



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

REPORTABLE

Case No: 1670/2022

Date heard: 26/05/2023

Date delivered: 04/07/2023

In the matter between:

NONYAMEKO NANCY HLAKEYANE

APPLICANT

and

LILLIAN LULAMILE HLAKEYANE

FIRST

RESPONDENT

MONDE MONWABISI LUNGILE HLAKEYANE

SECOND RESPONDENT

NOVUYISO KOLEKA NONTANDO

NOLULU HLAKEYANE

THIRD RESPONDENT

THEMBEKA HLAKEYANE

FOURTH

RESPONDENT

MASTER OF THE HIGH COURT MTHATHA

FIFTH

RESPONDENT

JUDGMENT

Notyesi AJ

Introduction

[1] In this application, Ms Nonyameko Nancy Hlakanyane (the applicant) is the second wife of the late Mr Ernest Lungisa Dlangamandla Hlakanyane (the deceased), and she is asking this Court to declare null and void a massed will and testament of the deceased and Lillian Lulamile Hlakanyane, the divorced wife of the deceased (first wife).

[2] The first wife had concluded a civil marriage, which was in community of property, with the deceased in July 1978. The civil marriage was terminated by divorce on 4 June 2003. There are three children born from that marriage. The divorce of the deceased and the first wife followed a deed of settlement regarding the division of their joint estate in accordance with the marriage in community of property. Prior to the termination of the marriage in community of property, the deceased and the first wife had executed a massed will pertaining to that joint estate. The massed will was executed on 11 March 1988. The deceased passed on in 2016, approximately 13 years after the divorce. The first wife suggests that there is no evidence that the massed will was revoked, and therefore, she seeks to enforce the provisions of the massed will.

[3] The second wife and the deceased had entered into a customary marriage in 1984. There are three children born out of the aforesaid marriage. The marriage between the second wife and the deceased survived until the demise of the deceased in September 2016. In other words, the second wife is the surviving spouse of the deceased. According to the second wife, the deceased died intestate, and the alleged massed will is invalid. There is no dispute about the validity of the marriages. I proceeded on the basis that both marriages were valid and lawful, with the first marriage being terminated by divorce in 2003 and the second marriage having survived until the death of the deceased.

[4] The second wife contended that the will in question fails to make provision for a joint estate, and instead, it refers to separate estates, and for that reason, the massed will is invalid. She further submitted that in terms of the Administration of Deceased Estates Act 66 of 1965 (the Act), the survivor in a massed will must formally and in writing, adiate and that the first wife never complied with the requirements for adiation. Finally, the second wife contended that as a result of the deed of settlement during the divorce proceedings, the deceased had no joint assets for purposes of the massed will, for the reasons that the deceased and the first wife shared their joint assets and liabilities and thus left no consolidated assets.

[5] On the contrary, the first wife contended that she had adiated and that the will is valid and binding irrespective of the divorce and the deed of settlement. She submitted that an adiation by her, as the survivor, had the effect of conferring her with rights arising from the massed will and that should be given effect in the absence of another will or proof of revocation of the massed will. In this regard, she relies upon a certificate of adiation which she has attached to her papers.

[6] The original massed will was not produced by the Master in his report. The first wife, too, did not produce the original massed will.

Issue

[7] The crisp issues for determination revolve around the validity of the massed will and the questions of whether, absent the adiation, there can be a valid massed will and the effect of the deed of settlement during the divorce proceedings in 2003.

The parties

[8] I shall, for the sake of simplicity, refer to the parties as follows—

- 8.1 The applicant – the second wife;
- 8.2 The first respondent – the first wife;
- 8.3 The late husband – the deceased; and
- 8.4 The fifth respondent – the Master.

Background

[9] The deceased was married to both the first and second wives. There is no dispute concerning the validity of their marriages. The first wife was married in 1978. The second wife was married in 1984. Each marriage produced three children. The first wife divorced the deceased in 2003. All the children are majors.

[10] During the subsistence of the first marriage, the deceased and the first wife executed a massed will on 11 March 1988. Below is an extract from the massed will—

“We, the undersigned, ERNEST LUNGISA DLANGAMANDLA HLAANYANE and LILLIAN LULAMILE HLAANYANE (born SOGONI), married in community of property, do hereby revoke all Wills, Codicils and other Testamentary Acts heretofore made by us whether jointly or severally and declare the following to be our Last Will and Testament.

