was such an injury, she would have expected to see tremor in his handwriting. The lines would be a bit shaky. There would not be a normal fluidity of the writing lines. In the deceased's signature there was none. In addition, it was her assertion that handwriting is a collection of habits and it is influenced by so many things, e.g. one's job, artistic nature and so on. It is therefore hard to break a habit. Even if one has a sore finger, only tremors would at least be visible, but one's habit would not break. For instance, the deceased in the specimen signatures was consistent in putting his signature on the base line. Whereas in the questioned document, the signature is floating in the air. Warrant Officer Smit could not gather how the applicant's handwriting expert, Mr Jannie Bester *("Mr Bester")* came to a conclusion that the questioned signature is a signature executed by the deceased based on the fact that his thumb was sore. There was no basis laid for such conclusion whatsoever in his report.

[69] Ms Buys testified that the deceased was invited to her friend's birthday on 13 January 2019. He poured wine for everybody around the table. As a left-handed person, he did not show any struggles in filling everybody's glasses. He executed the task with ease, as there was no visible injury in any of his thumbs. Ms Ingrid Joubert

corroborated this evidence and produced a document (a lease agreement that was signed by the deceased on 14 January 2019). In that lease agreement there was no difficulty observed or visible tremors in signing the document. In a situation where the applicant alleged that there were injuries to his thumb, surely some struggle in making the signature would have been identifiable.

[70] Ms Palm, the second handwriting expert to examine the same signature testified that she first had dealings involving the applicant in 2015. During that time, she received instructions from Mr Steenkamp, who was at the time the executor of Mrs Smit's estate to examine two (2) documents, i.e. the first being the Will dated 31 March 2014 and the envelope that was used in sending that by post. Those were the questioned documents. As could be gleaned from the these documents, they were apparently drawn two (2) weeks after Mr Steenkamp prepared Mrs Smit's will. This raised some question marks on Mr Steenkamp. What seemed strange in this document was that Mrs Smit disinherited her two (2) children. Her four (4) grandchildren would each receive an amount of R150 000.00 and the two (2) properties and the rest of Mrs Smit's estate would be inherited by the applicant.

[71] Ms Palm testified that she received the document printed on a yellowish-tinted bond paper – the ones previously used for a covering letter. The document was folded in squares in the length of a paper. It was printed by means of a toner-based process. This could be achieved by a laser printer (computer printer) or a photocopier. The toner particles were observed in the pen or ink lines or supposedly, ink lines (instead of it being a ballpoint pen or a fibre tip pen or a porous-tip pen). All the signatures were toner-based signatures – meaning they were not original. In Ms Palm's view, all

information that appeared on that document were copies information or toner-based information.

[72] *Firstly*, the *"Zurina Smit"* information (handwritten information) was an inserted information. She could clearly identify the handwritten *"aan Zurina"* as superimposable, i.e. it was the exact replica of the other. No human being can write exactly alike twice in a row. Every time a person writes there are small deviations in the handwriting. That can be due to various circumstances, for example heat or cold on that day, the type of paper, when one writes on the paper, the type of a writing instrument and so on. This is because one's handwriting is embedded on the person's sub consciousness mind. This is what a person has been taught all his / her life and the hand executes the information. With the signals being sent from the brain to the hand, there are slight delays within the firing of certain accents, and small deviations are created within a certain parameter. *Secondly*, when one takes *"Smit"* from handwritten *"Zurina Smit"* and "Smit" from handwritten *"M.E. Smit"* and put those two surnames on top of each other, they are exactly the same. Ms Palm's observation was that everywhere on that document the signature is superimposable. This means that one of those surnames was derived from the other. *Thirdly*, the letter Z on *"Zurina"* appearing in the middle of a document and Z on *"aan Zurina"* at the bottom of the document has a trash mark in the top bar of the Z. Clearly, those two names, Zurina are superimposed. In other words, the Zurina Smit was a reconstructed peace of information derived from Mrs Smit's signature and from the little note or card that was addressed to Zurina by Mrs Smit. The two were compiled and composed to form Zurina Smit.

[73] It was Ms Palm's evidence that from the forger's point of view to transfer a piece of information by cut and paste, to legitimise a document was not a good move. In fact, Ms Palm described this move as "amateurish." Ms Palm's conclusion on the document dated 31 March 2014 was that it is not an authentic document, but a reconstructed document by means of a cut and paste process.

[74] The second document she received at the end of 2019 was an envelope that enclosed the aforementioned document that she concluded that it was reconstructed by means of a cut and paste process. At the back of the envelope it reflected that it originated from: *Elsabe Brink P.O. Box 26530 Gezina 0031.* This document was sent for the attention of Mr Steenkamp. However, the striking part is that the stamp impression where it goes through the postal services and / or registered is Cape Town. This means that it entered postal services for the first time in Cape Town. Notably, this envelope simply enclosed a will (reconstructed document by means of cut and paste) and there was no covering letter.

[75] Further, during that period the applicant's attorney furnished Ms Palm with a third document, that is, a one-page document signed on 12 January 2019 for her opinion on its authenticity. When she received instructions from the applicant's attorney, the applicant also attended at her office on 20 November 2019 with a donation document/will (Cloetesville document), which did not have a certification stamp. It was patently clear that the document was photocopied. When Ms Palm asked for the original document, the applicant's response was that such document must be the original document because it was taken out of the Bible by the *dominee*. Ms Palm put

the document under a microscope and pointed out to her that it was a photocopy and not an original document.

[76] Ms Palm further requested the applicant to obtain specimen signatures from that period and asked further if there were any injuries, illnesses or medication that the deceased used that should be brought to her attention. Nothing of note was provided by the applicant. The applicant then left the photocopied document with her.

[77] Subsequent to that meeting, on 18 December 2019, Ms Palm received a certified copy of the same document and was advised that there is no original document. Included in that batch were the documents containing the specimen signatures and the doctor's prescription note stating all kinds of medication that the deceased was on. No mention of injury was made at that juncture.

[78] When Ms Palm was insistent on being furnished with an original copy of the will, the applicant advised her that on her journey moving from one attorney to the next, making photocopies for them, one of the attorneys must have left the original copy on the glass bed or in the photocopy machine. Perhaps it was thought that the copy that came out was the original copy. Ms Palm received about 28 specimens from the applicant, which were said to have contained the deceased's signature.

[79] On 6 May 2020, Ms Palm received further documents from the investigating officer. This was after she figured out that some of the applicant's specimens were contaminated and she was cautious not to use them.

[80] Ms Palm, in examining the deceased's signature, she identified sixteen (16) fundamental differences in respect of form, construction and execution of the signature. Those differences were not caused by illnesses as the specimens from the same period would have resulted in the same type of phenomena that was excluded. Ms Palm was able to conclude with confidence that the signature in the document dated 12 January 2019 is a forgery and therefore not authentic. The findings were therefore communicated to the applicant and her attorney.

[81] Upon issuing her report to the applicant shortly thereafter, she was presented with three (3) affidavits. The deponents to the affidavits stated that they observed a left thumb injury to the deceased. This was followed by Jannie Bester's report, which requested Ms Palm to reconsider her report. On her reconsideration of her report, Ms Palm first, decided to discard all the specimens that were furnished to her by the applicant (specimens) as she suspected that some of them might have been contaminated and / or not authentic signatures and relied on the specimens that were provided by the police (SA specimens). Second, she considered the effect that the thumb injury could have had on the signature, and third, was to comment on the facts that were made known by Mr Jannie Bester, the applicant's handwriting expert.

[82] According to Mr Bester's findings, "the observable handwriting differences are not considered to be of a fundamental nature, but is attributed to the injury and immobility of the left thumb by the writer." Ms Palm strongly disagrees with such sentiments. In her view, Mr Bester made a finding without motivating on how he made that conclusion. That was the same observation that was made by Warrant Officer Smit in her findings.

[83] On this occasion again, Ms Palm employed the ACE methodology in examining the SA specimen signatures. Once again, she found 15 – 16 fundamental differences between two (2) sets of signatures. She went on to conduct an experiment, selecting random people to make a signature with the normal grip of a pen, and without the normal grip (without using a thumb) to sign. The outcome was that there was no difference between the signatures. The signature did not produce any unnatural pen lifts, unnatural hesitations, retouching and so on. Notably, the signature was a bit bigger than the original one, however, remained the same without variations. Ms Palm then concluded with conviction that the handwriting differences on the document dated 12 January 2019 are a product of forgery, and not that of an injured thumb of an author.

