

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2022-7865

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

DATE: 9 May 2025

SIGNATURE OF JUDGE:

[Redacted signature]

In the matter between:

MASHABA, KOYO

Applicant

and

**THE MASTER OF THE HIGH COURT
THE MINISTER OF POLICE
THE MOMENTUM INSURANCE**

First Respondent
Second Respondent
Third Respondent

JUDGMENT

HF OOSTHUIZEN AJ

- [1.] On 21 July 2021, the applicant's late wife ("the deceased") was murdered at the applicant's home.
- [2.] For reasons which will become clear, the first respondent, the Master of the High Court, has, almost four years later, failed to appoint an executor for the deceased estate and the third respondent, Momentum Metropolitan Life Ltd, has failed to pay the benefits of a life policy which the deceased held with the third respondent to the applicant as the nominated beneficiary under the policy. This unfortunate delay is clearly prejudicial to the applicant as well as his four minor children.
- [3.] Following the murder of the deceased, a criminal case was opened with the South African Police Service ("the SAPS").
- [4.] On 24 August 2021, the applicant reported the death of the deceased to the first respondent and applied to be appointed as executor of the deceased estate. The first respondent was not prepared to appoint the applicant as executor until it had received a post-mortem report from the SAPS.
- [5.] Despite numerous requests by the applicant, the SAPS has failed to provide a copy of the post-mortem report to the applicant. It is apparently the stance of the SAPS that the murder investigation has not been concluded and that the provision of the post-mortem report may prejudice the investigation.
- [6.] During September 2021, the third respondent received an anonymous tip-off from a person claiming to be a family member of the deceased, accusing the applicant of being involved in the deceased's death.
- [7.] On 18 January 2022, the investigating officer informed the third respondent that the applicant was a suspect in the murder investigation. According to discussions between the third respondent and the SAPS, the applicant apparently remains a person of interest in the criminal investigation.
- [8.] The applicant denies any involvement in the murder of the deceased.

[9.] The third respondent is not prepared to pay the benefits under the policy to the applicant until it has received a copy of the post-mortem report (which the third respondent contends it is entitled to claim in terms of the provisions of the policy) and/or it has received written confirmation from the SAPS that the applicant is no longer a person of interest in the murder investigation. In the event that the applicant is in fact involved in the murder of the deceased, the third respondent intends to pay the benefits under the policy to the executor of the deceased estate.

[10.] The third respondent's stance is informed by the following legal principles enunciated in *Danielz NO v De Wet*:¹

"[27] There are two principles of insurance law which come into play here.

- (a) Firstly, that an assured may not intentionally precipitate the risk insured against, and in doing so will preclude himself/herself from claiming the benefit of the insurance.*
- (b) An assured, who intentionally perpetrates a criminal act relating to the risk insured against, may render himself/herself unworthy, and in such an event a court will not, as a matter of public policy, permit such a person to claim the benefit under policy.*

The first principle applies where the assured deliberately causes the risk. The second applies where some turpitude on the part of the assured is so connected with the risk and so repugnant to good morals, that public policy requires that the assured cannot claim the benefit under the policy.

[28] it is well established that, as a matter of general principle, an offender is not entitled or allowed to derive any benefit from his own criminal conduct...

[49] In life insurance the event which gives rise to the right to payment is death during the currency of the policy. The cause and circumstances of death are generally irrelevant. For though a murderer ... can never benefit from the insurance, the policy itself remains valid and the insurer is not relieved from liability vis-à-vis the deceased's estate."

¹ 2009 (6) SA 42 (C) para [27]

[11.] In the event that it is found that the applicant was involved in the murder of his wife, the applicant will also be unable to inherit any benefit under the will of the deceased on the basis of the maxim *de bloedige hand neemt geen erf*.²

[12.] On 15 February 2022, the applicant, acting in person, applied broadly for the following urgent relief:

[12.1.] ordering the first respondent to appoint the applicant as the executor of the joint estate;

[12.2.] ordering the second respondent, the Minister of Police, to deliver the post-mortem report to the applicant and the first and third respondents; and

[12.3.] ordering the third respondent to pay the benefits under the policy to the applicant.

[13.] The urgent application was opposed by all three respondents, who filed answering affidavits.

[14.] On 15 February 2022, Bokaka AJ found that the application was not urgent and removed it from the roll.

