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REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
(LIMPOPO LOCAL DIVISION, THOHOYANDOU)

**CASE NO: 1536/2019**

REPORTABLE:NO

OF INTEREST TO OTHER JUDGES:YES

REVISED.

Date: 12/05/2021

In the matter between:

**N M D[...]**

**FIRST APPLICANT**

**(M[...])**

**MATIDZA KUTAMA**

**SECOND APPLICANT**

**M[...] R P**

**THIRD APPLICANT**

**M[...] N O**

**FOURTH APPLICANT**

**M[...] M C**

**FIFTH APPLICANT**

**M[...] M E**

**SIXTH APPLICANT**

**M[...] M**

**SEVENTH APPLICANT**

and

**M[...] T A N.O**

**FIRST RESPONDENT**

**ESTATE LATE D (M[...])**

**SECOND RESPONDENT**

**MUDSIELWANE JOSIAH**

MABIRIMISA BUS SERVICES (PTY) LTD	THIRD RESPONDENT
M[...] N S	FOURTH RESPONDENT
D D[...]	FIFTH RESPONDENT
MATSHKETSHEKE MUNYADZIWA GLORIA	SIXTH RESPONDENT
RAPHALALANI TSHILO SALPHINA	SEVENTH RESPONDENT
RAMUSHUWANA ANNA	EIGHTH RESPONDENT
M[...] F	NINTH RESPONDENT
ESTATE OFFICER DZANANI MAGISTRATE COURT N.O	TENTH RESPONDENT
MAGISTRATE DZANANI	ELEVENTH RESPONDENT
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT N.O	TWELFTH RESPONDENT
MASTER OF THE HIGH COURT OF SOUTH AFRICA,	THIRTEENTH RESPONDENT
LIMPOPO LOCAL DIVISION, THOHOYANDOU N.O	
REGISTRAR OF COMPANIES	FOURTEENTH RESPONDENT

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## JUDGMENT

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**MAKGOBA JP**

[1] The late M J D[...] ([...]) ("the deceased") who died on 19 April 1998

was a businessman and co-owner / director of the business enterprise known as Mabirimisa Bus Service (Pty) Ltd. The business was situated and operated in the Vembe District of Limpopo Province.

The deceased had three wives to whom he was married by customary law; namely

- 1.1. D D[...] (First wife)
- 1.2. N D[...] (Second wife)
- 1.3. A D[...] (Third wife)

- [2] The First Applicant in this matter is the deceased's second wife. The 2<sup>nd</sup> to the 7<sup>th</sup> Applicants are the First Applicant's children with the deceased. The Fourth Respondent, S M[...] is also the First Applicant's son with the deceased. The deceased's first wife, D D[...] is the Fifth Respondent in this matter and the First Respondent, T A M[...] is her son with the deceased.

The deceased's third wife's children with the deceased are the 6<sup>th</sup> to the 9<sup>th</sup> Respondents in this matter.

- [3] After the deceased's death his estate was reported at the Magistrate's Office of Dzanani and registered under Estate Number [...]. The Dzanani Magistrate's Office is cited in this matter as the 11<sup>th</sup> Respondent. By virtue of he being the eldest son of the deceased's first wife, the First Respondent was appointed as the Representative of the deceased estate (Executor) on the 30<sup>th</sup> April 1998.

- [4] In this application the Applicants apply for the following relief:

- 4.1. An order declaring that the 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> , 4<sup>th</sup> , 5<sup>th</sup> , 6<sup>th</sup> and 7<sup>th</sup> Applicants are heirs in the deceased estate of the late M J D[...] ("the estate") registered with the Magistrate Dzanani under estate file [...];

- 4.2. An order declaring that the estate was not wound up in accordance with the applicable provisions of the Black Administration Act 38 of 1927;
- 4.3. An order declaring that the estate falls to be wound up and administered by the Master under the provisions of the Administration of Estate Act 66 of 1965;
- 4.4. An order declaring that the 13<sup>th</sup> Respondent, being the Master of the High Court, must conduct an enquiry with the heirs of the estate for the purpose of appointing an executor for the estate; and
- 4.5. That the First Respondent is ordered to hand over forthwith all the assets and the affairs of the estate to such executor upon his or her appointment by the Master of the High Court<sup>1</sup>.

