LESOTHO

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) NO.51/2017

CIV/T/25/2011

In the matter between: -

THATO MAHAMO **APPELLANT**

AND

LESOTHO NATIONAL GENERAL INSURANCE COMPANY **RESPONDENT**

CORAM: DR K.E. MOSITO P

P.T.DAMASEB AJA

DR J. VAN DER WESTHUIZEN AJA

HEARD: 12 APRIL 2021

DELIVERED: 14 MAY 2021

SUMMARY

Insurance law - Claim for compensation under the Motor Vehicle Insurance Order No.26 of 1989 – Prescription Special Plea – who bears the onus to prove– failure by Judge to hold enquiry as to the veracity of the Special Plea – Judge dismissing the claim prematurely without hearing evidence – effect thereof.

JUDGMENT

K.E. MOSITO P

Introduction

[1] This case is about extinctive prescription, that is, the extinction of a right or claim due to a time lapse. Especially, it is about whether, regard being had to the facts and the applicable law, the appellant's claim has prescribed.

Background

[2] The appellant instituted an action in the High Court, against the respondent for damages on 24 January 2011. He claimed payment of M1 759 303.00 being damages for loss of income, pain and suffering and loss of earning capacity arising from a motor vehicle accident allegedly caused by an insured third party. He also claimed interest thereon, costs and further and or alternative relief. The claim was opposed. The respondent delivered a special plea in terms of which it pleaded that the plaintiff's claim had prescribed. The basis of the special plea was that the claim upon which the appellant's action was based arose on the 9th day of November 2008. The claim in the prescribed form which the appellant was required to deliver to the respondent in terms of section 12 of the Motor Vehicle Insurance Order, No.26 of 1989, as amended was delivered to the respondent on 8 November 2010.

[3] Summons was served upon the respondent on 26 November 2011and therefore not served within the period of two years as from the date upon which the claim arose and as required by

section 12, read with section 10 of the Act. The learned judge a quo upheld the special plea, hence the present appeal.

Factual matrix

[4] The facts giving rise to this appeal are not complicated. They are that, the appellant was involved in a motor vehicle accident on 9 November 2008. On the day of the accident, he was taken to Scot Hospital for hospitalisation. On 11 November 2008, he was referred to Queen II Hospital where he was hospitalised until he was transferred to Pelonomi Hospital in Bloemfontein on 18/19 December 2008. On 2 December 2008, he was admitted to the Clinton Hospital in Johannesburg. On 17 January 2009, he was transferred to the Andrew Saffy Hospital at Rustenburg, South Africa and later readmitted to the Clinton House Hospital on 16/17 March 2009, whereat he received treatment until 8 April 2009 when he left for the Tshwane Rehabilitation Centre in Pretoria. He was discharged from the Tshwane Rehabilitation Centre on 8 May 2009.

[5] Upon discharge, he was re-admitted to Hospital in Marikana at Rustenburg, where he stayed until his discharge from employment on 18/19 June 2009.During the time he was receiving treatment in South Africa, he saw a lawyer by the name of Phole in connection with the accident. He testified that between the date of the accident and 2009, he was unable to attend to his affairs. Eventually he returned to Lesotho in November 2010. By then, a period of approximately eighteen months had passed. On12 October 2010, he signed an affidavit wherein he described the circumstances surrounding the accident. His claim was submitted

on 8 November 2010. On this date, his attorney requested for some extension of time to prepare for issuance of summons so that the claim does not prescribe, but the respondent's lawyers refused to accede to the request.

[6] It is common cause that according to the Act, summons were supposed to have been served on 7 January 2011 but were only issued on 24 January 2011 and served on the respondent on 26 January 2011. If we were to count from the date of accident to date of service of summons, this would have been outside a period of two years and sixty days.

