REPUBLIC OF SOUTH AFRICA

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

CASE NO: 28329/2015

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

A S	First Applicant
S C M	Second Applicant
S C M N.O.	Third Applicant
S C M N.O.	Fourth Applicant
And	
S J V N.O.	First Respondent
L S	Second Respondent
M H N.O.	Third Respondent
M H N.O.	Fourth Respondent
P R	Fifth Respondent

THE MASTER OF THE HIGH COURT Sixth Respondent

SUMMARY

Succession – wills – section 2(3) of the Wills Act 7 of 1953 – the deceased executing one will in 2011 ("*the 2011 will*") and another will in 2012 ("*the 2012 will*") – in terms of which the first respondent is appointed executor – deceased emailing scanned copy of 2012 will to first respondent – however, original copy of 2012 will cannot be found upon death of deceased – first respondent neglecting to properly search for 2012 will – rebuttable presumption that deceased destroyed 2012 will *animo revocandi* not applicable – scanned copy of 2012 will declared to be valid and his last will – the Master of the High Court directed to accept 2012 will as the will of the deceased for the purposes of the Administration of Estates Act 66 of 1965.

J U D G M E N T

MOSHIDI, J

INTRODUCTION

[1] In this opposed application, the applicants seek the following relief:

> "*1. Declaring that the will executed in 2011 by the late Johan Strachan (Identity Number 4……) ('the deceased') was*

revoked by the deceased by virtue of the execution of the 2012 will;

2. *Declaring the copy of the will executed in 2012 by the deceased to be the only valid and binding last will and testament of the deceased.*

3. *Ordering that the deceased's estate with estate number: 6……., be wound up in terms of the will executed in 2012 by the deceased.*

4. *Declaring that by virtue of the sale of Erf 8…. S……., situated at R…… B…… C…... 8…… C…… N…… E……., M…... G…… ('the property') by the deceased and the second respondent, two months prior to the death of the deceased, the bequest entitling the second respondent to a usufruct over the property is of no force and effect; and*

5. *Ordering that the proceeds of the sale of the deceased's 50% share of the property be allocated to the Remainder of the estate of the deceased and to be dealt with in accordance with clause 2.8 of the deceased's 2012 will.*"[1]

THE FACTUAL BACKGROUND

[2] The deceased married M A S, the mother of the first applicant ("*Marie Aletta Strachan*"). Out of this marriage, S C M, the second applicant, and the first applicant, were born on 3 December 1971 and 26 August 1973, respectively. However, the deceased and M A S were divorced on 30 March 1989. During March 2000, the deceased and L S ("*the second respondent*"), were married. No children were born out of this marriage.

[1] See prayers 1 to 5, notice of motion, Index 1, pp 1 to 3.

THE 2011 WILL

[3] On or about 24 June 2011, the deceased executed a will, annexed to the founding papers as annexure "FA3", ("*the 2011 will*"). In terms of the 2011 will, the deceased bequeathed his property, *inter alia*, as follows:[2] the deceased's interest in Burewor CC, to the second respondent; the deceased's coin collection to one J A M ("*J* "), and one Z C M ("*Z*"); the deceased's firearms, and accessories, and ammunition to the fifth respondent; the deceased motor vehicles are to be liquidated; a cash amount of R125 000,00 (one hundred and twenty five thousand rand) to one B J H ("*Bradley*"); a similar cash amount to one S M H ("*S*"); the residue of the cash portion of the estate to the first applicant, and second applicant; the deceased's 50% share in the residential home, which at the time of execution, was situated at 8…. R….. B….. C…., C….. N….. E……, M……. ("*The immovable property*"), or any other residential home which is founded or purchased before the deceased's death, to the second respondent; and the residue of the deceased's estate to the second respondent.

THE 2012 WILL

[4] However, on 3 July 2012, the deceased executed a new and updated last will and testament, annexure "FA4" to the founding papers ("*the 2012*

[2] See 2011 will, annexure "FA3", Index 1, pp 22 to 26.

will").[3] In terms of the 2012 will, the material bequests are, *inter alia*, as follows: two separate cash amounts of R125 000,00 (one hundred and twenty five thousand rand) each to J ("*J*") and Z ("*Z*"), respectively; the deceased's firearms and all accessories and ammunition to P R, the fifth respondent; cash amounts of R125 000,00 (one hundred and twenty five thousand rand) each to B ("*B*"), and S, respectively; the deceased's motor vehicles are to be liquidated; the deceased's 50% share in the immovable property, or any other residential home which is founded or purchased before the deceased's death, to the first applicant and second applicant, which was subject to a lifelong usufruct in favour of the second respondent with assurance of security; and the residue of the estate to the first applicant and the second applicant.