[5] The application is opposed by the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents who are herein represented by TN Ramashia Attorneys. Also opposing this application are the 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents who are herein represented by the State Attorney. The Respondents have filed the answering affidavits putting up their defence against the Applicants' relief sought. The State Attorney or their Counsel did not attend Court on 30 March 2021 for oral argument but had filed heads of argument for this Court to consider same.

[6] The defence raised by the Respondents is basically the same and to the effect that:

- 6.1. That the relief sought by the Applicants is impermissible in law and impractical in the light of the fact that the administration of the deceased has been finalised.
- 6.2. The deceased estate has already been administered and finalised in terms of section 23 of the now repealed Black Administration Act 38 of 1927.

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<sup>1</sup> Notice of Motion, Page 3

- 6.3. The finalisation of the estate was in terms of a settlement agreement which was made an order of Court before Magistrate Mr AG Mphanama on or about the 7<sup>th</sup> March 2006.
- 6.4. That the deceased estate was reported, administered and wound-up under section 23 of the Black Administration Act, 1927. Therefore the wound-up estate of the deceased does not fall within the purview of the Administration of Estates Act No. 66 of 1965.
- 6.5. That the aforesaid Court order before Magistrate Mphanama on 7 March 2006, was never challenged by the Applicants and remains valid and effective until set aside or rescinded.

[7] It is common cause that the Applicants in this matter are aggrieved parties who comprise of the widow of the deceased and other intestate heirs who allege that they have not benefitted from the estate. The issue in dispute between the parties is whether the estate has been finalised. The 10<sup>th</sup> to the 13<sup>th</sup> Respondents contend that the essence of this matter is that the executor has allegedly maladministered the deceased estate, excluded the beneficiaries from inheriting and has allegedly used the office of the executor to pursue his private agenda.

[8] In terms of the inventory submitted to the Magistrate Dzanani when the deceased estate was registered under Estate number [...] the following assets are listed as forming the deceased estate:

<b><u>Description</u></b>	<b><u>Value</u></b>
Cattle (5)	R 5000.00
Goats (10)	3000.00
Orchard	20 000.00

1983 Model Mercedes Benz Motor Car	10 000.00
1982 Model Massey Ferguson Tractor	5 000.00
2 x Transport Certificates: JM Denga	10 000.00
Household Furniture	3 000.00
Standard Bank Current Account	9 000.00
50% Interest in Mabirimisa Bus Service (Pty) Ltd	10.00
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Total	R 65 010.00

[9] It appears from the papers filed of record that during the course of the administration of the deceased estate, the 4<sup>th</sup> Respondent, S M[...], purporting to be acting on behalf of the second and third houses of the deceased reached a compromise or settlement with the Executor (First Respondent) as to the manner in which the estate had to be distributed to the beneficiaries and / or heirs to the estate. This aspect is confirmed in a letter written by the Magistrate Dzanani during May 2018. The said letter is Annexure TAM2 to the First Respondent's answering affidavit. The letter records that the estate has been finalised due to a settlement agreement having been entered into between the parties, which was made an order of Court<sup>2</sup>.

[10] The aforesaid letter is of importance in this matter and is reproduced hereunder:

*Ref: 7/1/2 (44/98)*

*Inquiry: Matamela NB*

**MAGISTRATES' COURT JUDICIARY  
REPUBLIC OF SOUTH AFRICA**

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<sup>2</sup> See Paginated Page 171