Basis of the appeal

[7] The appellant complains that, the learned judge erred and misdirected himself when he held that the plaintiff's [appellant's] claim had prescribed when the evidence before court clearly illustrated that the plaintiff's [appellant's] claim had not prescribed. This challenge should be understood against the understanding that the respondent bore the overall *onus* of proof in regard to the issue of prescription raised in the special plea.[1] Failure to evidentially establish and prove the special plea or contradict the evidence placed on record by the appellant, would amount to accepting such evidence.

The issue for determination

[8] The issue for determination is whether, regard being had to the above factual matrix, the appellant's claim had prescribed or not.

[1] Gericke v Sack 1978 (1) SA 821 (A) at 826A-827C; Van Zijl v Hoogenhout 2005 (2) SA 93 (SCA) at 107G para 41.

The law

[9] The answer to the foregoing issue for determination will depend on the law, evidence and facts now to be considered. It is apposite to now consider the applicable law. The relevant law is the Motor Vehicle Insurance Order No26 of 1989. Section 10 (1) of this Act provides that, the right to claim compensation under this [Act] from the insurer shall become prescribed upon the expiry of a period of two years as from the date upon which that claim arose. There is a proviso that, prescription shall be suspended during the period of sixty days referred to in section 12 thereof. Regard being had to the view I hold of the future of this matter, I decide not to discuss the legal issues raised by the above sections.

Consideration of the appeal

[10] As can be observed from the background and facts discussed above, the appellant's complaint is about an error and misdirection by the learned judge when he held that the appellant's claim had prescribed when the evidence before court clearly demonstrated that the appellant's claim had not prescribed. The way the learned judge tried the special plea was incorrect. In short, a party must allege the legal basis for the relief claimed (or opposed) and allege and prove the primary facts for such application of the law. As Smalberger JA correctly pointed out in *Lesotho National General Insurance Co. Ltd v Ever Union Garments (Lesotho)* Ltd[2] '[t]he *onus* of establishing a special plea rests on the defendants, not only in the evidential sense of requiring the defendant to first adduce evidence, which if it establishes a prima facie case, calls for

[2] 2009-2010 LAC p.541.

rebuttal by the plaintiff, but also the primary and substantial duty of proving the plea.' *In Moshao v Lesotho General National Insurance Co.*[3] it was held:

> [19] It was imperative the pleader of the "Special plea" to lead evidence that establishes a *prime facie* case then the plaintiff is then called upon to rebut that evidence, that is the tenor of this court's judgment in Lesotho National General Insurance Company v Ever Unison Garments (Lesotho) (Pty) Ltd *(supra).*

[11] In the present case, there was simply no evidence adduced by the defendant (present respondent) to establish the special plea. It rested on the defendant, to establish the special plea, not only in the evidential sense of first adducing evidence, which if it established a *prima facie* case, called for rebuttal by the plaintiff, but also in the primary and substantial duty of proving the plea. In all the circumstances I am satisfied that defendant [respondent], upon whom the *onus* rested to establish its special plea of prescription, failed to discharge that *onus* and that the judge was not correct in upholding the special plea.

Disposal

[12] Indeed, due to the severe penalty of the claimant foregoing the claim completely, unless the insurer can establish that there was merit in the special plea, failure by the claimant who has the capacity and the capability to do so a claim should not be dismissed. There was a mistrial in this matter.

Order

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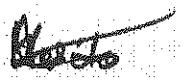
[3] Moshao v Lesotho General National Insurance Co. (C of A (CIV) 10 of 2016).

[13] In the result, I would make the following order

a. The appeal is upheld with costs.
b. The order of the High Court set aside and replaced with the following order:

"The "Special plea" raised by defendant is dismissed with costs."

c. The matter is remitted to the High Court for continuation of the trial on the merits of the appellant's claim.



