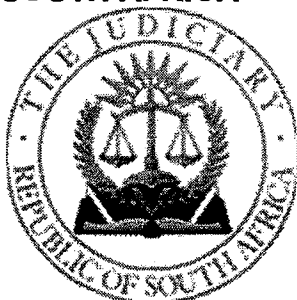
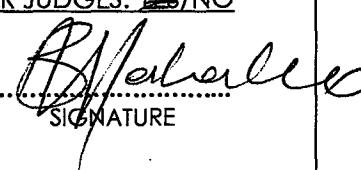


## REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 37347/2015

(1)	REPORTABLE: <del>YES</del> / NO
(2)	OF INTEREST TO OTHER JUDGES: <del>YES</del> / NO
(3)	REVISED.
<div style="display: flex; justify-content: space-between;"> <div> <u>17/8/2018</u> DATE         </div> <div>  SIGNATURE         </div> </div>	

In the matter between:

**SIMON BONAGELE KHUZWAYO**

Applicant

and

**ELIZABETH TSHINAVHE N.O**

First Respondent

**THE MASTER OF THE HIGH COURT**

Second Respondent

**REGISTRAR OF DEEDS, JOHANNESBURG**

Third Respondent

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**J U D G M E N T**


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**MAHALELO, J:**

[1] This is an opposed application wherein the applicant seeks an order in the following terms:

- (a) The Last Will and Testament of Poppy Khuzwayo be declared null and void.
- (b) An order that Poppy Khuzwayo died intestate and her estate devolve in terms of the Intestate Succession Act 81 of 1987 as amended.
- (c) Cancellation of the letter of authority issued by the second respondent in favour of the first respondent.
- (d) Directing the second respondent to convene a meeting with the parties involved and issue a new letter of authority to the intestate heir(s).
- (e) The first respondent to pay the costs of the application.

[2] The second and third respondents have not filed any opposing papers they abide the decision of the court. The first respondent opposed this application on the following grounds; (a) the applicant is not the descendant of Poppy Khuzwayo and as such cannot inherit in her estate (b) the applicant lacks *locus standi* to institute the present application.

## BRIEF BACKGROUND

[3] The factual background is to a larger extent common cause. Where it is not I shall indicate. Poppy Josephine Khuzwayo was a widow who was during her lifetime married in community of property to George Khuzwayo who died on 29 June 2008. She died on 24 September 2013. For the sake of convenience, I shall refer to both of them as the deceased and to Poppy Josephine Khuzwayo as Mrs Khuzwayo. The deceased were both owners of their joint estate. Both of them left no children. Mrs Khuzwayo is survived by her mother and siblings. She left her last Will and Testament in which she bequeathed her estate to the first respondent and nominated her as the representative of her estate. Upon her death her estate was reported with the Master of the High Court, Johannesburg and the first respondent was appointed the executor of her estate and furnished with a letter of authority. The first respondent was therefore authorised to administer the estate of her daughter and by virtue of the Last Will and Testament she inherited the immovable property which forms the subject matter of this case.

## APPLICANT'S CONTENTIONS

[4] The applicant contended that he was staying with Mrs Khuzwayo and her late husband who was his uncle prior to their death. At the time when Mrs Khuzwayo fell ill her mother moved in with her to take care of her. The applicant avers that it was the wishes of the deceased that the house situated at 2648 Rampulane Street, Diepkloof being their property be awarded to him because, when his uncle died Mrs Khuzwayo indicated on the death notice marked annexure "SBK3" that he was their

son. The applicant contended that even though no formal documents were drafted and signed awarding the said house to him, the mere mention of him as their son on the death notice demonstrates a clear intention on their part that he should be the beneficiary of the house in question. The applicant alleged that after the death of Mrs Khuzwayo, the first respondent colluded with her siblings and forged the will that is purported to be the Last Will and Testament of Mrs Khuzwayo. According to the applicant, he financially assisted Mrs Khuzwayo during her lifetime and she even perceived him as her son. He averred that at all material times Mrs Khuzwayo alluded to the fact that he was going to inherit the immovable property in question.

[8] The applicant challenged the authenticity of the signature on the Last Will and Testament of Mrs Khuzwayo. On 9 July 2015 he approached Grafex, a forensic handwriting examiner to examine the signature which appears thereon and to verify if it belonged to Mrs Khuzwayo. According to the applicant, it was concluded that the signature was forged. The said conclusion is contained in a report marked "SBK5" to the applicant's papers. On the basis of such conclusion, the applicant argued that the purported Last Will and Testament of Mrs Khuzwayo should be declared null and void. He submitted that he is the rightful heir to the deceased's estate and has the right to institute the present application.