*Magistrate's Office Dzanani*

*Tel no: 015 970 4005 Fax no: 015 970  
4332*

*LE ROUX INC/ING  
BOX 2179  
POLOKWANE  
0700*

*SIR / MADAM*

*RE: ESTATE LATE M[...] J D (ID NO [...]): YOUR CLIENT MR S M[...]*

- 1. Your letter dated 1/6/18 has reference.*
- 2. After having drawn the record I concluded that the estate has been finalized due to the fact that a settlement agreement by the parties was made a Court order in terms of which Mr S M[...] and those who sided with him were to receive R 1.4 Million payable in instalments. The first instalment being R 50 000 on monthly basis.*
- 3. The record does not have a final liquidation and distribution account and there is no proof of payment to all the beneficiaries.*
- 4. If your client is not satisfied with the manner in which the estate was dealt with I will suggest that you cause the decision of the magistrate who dealt with the matter to be reviewed by the Master of the High Court.*
- 5. Hoping that you will find this to be in order.*

*MAGISTRATE: DZANANI*

[11] The court order in question, dated 7 March 2006, is to be found as Annexure TAM 1 to the answering affidavit<sup>3</sup>. The said order is also

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<sup>3</sup> See Paginated Page 170

reproduced hereunder:

*IN THE MAGISTRATE COURT FOR THE DISTRICT OF DZANANI  
HELD AT DZANANI*

*In the estate matter between*

**ESTATE NO: [...]**

**S M[...] [in his capacity and**

**APPLICANT**

*Representative capacity later of MR M[...]*

*SECOND AND THIRD HOUSE]*

*And*

**MABIRIMISA BUS SERVICE**

**RESPONDENT**

### **COURT ORDER**

*Having heard legal representative on behalf of the Applicant, submission by the Respondent representative and having read the papers the following order is made:~*

1. *That the respondent to pay an amount of R 1.4 million to the applicant **[deceased first and second house]** as follows:*

- 1.1. *Deposit of R 50 000-00 payable on or before the 7<sup>th</sup> March 2006;*

- 1.2. *Thereafter ; monthly installment of R15 000-00 payable to the applicant attorneys of record until the applicant furnish the respondent with written*



*confirmation of their account.*

2. *That the respondent to pay applicant representative cost on attorneys own client scale as from 21<sup>st</sup> November 2005 to date of judgment including cost of drafting this Court Order.*
3. *Parties agree that the aforesaid amount will be interest free unless the defendant breached the agreement, wherein the applicant may approached court to enforce their claim for amount due.*

*SIGNED AT MAKHADO ON THIS THE 07<sup>TH</sup> DAY OF MARCH 2006*

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*BY ORDER  
MAGISTRATE DZANANI  
On 7/312006*

[12] From the aforesaid Court order it is noted that S M[...] (4<sup>th</sup> Respondent) was acting in his capacity as representative of the deceased's Second and Third houses.

The second house is that of the Applicants including S M[...] himself. This Court order should be read in conjunction with and in the context of the letter written by the Magistrate Dzanani as set out in paragraph [10] above. It is clear from Annexure TAM 3 to the answering affidavit that the agreed amount of R 1.4 million was paid to the Fourth Respondent in installments over a period of seven years, the final payment being made on the 18 October 2013<sup>4</sup>.

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<sup>4</sup> See Annexure TAM 4 to answering affidavit, Paginated page 189.

[13] The Applicants contend that the deceased estate was never administered and that if there was any proper administration of the estate the following particulars would have been available and produced by the Executor:

- 13.1. the Liquidation and Distribution account;
- 13.2. all vouchers of payments made in respect of the Liquidation and Distribution account;
- 13.3. all documents pertaining to a particular beneficiary;
- 13.4. the valuation certificate by appraiser of all assets, including the value of the deceased's share in Mabirimisa Bus Service.
- 13.5. proof of any estate account opened;
- 13.6. proof of claims lodged.

I agree that in a proper administration of a deceased estate the aforementioned particulars and/or documentation would be available. However, in the present case there has been a maladministration of the estate. It is the Respondents' case that the executor has maladministered the deceased estate, excluded beneficiaries from inheriting and used his office to pursue his private agenda.

[14] In paragraph 5.10 of the Applicants' founding affidavit it is stated by the First Applicant as follows:

*"...I am eager to know what the 1<sup>st</sup> Respondent did with the estate of my late husband and same goes to my children, who are equally estate beneficiaries..."*

In my view the aforementioned crystallized the Applicants' case. The Applicants have no knowledge on how the estate was administered to their exclusion as beneficiaries and seek knowledge of same.