DR K E MOSITO

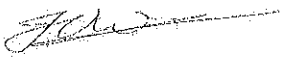
PRESIDENT OF THE COURT OF APPEAL

I agree:

P. T. DAMASED AJA

ACTING JUSTICE OF APPEAL

I agree:



DR J. VAN DER WESTHUIZEN AJA

ACTING JUSTICE OF APPEAL

FOR THE APPELLANT: MR T. FIEE

FOR THE RESPONDENT: ADV P. FARLAM SC

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) 51/2020

LC/APN/010/2020

In the matter between:

SEGOATI MONARE (CO-EXECUTOR)	**1ST APPELLANT**
OAGENG MOLETSANE (CO-EXECUTOR)	**2ND APPELLANT**
MOKHAMPANYANE MONARE (CO-EXECUTOR)	**3RD APPELLANT**
ELIAS NONE MONARE TRUST	**4TH APPELLANT**
AND	
MAPHUNYE MAMONYANE BOHLOKO (NEE MONARE)	**1ST RESPONDENT**
MANKEPILE MONARE	**2ND RESPONDENT**
MAPHEPHENG MONARE	**3RD RESPONDENT**
MONARE FAMILY TRUST	**4TH RESPONDENT**
ESTATE OF MATIISETSO VITALINA MONARE	**5TH RESPONDENT**
ENGEN LESOTHO (PTY) LTD	**6TH RESPONDENT**
GOLDEN INVESTMENTS (PTY) LTD	**7TH RESPONDENT**
LAND ADMIN AUTHORITY	**8TH RESPONDENT**
MASTER OF THE HIGH COURT	**9TH RESPONDENT**
ATTORNEY GENERAL	**10TH RESPONDENT**

CORAM: P.T DAMASEB AJA
DR P. MUSONDA AJA
N.T MTSHIYA, AJA

HEARD: 21 APRIL 2021

DELIVERED: 14 MAY 2021

SUMMARY

Appeal from the Land Court- locus standi - appellants have no locus standi as co-executors as their appointments were made in error- appeal dismissed.

JUDGMENT

MTSHIYA AJA

INTRODUCTION

[1] In this appeal, appellants are challenging the judgment of the Land Court delivered by Her Ladyship P. Banyane on 7 December 2020. The record shows that this matter was initially placed before the High Court, which dismissed it on the ground that it lacked jurisdiction. The High Court then remitted the matter to the Land Court.

[2] In the Land Court, the appellants brought the application claiming to be co-executors of the estate of the late Elias None Monare. The Land Court heard the matter on the merits and dismissed the application mainly on the ground that the appellants had no locus standi since their appointments, as co-executors of the estate of the late Elias None Monare, were made in error.

[3] In approaching the Land Court, the appellants made the following prayers:

> " 1. An Order for cancellation and nullification *ab nitio* of the transfer and succession endorsement in favour of "Vitalina Matiisetso Monare" over Plot No 13281-636 dated the 19/09/2000, and restoration of the status aquo thereof.
> 2. An order for cancellation and nullification ab nitio of a sub-lease agreement, Reg. no 26672 over Plot no 13281-636 in favour of " Golden Investments (Pty) Ltd" dated the 13/07/2002.
> 3. An Order for cancellation and nullification ab nitio of the transfer and succession endosements in favour of "Matiisetso Vitalina Monare" over Plot no. 13282-733 dated the 23/03/2016 and the 31/03/2016respectively.
> 4. An Order for cancellation and nullification *ab nitio* of the Deed of Transfer no 45094 dated the 15/08/2019 in favour of the 4th Respondent over Plot no 13282-733.
> 5. An Order for cancellation and nullification of Deed no 24573 dated the 31/03/1995 in favour of 6th Respondent over Plot no 13282-733.
> 6. An Order for cancellation and nullification *ab nitio* of lease no 13291-836 dated the 11/08/2016 and the same to be restored and registered back to the 4th Applicant.
> 7. An Order for cancellation and nullification *ab nitio* of Deed of Transfer no 45096 dated the 15/08/2019 in favour of 4th Respondent over Plot no 13291-836.
> 8. Directing Respondents to pay costs of suit on attorney and client scale only in the event of opposition of this application.
> 9. Granting Applicants any further and/or alternative relief that this Honourable Court may deem fit proper".

