

IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA

CASE NO: 9788/10

I E JASAT

APPLICANT

and

MRS A JAZZBHAI

1ST RESPONDENT

MRS F KAJEE

2ND RESPONDENT

MASTER OF THE HIGH COURT,
PIETERMARITZBURG

3RD RESPONDENT

J U D G M E N T

BALTON, J

[1] This is an application in which the applicant seeks an order that:

- (i) The decision of the third respondent dated 11 October 2010, to remove the applicant as executor be set aside.
- (ii)
 - (a) Restraining the third respondent from granting letters of executorships to testamentary nominations, first and second respondents.
 - (b) If any certificates of executorship have been issued to the first and second respondents, it must be ruled null and void.
- (iii) The third respondent receives further submissions from the applicant in terms of section 22 of the Administration of Estates Act 66 of 1965 (“the

Act”).

[2] It is common cause or not in dispute that:

- (i) The applicant and the first and second respondents are siblings.
- (ii) Their mother, Mrs Rasool Bebee Jasat (“the deceased”) died on 14 July 1994.
- (iii) The applicant was appointed executor dative by the third respondent on 19 August 2008.
- (iv) The deceased owned immovable property situated at 21 Dartnell Road, Pietermaritzburg.
- (v) The applicant’s sister, Fazila Patel, has been residing on the property since the deceased’s death, at a monthly rental of R700,00.

[3] The applicant alleges that:

- (i) The deceased instructed attorney Hoosen Jasat to draw up a Will.
- (ii) Hoosen Jasat, who was in partnership with his brother, attorney Farouk Jasat, suffered brain damage in 1996 and is non-corpus mentis.
- (iii) On 4 July 2007, the applicant lodged a complaint with the third respondent against the first respondent’s failure to lodge accounts.
- (iv) The third respondent advised the applicant in 2008 that he had no record of the deceased’s estate.
- (v) On 21 July 2010, Farouk Jasat lodged the deceased’s Will dated 12 May

1994, with the third respondent.

- (vi) The third respondent accepted the Will on 10 September 2010.
- (vii) The first and second respondents are the nominated testamentary executors and the third respondent appointed them as such.
- (viii) In 1994 the first respondent purported to be the appointed executrix to the third respondent's office. She declined to give the applicant a copy of the Will.
- (ix) The applicant filed a written objection in terms of section 22 of the Act.

[4] The third respondent filed a notice explaining that the first and second respondents were appointed executors in terms of the Will and that he will abide by the decision of the Court.

[5] The applicant alleges that the first respondent was in possession of the Will prior to July 2010, because a copy of the Will was faxed to the Municipality on 19 May 2010 at 12h02. Attorney Jasat alleges that he found the Will in July 2010.

[6] Despite much argument and the applicant's contention that the matter could be resolved on the papers, this Court is of the view that the issue of when the Will was faxed to the Municipality in relation to the allegation that the Will was found by Attorney Farouk Jassat in July 2010, is a dispute of fact which cannot

be resolved on the papers. Furthermore, correspondence between the Municipality and the tenant/first respondent relating to the immovable property is also relevant.

[7] This evidence will be necessary to determine the final outcome of the relief sought.

[8] The following order is made:

- (i) This application is adjourned to a date to be arranged with the Registrar for the hearing of oral evidence on the following issues:
 - (a) When was the Will faxed to the Municipality;
 - (b) Who corresponded with the Municipality on behalf of the estate.
- (ii) The evidence shall be that of any witnesses whom the parties or either of them may elect to call, subject, however, to what is provided in paragraph (iii) hereof.
- (iii) Save for any persons who may have deposed to an affidavit in this matter neither party shall be entitled to call any witness unless:
 - (a) such party has served on the other party at least 14 days before the date of the hearing, a statement wherein the evidence to be given in chief by such person is set out; or
 - (b) the court at the hearing permits such person to be called despite the fact that no such statement has been so served in respect of his

evidence.

- (iv) Either party may subpoena any person to give evidence at the hearing whether such person has consented to furnish a statement or not;
- (v) The fact that a party has served a statement in terms of paragraph 3 hereof or has subpoenaed a witness shall not oblige such party to call the witness concerned.
- (vi) Either party may call upon the other to make discovery of all documents in his possession or control, but such request shall be made not later than one month prior to the date of the hearing. Such discovery shall be made in accordance with Rule 35.
- (vii) The provisions of Rule 36 and 37 will apply.

COUNSEL FOR APPLICANT:

MR JASAT IN PERSON

COUNSEL FOR THE 1ST AND 2ND RESPONDENTS:

ADV W J PIETERSEN

(Instructed by:
Von Klemperers
234 Hoosen Haffejee Street
PIETERMARITZBURG)

DATE OF HEARING :

29 NOVEMBER 2011

JUDGMENT HANDED DOWN ON:

6 FEBRUARY 2012