[84] Ms Palm was asked to comment on the lease agreement that was signed by the deceased on 14 January 2019 – whether a seriously injured thumb would have been able to write in such a small print. It was Ms Palm's opinion that the writing is consistent with the deceased's writing on any other normal occasion. It was Ms Palm's opinion that Mr Bester's methodology is not the internationally – accepted standard for

document examination. The conclusion he reached, the terminology that he used is not consistent with internationally – recognised literature or standards.

[85] The applicant stated during cross-examination that her first meeting with Ms Palm was 24 June 2019, she was advised by Mr Cornel Stander to take the will to Ms Palm in order to ascertain whether it was an original document and whether the signature was that of the deceased. That was confirmed by Ms Palm and she further explained that, that was the day the applicant signed her fee agreement.

[86] Further, the applicant stated that after having been advised by her attorney on Mrs Smit's alleged forged will, she wrote to Mr Steenkamp and the Master of the High Court distancing herself from the document dated 31 March 2014 as it was quite upsetting to her.

[87] With regard to the Cloetesville document dated 1 February 2018, the applicant put to Ms Palm that she provided her attorney, Ms Barlow with a certified and uncertified version as she discovered them in that state. There was nothing sinister with those two documents. Her explanation was that she discovered these documents in their travel documents in a filing cabinet in the office. Ms Palm then pointed out that the document she received consisted of two (2) pages dated 1 February 2018. It was an original document. If it was in a passport, surely it would have fold marks. The one she received did not contain any fold-marks.

[88] Mr Hermanus “Manie” Rossouw Malan (“*Mr Malan*”) was the deceased’s financial adviser. He started with the deceased’s investment portfolio in 2009 / 2010. Mr Malan had review meetings with the deceased every six (6) months. He worked in conjunction with Mr Steenkamp who was the deceased’s estate planner and advised on wills, trusts and winding up of the estates. When Mr Steenkamp relocated to Montague, and Mr Jacque De Villiers took over his functions. However, Mr De Villiers has since died from Covid 19.

[89] Mr Malan was aware that Mr De Villiers was responsible for the will of the deceased dated 7 December 2018. He knew the deceased’s thoroughness when it comes to finances and estate planning. The deceased was careful, cautious and well-structured in any decision making process. He did not take decisions haphazardly. He relied on the input of experts where his knowledge was limited, hence he made use of specialised people in different areas with regard to his finances and estate. He would consult frequently and did not make decisions in a rush.

[90] On having sight of the Cloetesville document, it was Mr Malan’s opinion that the writer thereof did not have a clue on how trusts function. For instance, that document gave power to the applicant, powers to dismiss the trustees. In his opinion, the trust deed does not allow for that to happen. A trust is a legal entity, it is not incumbent upon the deceased to grant a special power of attorney to the applicant to control the trusts.

Further, it is not competent for the applicant to dismiss the trustees single-handedly without the trustees having made a resolution as such.

[91] Strangely, the Cloetesville document instructed Mr Malan and Mr De Villiers to transfer R5 million to the applicant without delay, over and above the life insurance policy. This had to be transferred to the applicant's private account to enable her to continue with safe accommodation, including close safe protection. According to Mr Malan, if the document was drawn on 1 February 2018, the deceased would have discussed it and what he needed to do with him in their April 2018 meeting. Nothing of that sort happened in their subsequent review. This document was not discussed even in their previous meeting in October 2017.

[92] Mr Malan, in addition, stated that it was not open to the deceased to give away the Louisenhof farm to the applicant as a wedding gift in circumstances where he did not own the farm. The applicant was not a capital beneficiary to the trust that owned the farm. Throughout the years, the immovable property was earmarked for the deceased's daughters and the applicant was entitled to a right of occupation on the farm or elsewhere – or the property that previously belonged to Mrs Smit. In his knowledge, the two (2) daughters and their descendants qualify as capital beneficiaries.

[93] Mr Malan testified that in November 2018, the deceased advised him that there was a theft in his safe of an amount of approximately R300 000.00 and a firearm. On 18 November 2018, the deceased contacted Mr Malan and advised that he intends to change the beneficiary nomination on his life policy and / or cancel the policy. On 29

November 2018, he sent a WhatsApp message requesting him for a meeting with his auditor, Mr De Villiers with regard to his will and policies. Normally, he would meet with the deceased in Louisenhof farm. However, on 4 December 2018, he offered to come to his office, which he did.

[94] At their meeting, the deceased wanted his life policy to be cancelled. If it cannot be cancelled, then the nominated beneficiary should be the Watergang Trust and not the applicant. That would mean that the applicant did not receive any inheritance from the deceased. Mr Malan advised him against cancellation of the life policy as there would not be enough money to live on for the applicant, should the deceased die. He wanted the applicant to stay on as beneficiary from an estate duty point of view. As the applicant is his wife, should he die, the estate would receive a Section 4(q) estate duty deduction. In the opposite, should the trust become the beneficiary of the life policy, the proceeds would form part of his estate and would forfeit the Section 4(q) deduction. This means the R7 million life cover would be taxed.

[95] The suggestions by Mr Malan were discussed by the deceased and Mr De Villiers. When Mr Malan returned to the consultation room, Mr De Villiers suggested that the beneficiary nomination should be split 50 / 50 between the applicant and the deceased's ex-wife, Esmé Smit, since the ex-wife would have a maintenance claim against the deceased's estate in the event of his death. The beneficiary nomination was changed as such and the applicant and Esme Smit would each receive half of that R7 million cover.

[96] Mr Van Staden confirmed in his testimony that he started doing legal work for the deceased in 2011. At some point, he had a discussion with him regarding his will at the tasting room. His response was that he need not to bother about that issue, it is well taken care of. It was later on in his dealings with the deceased that he came to understand that Mr Steenkamp and Mr De Villiers dealt with his estate planning and wills.

[97] Notably, Mr Van Staden pointed out that all these queried documents had same features, that is the applicants will of 12 January 2009, Mrs Smit so-called wish list dated 31 March 2014, Cloetesville documents dated 01 February 2008 all consist of one (1) page and all have one (1) winner, i.e. the applicant. They do not follow the deceased's disposition in his wills that were drawn in succession in 2009, 2014, 2016 and 2018 respectively. All of these wills follow the same wording, pattern, a couple of pages and include obligatory legal clauses. It is therefore clear that the document where the applicant is the biggest winner were drawn up by a layperson as they did not take into account the legal stipulations of trusts.

[98] It was stated by Mr Van Staden, that Mr De Villiers who is the executor of the deceased's estate has since died. The daughters have given nomination and / or consent for him to replace Mr De Villiers as an executor of the estate should the Court find in favour of the daughters. It was stated that all probabilities point to the fact that

the applicant forged the two (2) wills i.e. the deceased and that of his mother's and the Cloetesville document.

[99] The applicant testified in support of her case and called one witness, Mr Bartholomeus Jacobus Willemse ("*Mr Willemse*").

[100] Mrs Zurenah Smit confirmed that she is the applicant in these proceedings and the widow of the deceased. She loved the deceased dearly and misses him. To her, he was not only a husband but a soul partner. Her entire life was shattered within a few minutes on the day he was murdered. No worldly possessions could replace him. She could only survive on the memories they have created in their eighteen (18) years of marriage.

[101] From the day she discovered the will of 12 January 2019 in the office, she approached Sergeant Adams for clarity who then advised her to consult an attorney. This discovery was before the funeral and the will was inside the deceased's diary. To be specific, it was on the day she and Ms Buys went to the office in preparation for the funeral when she made the discovery. Ms Buys was in the front section of the house and the *dominee* was concentrating on the scriptures in the Bible. She did not advise any of them about her discovery. She merely put the will inside the diary and put the diary in the side drawer.

[102] The applicant decided to seek advice from Sergeant Adams as he previously mentioned to her that Mr De Villiers had furnished him with a will. It was after Sergeant Adams' advice that she contacted Ms Candice Gabriel at Webber Wentzel Attorneys who then referred her to another attorney who deals with estates in Techno Park Stellenbosch. Later, she went on to Mr Stander who assisted with her police statement and then referred her to Ms Palm to ascertain if that will was authentic. Ms Palm took some time to revert with her report as she was said to be in Israel. She then returned in March 2020.