[4] On 15 December 2020, following the dismissal of their application in the Land Court, the appellants filed a notice of appeal with the following grounds:

> "1. The learned judge erred and misdirected herself by declaring that appellants have no locus standi in *judicio* as appellants satisfied all the necessary requirements and pre-requisites of advertising in the newspaper and Government Gazette as required by law and which called upon anybody who had an interest to raise an objection, albeit to come forward to the office of the Master of the High Court for appointment of executors to the estate of 4th Applicant.

2. The learned judge erred and misdirected herself by recognizing the appointment of Attorney Moroesi Tau Thabane on the basis of a will despite the glaring fact that the late None Elias Monare died intestate and therefore such an appointment was void ab initio.

3.The learned judge erred and misdirected herself by failing to apprehend that the subsequent and still irregular appointment of the said Moroesi Tau Thabane had in fact and in effect expired on the 28th of February 2018 and failed to recognize and appreciate that at the time, 1st and 3rd appellants were appointed on the 18th February 2020 as co-executors, they became the only legitimate appointees as co-executors to the estate of the late None Elias Monare.

4. The learned judge erred and misdirected herself by dismissing the whole application against all applicants without affording 4th applicant an opportunity to be heard in a matter that 4th appellant has a direct interest in and is before the court for that purpose only, and therefore, the learned judge contravened the tenets of natural justice to the prejudice of 4th appellant.

1. The learned judge erred and misdirected herself by ignoring the fact that the nomination and appointment of Moresi Tau Thabane was made under the sole volition of the Master and not the beneficiaries nor family members which renders such action and / to be without any basis in law.

2. The learned judge erred and misdirected herself by ignoring documentary evidence of 1st to 4th applicants filed through filing sheet under the process pursuant to rule67(1) of the Land Court Rules which made clear revelation that Moresi Tau Thabane 's appointment as executor of the Late None Elias Monare was void ab initio, Annexures 'A to E' thereof.

3. The learned judge erred and misdirected herself by her failure to appreciate the fact that at the time of 1st to 3rd applicants were appointed co-executors; their appointments were exclusive as there was no other executor in place appointed through a legitimate process by the Master of the High Court".

[5] On 24 February 2021, the 1st to 5th respondents filed a cross-appeal with the following grounds:

"1. The Court a quo erred and misdirected itself in finding that the late None Elias Monare had divorced Makhantse Monare and subsequently married the 1st Applicant's mother while the deceased had only cohabited with the 1st Applicant's mother.

2. The Learned Judge erred and misdirected herself in concluding that the children and the wives of the deceased (None Elias Monare) became embroiled in an acrimonious inheritance battle after the appointment of Matiisetso Monare as Curator Bonis, because the deceased had only one wife, the late Matiisetso Monare, being the 1st to 3rd Respondents' mother.

3. The Court a quo erred and misdirected itself in finding that Moletsane (the 1st Applicant's elder brother) was not the heir to the deceased according to Sesotho Customary Law but Malie, while Malie cannot be the deceased's customary heir because the deceased's Estate has been under the administration of the Master of the High Court immediately after death of the deceased to date and his Estate cannot devolve in terms of Sesotho Customary Law, to afford Malie the Sesotho Customary heirship".

[6] The appeal was directed at what were purported to be incorrect factual findings made by the court a quo. That in essence is an attempt to appeal against the reasons in the judgment. Although the appellants, respondents in the cross appeal, indicated that they took no issue with the cross appeal, it is trite that a party can only appeal against the decision in the judgment and not reasons thereof. Accordingly, the cross appeal is misplaced and should be dismissed.

[7] It will be seen that the numerous grounds of appeal raised by the appellants are centered on the one issue, namely the appellants' challenge to the appointment of Mrs Moroesi Tau Thabane as executor of the estate of the late Elias None Monare. A successful challenge to that appointment will then legitimize their own appointments as co-executors.

