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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No: 69655/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO.

DATE 30 April 2025.

SIGNATURE

In the matter between:

PHILLIP BOTHA MOGASE

Applicant

and

PATRICK MODIGA

First Respondent

KEITUMETSE RAFEDILE

Second Respondent

Delivered: This judgment was handed down electronically by circulation to the parties by e-mail and the uploading of the judgment to the caselines profile. The date for the handing down of the judgment shall be deemed to be 30 April 2025.

JUDGMENT

GROBLER, AJ:

[1] The applicant was in a relationship with the late Ntipo Debroah Martha Modiga from 2007 until she passed away on 10 June 2023.

[2] The applicant alleged in his founding affidavit that he entered into a customary union with the deceased on 16 December 2009. The respondents denied the aforesaid customary union, but did not deny that the applicant and the deceased were involved in a longstanding romantic relationship during the period from 2007 to 2023.

[3] The applicant claims that he is entitled to inherit from the deceased estate in terms of the Intestate Succession Act, Act 81 of 1987, that the respondents treated him unfairly after the deceased passed away and that he is entitled to the following interdictory relief per notice of motion dated 13 July 2023:

- [3.1] interdicting and restraining the respondents from denying the applicant access to his primary residence at No. [...] M[...] Avenue, Karenpark, Akasia, pending finalisation of the estate of the applicant's deceased wife's estate;
- [3.2] interdicting and restraining the respondents from disposing of any of the assets of the applicant's deceased wife;
- [3.3] interdicting and restraining the respondents from changing the locks of the applicant's house;
- [3.4] ordering the respondents to return the identification card of the deceased and any documents in their possession that belongs to the applicant's deceased wife;
- [3.5] ordering the respondents to cooperate with applicant with the process of reporting the late estate of the Master's office and to sign any forms necessary for the purpose of the process;
- [3.6] any respondent(s) who oppose(s) this application be ordered to, joint and/or severally, pay the costs of this application.

[4] The respondents opposed the relief claimed by the applicant per answering affidavit which was served on the applicant on 31 August 2023.

[5] The applicant's attorney of record uploaded a replying affidavit to the CaseLines profile on the date of the hearing of the application in the opposed

motion court, i.e. on 25 April 2025. It should be noted that the replying affidavit was purportedly served on the respondents' attorneys of record already on 11 April 2024 and included a condonation application for the late service thereof, but as stated above it was only uploaded to CaseLines on 25 April 2025. The applicant, furthermore, uploaded heads of argument on the date of the hearing of the opposed motion on 25 April 2025. It goes without saying that the applicant failed to comply with the Practice Directives of this Court. To add insult to injury, the CaseLines profile was poorly organised and very difficult to access, which made it difficult to find the relevant documents and to navigate through the matter. The failure of the applicant's attorneys of record to properly comply with the Practice Directives is regrettable and should be condemned in the strongest possible terms.

[6] It would have been entirely reasonable to strike the application of the roll due to non-compliance with the Practice Directives, but I do not deem it reasonable to burden another court at a future date with the matter again.

[7] The respondents opposed the applicant's application *inter alia* on the basis that the deceased left a valid will dated 3 March 2020. The will was attached to the answering affidavit. The deceased did not nominate the applicant as a beneficiary in terms of the will, but left her entire estate to her three children being the first and second respondents and a third child named Malefyane Modiga (who were not cited as a respondent in the application under hand). The deceased nominated Standard Trust Limited or the Standard Bank of South Africa Limited as executors of her estate, but they renounced their nomination as executor in writing. The Master of the High Court: Pretoria issued a letter of executorship to the first respondent on 17 July 2023. The first respondent proceeded with the administration of the deceased estate by opening an estate account at First National Bank on 20 July 2023.

[8] It accordingly logically follows that the first respondent in his capacity as executor of the deceased estate lawfully took control of the assets of the deceased estate in terms of the Administration of Deceased Estates Act, Act 66 of 1965 (as amended).

[9] On the basis alone of the valid will of the deceased, which was accepted and acted on by the Master of the High Court, the applicant's assertion in the founding affidavit that he is entitled to inherit from the deceased's estate in terms of the Intestate Succession Act, Act 81 of 1987 can accordingly not stand.

[10] Furthermore, even if it is accepted that he entered into a customary union with the deceased on 16 December 2009 and that he was married to the deceased in community of property (which was not the basis upon which he approached the Court), he would at best have a claim against the deceased estate, and not against the two respondents.

[11] It is accordingly evident that the applicant has neither a clear, nor *prima facie* right to claim the interdictory relief set out in the notice of motion.

ORDER:

In the premises, the following order is issued:

1. The application is dismissed with costs, the costs of counsel to be taxed on Scale B.

JF GROBLER

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Date of hearing:	25 April 2025
Date of judgment:	30 April 2025
Counsel for Applicant:	AJ Baloyi
Instructed by:	AL Ramaboea Attorneys
Inc	
Counsel for Respondents:	PP Thabede
Instructed by:	Sepoloane Attorneys