[103] When Ms Palm returned from her trip, her attorney was Ms Sonja Barlow and had already been advised to file an application by the lawyers for an order for the Master to accept and register that will. This application was motivated by the fact that she had no financial income and further needed to do some medical procedures, which required her to at least have a medical aid.

[104] Based on Mr Jannie Bester's report she was convinced that the said will was signed by the deceased as his opinion was that "No two specimens are absolutely identical." His further input was that "Based on natural handwriting variation, no two writings by a writer is identical." Taking into consideration the injury of the deceased's thumb, there is a possibility that his signature might be different. It may then be possible that there may have been variants of the deceased's signature.

[105] The applicant did not oppose Ms Palm's 15 or 16 points of differences that were noted by her in the questioned signature. It was his opinion that the injured thumb could have altered the deceased's signature. In fact, the applicant said, the will was taken to Ms Palm out of caution. She did not expect to inherit anything that is not due to her.

[106] With regard to her being suspected of forging the deceased's mother's signature and the document dated 31 March 2014, the applicant denied ever having knowledge of the information contained in that document. She denied having full knowledge of Ms Brink's details. In her testimony, she only visited Ms Brink once in her office in Pretoria and has never set foot in her residence. She only knew her as a family relative. She was not close to her. It cannot be said that she had knowledge of the description of her mother-in-law's properties as those were managed by her husband. The deceased kept all the documents pertaining to the properties in the safe and she had no access to the safe.

[107] The applicant stated that it would be an insult to her to suggest that she falsified and / or forged a will for her benefit. To her knowledge, her mother-in-law had already bequeathed her estate to her children during her lifetime for them to manage their respective properties. To suggest that she wanted to enrich herself is totally absurd. In fact, when she read the note at the bottom of that document, she was in tears as her mother-in-law has her way of saying, *thank you*. She was always grateful for having a family that cared for her.

[108] When this forged document was put to her attention, she sought advice from her attorney and he said she should write to Mr Steenkamp and the Master distancing herself from such document and she did exactly that.

[109] Now, having read the contents of the will of 12 January 2019, she knows her husband to be a fair person. He would decide on doing something, but change his mind, sometimes a few times in a day. If he decided to change other wills and grant his wishes on this will that would be his ultimate wishes.

[110] The applicant confirmed that she has no knowledge of the trusts and their structure. She was not involved in their management. She would only comment when the deceased wanted her opinion on something that was discussed at the meeting. At the end, he made all the decisions. For instance, at their holiday in December 2018, he mentioned that he was not happy with the will he did with Mr De Villiers. He then went on to say she must not worry, there would be enough for everybody to inherit. However, he mentioned that he made many changes, but there would be enough for all to retire comfortably.

[111] The fact that it was said that she is “unfit” or “unworthy” to inherit from her husband’s estate is a bit puzzling to her. Throughout her marriage with the deceased, there was no animosity between the two of them, they lived a happy life and hosted

friends at their home quite often. She did not understand the basis of her disqualification from inheritance. She did not participate nor instruct anybody to harm her husband. She denied Bradley's version that they planned the murder of the deceased together. In fact, the murder of the deceased came at a happy phase in their life when they were planning to go and retire abroad. She had no other vision of life other than spending life with her husband. The applicant stated that this Court should allow her to carry out her husband's wishes as stipulated in the will.

[112] The applicant maintained during her cross-examination that the intruders gunned down the deceased. Bradley falsely incriminated himself and his stepbrother, Mr Sait and Mr Damon in the murder of the deceased. The applicant confirmed further that she had a good relationship with her mother-in-law. She cared for her until her last days. She was aware that an amount of R200 000.00 went missing from her mother-in-law's bank account. They discussed the issue as a family. Apparently, there was an amount of R2000 that was withdrawn at regular intervals from her mother-in-law's credit card at Die Boord Spar, Stellenbosch Square. The applicant frequently visited Die Boord Spar for her groceries. Coincidentally, during the period of withdrawals, the applicant and the deceased went overseas for a month and the withdrawals stopped from Mrs Smit's bank account. The applicant could not recall such occurrence as she had no recollection of dates.

[113] Further, the applicant agreed during cross-examination that Mrs Smit had no reason to disinherit her biological children. She agreed that the will of 31 March 2014 was a fraud. The applicant, however denied that she fraudulently drew up that

document. It was strange that some witnesses said her marriage with the deceased was unhappy. For instance, Ms Serdyn and Carinus are merely Councillors from the municipality, they had no business in their private life. Knowing her husband as a private person, it is unbelievable that he said he regretted the day he married the applicant and that he should have listened to his mother.

[114] The applicant disagreed with Sergeant Adams that the murder of the deceased was an inside job or an “in core” business. She disputed Colonel Benekes’ testimony that the murder was an “in core” business. She disputed Bradley’s version on how they planned the murder. Also, she disputed that she bought Bradley clothes at Cape Union Mart or a cologne worth R3000.00 or gifted him with money. She was not aware that Bradley suffered from insomnia and therefore used tablets in November 2018. The applicant did not dispute having meetings at different hotels. The explanation was that Mr Sait was assisting in the investigation of her daughter’s attempted murder. The deceased did not approve meetings of such nature at their house during their working hours, hence she took Bradley and Mr Sait to the Raddison Blue Hotel, Lord Charles Hotel and Protea Hotel. To her, there was nothing unusual. It did not matter to her that they met in a hotel bedroom with Bradley. She denied having softened Bradley with gifts and money in order for him to succumb to her demands. The applicant agreed that her husband was a rich man, but they built that wealth together. However, their marriage was not based on money.

[115] The applicant condemned the respondent’s evidence to the fact that the Cloetesville document was backdated. She agreed that this constituted fraud.

However, she declined suggestions that there is a huge benefit or inheritance she should receive based on that document. She further refused to comment on the fact that the immediate payment of R5 million that the Cloetesville document instructed was tied with Bradley's evidence that he and Mr Sait were each to receive R2 million after the killing of the deceased.

[116] She declined to comment further on the version that she practised the deceased's signature after his death. She did not find it peculiar that Warrant Officer Smit and Ms Palm found the deceased's signature on the will to have been forged. She could not give a clear answer where the original will went missing, as she had different versions. She denied having supplied Ms Palm with contaminated specimens when the will was sent to her for her professional examination. She denied submitting the Cloetesville document as part of specimens to Ms Palm so as to legitimise the forged signature on both documents.

[117] The applicant disputed that she convinced Bradley at their hotel meetings that she will change the deceased's will in order to ensure a huge inheritance. In fact, according to her this never happened. She further disputed that she used Ms Allerman in order to conceal her involvement in the deceased's murder. The applicant flatly denied that she tried to get the deceased to go out of the house and the deceased refused on three (3) occasions when they had dinner with Ms Allerman. She however conceded that she shifted the lock at the door when she went to look for the bag to pack bread in for Ms Allerman. It was not explained by the applicant why she decided to open the door after having had security threats at the farm. She disagreed with the

fact that her opening the door was in line with giving access to the assailants to house, and that ties up with Bradley's version that they planned that a sign would be given by her when it is the right time for them to come in as she would keep the doors open. She vehemently denied being part of the plan to murder the deceased. She denied falsifying and / or forging the three (3) contested documents, for her benefit in the deceased and Mrs Smit's estates. In any event, she stated that there are no grounds whatsoever prohibiting her to inherit in her late husband's estate.

[118] Mr Bartholomeus Jacobus Willemse *("Mr Willemse")* testified that he observed Ms Joubert removing documents from the office. He then reported the incident to Bradley. He did not identify the documents that were removed from the office.

Issues for determination

[119] There are seven (7) points that served before this Court for determination and could be identified as follows:

119.1 Whether the contested documents allegedly signed by the deceased, Wynand Stephanus Smit after 7 December 2018 are authentic;

119.2 Whether the applicant was involved in the forgery of the deceased's mother's will in 2014;

119.3 Whether the applicant should be declared unfit to inherit from the deceased based on her complicity in his murder on 2 June 2019;

119.4 Whether the applicant should be declared unworthy to inherit or receive any benefit from the estate of the deceased;

119.5 Whether the applicant should be interdicted to act as executrix in the estate of the deceased;

119.6 Whether the applicant should be interdicted to act as a trustee in either or both of the trusts, namely, the W.S. Smit Watergang Trust [IT 1112/92] and the Ribbok Heuwels Trust [IT 1624/93].