Accordingly, the relief sought by the Applicants which relates to the

declaration that the estate be reopened and be wound-up under the Administration of Estates Act 1965 is misconstrued.

- [15] Furthermore in paragraph 16.2 of the replying affidavit the First Applicant stated the following:

*“Mr. Mphanama does not have a direct and substantial interest as he is no longer in the employment of the 12<sup>th</sup> Respondent. I am reliably informed that he resigned from his employment due to the ma/administration of this estate<sup>5</sup>”*

Quite clearly, the Applicants know that the deceased estate was administered by the Office of Magistrate Dzanani though improperly. The argument or dispute that the estate has not been finalised is not a genuine and *bona fide* dispute due to the fact that the Applicants are aware that the estate has been finalised. The difficulty that the Applicants seem to have is rather how the estate was administered and finalised.

- [16] In the Notice of Motion the Applicants seek a declaratory relief in terms of which this Court should direct *inter alia* that the deceased estate be administered under the Administration of Estate Act 66 of 1965 in the circumstances whereby the estate has already been administered in terms of the Black Administration Act 38 of 1927.

The relief sought by the Applicants is impermissible in law. The estate does not fall within the purview of the Administration of Estate Act on account of the Constitutional Court judgment which provided that estates that were already being wound-up under section 23 of the Black Administration Act at the time of the judgment were to continue to be so administered to avoid dislocation.

In the present case the estate of the deceased had already been finalised some years prior to the Constitutional Court decision.

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<sup>5</sup> Paginated Page 306

- [17] In **Bhe and Others v Khayelitsha Magistrate and Others** the Constitutional Court held as follows:

*“It will be necessary, however, that estates that are currently being wound up under section 23 of the Act and its regulations, continue to be so administered to avoid dislocation. The order will accordingly provide that the provisions of the Act and its regulations shall continue to be applied to those estate in the process of being wound up. All estates that fall to be wound up after the date of this judgment shall be dealt with in terms of the provisions of the Administration of Estates Act<sup>6</sup>”*

It is common cause that the deceased estate in the present case was reported and registered at Magistrate Dzanani in April 1998.

The estate had to be administered there in terms of section 23 of the Black Administration Act until it was finalised. Under no circumstance will the provision of the Administration of Estate Act 66 of 1965 be applicable in the administration of this estate.

- [18] The issue in dispute between the parties is whether the estate has been finalised. In my view the Respondents have adduced documentary evidence in the form of a Court order (Annexure TAM 1) and the Magistrate Dzanani letter (Annexure TAM 2) supporting the contention that the estate was administered in terms of section 23 of the Black Administration Act and wound up in March 2006.

The relief sought by the Applicants is irreconcilable with the facts of the Applicants' case which rests on an alleged maladministration of the estate and the executor's failure to act in good faith. The Applicants have failed to provide a concrete basis upon which they rely on to assert that the estate has not been finalized.

- [19] In the result the following order is made:

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<sup>6</sup> 2005 (1) BCLR 1 CC at para 133

19.1. The application is dismissed.

19.2. There shall be no order as to costs.

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**E M MAKGOBA**  
**JUDGE PRESIDENT OF THE**  
**HIGH COURT, LIMPOPO**  
**DIVISION, POLOKWANE**

### **APPEARANCES**

<b>Heard on</b>	<b>: 30 March 2021</b>
<b>Judgment delivered on</b>	<b>: 12 May 2021</b>
<b>For Applicants</b>	<b>: Adv. M Coetsee</b>
<b>Instructed by</b>	<b>: Mulovhedzi &amp; Nelamvi</b>
<b>Attorneys</b>	
<b>For 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> &amp; 6<sup>th</sup> Respondents</b>	<b>: Adv. T.N Mahafha</b>
<b>Instructed by</b>	<b>:TN Ramashia Attorneys</b>
<b>For 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> &amp; 13<sup>th</sup> Respondents:</b>	<b>State Attorney</b>