

to give Z the power to dismiss the trustees of two trusts holding most of the property of S's farming business. The second respondent (M) and third respondent (L) are S's daughters from his previous marriage to E. M and L opposed the application while the first respondent decided to abide the decision of the court.

Z's case was that she discovered the document in S's Bible after his death and that she wanted to give effect to his last wishes. M and L adduced evidence about the plot to murder S, according to which Z was the planner of the murder for which she employed three others. Amongst the alleged murderers were security personnel employed by S to assist with the prevention of land grabs on a part of the land bordering an informal settlement outside Stellenbosch. Evidence about the plot was contested by Z, but was not seriously dented in cross examination. M and L also called two handwriting experts who both concluded that the document was a forgery and was not signed by S. Z also called a handwriting expert who maintained that the differences between S's purported signature on the document and his signature on other documents were resulting from an injury to his right thumb. One of the experts, P, refuted that, referring to experiments involving a number of people to test whether the use or not of the writing hand's thumb would make any significant difference to handwriting. No discernible differences could be indicated. In contrast, 16 differences between S's signature on other documents and the signature on the document could be identified.

The court (Mantame J) found on the facts that Z did forge the document dated 12 January 2019 and participated in the plot to kill S. Although the criminal trial is still pending, the court found on a balance of probabilities that M and L proved that Z was involved in both the murder and the forgery. Relying on the judgements in *Danielz N.O v De Wet and Another*; *De Wet and Danielz N.O and Another* [2008] ZAWCHC 35 and *Taylor v Pim* 1903 NLR 484, the court held that unworthiness to inherit is not limited to cases of conviction on charges of murder. It would be unconscionable to allow Z to benefit from forging a document purporting to be S's will. The last will of S dated 7 December 2018 was declared his last valid will and the court ordered the Master to accept it as such and appoint a person nominated by M and L as executor. The document dated 12 January 2019 was declared a forgery and to be null and void. Z was declared unworthy to inherit under the will dated 7 December 2018 or to receive any benefit from the estate of S, including any maintenance or insurance benefits.

Court case on 18(3) estates and National Credit Act – MFC (A Division of Nedbank Limited) v Mkhwanazi and Others [2022] ZAGPJHC 203

The deceased entered into an instalment sale agreement with the applicant (Nedbank) under which the applicant financed the purchase of a motor vehicle. The terms of the agreement provided that the death of the deceased would be a default event and that ownership of the vehicle would remain with the applicant until after payment of the last instalment, after which the deceased would become the owner. After the deceased's death, the first respondent (M) was appointed by the Master of the High Court under section 18(3) of the Administration of Estates Act, 66 of 1965 (the AEA), to liquidate and distribute the estate. M listed the vehicle in the inventory submitted to the Master as an asset in the estate.

M did not continue paying instalments, nor did he surrender the vehicle to Nedbank after Nedbank informed him in writing that it was cancelling the agreement in accordance with the terms of the agreement. Instead he claimed not to know the whereabouts of the vehicle, while, in fact, he was using the vehicle.

M argued that Nedbank, as a credit provider under the National Credit Act, 23 of 2005 (the NCA), should have acted in accordance with the provisions of sections 128 and 129 of the NCA. Section 129 provides: "(1) If the consumer is in default under a credit agreement, the credit provider-

- (a) May draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to the debt counsellor, alternatively dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date, and
- (b) Subject to section 130(2), may not commence any legal proceedings to enforce the agreement before
 - (i) First providing notice to the consumer, as contemplated in paragraph (a) or in Section 86(10), as the case may be, and...

Nedbank argued that a person appointed under section 18(3), as opposed to an executor appointed under section 14 of the AEA, does not fall within the definition of "consumer" under the NCA.

The court (Mahomed AJ) held that M in his role as the appointee under section 18(3) of the AEA does not enjoy the protection of section 129 of the NCA. Nedbank was, therefore, entitled to cancel the agreement and demand the return of the vehicle to it. The court opined though, that there should be no difference between a person appointed under section 18(3) and an executor for purposes of the protection afforded by section 129 of the NCA.

Comment: The judgement seems to be problematic in some aspects. Although the outcome is correct on the facts of the case, the court's opinion that an appointee under section 18(3) should be equated to an executor for purposes of the NCA does not seem to take into consideration that the executor is bound to specific procedures under the various provisions of the AEA, for example in respect of insolvent estates. The appointee under section 18(3), on the other hand, is supposed to be under direct direction of the Master on how to liquidate and distribute the estate. ♦

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