119.7 An appropriate order regarding costs.

Submissions

[120] Mr Raubenheimer for the respondents submitted that in order for this Court to determine whether the Master of the High Court should accept and register a copy of the contested will, there are four (4) points that need to be addressed for the Court to declare the applicant unworthy to take any benefit under the deceased's will. They are as follows:

120.1 Is the murder the only crime that leads to unworthiness;

120.2 Is the attempted forgery of the Will of the deceased's mother, Martha Elizabeth Smit in 2014 to 2015 to be taken into consideration in deciding whether the applicant is unworthy to inherit from the deceased? How must the *conjunctissimae personae* be determined;

120.3 What is the onus of proof applicable in this civil matter to determine whether the applicant is guilty of a criminal offence to qualify her as a person unworthy to benefit;

120.4 If the applicant is found to be an *indigna* (unworthy), does she also forfeit her right to claim maintenance from the estate of the deceased resorting under "any benefit."

A Is murder the only crime to determine unworthiness?

[121] It was the respondents' submission that Bradley testified about a strange string of meetings he had with the applicant to plan the heinous act. The applicant in those meetings constantly asked when the execution would take place. She sounded demanding and desperate. They considered all the options available, whether to set up the execution in a public road or at home.

[122] For the execution services, the applicant offered Bradley and Mr Sait, R2 million each; Bradley would receive a permanent residence at Louisenhof and Mr Sait would receive a tract of land in the farm. It was on these benefits that Bradley and Mr Sait committed themselves to the execution. Mr Sait's brother-in-law, Mr Damon was also robed in. In an attempt to explain Mr Sait's presence in Bradley's suite, on the night of the murder, they sent an email in connection with a civil matter that Bradley was involved in and in which Mr Sait assisted him. The final meeting before the murder took place between Mr Sait, Bradley and the applicant took place at Bradley's suite. The applicant was convinced by Mr Sait to invite a guest for dinner to have a witness of her non- involvement in the deceased murder. The applicant then invited Emilia Allerman.

[123] Other than a bare denial, the applicant could not explain herself out of the planning and the actual murder of the deceased as testified to by Bradley. Reference was made to *Danielz NO vs De Wet and Another*[4], where Mrs De Wet had paid a certain Benting to assault her husband so severely that he would be confined to a wheelchair. She left the front door of their house open. Her husband was shot eighteen (18) times, thereby killing him. Mrs De Wet was convicted of assault with intent to do grievous harm and conspiracy to assault the deceased. She was acquitted on charges of murder.

[124] Traverso AJP in this matter did not find it necessary to rely on a specific ground upon which the Court would hold a beneficiary to be unworthy to inherit. In paragraph [38] of the judgment, the Court stated: *"The grounds are not static and the common law should be developed to include these grounds that presently offend the boni mores of society"*. It seems the Court was bastioned in this view by the approach in *Taylor v Pim*[5], where Bale CJ cited Domat as saying *"the causes which may render the heir unworthy of succession are indefinite, and the discerning of what may or may not be sufficient to produce this effect depends on the quality of the facts and circumstances."*

[125] In *Taylor v Pim (supra)*, Pim supplied the deceased with liquor although it was forbidden by her medical advisor. He continued doing so during her illness until her death. The Court declared him unworthy to succeed. At page 493 of this judgment, Chief Justice Bale stated:

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[4] 2009 (6) SA 42 (C)
[5] 1903 NLR 484 at 492

"*But if there should happen any other case where good manners and equity should require that an heir should be declared unworthy, it would be just to deprive him of the inheritance.*"

[126] It seems this approach by Traverso AJP did not sit well with scholars such as Michael Wood-Bodley and in his article in *The South African Law Journal* [6] he analysed this judgment. In fact, he seemed to be criticising the approach adopted by Traverso AJP in *Danielz (supra)* and comparing it with that of Steyn J's judgment in *Ex Parte Steenkamp*[7] on whether it is permissible to extend the grounds of unworthiness. Steyn J in her judgment pointed out that declaring a person to be an *indignus* involves a taking away and consequently any extension of the categories of unworthiness would be oppressive and odious. According to this author, *"it was unfortunate that Traverso AJP did not consider Steyn J's argument in her judgment"* (at p33).

[127] Steyn J refused to follow *Taylor v Pim (supra)* where it was stated that the causes which may render the heir unworthy of succession are indefinite and proffered the reason that it was mentioned "terloop" (obiter) (750H) and thus not authority for the expansion of the known grounds of unworthiness. In *Ex Parte Steenkamp (supra)* the son-in-law murdered his parents-in-law. The murderers' children were the sole heirs to the grandparents' property. One grandchild died intestate. Steyn J held that the murderer was entitled to succeed to such child's estate. It was Steyn J's view that there

[6] Forfeiture by a Beneficiary Who Conspires to Assault with Intent to do Grievous Bodily Harm: Danielz NO v De Wet 2009(6) SA 42 (C) – Michael Cameron Wood-Bodley Senior Lecturer University of KwaZulu Natal SALJ Page 30
[7] 1952 (1) SA 744 (T) (at 751H)

was no need to expand the grounds of unworthiness and that our common law made sufficient provision or direct provision for the grounds of unworthiness to be applied (at p751A).

[128] Michael Wood-Bodley questioned whether the radical departure from the status *quo* envisaged by Traverso AJP is wise or justified. According to him, it would be better if changes were incremental and limited to circumstances analogous to the existing grounds of unworthiness (at page 34). In his opinion, "Traverso AJP's approach of applying the principles governing unworthiness seamlessly across the various areas of law may prove to be controversial (at page 37). The author warned that this Court's approach has been a "major departure from the way unworthiness has been treated in other cases. If this approach is correct we are not limited to specific categories of unworthiness recognised by the old authorities …" In this respect, he opined that the decision is on shaky ground.

[129] This analogy was refuted by Mr Raubenheimer in his submissions on the basis that the development of common law by Traverso AJP was not incremental. A strong indicator that Traverso AJP was correct in her approach was demonstrated in *Pillay and Others v Nagan and Others*[8] in which McCall J found that where a person forged a will, public policy demanded that he be regarded as unworthy of inheriting either by testament or intestacy. The judge in *Pillay (supra)* refused to follow *Steenkamp (supra)* and ordered *inter alia* that "the first defendant is unworthy of taking any benefit from the deceased." It was therefore argued that the *Danielz (supra)* decision is to be preferred.

[8] 2001 (1) SA 410 (D)

This Court should not only consider the complicity of the applicant to the murder of the deceased, but also the forgery of the will to declare her unworthy of taking any benefit from the deceased.

The conjuntissimae personae

[130] Mr Rubenheimer asserted that in *Ex Parte Steenkamp,* the court stated that the barometer to be applied is that of *conjunctissimi*, that is, the next of kin. According to the common law, any person who murdered a *conjunctissimae personae* of the deceased is unworthy to inherit from him. The writer, Matthaeus, was not prepared to include the testator's brother's murder for these purposes (Ex Parte Steenkamp p752). Steyn J stated that the relationship between grandparents and grandchildren are further removed than those of brothers. Brothers, according to the said judge, share the same roof of the house.[9]

[131] It was submitted that if the applicant can forge or attempt to forge her mother-in-law's will and thereby causing or attempting to cause her sister-in-law to lose her flat, according to the common law and *Ex Parte Steenkamp (supra),* the applicant would not be unworthy to inherit from the deceased, but only if the deceased was to lose his part of the "furniture and household effect."

[9] Ex Parte Steenkamp at p 752 A - B

[132] Corbett[10] summarised the legal point as follows:

> "*The rule, however, that a killer is not precluded from inheriting from the heir of the victim is subject to an exception. If the victim and the victim's heir are persons closely linked by ties of relationship or marriage (conjunctissimae personae), a crime against the one is regarded as an attack against the other and the killer will be considered disqualified from inheriting from either on the ground of unworthiness. It seems that only the testator's spouse, parents and children are considered to be conjunctissimi and that the testator's brothers, sisters and grandchildren or remoter relatives would not be included.*"

[133] In this instance, this Court was asked to take cognisance of Count 3 of the Indictment in the pending criminal matter. During the period of March 2014 – August 2015, the applicant unlawfully, falsely and with intent to defraud and to the prejudice of the deceased and others forged the document (Exhibit D p55-56) that removed the deceased as beneficiary under the will of his mother. Regard having been had to the evidence of Marelize Viljoen, Elsabe Brink and Yvette Palm with regard to the fraud committed by the applicant, on a preponderance of probability it has been proven.

