

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – GRAHAMSTOWN)**

**CASE NO: 585/2012
DATE HEARD: 26/04/2012
DATE DELIVERED:**

In the matter between

SHAUN LEON JANSEN VAN RENSBURG N.O. (Estate late L Jansen van Rensburg)	1ST APPLICANT
SHAUN LEON JANSEN VAN RENSBURG	2ND APPLICANT
SHARON ELIZABETH JANSEN VAN RENSBURG	3RD APPLICANT

and

MASTER OF THE HIGH COURT , GRAHAMSTOWN	1ST RESPONDENT
DIANN MARLENE TODKILL	2ND RESPONDENT

JUDGMENT

ROBERSON J:-

[1] This application involves the interpretation of the last two clauses of the will of the late Leonard Jansen van Rensburg (the deceased). It is brought by the first applicant (Shaun) in his capacity as the executor of the estate of the deceased, and in his personal capacity as the son and heir of the deceased. The third applicant (Sharon) is the daughter of the deceased, and is also an heir in the

estate. The first respondent issued letters of executorship to the first respondent. The second respondent was the fiancé of the deceased and is also an heir in the estate. The first respondent abides the decision of the court and the second respondent did not oppose the application.

[2] According to the founding affidavit, the deceased executed his will on 17 October 2009, and died on 14 August 2010. The deceased's mother died on 29 April 2010, and in her will bequeathed to the deceased the proceeds of the sale of an immovable property. The monetary value of such bequest is the sum of R141 913.44. The deceased died before this sum was paid out. It however forms part of his estate.

[3] It is necessary to set out the whole of the deceased's will, and, because of its peculiar format, it is more convenient to annex a copy of the will to this judgment. The clauses in question are those falling under the headings or words "Household contents" and "The rest will go to", on the second page of the will, above the signatures.

[4] The applicants seek an interpretation to the effect that these clauses are linked and deal with the household contents, and that the words "the rest will go to" refer to those items of household contents which they did not take within 30 days of the deceased's death. According to the founding affidavit Absa Trust, which was appointed as an agent to administer the estate because neither

Shaun nor Sharon has the necessary expertise, is of the view that the last clause of the will means that the residue of the estate should devolve upon the second respondent.

[5] In *Aubrey-Smith v Hofmeyr N.O.* 1973 (1) SA 655 (CPD) at 657E-H Corbett J (as he then was) said:

"Generally speaking, in applying and construing a will, the Court's function is to seek, and to give effect to, the wishes of the testator as expressed in the will. This does not mean that the Court is wholly confined to the written record. The words of the will must be applied to the external facts and, in this process of application, evidence of an extrinsic nature is admissible to identify the subject or object of a disposition. Evidence is not admissible, however, where its object is to contradict, add to or alter the clearly expressed intention of the testator as reflected in the words of the will. (See generally, *Ex parte Froy: In re Estate Brodie*, 1954 (2) S.A. 366 (C) at p. 370; *Ex parte Eksekuteure Boedel Malherbe*, 1957 (4) S.A. 704 (C) at p. 710). As was stated in *Ex parte Estate Stephens*, 1943 C.P.D., by SUTTON, J. (at p. 402)-

"...in construing a will the object is not to ascertain what the testator meant to do but his intention as expressed in the will"

On the other hand, in addition to receiving evidence applying the words of the will to the external facts, the Court is also entitled to be informed of, and to have regard to, all material facts and circumstances known to the testator when he made it. As it has been put, the Court places itself in the testator's armchair. Nevertheless, the primary enquiry still is to ascertain, against the background of these material facts and circumstances, the intention of the testator from the language used by him in his will (see *Froy's case, supra* at p. 372)."