Issues for determination

[8] The issues for determination in this case are the following:

a. Whether or not the appellants lacked locus standi due to having been appointed co-executors in error, and
b. Whether or not family resolutions of 4 May 2019 could set aside court judgments.

In brief, the appellants claim that they were regularly appointed as co-executors. They claim the right to approach the courts from their appointments as co-executors.

4. In the originating affidavit, they state in part, as follows:

"4. The late Elias None Monare's family has remained seized and embroiled in a dispute over lawful succession and heirship to the estate of their late father Elias None Monare, until on the 4th of May 2019, when the family united and finalized heirship and succession matters, which had also been motivated and guided by High Court and Court of Appeal judgments. The family thereafter followed the requisite process with the Maseru City Council and the office of the Master of the High Court, whereat condonation of their decisions and resolutions received approval as can be exemplified by the requisite conferments....."

[9] For their part, and apart from raising a point in *limine*, which point I shall deal with shortly in this judgment, the respondents averred that most of the issues raised by the appellants had already been decided by courts of law in cases:

i. **C OF A (CIV) No.26 of 2000**
ii. **CIV/T/422/1998**
iii. **C OF A (CIV) No.9/1998**
iv. **CIV/APN/106/96**
v. **CIV/T/271/2001 and others**

[10] The respondents go on to state that:

"4.3 The 1st to 3rd Applicants' appointments and Letters of Administration was erroneously issued as a result of misrepresentation before a newly appointed Assistant Master of the High Court, Adv. Ntsonyana, who advised that he was not aware that an Executrix was already appointed as there was no

copy of Letters of Administration in the Estate of the late None Monare's records/file.

4.4 Mrs Tau Thabane is the Executrix of the Estateof the late None Monare and the 1st Applicant was present when she was appointed and he later lodged inheritance/benefits claim before the Executrix. The Executrix succeeded the Curator Bonis who was the late Matiisetso Vitalina Monare, the 1st to 3rd Respondent's late mother, who was appointed in 1996".

4.5...

5.2.1 The 1st Applicant was ordered by his Lordship W.C.M Maqutu on the 7th of February 2000 under CIV/APN/502/1999 to refrain from interfering with the property of my late father, None Monare".

[11] In view of their above stated position, the 1st to 3rd respondents opposed the application and raised a point *in limine*, namely that the appellants had no locus standi. The respondents questioned the basis upon which appointments of the appellants as co-executors were made.

[12] I hold the view that a determination on the issue of locus standi will dispose of this appeal.

The Law and Locus standi of the appellants

[13] In order to appreciate the law regulating the appointment of executors, I quote here below the relevant sections of the Administration of Estates Proclamation 19 of 1935:

31 (1) "1. The estates of all persons dying either testate or intestate shall be administered and distributed according to law under letters of administration granted by the Master in the form "B" in the First Schedule to this Proclamation. Such letters of administration shall be granted to the executors testamentary duly appointed by persons so dying or to such persons as, in this Proclamation described, executors dative to the persons so dying.

2. Letters of administration shall authorize the executor to administer the estate wherever situate.

3. Letters of administration may be issued to a woman, but shall not, without consent in writing of her husband, be granted to a woman married in community of property, or to a woman married out of community of property when the marital power of the husband is not excluded".

32...

33...

34 (1) Whenever-

a. Any person has died without having by any valid will nominated any person to be his executor;
b. Any person duly nominated to be the executor of any deceased person has predeceased him or refuses or becomes in capacitated to act as executor or within such reasonable time as the Master deems sufficient fails to obtain letters of administration;

The master shall cause to be published in the Gazette and in such other manner as he thinks fit a notice calling upon the surviving spouse (if any), the heirs, legatees, and creditors of the deceased to attend before him, or, if more expedient, before any District Officer , at a time and place to be specified in that notice, for the purpose of proposing some person or persons to be appointed by the Master or, as the case may be, recommended by that District Officer to the Master for appointment as executor dative.