The onus of proof required

[134] It was the daughter's submission that the applicant's unworthiness to inherit, despite the criminal charges against her, remains on a balance of probabilities. In

[10] The Law of Succession in South Africa by The Hon M Corbett et al, Second Edition page …

Yassen and Others v Yassen and Others[11], in an action to declare the son, Ahmed unworthy to inherit where he allegedly concealed a will that was a criminal offence, Harcourt J found that the onus of proof was on a balance of probabilities as it was a civil case. Further, the Appellate Division in *Ley v Ley's Executors*[12] summarised the onus with reference to other cases as follows:

> "… *that our law does not know any onus other than the ordinary one in civil cases. All those cases show that, no matter how serious the allegation of fact may be, the onus of proving the fact is, in civil cases, discharged on a preponderance of probability …*"

It appears that the onus remains the same and has not changed.

Should the applicant be declared to be unworthy of taking any benefit including her right to claim maintenance

[135] In their article, *Corbett et al (supra)* raised a question whether the *indigna* is entitled to claim support from the estate of her spouse. In their conclusion, they stated that the question is considered an open one. It was argued that maintenance is a benefit that a spouse is entitled to in terms of the Maintenance of Surviving Spouses Act 27 of 1990. Our common law and case law has a goal to ensure that the wrongdoer and murderer in no way should benefit by his / her wrongdoing. The respondents emphasised that it would be unjust if the murderer could enrich herself by

[11] 1965 (1) SA 438 (N) at 441 H and 442 C
[12] 1951 (3) SA 186 (A) at 192 H

killing a husband and claiming maintenance from his estate for the rest of her life. In *Casey N.O. v The Master & Others*[13], it was stated that law and public policy require that the applicant should forfeit the benefits of maintenance against the deceased's estate. The most gruesome fact is that a well-planned murder, the callous execution and the applicant's subsequent conduct does not only disqualify her to inherit from the deceased, but also to receive any benefit, including maintenance.

[136] The applicant denied that she murdered the deceased. It was her contention that such allegations are based on relentless and unsubstantiated slander and accusations that she murdered her husband. The accusations resulted in the belief by the trustees and beneficiaries of the trust that she is not fit to inherit from her late husband.

[137] It was the applicant's view that Bradley has failed to prove that she murdered her husband. His knowledge of the events on the night of the murder are surprisingly vague and did not back his statement that she was involved in the murder.

[138] The applicant argued that the will that she applied to this Court to accept went missing on 24 June 2019 at 7.30 am. Ms Joubert removed documents from the office to the car and when Mr Willemse asked her to return the documents, she refused. The disappearance of this will could be attributed to her removal of the documents.

[13] 1992 (4) SA 505 (N) p507C

[139] With regard to the questioned signature on this will, the applicant contended that Mr Bester's report confirmed that the signature in the will was that of the deceased although Ms Palm had a different opinion. It would therefore be an injustice if this Court would reject her version based on an "inconsistent signature."

[140] This Court, the applicant said, should take into account that the deceased nominated her as the 100% beneficiary of his retirement annuity, she shared 50% benefit of the deceased life policy, which was meant to take care of maintenance obligations towards her; the deceased made a donation to her and her grandchildren of R1.2 million in 2017; the deceased made a promise at their wedding ceremony that a dowry settlement would be made at a later stage; that the deceased will always take care of her; that the deceased gifted her with a beautiful diamond ring for her birthday in February 2019; that the deceased took care of her every need and they went on annual overseas holidays; and that the deceased stood by her in all her medical procedures. They cared for each other as a family including her two (2) step-daughters and her mother-in-law unconditionally. The deceased shared his wishes of moving overseas, he shared a picture of a house he wanted to purchase in Latvia, however she was saddened by Ms Buys denial of the deceased intending to move overseas with her. In the applicant's view, a signed and certified donation affidavit (Cloetesville document) where the deceased expressed his wishes, should anything happen to him should be taken into consideration. It would not have been the deceased's intention to exclude her from inheriting from his estate.

[141] The applicant decried the inhumane treatment she received from the trustees in the last three (3) years. She has been locked out of her place of work and home. The trustees neglected their bare minimum duties of ensuring that she received maintenance, despite her request for assistance.

[142] It was the applicant's submission that in the absence of any substantiated evidence of her alleged wrongdoing, this Court should accept the deceased's last Will and she should be appointed as executrix and a trustee and as beneficiary together with her two (2) step-daughters. The respondents should be ordered to pay costs based on the fact that as a spouse of the deceased she was compelled to report the estate to the Master having in hand the deceased's last will. It was so unfortunate that frivolous civil litigation was brought against her by the respondents in a relentless and malicious manner.

Analysis

[143] This matter is novel in the sense that the maxim "*de bloedige hand does not inherit*" was raised by the respondents even before the start of the criminal trial or without a finding of guilt of the applicant by the criminal court. In most cases, the maxim is used as a compelling reason to disinherit the party whose hands are bloodied after the pronouncement by the criminal court. The application in this matter served before this Court before arrests were made, that is, five (5) months after the death of the deceased.

[144] It appears that a certain level of doubt was created even before the applicant reported the estate on the veracity of the will. In the applicant's own evidence, the first attorney she approached to assist her in reporting the estate having in hand a will dated 12 January 2019, suggested that she must appoint a handwriting expert to examine whether this will was signed by the deceased. At that stage, the Master had no sight of the will and this application was not yet drawn and the deceased's daughters had not opposed the acceptance and registration of the will by the Master. When the Court probed for clarity on what necessitated this "expert examination" having been the deceased spouse of some eighteen (18) years and was armed with a will and would have known better how her husband took care of the affairs related to his estate. Why would her own attorney suggest so? The response was that "the attorney wanted to be sure that the document was the applicants' late husband's will".

[145] Indeed, the applicant approached Ms Palm with the will on 24 June 2019. On the same day, Ms Palm advised her that the document she had was not an original document and requested her to furnish an original copy. According to the evidence presented, the original copy was not forthcoming and Ms Palm then travelled to Israel without being furnished with the original copy. When Ms Palm insisted on the original copy of the will, the applicant was adamant that the document she handed her should be an original will. On another occasion, she suggested that from moving from one attorney to the next, the original copy might have been left on the glass bed of the attorney's photocopy machine. At no stage at that time did the applicant suggest that Ms Joubert removed it with the pile of documents from the office, as she wanted this Court to believe during her testimony.

[146] On 20 November 2019, the applicant attended at Ms Palm's offices with the similar copy of the will. She insisted that it should be an original document because it was taken out of the deceased's Bible by a *dominee*. Ms Palm was adamant that this was a copy having showed her under a microscope previously. The applicant was further requested to furnish specimens signatures for purposes of comparisons.

[147] On 21 November 2019, the applicant filed this matter on an urgent basis for the Court to order that the Master of the High Court accept and register such document as the deceased last will and testament. On being questioned by the Court why the application was made on an urgent basis having Ms Palm on the other hand in a process of examining the same document in order to ascertain that it was authentic, the response was that she had no income and needed some funds for her medical attention.

[148] It is common cause that the urgent application was opposed by the daughters and those proceedings culminated into the trial. As pointed out earlier in my analysis that, the pronouncement that a party has bloodied hands is ordinarily made at the conclusion of the criminal trial. In this matter, this Court has been requested to make such pronouncements in this trial based on the evidence of the witnesses led that are the same witnesses who would testify at the criminal trial in the near future. In order to discharge the onus that the applicant has bloody hands, the respondents called fifteen (15) witnesses and their evidence has been dealt with earlier in this judgement.

[149] The salient feature in this matter is that Bradley, the trusted security in charge of the deceased and his family's safety at the farm approached Sergeant Adams and made a confession statement after Colonel Beneke had a meeting with him and asked him to come up with the truth. This was a huge twist in the process of uncovering the assailants responsible for the death of the deceased. It was almost one and a half years after the killing of the deceased and there was no breakthrough by the members of the police to bring the perpetrators to justice.