THE FOUNDING PAPERS

[5] In the founding papers, the applicants, alleged that, the 2012 will had the effect of, *inter alia*, revoking the 2011 will; bequeathing the deceased's 50% share in the immovable property to the first applicant and the second applicant in equal shares, which was to be subject to a lifelong usufruct in favour of the second respondent; and accounting for the sale of the deceased's coin collection, a major asset of the estate which was bequeathed to J and Z. That had the deceased not executed the 2012 will, J and Z would no longer be able to inherit in terms of the 2011 will as the deceased had disposed of his coin collection prior to his death on 28 December 2013.[4] The above allegations were not in dispute or seriously challenged by the

[3] See 2012 will, annexure "FA4", Index 1, pp 27 to 31.
[4] See notice of motion, paragraph 25, Index 1, p 11.

respondents. It was equally not in dispute that both the 2011 will and the 2012 will were drafted by Schalk Jacobus Viljoen N.O., i.e. the first respondent. Both the wills were so drafted on the direct instructions of the deceased, and in terms of which the first respondent was the nominated executor in both. It was further not in dispute that, on 3 July 2012, and after the execution of the 2012 will, the deceased sent a duplicate of the original will (an electronic scan) of the validly executed 2012 will to the first respondent, and second respondent and others via email correspondence, which email, in parts, read as follows:

> "*M L, ingesluit is die getekende dokumente soos bespreek.*
>
> *Groete.*
>
> *Johan Strachan*
> *Sales and Marketing.Volvo.Trucks*
> *Region Southern Africa*
> *Corner Jet Park Road and Saligna Street,*
> *Hughes Business Park,*
> *Witfield, Boksburg*
> *Johannesburg*
>
> *…*"[5]

On 28 December 2013, the deceased died suddenly and unexpectedly.

[6] Indeed, the divergence in the contentions of the parties, as mirrored in the first respondent's answering papers, and essentially from paragraph [29] of the founding papers emerged. The first respondent described the divergence of the assertions as factual disputes, which the applicants ought to have foreseen when launching this application. For this reason, the opposing

[5] See annexure "FA5", notice of motion, Index 1, p 32.

respondents argued that prayers 2, 3 and 5 of the notice of motion be either dismissed or the application be referred to oral evidence. I shall later deal with more common cause issues and the relief not opposed. I deal with this contention later below.

THE SECOND RESPONDENT'S ANSWERING AFFIDAVIT

[7] I must mention that, L S, the second respondent, has not only filed an answering affidavit, but also a counterclaim. In the answering affidavit she conceded that, the 2011 will has been lawfully revoked by the deceased's 2012 will; that on the evidence contained in the papers, the presumption that the deceased destroyed the 2012 will with the intention to revoke it, has not been rebutted fully; that as a consequence, the deceased died intestate and his estate must be administered accordingly; and that, in accordance with the law of intestate succession, the deceased's three daughters, and the second respondent, are entitled to claim on the basis of the so-called, child's share, i.e. one-third of the estate. The second respondent, also brought an application for the joinder of M H N.O., (in her personal capacity), the third and fourth respondents, to be joined in these proceedings as having a direct and substantial interest in the proceedings. M H is one of the three daughters of the deceased and M St, and mother of the two minor beneficiaries, B and S. She, however, is not a beneficiary. Her joinder sought by the second respondent, is based solely on the hope that she may be entitled to a child's share, in the event it is found that the deceased died intestate. The second respondent does not oppose the relief sought in prayers 1 and 4 of the notice

of motion. The applicants subsequently withdrew their opposition to the joinder application.[6]

