

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 55701/17

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
20/09/2018	M. Mdalana
DATE	SIGNATURE

In the matter between:

CHRISTINA HELENAH PRETORIUS NO
(In her capacity as duly appointed executrix of
the estate late W P Meyer– 2496/2013)

Applicant

and

BAREND PETRUS JONES

First Respondent

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

Second Respondent

JUDGMENT

Mdalana-Mayisela AJ

1. The applicant, is the appointed executrix of the estate of the late WP Meyer. The applicant has brought an application to this Court for an order that the first respondent be ordered to pay the amount of R1,148,828.13 to the estate of the late Willelm Petrus Meyer together with accrued interest within 7 days from the date of the granting of the order.

2. The applicant was appointed as executrix by the Master of the North Gauteng High Court on 21 April 2016 under letter of executorship number 2496/2013. The late Mr. Meyer (the deceased) was a father of the applicant. He died on 29 December 2012. The deceased died testate and his will was registered and accepted by the Master of the North Gauteng High Court on 30 April 2013. The said will was a joined will of the deceased and his wife (the mother of the applicant), Mrs. Cornelia Wilhelmina Getruida Meyer (Mrs. Meyer). In terms of the joined will, Mrs. Meyer was nominated and appointed as executrix of the estate of the deceased. Pursuant to the nomination aforesaid in the will, Mrs. Meyer was appointed as the executrix on 30 April 2013. On 25 January 2013 Mrs. Meyer signed a power of attorney authorising the first respondent to administer the estate of the deceased. The first respondent is a Chartered Accountant practicing under the name and style of Jones and Co. Mrs. Meyer died on 25 September 2013. No replacement executor or executrix was appointed immediately after her death until 21 April 2016 when the applicant was appointed as executrix. The applicant subsequently appointed her present attorney, Willem Francois Bouwer as her agent in the administration of the estate. Upon enquiries made with the first respondent by the applicant initially and subsequently by Mr. Bouwer, it was established that the first respondent had continued to administer the estate despite the death of Mrs. Meyer. It is common cause between the parties that the mandate of the first respondent as agent of Mrs. Meyer to administer the estate of the deceased lapsed upon the death of Mrs. Meyer. This means that the first respondent had no authority after 25 September 2013 to continue with the administration of the deceased estate. Mr. Bouwer demanded from the first respondent the handover of the estate files. It is alleged that the first respondent had since the death of Mrs. Meyer in September 2013 took certain steps in the administration of the deceased

estate. Among the steps he took was to place section 29 of the Administration of Estate Act advertisements in the Beeld newspaper and in the government gazette on 28 February 2014, drafted and lodged a liquidation and distribution account in the estate. The Master did not approve the account as there was outstanding requirements to be met before the account could be advertised for objections in terms of section 35 of the Administration of Estates Act. The first respondent despite his mandate having lapsed took these steps in the administration of the estate including pay himself executors fees and making payments to heirs in the cause of the distribution of the estate. In terms of the Administration of Estate Act, before any executor's fees or distribution to heirs can be made, the liquidation and distribution account must be approved by the Master and advertised in terms of section 35 for a period of 21 days for objections to be lodged against the account if any. In this case, no section 35 advertisements were placed because the Master did not approve the liquidation and distribution account for advertisement. It is contended that the payments made by the first respondent to himself and to heirs was irregular and illegal.

3. It is also alleged that between September 2013 and 21 April 2016, being the date when the applicant was appointed as executrix, the following irregular payments were made by the first respondent to himself:
 - 3.1 R150 000.00 on 26 March 2014;
 - 3.2 R78,000.00 on 27 March 2014;
 - 3.3 R150,000.00 on 28 May 2014;
 - 3.4 R78,000.00 on 29 May 2014;
 - 3.5 R150,000.00 on 9 December 2014;
 - 3.6 R250,000.00 and R142 828.13 on 27 December 2014;
 - 3.7 R150,000.00 on 6 May 2015.
4. The total payments made by the first respondent to himself during this period is R1,148,828.13.
5. Section 51(4) of the Administration of Estate Act states that:

"An executor shall not be entitled to receive any remuneration before the estate has been distributed as provided in section 34(11) or 35(12), as the case may be, unless payment of such remuneration has been approved in writing by the Master."

6. It is common cause in this matter that the payments were not approved by the Master and the distribution of the estate had not been finalized and no liquidation and distribution account had been approved by the Master and no advertisement in terms of section 35 had been made.

7. Section 34(11) of the Administration of Estate Act states that:

"When an account has been confirmed by the Master, the executor shall forthwith pay the creditors and distribute the estate among the heirs, if any, in accordance with the account, and lodge with the Master the receipts and acquittances of the creditors and heirs, if any: provided that a cheque purporting to be drawn payable to a creditor or heir in respect of any claim or share due to him and paid by the banker on whom it is drawn, may be accepted by the Master in lieu of any such receipt or acquittance."

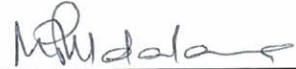
8. Section 50 of Administration of Estate Act imposes a personal liability to an executor who makes distribution otherwise than in accordance with the provisions of section 34 or 35 and empowers an executor to recover from any person any amount paid or any property delivered or transferred to him in the cause of the distribution which would not have been paid, delivered or transferred to him if a distribution in accordance with the said provisions had been made: provided that no costs incurred under this paragraph shall be paid out of the estate.
9. The version of events by the first respondent as contained in the answering affidavit essentially confirm the version of events of the applicant as contained in the founding affidavit to the effect that the first respondent was not appointed to administer the estate as an agent after the death of Mrs. Meyer. What the

not take the first respondent's defence any further. It matters not that the applicant consented to the payments been made to the first respondent as alleged. What matters is whether the first respondent had a legitimate basis to receive such payments. The first respondent does not dispute that his authority to administer the estate lapsed upon the death of Mrs. Meyer. It follows that any act he purported to perform after the death of Mrs. Meyer and any payment he made to himself and to heirs thereto were unlawful and invalid.

10. It follows that the purported distribution that the first respondent effected was not in accordance with sections 34 or 35 of the Administration of Estate Act. The applicant as the executrix is therefore entitled to recover from the first respondent payments illegitimately made or which the first respondent illegitimately authorized to himself. There is no dispute that the amounts listed above are those the first respondent paid to himself.
11. Accordingly, I am satisfied that the applicant has made out a case for the relief that she seeks in the notice of motion. What remains is whether the costs should be on a punitive scale. I am not convinced that this is a matter which warrants a punitive costs order. A cost order on party and party scale should suffice. Also, the applicant wants the amount to be repaid by the first respondent into the estate to be made within 7 days from the date of the order. I am not satisfied that the interest of justice would be served by giving the first respondent such short notice to repay the money. A period of 60 days should suffice to enable the first respondent to comply with the order.
12. As a result, I make the following order:

- 12.1 the first respondent is ordered to pay the sum of R1,148,828.13 to the estate of the late Willem Petrus Meyer together with accrued interest thereon within 60 days from the date of this order;

- 12.2 the first respondent is ordered to pay the costs of the application on party and party scale which include the cost of the employment of senior counsel.



M M P Mdalana-Mayisela
Acting Judge of the High Court Gauteng Division

Date of judgment: 20 September 2018

On behalf of the applicant: A J H Bosman SC
Instructed by: W F Bouwer Attorneys

On behalf of First Respondent: J Truter
Instructed by: Surita Marais Attorneys