

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 028546/2023

DATE: 13-11-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 27 /02/2024

SIGNATURE

10 In the matter between

MMANOKO JEANNEKE MAKGAMATHA

Applicant

and

NAKEDI SALMINA NGWENYA

Respondent

J U D G M E N T

20 **FISHER, J:** This is an application for joinder. The joinder application is in respect of the main application which is an application to remove two persons as the executors of the estate of a deceased person.

The allegations made in the main application relate to the biological parentage of the respondents in the main application. A central to the dispute in the matter is whether an agreement of settlement dated 2 May 2013 was made an order of court on the divorce of the applicant for

intervention and the deceased, whose estate is the subject of the main application or whether another document dated 5 April 2023 was the settlement agreement that was made the order of court.

In terms of the settlement agreement contended for by the applicant for intervention, she retains an interest in the immovable property which is the subject matter of the estate. As such she has a direct and substantial interest in the estate and the manner in which the estate is to be
10 distributed amongst the heirs of the deceased.

It bears mention that the applicants in the main application seek the removal of the respondents in the main application on the basis that they contend that they (the respondents) are not the biological heirs of the deceased. The applicant for intervention is their mother.

Counsel for the parties have been referred by me to statute dealing with the regulation of the customary law applicable in intestate succession. It appears that neither counsel had reference to this statute in their advice to their
20 clients.

The import of the statute is that a descendant for the purposes of intestate succession can be a non-biological child if certain circumstances are met. The respondents in the main application who are sought to be removed as executors will no doubt rely on this provision in due course.

Given the fact that the applicant for intervention has the necessary interest, there is no reason why she should not be joined in the matter. Indeed, if her version is found to be correct in due course, she should have been joined from the outset.

In these circumstances, I make the following order:

The applicant in the application to intervene, Ms Mmanoko Jeannete Makgamatha, is granted leave to intervene in the main application under case number
10 2023/028546.

The costs are costs to be in the cause.

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FISHER J

JUDGE OF THE HIGH COURT

DATE: 27/02/2024