[8] I revert to the allegations in the founding papers. The applicants contended that a meeting was held at the offices of Wagener, Muller and Vermaak Attorneys, between the first respondent, Mr Craig Green of Schindlers Attorneys, Ms Catherine Plit of Schindlers Attorneys and Ms Vermaak of Wagener Muller and Vermaak Attorneys on 14 May 2015. At this meeting the applicants alleged that the first respondent informed that the deceased had made an arrangement for the first respondent to collect from him, the original 2012 will. However, the first respondent neglected to do so. In this regard, the applicants attached confirmatory affidavits of Attorneys Green and Plit who attended the meeting. The applicants also alleged that, after the death of the deceased, the first respondent, even though aware that the deceased's intentions were contained in the 2012 will, failed to search diligently for such will. Neither did the first respondent and the second respondent enquire from the first and the second applicants (as the daughters of the deceased) about the location of the 2012 will. The first respondent also neglected to look for the 2012 will at the deceased's place of employment, i.e. Volvo South Africa, where the first respondent alleged it was at the time. In this regard, the applicants attached to the founding papers, a confirmatory affidavit of Ms B D van Niekerk ("*Van Niekerk*"), who worked with the deceased. Van Niekerk was responsible for clearing out the deceased's

[6] See notice of withdrawal of opposition, Index 1, pp 227 to 228.

office after his death. Unfortunately, the original version of the 2012 will could not be located.[7]

[9] In the answering papers, the first respondent, although admitting to attending the meeting of 14 May 2015, denied that he made an arrangement with the deceased to collect the original of the 2012 will. He, however, admitted that he prepared the 2012 will on instructions of the deceased, and that the will was executed by the deceased at his workplace on 3 July 2012. The two witnesses to the will, co-employees of the deceased, Ms J C and Mr W J v V, have furnished supporting affidavits to the founding papers. In addition, Mr J v V mentioned that the deceased appeared to be of sound mind and sober senses and in a competent mental state at the time of the execution of the will. On the same day, at about 09h13, the deceased emailed a copy to the first respondent. The first respondent assumed that since the deceased had kept the original of the 2011 will at home, the deceased would do the same with the 2012 will. The first respondent was fully aware of the 2012 will, but denied that he failed to conduct a diligent search for the will. He had no right to conduct such a search at either the deceased's residence or place of employment, but requested other person(s) to do so. He did not know V N.

[10] The remaining salient allegations in the founding papers included that: the second respondent is equally to blame for not searching and finding the original version of the 2012 will, since she was the only one who would benefit

[7] See paras 29 to 34 of the founding affidavit, Index 1, pp 11 to 12.

if the deceased had not executed the 2012 will; that the applicants only found out during October 2014 that the first respondent, a financial planner and executor in the estate, intended to finalise the estate in terms of the 2011 will, instead of the validly executed 2012 will, a scanned copy of which was already in the possession of the first respondent; that the Master of the High Court (sixth respondent) erroneously furnished to the first respondent instructions to administer the estate in terms of the revoked 2011 will, and that the first respondent is now selectively using portions of both wills in the winding-up of the estate, as reflected in the draft Liquidation and Distribution Account.[8]

[11] In the final analysis, the applicants alleged that the 2012 will, clearly revoked the 2011 will and made the deceased's intentions clear; the intentions included that the first respondent would take possession of the 2012 will and safeguard same until his death.

SOME COMMON CAUSE FACTS

[12] The following are either common cause or not seriously disputed: the first applicant (A S), the deceased's daughter, born of the marriage between the deceased and M A S ("*Marie*"), is a beneficiary of the estate of the deceased in terms of the 2011 will and the 2012 will; the second applicant (S C M), the deceased's other daughter, born of the marriage between the deceased and M, is a beneficiary of the estate of the deceased in terms of the

[8] See annexure "FA8" founding papers, Index 1, pp 39 to 47.

2011 will, and the 2012 will; the third applicant (S C M NO) is also the fourth applicant, in her capacity as mother and legal representative of J and Z. J, the deceased's grandson, also the second applicant's son, is a beneficiary of the estate of the deceased in terms of the 2011 will as well as the 2012 will; and Z, the deceased's granddaughter, also a daughter of the second applicant, is a beneficiary of the estate of the deceased in terms of the 2011 will as well as the 2012 will.