2. The Master shall appoint such person as he deems fit and proper to be executor dative of the estate of the deceased and shall grant letters of administration accordingly, unless it appear to him necessary or expedient to postpone the appointment and to publish another such notice as aforesaid".

The above is the law under which executors are appointed. As already stated, it is on the basis of their having been properly appointed co-executors in terms of the above law that the appellants claim the right to approach the courts.

ANALYSIS

[14] This appeal is anchored so much on the background facts which are now common cause to the parties. Important to note is that on 12 August 2017, Mrs Moeresi Tau Thabane was appointed executrix of the Estate which she accepted in the presence of the

1st to 3rd appellants at a meeting convened at the office of the Master of the High Court for the purpose of appointing an executor. Thereafter, on 18 February 2020, the 1st to 3rd appellants were also appointed as co-executors in terms of Section 34 of the Administration of Estates Proclamation 19 of 1935. This administrative act was made without discharging Mrs Moeresi Tau Thabane of her duties as executrix.

> Admittedly, the appellants were appointed in terms of the above Proclamation. However, as it later turned out, the appointments were made in error. Viva voce evidence was led in the court a quo to establish the error of appointment. A newly appointed officer in the office of the Master of the High Court, M. Ntsonyane, told the court a quo that he indeed had not been aware of the appointment of Mrs Moroesi Tau Thabane as executrix.

[15] As regards the issue of viva voce evidence, the court a quo said:

> "22. Two Assistants of the Master of the High Court testified in this regard. Ms Mochesane testified that she chaired a meeting in which the applicants, their mother, the respondents' mother as well as other family members were present. After much debate on who should be appointed, she acted on the advice of her superiors and nominated Mrs Moroesi Thabane an executor and she (Mrs Thabane) accordingly accepted the appointment. This was in 2017.
>
> 23. Mr Ntsonyane, testified that the three applicants came to his office with a family resolution in 2019. He complied with the legal requirements for appointments of executors and accordingly appointed applicants as co-executors. He says, at this time, he was unaware of Mrs Thabane's appointment and only discovered it after institution of these proceedings.
>
> 24. While admitting attendance of the 2017 meeting, the applicants contend that they never endorsed the decision to nominate Mrs Thabane as an executor. Crucially, they never acted on their dissatisfaction. They did not invoke the provisions of section 109 of the Administration of Estates Proclamation of 1935 to challenge the

Master's decision in this regard but indirectly sought, through the 2019 family letter, to undo this decision".

[16] The court then went on to find:

"27...I come to the conclusion that the applicants' appointment as executors while Mrs Thabane's appointment remains extant was erroneous and thus of no force and effect. They are on this basis not qualified for acting in these proceedings and this application should be struck out on this point alone".

Having made the above finding, the court a quo correctly struck out the application and thus allowing the appellants to revisit the matter. I am unable to fault the decision of the court a quo. The appellants could not be appointed co-executors when Mrs Moroesi Tau Thabane was still the executrix. The Land Court's findings are based on testimony led before it and for which no admissible contrary evidence was led.

[17] Notwithstanding the issue of locus standi, it is also important to consider whether or not the appellants had the legal authority to set aside court orders. In the minutes of their meeting of 4 May 2019, the following is recorded:

"We have made these resolutions and decisions to bring closure pertaining to the succession and heirship in respect of the estate of the late Ntate Elias None Monare, with a resolute purpose of bringing to bear the long protracted heirship dispute that even permeated into the Courts of Law. We were particularly challenged and prompted into action by the judgments of the High Court and Court of Appeal nos CIV/APN/106/'96, CIV/T/422/'98 and C of A (CIV) No 9/98. By these resolutions, it is our wishes and conviction that, these resolutions are definitive in rightly determining the proper and legitimate position pertaining to the three (3) Elias None Monare Households".