1. Provided the survivor of us outlives the other for a period of thirty days we nominate such survivor to be the sole heirs or heiress of the residue of the estate of the first-dying of us.
2. Should neither of us survive the other for a period of thirty days we bequeath the residue of the estates of both of us in equal shares to those of our children MONDE MONWABISI LUNGILE HLAANYANE, NOVUYISO KOLEKA NONTANDO NOLULU HLAANYANE and THEMBEKA HLAANYANE who are alive at the death of the survivor of us to the exclusion of the lawful issue of a predeceased child.

Should any of our children not have attained the age of twenty-five years at the date of death of the survivor of us we direct that the residue of our estates shall, with the exception of all fixed property, be reduced to cash and that any share devolving upon a child under that age with the exception of fixed property which shall be transferred into our children's names, shall be held in trust by our Administrators and invested in equities, interest-bearing securities and/or any other investments as they in their absolute discretion may deem fit without being fettered by any of the considerations which otherwise would cause them to restrict the investments to recognised trustee securities. . . .”

[11] In 2003, during divorce proceedings, the first wife and the deceased entered into a settlement agreement. The settlement agreement was about the distribution of the joint estate, as their marriage was in community of property. The net effect of the deed of settlement was the dissolution of the joint estate. Below, I set out briefly the terms of the settlement agreement as they are relevant—

“NOW THEREFORE the parties, in full and final settlement of all claims arising in consequence of the Plaintiff's action and Defendant's Counter Claim, agree as follows:

Decree of Divorce

1.

That there shall be a Decree of Divorce.

Movable Assets

6.

That in respect of movable assets each party shall retain possession and ownership of whatever assets are presently in his/her possession.

Cash Settlement

7.

That the Plaintiff pay the Defendant an amount of R40 000 payment to be effected on or before the 30th November 2003, failing which interest shall accrue thereon at the rate of 15.5% per annum from 1st December 2003 to date of payment.

Immovable Properties

8.

8.1 That the Plaintiff shall sign all documents and do all things necessary to transfer the right of occupation in respect of the residential allotment site at Lubacweni, Mount Frere into the name of the Defendant.

8.2 That the Plaintiff shall retain sole ownership of the immovable properties presently registered in his name and shall bear sole responsibility for payment of the bonds registered against the said properties.”

[12] Consequent to the divorce of the deceased and the first wife in 2003, the second wife continued to be the only wife of the deceased. Their customary marriage was in community of property for the reason that there are no antenuptial agreements excluding community of property. According to the second wife, she and the deceased developed businesses. In 1999, they jointly purchased a property in Kokstad. The second wife alleged that she and the deceased were joint owners of their businesses. The second wife and the deceased shared a common home.

[13] In 2016, the deceased passed on. This is approximately 13 years from the date that the deceased divorced his first wife. The deceased was buried in September 2016, and he is survived by his second wife and six children, of which three were born from their first marriage.

[14] Following the burial of the deceased, the second wife reported the estate to the Master for the purposes of obtaining letters of executorship. She was issued with

letters of authority and thereafter started administering the intestate estate of the deceased as, according to her, there was no will.

[15] Whilst the second wife retained possession of the letters of authority, the first wife, with the assistance of the Standard Executors and Trustees Limited, sought and obtained letters of executorship from the Master. According to the first wife, both Standard Executors and Trustees Limited relied on a massed will which was executed by the deceased before her divorce. The first wife produced a copy of the massed will dated 11 March 1988. In terms of the massed will in clause 5, Standard Executors and Trustees Limited is nominated as an executor. A copy of the massed will form part of the record, and for that reason, I quote the relevant parts therefrom—

“We appoint as Executor of our estates whichever of THE STANDARD BANK OF SOUTH AFRICA LIMITED and STANDARD TRUST LIMITED shall first lodge with the Master of the Supreme Court a written acceptance of the appointment in terms of section 14(1) of Act 66 of 1965 and we further appoint STANDARD TRUST LIMITED to be the Administrator of this our Will. We declare that neither the said Bank nor the said Company shall be called upon to furnish security for acting in those capacities. For its services the said Bank/Company shall be entitled to recover Executors' commission at the official tariff rates in force from time to time and Administrators' commission in accordance with the Company's tariff as laid down from time to time. We further direct that the said Bank may act as banker to our estates or trust estates and that where the said Bank and the said Company and any company or institution in which either or both of them may have an interest, financial or otherwise (hereinafter referred to as “the Agent”) is able to provide any banking, financial, estate agency or any other services and/or perform any work on behalf of our estates or trust estates, then the Agent shall be employed (unless it declines to do so) in preference to other persons; and the Agent shall be entitled to charge and retain the customary charges, fees and/or commissions recoverable in the ordinary course of business, irrespective of the fact that the Bank or the Company is receiving Executor's and/or Administrator's remuneration for its services to the estates and/or trust estates.”