[150] Bradley started by setting out how the applicant came closer to him shortly after he was appointed by the deceased as Head Security at Louisenhof Farm. As he had an opportunity to be tasked by the deceased to drive the applicant around to her doctor's appointments and so on, they started spending more time and had all sorts of conversations and became intimately closer. That is when the applicant shared the chronicles of her unhappy marriage and asked for Bradley's assistance on how the deceased could be eliminated. On learning that Bradley was a bit cold on this enquiry, the applicant started showering him with expensive gifts and added Mr Sait to this scheme as the bravest person. The applicant tried to dispute this version by stating that the deceased took care of her and they went on overseas trips. Her husband was her life and pillar of strength. He even bought her a diamond ring on her birthday in February 2019. The applicant did not appreciate that she initiated this conversation in September / October 2018. The deceased might have bought her an expensive diamond ring later on her birthday in February 2019. The deceased at the time might have been an innocent, loving husband and did what he felt like doing for her partner,

but had no clue that he was the subject of assassination. In fact, after the applicant was showered with such a gift, the plans to assassinate the deceased actually continued until they were finally executed. The gifts from her husband did nothing to prevent her from carrying on the plan.

[151] Bradley painted a picture of an applicant who knew what was materially lacking in his life and she provided it. Indeed, Bradley acceded to the applicant's demands as it was clear that the applicant had managed to placate him. The applicant's defence on these allegations was merely a bare denial. The sequence on which the events occurred is hard for this Court not to believe on a balance of probabilities.

[152] In November 2018, the applicant had started digging on the deceased's financial affairs. At that point, she got hold of the deceased's safe. The fact that the safe's keys were always on the moon bag on the deceased's waist appeared to have troubled the applicant. According to Bradley, the applicant knew that he used some medication for his insomnia, and she requested Bradley to provide her with such medication so as to drug the deceased and open the safe. Bradley handed ten (10) sleeping tablets to the applicant, of which seven (7) were given to the deceased by the applicant. Indeed, the deceased spent the entire afternoon sleeping in the lounge.

[153] It was Bradley's evidence that he and the applicant went to the safe and opened it, after the applicant removed the keys from the deceased's moon bag. They removed the ADP pistol belonging to the deceased's ex-wife, a cash of between R250 000 –

R300 000, and some foreign currency. The deceased could not attend his sister's son's congratulatory party for his honours degree that he was scheduled to attend on that evening as he was drugged. On the following Monday, the deceased reported the incident to Bradley on which he advised him to report at the police station. Other than a bare denial, the applicant did not attempt to explain herself out of this incident. Having drugged the deceased the whole afternoon and evening, it follows that the applicant had ample opportunity to go through all the documents including the deceased's wills that were kept in the safe. She then gathered that she would be left with nothing should the deceased die other than the life policy pay-out which Mr Malan stated was good to have for tax purposes and for her maintenance and the *"habitatio*" as Mr Van Staden put it.

[154] Mr Malan stated that shortly after this incident the deceased attended at his office and wanted to totally disinherit the applicant. An inference could be drawn further to the deceased's utterances to Mr Carinus and Ms Serdyn that he should have listened to his mother and should not have married the applicant. He regretted the day he married the applicant. In fact, the deceased's actions were consistent with a person who suspected the applicant's involvement in the theft /robbery that happened in his safe. However, he did not want to voice this out or be confrontational and file criminal charges with the police. It was Mr Malan's testimony that it was through his intervention that Mr De Villiers came up with a suggestion that Ms Esmé Smit and the applicant should share the proceeds of the life policy 50/50. Mr Malan stated that the deceased told him about this theft in his safe, but could not see its relevance as the money stolen did not form part of the portfolio he was managing at the time.

[155] Even though the applicant had an idea of killing the deceased before Bradley and the applicant opened the safe in November 2018, the matter became urgent after the opening of the safe as she was now armed with the information that was contained on the deceased's will. The applicant had all the time to go through the deceased's will while he was lying down drugged. The applicant went on to pacify and comfort Bradley in order to accede to her request and told him that she would change the deceased's will, of which she did albeit by means of forgery. Though Bradley in his evidence was not committal about the dates, he testified that the applicant became more agitated and demanding as the time progressed. In order to do their planning unhindered or not to raise the deceased's suspicion, the meetings had to be held outside the farm, hence their visits to the Radisson Hotel Mouille Point, Lord Charles Hotel Somerset West and Protea Hotel Bellville. In attempting to remove the Court's focus on the planning of the killing of the deceased, the applicant stated that the deceased did not want her to discuss her daughter's attempted murder case during working hours. The applicant did not furnish the name of the daughter she was referring to nor the particulars of the attempted murder case they discussed. In coming up with the reason for these out of the farm meetings, she failed to realise that the security personnel were still contracted to do its duties at the farm within working hours. If it was the deceased's concern that the working time should be used productively, it would not have escaped him that they were out of farm with Bradley for prolonged or unaccounted hours. This Court considered the witness's testimony that the deceased wanted Bradley and his security contingent out of his farm as he was becoming too close to his private space with the applicant and further he wanted to free his pocket from the huge financial burden his security company came with as the threats have subsided.

[156] As the applicant became demanding, it seems the planning wheels started moving when Mr Sait became involved. According to the evidence of Bradley, Mr Sait became the person who put the structures in place in the execution plan and further robed in Mr Damon. On their last meeting preceding the night of the murder, the finer details were finalised as to who should be invited for dinner so that the applicant could have a witness to back up her version, how the applicant had to signal (putting on the light in the study) when the time is opportune for them to come and attack the deceased, and where the dog, Shiraz has to be kept (in the study) for it not to attack them and leave DNA traces at the scene, and that the applicant has to remain in the kitchen so as not to be effected by stray-bullets during the attack on the deceased and so on. To an extent, Ms Allerman corroborated Bradley's version on the set up of the dinner and where the applicant was placed when the assailants came in.

[157] In fact, Bradley's version is further collaborated by the applicant's own version to some extent. According to her version, she was in the kitchen preparing tea for the deceased and Emilia Allerman. She went to the gate to open it (just a little – for about 3cm) for Ms Allerman to leave. This was besides the fact that Ms Allerman at the time of the attack, was sitting with the deceased at the dinner table waiting to be served tea by the applicant. Whether the applicant opened "a bit or a lot", the fact remains that the front door and the security gates were opened for Bradley, Mr Sait and Mr Damon to get easy access to the house and shoot the deceased as was the plan. This, was despite the fact that the deceased was security conscious and impressed upon his family to always lock the door and security gates. The applicant had no plausible explanation for her part in opening the door. It was said that after the fictitious threats

(by the planning team) started coming the deceased was always having a gun within reach.

[158] The applicant did not dispute that most of the threats at the farm came from the planning team of the deceased's murder in order to heighten fear on the deceased and make him believe that he needed the security although he was at the point of doing away with them. It was Bradley's evidence that he and his team were supposed to vacate the farm on the following night of the killing of the deceased as their contract had not been renewed. It was therefore important that the killing happened that night on an expedited basis so that they could remain in the farm. In fact, that indeed happened.

[159] It is so unfortunate that one of the firearms that were used for the killing of the deceased was removed from the safe by the applicant and Bradley when they looted the safe and the other one was given to Bradley by the deceased to dispose of. These two (2) firearms belonged to Esme Smith (the deceased's ex-wife) and Martha Elizabeth Smith (the deceased's mother). These two (2) firearms were used by Bradley and Mr Sait on the day of the shooting. The silver revolver that was used by Mr Damon was not known by Bradley as he was not involved in procuring it. The applicant did not dispute that Mr Sait was the first to fire the shot and was followed by Mr Damon and three (3) shots finished the deceased. Bradley was tasked to stand by the door and look for anyone or anything that would ruin the attack. It was Ms Allerman's evidence that it only became awkward to her when the applicant asked her "*Do you think he suffered?"* shortly after the incident. It was Ms Allerman's evidence that such question coming from the applicant shortly after the deceased shooting left a bitter taste to say

the least. But at the time she did not have facts to suspect the applicant in the deceased's killing. However, when she and her co-accused were arrested, some things started playing out in her mind that made sense. Ms Allerman even stated that after the assailants had left and Bradley and Mr Sait came to the scene, to investigate what had happened, she screamed immediately they entered the room and alerted the applicant that the assailants had returned. To her mind, though the assailants covered themselves with masks when they initially appeared, Bradley and Mr Sait had the same gait and same trousers as the assailants when they re-appeared, hence she had such a feeling. It made sense to her that Bradley, Mr Sait and Mr Damon were later on arrested and charged as the alleged killers of the deceased. Shortly after the incident, those three people had already played out in her mind as the assailants. It was only the applicant who calmed her down and said they are not the assailants; they are the security personnel at the farm.

