



**IN THE HIGH COURT OF SOUTH AFRICA (GAUTENG DIVISION,
PRETORIA)**

REPUBLIC OF SOUTH AFRICA

CASE NO: 54184/2021

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **YES**
DATE:
SIGNATURE: ***N JANSE VAN NIEUWENHUIZEN***

In the matter between:

SUSARAH JOHANNA RABIE

Applicant

and

THE MASTER OF THE HIGH COURT, PRETORIA

First Respondent

CHANELLE SHANDONETTE BOSHOFF N.O.

Second Respondent

(In her capacity as guardian of the Late
Arnu Rabie's biological minor child)

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

1. This application emanates from the untimely death of Arnu Rabie (“the deceased”) on 8 March 2021.
2. The applicant is the mother of the deceased and the second respondent was at the time of the deceased’s death in, what seems, like a rather acrimonious relationship with the deceased.
3. From the relationship between the deceased and the second respondent one minor child, Ané was born on 22 February 2018.

Relief

4. The applicant brought the application in terms of the provisions of section 2(3) of the Wills Act, 7 of 1953, seeking an order that a copy of the deceased’s Will dated 13 July 2010, be accepted by the first respondent as the last will and testament of the deceased.
5. Notwithstanding certain suspicions raised by the second respondent in respect of the validity of the Will, Ms Ferreira, counsel for the second respondent, correctly conceded during the hearing of the application that the averments in the founding affidavit justifies the order prayed for by the applicant.
6. In the result, I issued an order as prayed for in prayer 2 of the Notice of Motion and reserved judgment in respect of the issue of costs.

Costs

7. Although costs normally follow the result, the second respondent is of the view that her opposition to the application was justified and that she should not be liable for the costs.
8. Notwithstanding the clear evidence contained in the founding affidavit that the copy of the deceased's Will dated 13 July 2010 is indeed his last Will and Testament, the second respondent filed an opposing affidavit consisting of 35 pages. The opposing affidavit contains mainly irrelevant material and deals almost exclusively with the battle between the applicant and second respondent for the appointment of an executor to the late estate of the deceased.
9. The only issue of some relevance raised by the second respondent in her opposing affidavit is the existence of certain letters written by the deceased shortly before he committed suicide.
10. A copy of the letter written to the second applicant was provided to her. Save to say that the letter casts the second respondent in the most unflattering light, I do not deem it necessary to repeat the contents herein. One thing that is patently clear from the letter is that the deceased did not want the second respondent to lay her hands on any part of the assets in his late estate.
11. The applicant stated emphatically in her founding affidavit that the other letters were written to third parties and had nothing to do with the administration of the deceased's estate. In other words, the letters had no bearing on the last Will and Testament of the deceased, being the only subject matter of the application.

12. Notwithstanding the aforesaid, the second respondent deemed the applicant's refusal to make the other letters available as "*suspicious*". If one has regard to the contents of the letter the deceased had written to the second applicant, it is not clear what the second respondent attempted to achieve by insisting to have sight of the contents of the other letters.
13. In order to remove the second respondent's unsubstantiated and uncalled for "*suspicion*", the applicant filed a supplementary affidavit on 7 March 2022 and attached the letters thereto.
14. There are two further letters, one to the applicant and one to a certain Brendan, which appears to be a work colleague of the deceased. The letters do not pertain to the deceased's last Will and Testament at all. To the contrary they are personal in nature and creates a heart wrenching picture of a desperate person who has lost all hope in life.
15. Bearing in mind the relief claimed by the applicant, I consider the manner in which the second respondent chose to oppose the application as unreasonable and insensitive. There were simply no facts to justify the opposition to the relief claimed by the applicant.
16. In the premises, I could find no reason to deviate from the normal cost order and find that the second applicant should be liable for the costs of the application.

ORDER

The following order is made:

1. The second respondent is ordered to pay the costs of the application.

**N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

DATE OPPOSED MOTION APPLICATION HEARD PER COVID19 DIRECTIVES:

28 April 2022

DATE DELIVERED PER COVID19 DIRECTIVES:

6 May 2022

APPEARANCES

Counsel for the applicant

Advocate Z Schoeman

Instructed by:

Steynberg Law Inc.

Counsel for the second respondent:

Advocate R Ferreira

Instructed by:

Loots Basson Attorneys Inc