[13] It is also not in dispute that: the first respondent (S Ja V N) is the executor of the estate of the deceased, who was appointed as such in terms of the 2011 will as well as the 2012 will; the second respondent (L S), the deceased's widow, whom the deceased married after he had divorced M, is a beneficiary of the estate of the deceased in terms of the 2011 will, as well as a beneficiary in terms of the 2012 will, only to a limited extent; the third respondent (M H NO) is also the fourth respondent, and is the deceased's other daughter, born of the marriage between the deceased and M and she is also the mother and legal representative of B and Sienna; B is the deceased's grandson as well as the third and the fourth respondents' son, and he is a beneficiary of the estate of the deceased in terms of both the 2011 will and the 2012 will; S is the deceased's granddaughter and the second and the third respondents' daughter, and is a beneficiary of the estate of the deceased in terms of both the 2011 will and the 2012 will; and that the fifth respondent (P R) is a beneficiary of the estate of the deceased in terms of both the 2011 will and the 2012 will.

[14] From the papers, the first respondent and the second respondent, do not dispute that by virtue of the 2012 will, the deceased revoked the 2011 will. To this extent, the first respondent and the second respondent do not challenge the relief sought by the applicants in respect of declaring the 2011 will to have been revoked by the 2012 will. In this regard, the first respondent, in the answering affidavit said:

> "*Ek is geadviseer dat die 2012 testament inderdaad die 2011 testament herroep het en bede 1 en 4 van die kennisgewing van mosie word nie opponeer nie.*"[9]

The second respondent, in her answering affidavit, also stated:

> "*Derhalwe versoek ek met eerbied dat 'n bevel gemaak word ingevolge bedes 1 en 4 van die kennisgewing van mosie, dat bedes 2, 3 en 5 van die hand gewys word met koste en dat 'n bevel gemaak word ooreenkomstig die kennisgewing van teenaansoek wat hiermee saam afgelewer word.*"[10]

THE SECOND APPLICANT'S COUNTER-APPLICATION

[15] The counter-application in essence, seeks an order that the deceased died intestate, and that his estate therefore must be administered in

[9] See first respondent's answering affidavit, paragraph 18.2, p 85, Index 1 paginated papers.
[10] See second respondent's answering affidavit, paragraph 18, p 215, Index 3, paginated papers.

accordance with the law of intestate succession. The counter-application is based on the assertion and concession that:

> "*Die oorledene se 2011 testament is inderdaad regsgediglik herroep deur die oorledene se 2012 testament,*"

and as mentioned above, that on the evidence presented, the presumption that the 2012 will executed by the deceased, was destroyed by the deceased with the intention to revoke it, was not rebutted.[11]

[16] From the opposition proffered by the first and the second respondents, it is more than plain that they rely on the common law presumption that: where a deceased testator is known to have executed and possessed a will, which upon his or death cannot be found, a rebuttable presumption arises that the testator destroyed the will (in this case the 2012 will), and that he or she did so with the intention of revoking the dispositions made therein. The applicants, contended otherwise by countering that the presumption is inapplicable in the instant case. It appears to me that the issue of the applicability of the above presumption, with all its ramifications, will have to be determined first as it may be dispositive of the matter, one way or the other. It will also be necessary to decide the issue whether the available copy of the 2012 will before me, is acceptable and valid and compliant with the law in its own right. If so, whether the 2011 will was correctly and properly revoked by such will.

[11] See notice of counter-application, paragraph 2, p 207 to 208, Index 3, paginated papers.

SOME APPLICABLE LEGAL PRINCIPLES

[17] I turn to some applicable legal principles. In *Ex Parte Warren,*[12] although the Court concluded that it could not find whether the presumption applied, said:

> "*The respondent relies on the presumption in law that where a deceased is known to have executed and possessed a will, which was on his decease cannot be found, a rebuttable presumption arises that the testator destroyed the will and that he did so with the intention of revoking the dispositions he has made therein. In order to succeed, anyone claiming under such a will would have to show on a balance of probability that the deceased did not destroy the will or, if he did destroy it, he did not do so with the intention of rendering it inoperative (Ex Parte Slade, 1922 T.P.D. 220).*"

See also *Nell v Talbot NO.*[13] In the latter case, the joint will of the couple could not be found after the husband died. The wife plaintiff, believed that the will, which was properly executed, was in the possession of their attorney. However, despite a thorough search in the attorney's office, the wife was unable to find the will or any copy thereof. At p 208 of the judgment, the Court said:

> "*The circumstances that after the death of the deceased the ante-nuptial contract but not the will was found in the strong-room might prima facie suggest that the will was at some time after it had been deposited therein removed and handed to the plaintiff or her husband. If that is what happened, the non-existence of the will after the death of Mr Nell would not readily give rise to an inference that it had been lost or accidentally destroyed, for a rebuttable presumption would arise that*

[12] 1955 (4) SA 326 (W) at 326F-H.
[13] 1972 (1) SA 207 (D) at 208.