[16] The Standard Executors and Trustees Limited had also written letters to the second wife requesting assets of the deceased and relevant documents on the basis that they were the appointed executors. According to the first wife, the written requests to the second wife had yielded no results. Letters were also written to the second wife's attorneys, even by the Master. According to the first wife, the Master cancelled the letters of authority that were issued in favour of the second wife.

[17] The Master has filed a report. In the report, the Master stated that the Standard Executors and Trustees Limited was nominated in the massed will to be the executors of the estate and that he appointed them on 8 March 2018. The Master reported that the second wife did not report that the deceased had a will. Although the Master did not produce the original will, he indicated that he accepted the massed will. According to the Master's report, it was on those bases that he wrote a letter to the second wife cancelling the letters of authority. The Master reported that the executors delegated their functions to the first wife. Upon her appointment, the first wife engaged attorneys to assist her. No reasons had been proffered on why the Standard Executors and Trustees Limited delegated their functions as the appointed executors.

[18] According to the Master's report, Standard Executors and Trustees Limited resigned as executors on 27 February 2020. As a result of their resignation, the Master appointed the first wife as executrix on 12 November 2021. The first wife was assisted by attorneys B A Mzolo & Associates. The Master alleged that he appointed the first wife as executrix because she was the sole heir of the deceased in terms of the will. The first wife was therefore assigned to collect the assets of the deceased and administer the estate.

[19] According to the first wife, her attempts to obtain details of the assets and the documents from the second wife were unsuccessful. Although the Master suggested that he purportedly cancelled the letters of authority issued in favour of the second wife, there was no formal cancellation of such letters of authority.

[20] The second wife is now contesting the validity of the massed will and is seeking an order to nullify the purported massed will.

The contentions of the parties

[21] The second wife submitted to this Court that the massed will and testament should be set aside as a nullity. She is also seeking the removal of the first wife as executrix of the estate late for the simple reason that the deceased had no joint

assets and estate with the first wife. According to the second wife, the first wife and the deceased dissolved their joint estate during the divorce proceedings in 2003 through a deed of settlement. She alleged that the deed of settlement dealt with the distribution and sharing of the joint assets in terms of the marriage in community of property between the first wife and the deceased. Accordingly, the second wife contended, in this regard, that there are no assets of the joint estate as envisaged in terms of the massed will.

[22] In advancing her contention, the second wife pointed out that the massed will is self-evident pertaining to the assets that were held by the first wife and the deceased by virtue of their marriage in community of property. In this regard, reference was made to the preamble and the first clause in the will, which I now quote below—

‘We, the undersigned, ERNEST LUNGISA DLANGAMANDLA HLAKEYANE and LILLIAN LULAMILE HLAKEYANE (born SOGONI), married in community of property, do hereby revoke all Wills, Codicils and other Testamentary Acts heretofore made by us whether jointly or severally and declare the following to be our Last Will and Testament.

1. Provided the survivor of us outlives the other for a period of thirty days we nominate such survivor to be the sole heir or heiress of the residue of the estate of the first-dying of us.’

[23] The second wife contended that, on a proper reading of clause 1 and the preamble to the will, the clear intention of the parties was to deal with the assets held by virtue of their marriage in community of property. The gravamen of the submission is that upon the distribution of the joint assets, in terms of the deed of settlement, the massed will became null and void. The second wife further submitted that clause 1 of the massed will is ambiguous and vague and that there is no meaning that can be attached to the clause. In addition to those submissions, the second wife pointed out that there is no adiation by the first wife and the sole reason, in this regard, is that there is no joint estate between her and the deceased. On that ground, the contention was that the massed will must be nullified and that the first wife was wrongly appointed as executrix for the estate of the deceased. There is a further problem in relation to the massed will, which is the absence of the original will.

[24] On the contrary, the first wife contended that the deceased never revoked the massed will, despite the fact that the decree of divorce and the deed of settlement in 2003 and, therefore, the intention of the deceased was to bequeath her with his assets. In this regard, Ms *Klaasmani*, who appeared for the first wife, relied on the authority of *Master v Estate Cooper & Others*¹ where Steyn J said–

‘The court interpreting a will must if at all possible give effect to the wishes of the testator. The cardinal rule is “no matter how clumsily worded a will might be, a will should be so construed as to ascertain from the language used therein the true intention of the testator in order that his wishes can be carried out.”

