



## IN THE HIGH COURT OF SWAZILAND

### JUDGMENT

Civil Case No.1615/2012

In the matter between:

**MANDLENKOSI LUCKY VILANE**

**1<sup>ST</sup> Applicant**

**SIMON MNUMZANE VILANE**

**2<sup>ND</sup> Applicant**

**and**

**THE MASTER OF THE HIGH COURT**

**Respondent**

**Neutral citation:** *Mandlenkhosi Lucky Vilane & Another vs Master of the High Court (1615/2012) SZHC 270 [21 December 2012]*

**Coram:** **MAPHALALA PJ**

**Heard:** **NOVEMBER 2012**

**Delivered:** **21 DECEMBER 2012**

**Summary:** An Application outside the provisions of section 30 of the Administration of Estates No.28 of 1902. The court finds that the said section is preemptory and order the parties to negotiations.

- [1] On 25 September, 2012 the Applicants filed before this court an Application in the long form for an order compelling the Respondent to issue Letters of Administration to them as Executor's Dative in the estate of the Late Ben Jacob Vilane and costs of the Application in prayer (b) thereof.
- [2] The Application is founded on the affidavit of the 2<sup>nd</sup> Applicant one Simon Mnumzane Vilane who has outlined the sequence of events in this Application and pertinent annexures.
- [3] The Respondent oppose the granting of this Application and had filed an answering affidavit of the Master of the High Court one Phumzane Masilela where she has raised a point *in limine* and also addressed the merits of the case.
- [4] When the matter came before me on the 19 November 2012 the attorney for the Respondent indicated to the court that he abandoned the point *in limine* raised in the affidavit. For the purposes of the record the points *in limine* is that of non-joinder that the non-joinder of the Attorney General in these proceedings is fatal to the Applicant's case as it offends with section 3 of the Government Liabilities Act, 1962 that as presently cited, there is no legally recognized Respondent to the Applicant's case.

- [5] The brief facts of the matter are that the Applicants are nominated joint Executors in the deceased estate of Late Ben Jacob Vilane who died on the 18 June, 2012. The Respondent issued a “letter of authority” dated 29 August 2012 confirming the nomination of the Applicant as co-Executor Dative.
- [6] The Applicants through their attorney addressed two letters to the Respondent calling for the issue of the formal Letters of Administration. These letters are annexed to the founding affidavit marked “SMV4”. In both these letters the Applicants requested that security be dispensed with as at present the estate has no assets.
- [7] The immovable properties that have been registered in the name of the estate were illegally transferred to his own name by Antony Tinyo Vilane since deceased. An order of court was obtained to the effect that the properties should revert to Ben Jacob Vilane.
- [8] In arguments before the attorney for the Applicant contended that the Respondent has refused to issue Letters of Administration to the Applicants and her ostensible reasons is that they must furnish security. That the Respondent has informed the Applicants that

she requires security before issuing the Letters of Administration despite the fact that in their letters to her the annexed and directed to Samuel and Mandlenkosi Vilane - the letter does not bear an address. It is not clear how it was supposed to reach the addresses. Further that this letter is also addressed to Samuel Vilane and there is no person by this name who is involved in this estate. That the letter should also have been addressed to the Applicant's attorneys as by that time he had been in contact with the Respondent both verbally and in writing.

[9] Mr. Dlamini for the Applicant further contended that the Respondent exercises a discretion to determine the amount of security. This discretion must be exercised judiciously. That *in casu* the estate has no assets at present. That it is clear that the Master has not brought her mind to bear on the issue that is raised in this estate and her actions are high handed and not in according with substantial justice.

[10] Mr. Masinga for the Respondent advanced arguments against those of the Applicants to the proposition that the Applicant's stance is in contravention of the provisions of section 30 of the Administration of Estate Act which are preremptory that Applicant should furnish the Master of the High Court with a security bond as a matter of law.

[11] That the office of the Master of the High Court is a creature of statute and in the performance of its functions is guided by the Administration of Estates Act No.28 of 1902. That section 30 thereof is unambiguous administrative requirement to be satisfied before an Executor Dative is issued with Letters of Administration.

[12] Mr. Masina furthermore argued that it was not necessary for the Applicant to have launched this Application as the parties would have sat down and resolved this matter amicably.

[13] I have considered the arguments of the parties in this case and I agree *in toto* with the submissions advanced for the Respondent that the Respondent is empowered by the provisions of section 30 of the Administration of Estate Act and this court cannot willy nilly over-ride those powers. It also appears to me that Mr. Masinga is correct that this matter can be resolved between the parties in a round table.

[14] In the circumstances, I decline to issue an order as sought by the Applicants and order that the parties sit down to resolve this difficulty as suggested by the Respondent. I make no order as to costs.

**STANLEY B. MAPHALALA**

**PRINCIPAL JUDGE**

**For Applicant : Mr. S.C. Dlamini**

**For Respondent : Mr. T. Masinga**