> *the will was not available because it had been destroyed animo revocandi by the testator or testators.*"

The Master was directed to accept as valid and effective the will of the deceased, a copy of the reconstructed will. See also *Ex Parte Ntuli*,[14] and compare *Senekal v Meyer NO en 'n Andere* 1975 (3) SA 372 (T). Interestingly, in Corbett *et al Succession* 97-98, it is observed that the destruction of a copy of a will will not normally constitute an effective revocation.

[18] Based on the above principles, as well as the peculiar circumstances of the instant matter, I am not convinced that the presumption applies in this matter. The applicants too, in the founding papers, do not concede that the common law presumption applies, as suggested by the first and the second respondents. For in the founding affidavit, the applicants state that there is sufficient evidence to rebut the presumption of *animus revocandi* in respect of the 2012 will. This, especially, in the circumstances where no one looked for the will, and the deceased adhered to a strict pattern of always having a will so that his estate would be wound up in accordance with his wishes.[15] Indeed, the above assertion by the applicants, namely that no one looked for the 2012 will, is one in regard to the requirements for the common law presumption being applicable, i.e. that the 2012 will must have been in the possession of the deceased at the time of his death, and that such will cannot now be found.

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[14] 1970 (2) SA 278 (W).
[15] See founding affidavit, paragraph 84 p 19.

[19] I may add that, the applicants' case is significantly supported by numerous other factors, both common cause and disputed. These include the following: that it is common cause that the first respondent drafted the 2012 will on instructions of the deceased; and it is also common cause that the deceased executed the will properly at his place of employment (Volvo South Africa) on 3 July 2012. The common law presumption will therefore be applicable, if (a) the deceased was in possession of the original 2012 will at the time of his death, and (b) if the original 2012 will cannot be found. The first and second respondents bear the *onus* of establishing the necessary facts in order to give rise to the presumption; indeed the first respondent conceded that the deceased was in possession of the original 2012 will at the time of his death; that it is equally common cause that after executing the 2012 will at work, the deceased emailed to the first respondent a scanned copy of the 2012 will from his place of employment on 3 July 2012 (the scanned copy of the 2012 will forms part of the papers before me). More about it later below; that it seems that the first respondent does not know what transpired about the deceased's possession of the original 2012 will, and his evidence to the effect that the deceased was in possession of the original 2012 will at the time of his death was highly speculative; that the same applied to the evidence of the second respondent; that the first respondent, as the appointed executor of the deceased's estate, had the requisite authority to look for the original 2012 will, which authority he did not exercise; that the alleged search for the 2012 will at the deceased's place of work, and at his immovable property was plainly limited; and that it cannot be said that the original 2012 will cannot be found in the circumstances. For all the above

reasons, the applicants contended that the common law presumption is not applicable here. There is merit in these contentions.

[20] In addition to the above, and in the alternative, the applicants contended that, even if the presumption is applicable, it is however rebutted, having regard to the following facts from which the intention of the deceased can be inferred: the first respondent drafted the 2011 will, in terms of which the first respondent was appointed as executor; the first respondent had been the deceased's financial planner since about February 2011, and had discussions with the deceased concerning the deceased's family, and that the first respondent, as mentioned before, drafted the 2012 will, in terms of which the first respondent was also appointed as executor, on the instructions of the deceased.

[21] Indeed, in *Piennaar and Another v Master*,[16] it was held that, where a testator has made two consecutive wills dealing with his entire estate that differ from one another, the one will, if it lacks a revocation clause, impliedly revoke the earlier one in so far as it is inconsistent with it. Furthermore, and for what is relevant to the instant matter, at paragraph [14] of the judgment, the Court said:

> "*The golden rule for the interpretation of wills is to ascertain the wishes of the testator from the language used. Once the wishes of the testator have been ascertained a court is bound to give effect to them.*"

[16] 2011 (6) SA 338 (SCA).