[25] Ms *Klaasmani* emphasised, in her submissions, that although the deceased was divorced from his first wife in 2003, there is no evidence that he had executed another will in which he revoked the massed will, and therefore, it should be accepted that at all material times, the deceased intended for the first wife to inherit the residue of his estate. She further relied, in this regard, on the authority of *Phanyane NO v Panyane NO and Others*,² where Olivier AJ stated–

“[A] will which is regular and complete on the face of it is presumed to be valid until its validity has been established. The onus is on the person alleging invalidity to prove such allegations. He or she who alleges invalidity must prove.”

[26] On the basis of these authorities, Ms *Klaasmani* submitted that the applicant failed to discharge the onus resting on her to prove that the massed will is invalid and, therefore, the massed will be allowed to stand.

[27] Regarding the removal of the first wife as executrix of the estate, Ms *Klaasmani* submitted that as the first wife is the sole heir in terms of the will, the Master was entitled to appoint her when Standard Executors and Trustees Limited resigned as executors of the estate. Ms *Klaasmani* further submitted that the Master was entitled to appoint any person as an executor of the estate in the event of Standard Executors and Trustees Limited resigning. The submission, in this regard, was that there is no basis for the removal of the first wife as an executrix simply

¹ *Master v Estate Cooper & Others* 1954 (1) SA 140 (C) at 143H-144A.

² *Phanyane NO v Phanyane NO and Others* [2022] ZAGP JHC 481 para 10.

because the second wife disagreed with her appointment. Ms *Klaasmani* relied on the authority of *Oberholster NO v Richer*³ where it was held—

“[M]ere disagreement between an heir and executor of a deceased estate, or a breakdown in relationship between one of the heirs and the executor is insufficient for the discharge of an executor in terms of Section 54(i)(v) of the Act. In order to achieve the results, it must be shown that the executor conducted himself in such a manner that it actually imperilled his proper administration of the estate. Bad relations between an executor and an heir cannot lead to the removal of the executor unless it is probable that the administration of the estate.”

[28] I will consider the contentions of the parties based on the applicable principles in respect of a massed will.

Massed will and testament

[29] In *Rhode v Stubbs*,⁴ it was held—

“When two (or more) testators make a testamentary disposition together, grammatical uncertainty frequently arises. The use of the (appropriate) first person plural does not convey unambiguously to a reader of the will whether each testator is expressing his wishes only on his own behalf, or also on behalf of the other testator(s). Our law finds a solution to the problem of interpretation to which this structural lack of clarity gives rise in the rule that mutual or joint wills of spouses married in community of property must in the first instance be read as separate wills. The person analysing such a will proceeds on the hypothesis that he or she is dealing with separate wills until the contrary clearly appears. The reason for this approach is embedded in our common law.

In *Joubert v Ruddock and Others* 1968 (1) SA 95 (E) at 98F-G, Eksteen J quotes a passage from Van Leeuwen’s *Censura Forensis* 3.11.6 in which he underlines the importance of the principle that a person ought to remain capable of changing his will until the end of his days, and motivates this proposition by saying (*Schreiner’s* translation) “...there is nothing to which men are more entitled than that their power of making a last will should be free, and hence the rule; that no one can deprive himself of this power”.

The proposition is not correct without qualification. A testator can deprive himself of the right to make a will by massing, but if there is any doubt about his intention, the will must be interpreted so as to leave the greatest possible freedom of testation. That gives rise to the subordinate rule of interpretation, the presumption against massing, that applies when the

³ *Oberholster NO v Richer* [2013] 3 All SA 205 (GNP) at 210C-E.

⁴ *Rhode v Stubbs* 2005 (5) SA 104 (SCA) paras 16-18.

golden rule for the interpretation of wills, ie to give meaning to a testator's words within the framework of a will, fails due to vagueness or ambiguity.”

[30] Massing occurs when two or more persons, with testamentary capacity, combine or consolidate (mass) their separate estates (or their undivided half shares of their joint estate where they are married in community of property) into a single massed estate, prescribing in the Will what must be done with this massed estate on the occurrence of a specific event, usually the death of the first-dying testator. In this regard, section 37 of the Act states as follows–

“If any two or more persons have, by their mutual will, massed the whole or any specific portion of their joint estate and disposed of the massed estate or of any portion thereof after the death of the survivor or survivors or the happening of any other event after the death of the first-dying, conferring upon the survivor or survivors any limited interest in respect of any property in the massed estate, then upon the death after the commencement of this Act of the first-dying, adiation by the survivor or survivors shall have the effect of conferring upon the persons in whose favour such disposition was made, such rights in respect of any property forming part of the share of the survivor or survivors of the massed estate as they would by law have possessed under the will if that property had belonged to the first-dying; and the executor shall frame his distribution account accordingly.”