[6] With the exception of the Isuzu vehicle, and leaving aside the clauses in question, the deceased clearly intended that his assets be shared between Shaun, Sharon and the second respondent. Although the Old Mutual Flexi Pension was to be shared between Shaun and Sharon only, the deceased was apparently at pains to point out that it had been paid up before he met the

second respondent, in other words if it had not been paid up she would have received a share. When it comes to the household contents, one would therefore expect, in the general scheme of the will, that the deceased would have intended that those too would be shared between Shaun, Sharon and the second respondent. Implicit in the second to last clause is that there might be some household contents left over which were not taken by Shaun and Sharon. The deceased could not have intended that they be left unaccounted for. Household contents were identified and dealt with as a specific asset, in the same manner as the other assets. In my view, in view of the general scheme of the will, the words "the rest will go to" refer to those household contents not taken by Shaun and Sharon within 30 days of the deceased's death. This interpretation has the result that the deceased did not expressly deal in his will with any residue which there may have been in his estate.

[7] In my view there are no grounds for interpreting the will to the effect that by implication the deceased intended to deal with any residue in his estate. When he executed his will, his mother was still alive and her bequest to him did not form part of his estate. In *Estate Greenacre v Brett N.O. and Another* 1956 (4) SA 291 (N) at 295 A-F, James AJ (as he then was) said the following:

"To my mind, the effect of the cases dealing with a bequest by necessary implication may be summarised as follows:

- (1) "If an event has occurred which was not contemplated by the testator at the time he made his will, the Court is not entitled to surmise what the testator's intention would have been if he had contemplated the occurrence of that event and given effect to such surmise. To do so would be to add something to the will and not construe it" (see *Parker and Others v Estate Fletcher*, 1932 C.P.D. 202 at p. 208):

- (2) Notwithstanding the above rule, if the Court is satisfied from the language used by the testator in his will that he has in fact contemplated the occurrence of that event and has indicated his intention in respect thereof, then, even if his intention has not been expressed in specific words, it may be gathered by necessary implication from the terms of the will (see *Ex parte Estate Paley, supra* at p. 186, and Jarman on *Wills*, 8th ed., p. 592):
- (3) Conjecture must not be taken for implication and, before a Court will gather a testator's intention by necessary implication, it must be satisfied that his intention is indicated in such a way that an intention to the contrary cannot be supposed (see *In re Estate Sfaelos, supra* at p. 306; *Ex parte Estate Paley, supra* at p. 186):
- (4) In cases where the testator's intention may legitimately be implied, the implication may be used not only to fix the sense of ambiguous words but to control the sense even of clear words and supply the place of express words in cases of difficulty or ambiguity (see *Ex parte Paley, supra* at p. 187)."

[8] In my view the language used by the deceased in his will does not reveal that he contemplated the bequest from his mother or any residue at all. There is simply no mention of any other property in his estate. There is therefore no room for implying that he bequeathed the residue in his estate to any particular person.

[9] In the result, the bequest from the deceased's mother is to devolve in accordance with the law of intestate succession.

[10] In addition to a declaratory order interpreting the last two clauses of the will, the applicants asked for an order that the amount of R141 913.44 be divided equally between them. Such a division would be on the basis that they are the intestate heirs to that portion of the estate which was not dealt with in the will. However it is not altogether clear in the founding affidavit that they are the only intestate heirs in the estate. An order merely that the residue should devolve in

accordance with the law of intestate succession will not prejudice them if they are the only intestate heirs.

[11] The applicants asked for costs only in the event of the application being opposed.

[12] In the result, the following order will issue:

12.1 It is declared that:

12.1.1 The words "the rest will go to" in the last clause of the will of the late Leonard Jansen van Rensburg, identity number 490203 5068 08 2, such will having been executed on 17 October 2009, refer to those household contents of the said Leonard Jansen van Rensburg which were not taken by Shaun Leon Jansen van Rensburg and Sharon Elizabeth Jansen van Rensburg within 30 days of the death of the said Leonard Jansen van Rensburg.

12.1.2 The residue of the estate of the said Leonard Jansen van Rensburg, in the sum of R141 913.44, is to devolve in accordance with the law of intestate succession.

12.2 There is no order as to costs.



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J M ROBERSON
JUDGE OF THE HIGH COURT

MAKAULA J:-

I agree



M MAKAULA
JUDGE OF THE HIGH COURT

Appearances

Applicants: Adv. S. McTurk, instructed by Nolte Smit Attorneys,
Grahamstown.