[160] Shortly after the incident, the applicant asked Bradley if he did not know anyone in the police service in Cloetesville who would backdate a document. Bradley asked Mr Ryan Langdon who was in the police service who used to assist at the farm as security guard to assist him with the applicant's request. Mr Langdon asked for a certain Sergeant Paulsen to assist with the backdating of the Cloetesville document to 01 February 2018 by affixing his Commissioner of Oaths stamp and signature. That version was not disputed by the applicant. In fact, during her testimony she conceded that one document was signed and another unsigned. There was nothing sinister with that. However, her explanation was that she discovered this document amongst their travel documents that were kept in the cabinet at the farm office. She did not specify

whether the one she discovered was a signed or unsigned version. Mr Langdon confirmed that he arranged for the backdating of the Cloetesville document that donated almost all the deceased assets including the assets owned by the certain trust to the applicant as a wedding gift some 18 years after their wedding.

[161] On consideration of the Cloetesville document, it is evident that it was not a thought out document by the person who forged it. Although it purported to have been signed on 1 February 2008, the facts contained therein referred to the present situation of the applicant at hand in 2019. In my view, that was the first indication that it was not drawn by the deceased, despite the overwhelming evidence that it was backdated. Its lack of authenticity is borne out by the fact that; firstly, it does not follow the pattern that the deceased followed in his previous wills, secondly, it gives all the assets to the applicant and for instance, a farm as a "wedding gift" some eighteen (18) years after the applicant and the deceased got married. Thirdly, although this is an affidavit and or donation document, it envisages a situation where the deceased would be no more – and suddenly takes the shape of a will; fourthly, the deceased single-handedly gives the applicant the powers that are ordinarily incompetent in law, for instance *"granting special power of attorney to the applicant to carry out any actions and / or sign documents to comply with and execute this power of attorney. Continue with all business negotiations, leasing, appointment or dismissal of trustees, employees and contractors. Make financial decisions to continue with or terminate entities. I grant power of attorney to her to appoint a company of her choice to administer the estate should Pieter Botha Steenkamp ID No. … not give his co-operation."* The businesses, entities, trustees, employees referred to have not been named or fully spelt out. The

affidavit suggests that all those entities at some point would resort to the applicant without certain requirements or legal obligations been taken into account. The drafter of the affidavit failed to appreciate that businesses and trusts are legal entities governed by legislation. One person in the form of the applicant cannot just chop and change the structure of a business or trust as and when she pleases and without taking into account the provisions of, for instance, the Close Corporation Act 69 of 1984, Companies Act 71 of 2008 and / or Trust Property Control Act 57 of 1988 and / or the Administration of Estates Act 66 of 1965, if at all the businesses and entities or trusts referred to were founded under the said pieces of legislation.

[162] On the assumption that this Cloetesville document would be operational at the same time as the alleged will dated 12 January 2019, Mr Malan in this document is instructed to *"transfer an amount of R5m to the applicant without delay from the above-mentioned entities, whether distribution of investments or sale of shares and transfer this to the private account so that she can continue with safe accommodation including close protection as currently provided."* Even if this document was to be implemented after the death of the deceased, there is no procedure in place which allows independent and / or third parties to disburse huge amounts of money from the deceased's estate having not been appointed an executor or executrix – that on its own is incompetent. It was Mr Malan's evidence that as he managed the deceased's portfolio, if this Cloetesville document was drafted and signed by the deceased, surely it would have been discussed with him as the deceased's portfolio manager in their frequent review meetings. In his independent view, that document was forged.

[163] Further, this document, although dated 1 February 2018, envisages that the applicant continues with safe accommodation including close protection as currently provided. This part talks to the situation at hand in 2019. There were no protection services at the farm on 1 February 2018. This portion echoes the respondents' evidence that the document was drafted after the death of the deceased and backdated at Cloetesville Police Station. As stated, the affidavit refers to the donation of the farm Louisenhof to the applicant. That on its own is incompetent without a resolution from the other trustees.

[164] The Cloetesville document, the will dated 12 January 2019 and the will dated 31 March 2014 were all examined by Ms Yvette Palm, the handwriting expert and were found to be forged documents. The will was confirmed by Warrant Officer Smit of the SAPS to be fraudulent. This Court has no reason not to conclude so, as the documents appear to be forged at face value.

[165] Ms Viljoen and Ms Brink stated that the applicant is the only person who stood to benefit in the fraudulent will of 31 March 2014, and had intimate knowledge of the family affairs and further was close to Ms M E Smit her deceased mother-in-law. It could only be the applicant who forged that document as she was the member of the family and knew all the details mentioned in that fraudulent will. Even though Ms Palm specifically testified that the envelope enclosing that fraudulent will had a franking stamp of "Cape Mail", its origin is not Gezina as the envelope at the back seems to suggest. That on its own is a further fraudulent misrepresentation of facts.

[166] In my view, had it not been for the rejection of that will by the Master of the High Court on the basis of its fraudulent nature, the applicant would have inherited the estate of her mother-in-law, *albeit* fraudulently. However, she sought to distance herself from this wrongdoing during these proceedings by stating that she wrote to the Master of the High Court distancing herself from that fraudulent will. No letter was furnished as proof of such disassociation.

[167] Similarly, the will dated 12 January 2019 was found to be fraudulent by Warrant Officer Smit and Ms Palm. The applicant attempted to dissuade this Court by stating that Mr Bester, her handwriting expert opined that Ms Palm did not take into account the fact that the deceased had an injured thumb when he signed that will. Ms Palm subsequent to his opinion prepared a second opinion on which an injury to the thumb was taken into account. Her testimony was that she commissioned five (5) people to sign without them knowing that they were tested on different scenarios. Initially, she asked them to sign with the thumb holding a pen and secondly without a thumb holding a pen, there was no change to their signature. Instead, where they signed without a thumb holding a pen, the signature was accentuated and appeared bigger.

[168] A specimen of the lease agreement was presented as part of the evidence where the deceased signed as a lessor on 14 January 2019. The word print was legible and flowing and his signature appeared normal. There was no evidence to back up the applicant's allegations that the signature of the deceased changed as a result of thumb injury. The applicants' version that the deceased had injured his thumb was disputed by Ms Buys who testified that the deceased poured wine for everybody on the

table on Mr Oosthuizen's birthday that was held at Reuben's restaurant on 13 January 2019 and there was no sign of an injured thumb. The applicant's knowledge of the deceased's alleged injured thumb exactly on 12 January 2019 and a subsequent provision of three (3) affidavits of witnesses who witnessed this "sore thumb" leaves a bitter taste when all the evidence points to the contrary.

[169] In fact, Ms Palm rejected the applicants' suggestion that the will dated 12 January 2019 was signed by the deceased. She found about sixteen (16) points of differences to the questioned signature for her to conclude conclusively that the signature in question was not executed by the author (deceased).

[170] Most curiously, all the forged documents in the deceased estates of Smit family (M E Smit and W S Smit) have one common denominator, that is, the applicant who stood to inherit immensely if the legitimacy of those documents were not challenged. That then supports the respondents' inference that the applicant forged those documents for her own benefit.

[171] It is common cause that the evidence that was presented by the respondents was not challenged. In *S v Manicum,*[14] Broome DJP stated:

> "*It has been said time and time again that if evidence is not challenged in cross-examination, it may be accepted without further ado*."

[14] 1998 (2) SACR 400 N at 404 f

It is for this basis that this Court cannot find fault with the evidence presented by the respondents. In fact, the witnesses who testified before this Court were honest, credible and eager to assist the Court at arriving at a just decision.

[172] For instance, when Bradley related the manner in which the planning of the killing of the deceased was set up and ultimately executed, it was hard not to observe that he had suffered from mental anguish. He was relieved that ultimately he had to tell the truth. In my view, Bradley came clean before this Court, he had nothing to lose by telling a lie. He came across as a credible and reliable witness.