[15.] During October 2024, the applicant delivered an amended notice of motion and a so-called updated founding affidavit and applied for a date for the hearing of the application on the opposed motion roll.

[16.] The applicant failed to serve a notice of set down of the allocated hearing date on the respondents.

[17.] The applicant moreover uploaded heads of argument to CaseLines, which contains information about events which had occurred since 15 February 2022 but which information was not included in the updated founding affidavit, as one would have expected.

² *Danielz NO v De Wet supra* para [49]

[18.] When the matter was called on Monday, 5 May 2025, there was no appearance on behalf of the first and second respondents but Adv Linde appeared on behalf of the third respondent.

[19.] In an application for condonation for the late delivery of the third respondent's heads of argument (which were uploaded to CaseLines on Friday, 2 May 2025) the third respondent's attorney indicated that the applicant had failed to serve a notice of set down with the allocated hearing date on the third respondent and that he only became aware of the allocated hearing date on 22 April 2025 when he visited this application on CaseLines.

[20.] In view of the applicant's failure to serve a notice of set down on the first and second respondents and due to their non-appearance on 5 May 2025, I indicated to the applicant that I was not in a position to grant any relief against the first and second respondents but that I was prepared to postpone the application to the first available date on the opposed motion roll, being 25 August 2025.

[21.] I was moreover prepared, in the interest of justice, to afford the applicant the opportunity to file a supplementary founding affidavit to deal with all relevant events since 15 February 2022, when the application was removed from the urgent roll. This would enable the second respondent to deliver a supplementary answering affidavit to explain the outcome of the murder investigation and more specifically to indicate whether the applicant is still a suspect/person of interest and whether he will be prosecuted or not. Such information will enable the third respondent to make an informed decision whether it should pay the benefit of the policy to the applicant or to the executor of the deceased estate.

[22.] In view of the fact that the third respondent was represented on 5 May 2025, I heard argument on the relief which the applicant sought against the third respondent. The third respondent sought the dismissal of prayer 3 of the amended notice of motion with costs.

[23.] In view of the fact that:

[23.1.] the liability of the third respondent to pay the benefit of the policy to either the applicant or the deceased estate is not disputed by the third respondent;

[23.2.] the applicant has a valid claim for payment of the benefit under the policy in the event that it is found that he was not involved in the murder of his wife; and

[23.3.] it remains unclear whether the applicant is entitled to payment of the benefit under the policy

it would be inappropriate at this stage to make a ruling on the relief which is sought by the applicant against the third respondent. I reiterate that the relief which is sought by the applicant against the second respondent and the content of the second respondent's envisaged supplementary answering affidavit may very well enable the third respondent to make a decision on the payment of the benefits under the policy.

[24.] I am accordingly of the view that the application as a whole must be postponed to the opposed motion roll of 25 August 2025.

[25.] In view of the fact that the notice of set down had not been served on the third respondent, it was unnecessary for the third respondent to appear on 5 May 2025. The third respondent should accordingly pay its own costs in respect of the appearance on 5 May 2025.

ORDER

[26.] I accordingly grant the following order:

[26.1.] the application is postponed to the opposed motion roll of 25 August 2025;

- [26.2.] the applicant is directed to approach the Registrar to ensure that the application is properly enrolled for hearing on the opposed motion roll of 25 August 2025;
- [26.3.] the applicant is ordered to serve this judgement forthwith on the respondents;
- [26.4.] the applicant is authorised to deliver a supplementary founding affidavit within 15 court days of this order to deal with all relevant events which occurred since the application was removed from the urgent roll on 15 February 2022;
- [26.5.] the first, second and third respondents are authorised to deliver supplementary answering affidavits within ten court days of receipt of the applicant's supplementary founding affidavit;
- [26.6.] the applicant is authorized to deliver a supplementary replying affidavit within ten court days of receipt of the supplementary answering affidavit(s);
- [26.7.] the third respondent is ordered to pay its own costs in respect of the appearance on 5 May 2025.



HF OOSTHUIZEN AJ

ACTING JUDGE OF THE HIGH COURT

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on this 9 May 2025.

Appearances

The applicant appeared in person.

There was no appearance on behalf of the first and second respondents.

Adv D Linde, instructed by Keith Sutcliffe & Associates appeared on behalf of the third respondent.

Date of Hearing: 5 May 2025

Date of Judgment: 9 May 2025