16/10/2009

TESTAMENT16 October 2009

Ek die ondergetekende

Name : Leonard Surname : Jansen van Rensburg

I.D. No. 490203 5068 08 2

Address : 42 Albert st. P.O. Box 682
Cradock Cradock
5880 5880Employer : Goba (Pty) Ltd
Consulting Engineers & Project Managers
Unit 5 - Ascot Office Park
Conyngham Street
Port ElizabethOld Mutual Cape Town
Uittredingsannuiteits fonds
Flexi pension Client no 38004232
Polis No 005136887

Beneficiary details	ID No	% Share	Relationship
Jansen van Rensburg, Shaun Leon	7901-22501-1081	50%	Son
Jansen van Rensburg, Sharon Elizabeth	8109-10005-608-5	50%	Daughter
Total =		100%	

*This policy was paid-up before I met Diann Todkill

Life insurance

Momentum Policy No 091450393

Beneficiary details	ID No	% Share	Relationship
Jansen van Rensburg, Shaun Leon	7901-22501-1081	35%	Son
Jansen van Rensburg, Sharon Elizabeth	8109-10005-608-5	35%	Daughter
Todkill, Diann Marlene	611230 0144 083	30%	Fiancee
Total =		100%	

Goba pension fund & death benefits

Ref: No 478532

Employee no 1950

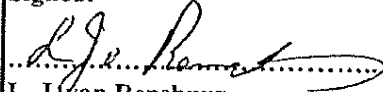
Momentum

Contact centre - 0860 65 75 85

Fax - (012) 675 3970

Beneficiary details	ID No	% Share	Relationship
Jansen van Rensburg, Shaun Leon	7901-22501-1081	37.5%	Son
Jansen van Rensburg, Sharon Elizabeth	8109-10005-608-5	37.5%	Daughter
Todkill, Diann Marlene	611230 0144 083	25.0%	Fiancee
Total =		100%	

Signed:



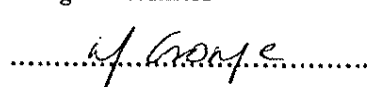
L. J. van Rensburg

TESTATEUR

Date

17/10/2009

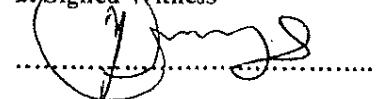
1. Signed Witness



Date

17 Oct 2009

2. Signed Witness



Date

2009.10.17

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16/10/2009

Isuzu 300TDI LDV Double cab 2003

300TDI LX Double Cab
With canopy

Reg. No CZC 691 EC

Model code ADMTFR77D2C 134182

Serial No. S134182

Engine No. 4JH1885668

****This vehicle must go to Shaun Leon Jansen van Rensburg**

Beneficiary details	ID No	% Share	Relationship
Jansen van Rensburg, Shaun Leon	7901-22501-1081	100%	Son

*If any money is due on the vehicle it must be paid from my money market account at ABSA Cradock
Account no 91 8367 0517

Money market account balance at ABSA
Account no 91 8367 0517

Beneficiary details	ID No	% Share	Relationship
Jansen van Rensburg, Shaun Leon	7901-22501-1081	35%	Son
Jansen van Rensburg, Sharon Elizabeth	8109-10005-608-5	35%	Daughter
Todkill, Diann Marlene	611230 0144 083	30%	Fiancee
Total =		100%	

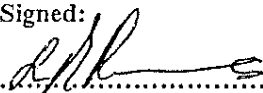
House hold contents

If the children below want to take anything from the house they must do this within 30 days of my death


			Relationship
Jansen van Rensburg, Shaun Leon	7901-22501-1081		Son
Jansen van Rensburg, Sharon Elizabeth	8109-10005-608-5		Daughter

The rest will go to

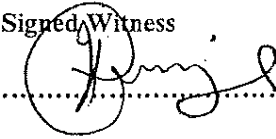
Todkill, Diann Marlene	611230 0144 083		Fiancee
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Signed:

.....
L.J. van Rensburg
TESTATEUR
Date

17/Oct/2009
.....

1. Signed Witness

.....

Date
17 Oct 2009
.....

2. Signed Witness

.....

Date
2009.10.17
.....

**My .38 special revolver must be handed in at the police
PAGE 2 OF 2

A. D. K.