[18] Excluded from the above judgments is case **CIV/APN/502/1999** which contained Justice Maqutus' order of 7

February 2000. I believe the exclusion was deliberate because the order was already in place when the meeting took place. That is one of the cases that the respondents referred to in their special answer. The order restrained the members of the family, particularly the 1st appellant, who in that case was cited as 3rd respondent, from interfering with the properties of the late Elias None Monare.

[19] It may help to show what each court case dealt with. I therefore briefly give here below short notes against each case:

(i) CIV/APN/6/96: A case in which the 1st appellant's brother failed to stop the mother of the 1st to 3rd respondents from dealing with the estate of her late husband and also failed in his bid to be declared heir to the estate.

(ii) C of A (CIV) 9/98: Failed appeal by 1st appellant's brother

(iii) CIV/T/422/98: A failed case where 2nd appellant wanted to nullify the marriage between the mother of 1st to 3rd respondents and the deceased Elias None Monare. Application was dismissed for lack of locus standi.

(iv) C of A (CIV) 26/2000: Dismissal of 2nd appellant appeal.

(v) CIV/T/271/2001: 1ST appellant's mother sought to declare the marriage between Elias None Monare and the mother of 1st to 3rd respondents void. Case was thrown out upon an exception being filed. Case was never pursued to finality.

(vi) CIV/APN/502/99: The mother of 1st to 3rd respondents applied for interdict against Moletsane Motaung Monare, Monare Ts'ehla and Segoati Monare (1st appellant herein). Interdict not to interfere with the estate of the late Elias None Monare was granted by Justice Maqutu on 7 February 2000. That is the judgment referred to by the 1st to 3rd respondents in paragraph 5.2.1 of their special answer quoted under paragraph 8 of this judgment. That judgment is still in force.

[20] Decisions made in the above cases buttress the position that the administration of the estate under the executorship of Mrs Moroesi Tau Thabane remained undisturbed up to the date of the family meeting i.e 4 May 2019.

[21] Prior to 18 February 2020 when appellants were appointed co-executors they, had done the following:

a. appointed Malie, a South African citizen as heir and had purportedly surrendered all properties under the estate to him.
b. created a Trust, cited as 4th appellant herein; and
c. caused the supposedly heir Malie to donate the properties to the Trust. There is however no evidence of the alleged donations.

[22] I cannot accept that family resolutions could set aside court orders without due process or without respondents abandoning judgments granted in their favour. This means that at the end of the day, in addition to lack of locus standi, appellants, executing the acts referred to in paragraph 14 above, were in fact acting against the law. The lack of locus standi is closely linked to the conduct of the appellants prior to the date they sought

appointment as co-executors. They were not obeying court orders that were in place. During the hearing of this matter it was conceded by counsel on their behalf that if they had known of the order they would not have acted in the manner they did.

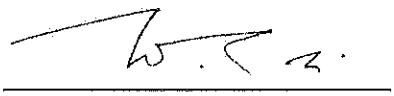
[23] Clearly, there is no merit in their appeal and it should be dismissed.

COSTS

[24] This being a family dispute which calls for cooperation within the family, I am of the view that each party should bear its own costs.

[25] In the result I therefore make the following order;

a. The appeal is dismissed.
b. The cross appeal is dismissed.
c. Each party shall bear its own costs.



N.T MTSHIYA

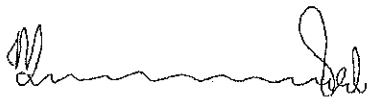
ACTING JUSTICE OF APPEAL

I agree

P.T DAMASEB

ACTING JUSTICE OF APPEAL

I agree



DR P.MUSONDA

ACTING JUSTICE OF APPEAL

FOR APPELLANTS:	ADV B SEKATLE
FOR 1ST-5TH RESPONDENTS:	MS. LEPHATSA