[22] The evidence in the present matter, show that the conduct of the deceased by keeping the original 2012 will, and providing the scanned copy thereof to the first respondent was consistent with the deceased's conduct with respect to the 2011 will. (The deceased had also kept the original 2011 will and provided the first respondent with a copy thereof.)[17] Also in regard to the 2011 will, the deceased, instead of destroying the will when he wished to revoke it, instructed the first respondent, his financial planner, to draft a new will (the 2012 will). The deceased never instructed the first respondent to destroy a will. The deceased did not inform the first respondent that he had change of intention in regard to the 2012 will. So too, is the fact that the deceased, prior to his death, did not inform anyone about a change of intention and wish in regard to the 2012 will. In my view, it can be inferred from all the above facts and legal principles that the intention of the deceased was not to revoke the 2012 will, and that he in fact intended that the 2012 will be his will. This is the more probable inference to be drawn from any other inference. It follows that the presumption relied on by the first and the second respondents, even if applicable, is rebutted. (*cf Opperman v Opperman and Others.*)[18] It also follows that the 2012 will is valid. The contentions of the opposing respondents are without merit. The same applies to the second respondent's counter-application. In the circumstances of the matter, I also find it unnecessary to make a comparison of the various dispositions made by the deceased in the two wills.

COPY OF THE 2012 WILL

[17] See answering affidavit of first respondent, paragraphs 5.3 and 5.4 p 72.
[18] (3659/2015) [2016] ZAFSHC 26 (3 March 2016) para [13].

[23] I deal with the acceptance of the copy only of the 2012 will which is before me, for the sake of completeness. It is by now settled law that the court has the requisite discretion to order the acceptance of a copy by the Master. Section 2(3) of the Wills Act 7 of 1953 ("*the Act*") provides that:

"*If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act 1965 (Act No 66 of 1995) ('the Act') as a will, although it does not comply with all formalities for the execution or amendment of wills referred to in subsection (1).*"

See also *Van der Merwe v Master of the High Court and Another*.[19] In the present matter, there can be little doubt that the 2012 will does comply with the formalities prescribed by the Act. It was drafted by the first respondent on instructions of the deceased. The deceased properly executed the will at his place of employment, and emailed a scanned copy to the first respondent. There is no evidence at all that the contents of the available copy of the 2012 will differ from the original thereof. I conclude therefore that the copy of the 2012 ought to be accepted as valid. The applicants are entitled to the relief sought in the notice of motion. The assertions of the first and the second respondents that there are, on the papers, factual disputes, which warrant that the application be referred to oral evidence on the question as to whether the common law presumption has been rebutted, are also without merit. As argued by the applicants, regardless of who has the *onus* to show that the common law presumption is or is not applicable, the question here remains

[19] [2011] 1 All SA 298 (SCA).

whether, having regard to the contents of the first and the second respondents' answering papers, as read with the applicants' founding papers, the presumption is or is not applicable. See *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.[20] The first and the second respondents have not raised a real, genuine or *bona fide* factual dispute. I have already found that the common law presumption does not apply.

COSTS

[24] I deal with the question of costs, which is a discretionary matter. The applicants argued that the second respondent should pay the applicants' costs of the application. In regard to the first respondent, the applicants argued that he ought to pay the costs *de bonis propriis*. I have had regard to the opposing contentions on the costs issue. I am not persuaded, however, that a costs order *de bonis propriis* against the first respondent will be justified in the circumstances of this matter. He is acting in a fiduciary capacity. I cannot find conclusively that his conduct in these proceedings is *mala fide*. However, his opposition to the application was clearly completely unnecessary and contrary to the interests of the deceased's estate and the beneficiaries. The same applies to the second respondent. It will be just and equitable that they pay the costs in their personal capacities. The estate ought not to be burdened with the costs of this unmeritorious application.

ORDER

[20] 1984 (3) SA 623 (A) at 634E-635C.

[25] In the result I make the following order:

25.1 An order is granted in terms of prayers 1, 2, 3, 4 and 5 of the notice of motion dated 6 August 2015.

25.2 The second respondent's counter-application is dismissed with costs.

25.3 The first respondent and the second respondent shall pay the costs of the application in their personal capacities, jointly and severally, the one paying the other to be absolved.

25.4 In essence, the sixth respondent is directed to accept the 2012 will executed by the deceased on 3 July 2012 as the will of the deceased for the purposes of the Administration of Estates Act 66 of 1965.

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D S S MOSHIDI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

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DATE OF HEARING	26 MAY 2016
DATE OF JUDGMENT	11 AUGUST 2016