#### FIRST RESPONDENT'S CONTENTIONS

The first respondent contended that the applicant is not the biological child of the deceased. The first respondent stated that the applicant is the son of George Khuzwayo's sister who is still alive, a fact which is not disputed by the applicant. The

first respondent submitted that the applicant was not residing with Mrs Khuzwayo at the time of her illness and death. She disputed that both Mr and Mrs Khuzwayo had wished the immovable property in question be bequeathed to the applicant because no formal documents were drafted and signed by them bequeathing the said property to him.

[11] The first respondent denied that the Last Will and Testament of Mrs Khuzwayo was forged. She therefore disputed that the applicant has the necessary *locus standi* to institute the present application as he is in no way entitled to inherit from the estate of the deceased. The first respondent argued that she is the rightful heir to her deceased daughter's estate and was rightfully appointed as the executor of her estate.

#### FACTUAL POSITION

[12] It is common cause that the deceased died without leaving any children.

[13] It is further common cause that Mr Khuzwayo pre-deceased his wife and she died leaving her mother and siblings.

[14] It is alleged that the deceased wished that the applicant be awarded the immovable property situated at 2648 Rampulane Street, Diepkloof, although it is not stated whether this is in terms of a Will or the laws of intestate succession.

[15] It is common cause that the applicant is not the biological child or adopted child of both the deceased.

[16] It is furthermore common cause that in accordance with the challenged Last Will and Testament of Mrs Khuzwayo, the first respondent is the beneficiary in the estate of the late Mrs Khuzwayo and she is the heir in terms of the laws of intestate succession. The first respondent was therefore appointed by the Master as the executor of the deceased estate.

#### LEGAL POSITION

[17] It is trite that any person intending to institute proceedings must have the necessary *locus standi* in law to do so. The general rule is for the party instituting proceedings to allege and prove that he or she has *locus standi*, the *onus* of establishing that issue rests on the applicant. See *Mars Incorporated v Candy World (Pty) Ltd* 1991 (1) SA 567 (A).

[18] A person intending to institute or defend legal proceedings must have a direct and substantial interest in the right which is the subject of the litigation. See *Jacobs and Another v Waks Others* 1992 (1) SA 521 (A) at 534A-E.

[19] In *Sandton Civic Precinct (Pty) Ltd v City of Johannesburg and Another* 2009 (1) SA 317 (SCA) it was held that *locus standi* concerns the sufficiency and directions of the litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted.

[20] When it comes to deceased estates the general rule is that an executor is the only person who can represent the estate of the deceased person. In *Booyesen and Others V Boosen and Others* 2012 (2) SA (GSJ) it was held that:

*"In regard to the legal status of both deceased estate and the executor, the deceased estate is not a separate persona, but the executor is such person for the purpose of the estate and in whom the assets and liabilities temporarily reside in a representative capacity. The executor only has locus standi to sue or be sued."*

## CONCLUSION

[22] The applicant is not the first respondent's descendant. He is also not the deceased' adopted child. There is no valid Will bequeathing to him any of the deceased' estate or part thereof. The applicant has not established any right to inherit as the deceased's heir. The deceased's estate appears to be the one that was eligible to devolve according to her Last Will and Testament, accordingly the property in question was supposed to devolve upon Mrs Khuzwayo's mother according to her wishes expressed in her Last Will and Testament. Even if I were to accept that there was something wrong with the signature of the first respondent on her Last Will and Testament, in the absence of any evidence from the applicant declaring him to be an heir to the deceased's estate I am satisfied that the applicant does not have the requisite *locus standi* to institute the present application and the application stands to be dismissed on this point alone.

[23] In the circumstances the application is dismissed with costs.

A handwritten signature in black ink, appearing to read 'M B Mahalelo', is written over a horizontal line.

**M B MAHALELO  
JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**Appearance**

**For the applicant:**

**Instructed by:**

**MR H.R MUNYAI**

**Munyai Attorneys**

**For the respondent:**

**Instructed by:**

**MR M.W Segatja**

**Segatja Attorneys**

**Date heard:**

**07 May 2018**

**Date of judgment:**

**17 August 2018**