[173] Having said so, is the applicant entitled to inherit in the estate of the deceased having caused or taking part in the execution of the deceased. It must be stated that the offences committed by the applicant are criminal, reprehensible and deplorable in nature. Without a doubt, they need to be punishable. In such a situation, it appears that *Taylor v Pim (supra)* is still the guiding authority in this instance.

[174] In *Pillay and Others v Nagan and Others,*[15] McCall J accepted that there cannot be limitations to the question unworthiness of inherit and it was stated as follows:

> ***"In Roman-Dutch law certain classes of persons were regarded as unworthy (indignus) of inheriting, either by testament or on intestacy. See Van Leeuwen's Roman Dutch Law 3.3.9 (Kotze's translation, revised ed vol***

[15] 2001 (1) SA 410 (D) at 423 I – 424 A

1 at 336 – 7); Voet 34.9 (Gane's translation vol 5 at 281 et seq). It is apparent from the classes of persons referred to in the judgment of Bale CJ in Taylor v Pim 1903 NLR 484 at 492-4 that the classes of persons may include persons who are deemed unworthy for reasons other than some wrong they have done to the testator or his property. Bale CJ at 493 cites Domat as saying:

> "*The causes which may render the heir unworthy of the succession are indefinite, and the discerning of what may or may not be sufficient to produce this effect depends on the quality of the facts and the circumstances. Thus we are not to limit these causes to such as shall be explained in the following articles, where we have only mention of those which are expressly names in the laws. But if there should happen any other case where good manners and equity should require that an heir should be declared unworthy, it would be just to deprive him of the inheritance … (cf Voet 5.28.6; 34.93)*."
>
> *It seems that in our law disqualification of the murderer of a testator extends to disqualification from succeeding either ab intestatio or by testament from the testator.*

[175] This Court in fact agrees with the approach that was taken by Traverso AJP in *Danielz (supra)*. The Courts are faced with numerous disputes on a daily basis that require a different approach on its adjudication. Simply because a case involves the same principle, it does not mean that it should be decided similarly. Each case should be decided on its own merits. The grounds to hold a beneficiary to be unworthy to

inherit in my view cannot be ring-fenced. The Court has to put its mind to bear on the facts before it and decide accordingly.

[176] The rule to hold a beneficiary unworthy to inherit seems to have been taken further in *Pillay (supra)*[16] where it was stated:

> "*I may add that in terms of s 102(1) of the Administration of Estates Act 66 of 1965 a person who falsifies any document purporting to be a Will is guilty of a criminal offence. In my judgment public policy requires that someone who has sought to defraud persons of their rightful inheritance by forging a Will should be regarded as being unworthy of succeeding to the estate of the person whose heirs he attempted to defraud. Compare Casey NO v The Master and Others 1992 (4) SA 505 (N) at 510G.*"

[177] It then follows that the applicant having been ascertained that she forged at least three (3) documents, and submitted one forged document purporting to be the deceased's last will dated 12 January 2019 to the Master of the High Court for her benefit at least, and to this Court to be accepted and registered to be the last will of the deceased, is the candidate for criminal prosecution in terms of Section 102 (1) of the Administration of Estates Act 66 of 1965. The forged documents (Cloetesville document dated 1 February 2018 and the will dated 12 January 2019) in my opinion are invalid and have no force or effect. There is no basis on which the applicant can acquire a status of being an executrix of the estate based on those documents. An

[16] At page 424 I – 425 A

order in terms of Section 8(4) of the Administration of an Estate is not competent. In addition, there is no basis on which she could be appointed as a trustee of either trust, namely the W S Smit Watergang Trust and the Ribbok Heuwels Trust having committed such scandalous, dolorous and reprehensible actions. It then follows that as an *indigna,* wrongdoer and murderer, she is not entitled to claim spousal benefit in the form of maintenance against the deceased estate. As stated in *Casey (supra),* public policy requires that the applicant forfeits all the benefits that arise from the deceased's estate. Her involvement in the planning of the murder, the callous execution and her subsequent conduct in forging documents does not only disqualify her from the inheritance in the entire estate, but to receive any benefit including maintenance.

[178] To the extent that the last will of the deceased is that dated 7 December 2018, as stated above, it follows therefore that it is incompetent for the applicant to benefit under the said will, whether in her capacity as the beneficiary or by virtue of her capacity as a spouse (spousal maintenance). In *Ex Parte Steenkamp (supra)* it was stated that, the rule, however, that the killer is not precluded from inheriting from the heir of the victim is subject to an exception. If the victim and the victim's heir are persons closely linked by ties relationship of marriage (*conjunctissimae personae*) a crime against the one is regarded as an attack against the other and the killer will be considered disqualified from inheriting from either on the ground of unworthiness.[17] By virtue of the applicant being a *conjunctissimi* and her actions in forging the documents and her subsequent conduct or her own complicity in the murder of the deceased, this court finds her unworthy to inherit on this will.

[17] At 749F – 750F

[179] The respondents pointed out that should this Court find in their favour, since the appointed executor by the will, Mr De Villiers has since passed on, he should be succeeded by Mr Van Staden. In essence, Mr Van Staden should be appointed as the executor of the deceased's estate. This Court finds no reason not to grant this order.

[180] In this judgment, this Court echoes the sentiments expressed by Traverso AJP in *Danielz (supra)*[18] that:

> "[*37] The maxim "de bloedige hand en neemt geen erf" has been part of our common law since Roman times. Murder was not the only crime which led to unworthiness. The Roman-Dutch writers mention numerous grounds upon which a beneficiary was considered unworthy to inherit. (See Ex Parte Steenkamp & Steenkamp, 1952 (1) SA 744 (T) at 752 G – H.*
>
> *[38] Many of the grounds will be obsolete today. To list specific grounds upon which the Court would consider a beneficiary unworthy to inherit would be inappropriate. The grounds are not static and the common law should be developed to include those grounds that presently offend the boni mores of society. Taylor v Pim, 1903 NLR 484 at 492 – 4, Bale CJ cites Domat at 493 as saying:*
>
> *"The causes which may render the heir unworthy of the succession are indefinite, and the discerning of what may or may not be sufficient to produce this effect depends on the quality of the facts and circumstances. Thus we are not to limit these causes to such as shall be explained in the following articles, where*

[18] At para 37 - 38

we have only mention of those which are expressly named in the laws. But if there should happen any other case where good manners and equity should require that an heir should be declared unworthy, it would be just to deprive him of the inheritance."

[181] This quotation on *Taylor v Prim (supra)* might appear to have been repeated in this judgment, however it is necessary to reflect and stress upon the basis on which the ultimate finding originates, and that emphasises the fact that the law has not changed, it has remained the same. Notably, with passing years, the jurisprudence on the issue seems to be expanding.

[182] The evidence presented by the respondents in my view is more probable than that of the applicant. The inference to be drawn from the evidence presented by the respondent is that the applicant, forged the three (3) documents for her own benefit, planned and ultimately was instrumental in the killing of the deceased for her to be able to take control of the entire estate, including the trusts. For these reasons, I am satisfied that the applicant is unworthy to inherit from the deceased's will dated 7 December 2018.

[183] In the circumstances, I grant the following order:

183.1 The applicant's application is dismissed;

183.2 The last will of Wynand Stephanus Smit ("the deceased") dated 7 December 2018 is declared the last will and testament of the deceased;

183.3 The first respondent, the Master of the High Court, Western Cape, is directed to appoint Ernest Van Staden as executor in the estate of the deceased;

183.4 The applicant, Zurenah Smit, is declared unworthy of taking any benefit from the estate of the deceased. This includes maintenance and any benefit from the Discovery Life Insurance Policy number 5100021810 in the name of the deceased, Wynand Stephanus Smit in the amount of R3.5 million;

183.5 The Cloetesville document, allegedly signed at Cloetesville Police Station purporting to be a donation document for the benefit of the applicant dated 1 February 2018 is declared null and void;

183.6 The purported will, that that the applicant stated that it was allegedly signed by the deceased on 12 January 2019 is declared null and void;

183.7 The applicant is ordered to pay the second and the third respondents' costs.

MANTAME J

WESTERN CAPE HIGH COURT