[31] The following are the requirements for statutory massing–

- 31.1 the first dying testator must have died on or after 2 October 1967, being the date on which the Administration of Estates Act 66 of 1965 came into operation.
- 31.2 There must be two or more persons as parties to the mutual will.
- 31.3 The parties must make a mutual will (a mutual will is a joint will in which two or more testators have mutually benefitted one another in the same document).
- 31.4 The parties must mass the whole or part of their separate estate assets into a consolidated unit, and this unit must be disposed of in the mutual will.
- 4.5 The mutual will must grant the survivor ‘a limited right’ in respect of any property which has been massed.
- 31.6 The disposition of the massed estate must take place sometime after the death of the first dying.
- 31.7 The survivor must adiate on the death of the first dying.

Interpretation of a will

[32] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁵, Wallis JA said:

“The present state of the law can be expressed as follows. Interpretation is the process of *attributing meaning to the words* used in a document . . . having regard to the *context* provided by reading the particular provision or provisions in the light of the *document as a whole* and the *circumstances attendant* upon its coming into existence. . . . The *process is objective, not subjective*. A *sensible meaning* is to be preferred to one that leads to insensible or businesslike results or undermines the apparent purpose of the document. Judges must be alert to, and *guard against*, the *temptation to substitute* what they regard as reasonable, sensible or businesslike for the words actually used.” (Emphasis added.)

Evaluation and analysis

[33] When the first wife and the deceased concluded the massed will, they were married in community of property. There can be no doubt that the massed will relate to their joint assets in terms of marriage in the community of property. In this regard, I am fortified by the wording in the preamble—

‘We, the undersigned, ERNEST LUNGISA DLANGAMANDLA HLAKEYANE and LILLIAN LULAMILE HLAKEYANE (born SOGONI), married in community of property, do hereby revoke all Wills, Codicils and other Testamentary Acts heretofore made by us whether jointly or severally and declare the following to be our Last Will and Testament.’

[34] Clause 1 is not immediately clear, although I am prepared to accept that it refers to the surviving spouse of that marriage in community of property. The clause reads—

“Provided the survivor of us outlives the other for a period of thirty days we nominate such survivor to be the sole heir or heiress of the residue of the first-dying of us.”

[35] The first problem with the massed will is that the deceased and the first wife divorced in 2003. During the divorce, the first wife and the deceased dissolved their joint estate and distributed the assets in terms of the deed of settlement. That conduct, in my view, rendered their massed will null and void, for there were no consolidated assets for purposes of a massed will. I agree with the submission by

⁵ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) para 18.

the second wife that there are no assets in the joint estate as envisaged in terms of the massed will. In my view, the will should be invalidated on this basis alone.

[36] There is a further problem. The original will was not produced. There is a rebuttable presumption that when a will that was last known to be in the testator's possession cannot be found, the testator is presumed to have destroyed it with the intention of revoking it.⁶ The massed will was executed in 1988. The first wife and the deceased divorced in 2003. They executed a deed of settlement in which they distributed their joint estate. The deceased passed on in 2016. A copy of the will was only produced in 2018. I cannot accept the copy of the massed will in these circumstances.

[37] It is well to remember that the deceased is survived by the second wife to whom he is married in community of property by virtue of customary law. I find it extremely difficult to determine the residue of the deceased's assets from those of the second wife. In these circumstances, it is apparent that the deceased, by his conduct, revoked the massed will. The version of the second wife that she holds a joint estate with the deceased was uncontested, and I do accept, considering the 13-year period from the date of divorce of the first wife.

[38] I find no merit in the submission by Ms *Klaasmani* that the deceased had intended to bequeath his assets to the first wife solely on the basis that there is no evidence of another will having been executed by the deceased. The starting point is that there is no joint estate held by the first wife and the deceased, and therefore, there can be no massing of the estate.

[39] Another insurmountable problem for the first wife is that she did not adiate even if the massed will was valid. I say so for the following reasons: (a) in the answering affidavit, the first wife filed what purports to be an adiation certificate, and this certificate is unsigned by witnesses and it has no date when it was filed; (b) realising the shortcomings in the first certificate, a declaration has been signed by attorney, Mr Mzolo, and it has no date; and (c) the purported adiation certificate is fraudulent for the reasons that it purports to have been signed by the surviving

⁶ See *Ex Parte Slade* 1922 TPD 220.

spouse. There is no doubt that, at the time of the death of the deceased, the first wife was not a surviving spouse of the deceased. My view is that if the certificate was submitted to the Master, he was certainly misled in this regard. In the Master's report, there is simply no confirmation that the first wife had adiated within 30 days of the death of the deceased. It bears mentioning that the first wife had only emerged in relation to the deceased estate towards the end of 2017, although the deceased passed on in 2016. I find this to be opportunistic on its own. It is startling that the first wife, who had not been living with the deceased for approximately 13 years, would simply emerge only to demand the assets of the deceased in circumstances where she has taken her own assets from the joint estate. The massed will bring on some of its own obligations to the surviving spouse. In this case, the first wife seems to take no responsibilities other than to demand the benefits from the purported massed will. The interest of justice cannot permit such eventuality or occurrence.

[40] In my view, the massed will is also riddled with contradictions, vagueness and ambiguities. I agree, in this regard, with the submissions by Mr *Dingiswayo*, counsel for the second wife, that in a mutual or massed will, the two estates are consolidated into one, thus it cannot be said that the survivor will be an heir or heiress to the estate of the first-dying, for that defeats the intention of a massed or a mutual will and indicates the existence of two separate wills. The present will refer to estates as opposed to an estate, and that must surely indicate that there are separate estates. In these circumstances, it is correct to follow the approach in *Theart v Scheibert & Others*,⁷ where it was held that if there is any doubt about the intentions of the testator, then the presumption against massing takes place. The use of plural words in the will casts serious doubt on the intention of the testator, whether the testator intended massing or not.

[41] In these circumstances, this Court is constrained to accept that there is no valid massed will.

Conclusion

⁷ *Theart v Scheibert & Others* [2012] ZASCA 131; [2012] 4 All SA 278 (SCA) para 18.

[42] It is trite law that a will must be interpreted so as to leave the greatest possible freedom of testation. However, a testator can deprive him or herself of the right to make a will by massing.⁸ Whether or not there has been massing is a matter of construction. However, when there is confusion or ambiguity regarding the meaning of the testator, the presumption against massing finds application.⁹ The present massed will is ambiguous, contradictory and confusing, and therefore, there is a strong presumption against the massing. I have also found that there was no consolidation of assets for purposes of the massed will. Insofar as the first wife and the deceased were partners to a marriage in community of property, the deed of settlement, which resulted in the distribution of their joint assets, had the effect of invalidating any massed will in the absence of clear intentions on their part. I have also found that the first wife has not adiated, and therefore, the massing has not taken effect.

[43] For the foregoing reasons, the application must succeed, and costs must follow the results. I have not been persuaded differently. The second wife is entitled to her costs. The massed will be nullified, and it therefore follows that the executor, who was appointed in terms of the invalid will, should be removed, for the reason that the appointment too, in my view, was authorised by an invalid will.

Order

[44] In the result, the following order is made—

- (1) It is declared that the massed will and testament of Lillian Lulamile Hlakanyane and Ernest Lungisa Dlangamandla Hlakanyane is null and void.
- (2) The Master of the High Court is directed to take all necessary steps and remove Lillian Lulamile Hlakanyane as the estate executrix of the estate late Ernest Lungisa Dlangamandla Hlakanyane.
- (3) The first respondent (Lillian Lulamile Hlakanyane) is directed to pay the costs of the application, including all costs previously reserved.

⁸ *Joubert v Ruddock* 1968 (1) SA 95 EI at 98E-G; *Rhode v Stubbs* above n 4 paras 16-17.

⁹ *Rhode v Stubbs* above n 4 para 18. See also *Outhoff and Another v Kaplan N.O and Others* [2019] ZAGPPHC 135 para 40.

M NOTYESI

ACTING JUDGE OF THE HIGH COURT

I agree

M N HINANA

ACTING JUDGE OF THE HIGH COURT

Appearances

Counsel for the applicant : *Adv Dingiswayo*
Attorneys for the applicant : Dube Lesley Attorneys Incorporated
c/o Nceba Giwu Incorporated
Mthatha

Counsel for the first respondent : *Adv Klaasmani*
Attorneys for the first respondent : M Dukada Incorporated
Mthatha

No appearance for second to third respondents