

# **IN THE HIGH COURT OF LESOTHO**

**Held at Maseru**

**CIV/T/769/2015**

In the matter between:

**LINEO EDWINA NKOSI SEKELEOANE NO**

**1<sup>ST</sup> APPLICANT**

And

**DENISE SEKELEOANE AND 14 OTHERS**

**RESPONDENTS**

Neutral Citation: Sekeleoane NO v. Sekeleoane And 14 Others [2021] LSHC  
Civ 13 (23 February 2021)

**CORAM: S.P. SAKOANE CJ.**

**HEARD: 10 DECEMBER 2020**

**DELIVERED: 23 FEBRUARY 2021**

## **SUMMARY**

Administration of estates – application by residual legatee to remove the curator bonis and to review and set aside an interdict preserving *status quo* pending outcome in main case – whether applicant has locus standi – Administration of Estates Proclamation 1935, sections 101 and 109.

## ANNOTATIONS

### CASES CITED:

#### LESOTHO

Mosuo v. Judge Peete NO And Others LAC (2007-2008) 275

Teaching Service Commission v. Judge of the Labour Appeal Court And Others LAC (2007-2008) 284

#### SOUTH AFRICA

Ex parte Goodman: in re Estate Herman 1941 WLD 177

### STATUTES:

Administration of Estates Proclamation No.19 of 1935

### BOOKS:

Joubert W.A et al (2008) The Law of South Africa Volume 11 (2<sup>nd</sup> Edition)  
(Durban: LexisNexis)

Joubert W.A et al (2020) The Law of South Africa Volume 31 (2<sup>nd</sup> Edition)  
(Durban: LexisNexis)

# JUDGMENT

## I. INTRODUCTION

[1] This is an interlocutory application in the main trial in CIV/T/769/2015. Both the applicant and the 1<sup>st</sup> respondent are 1<sup>st</sup> and 2<sup>nd</sup> defendants respectively in the main trial in which they are sued by some beneficiaries to a will of the deceased *Daniel Sekeleoane*. Their relationship with the deceased is described in the summons as follows:

“3.5 The First defendant was born from the deceased’s second marriage relationship with Edith Sekeleoane.

3.6 The deceased and the Second Defendant were married, in community of property, and the marriage subsisted at the time of the deceased’s death.

3.7 The First, Second, Sixth and Seventh Defendants are beneficiaries in terms of the alleged will which forms the subject matter of this action and they are cited insofar as their rights are affected by the relief sought herein.”

[2] The two defendants have been involved in a number of court battles for the control of the estate of the deceased since his demise in April 2015. In one such court battle (CIV/APN/269/2015), this Court, per *Moiloa J.*, handed down a judgment on 21 September 2015 which captures the history of facts that presage this interlocutory application. The learned Judge said at para [2]:

“The essential facts of this case are as follows: One Daniel Sekeleoane Sekeleoane a businessman of Maseru died in April, 2015. He has left a Will. Some of the legatees dispute the validity of the Will he left. But as matters stand now, he has left a Will regarding disposal of his estate.

Following his death his estate was reported to the Master of the High Court (11<sup>th</sup> Respondent herein). A few meetings of the legatees have been held at the Master's office at which various legatees could not agree on who should be recommended to the Master for appointment as an Executor of the Estate of D.S. Sekeleoane. Threats of litigation were made at these meetings. The Master resolved to call on any person that wishes to litigate concerning this estate to do so expeditiously but in the meantime the Master resolved to appoint Denise Sekeleoane (1<sup>st</sup> Respondent herein) as a curator bonis to look after the interests of the estate ad interim under Master's supervision pending outcome of any such litigation as might be instituted as threatened by some at her meetings. She appointed Denise Sekeleoane as a curator *bonis inter alia* because she was the wife of the late Daniel Sekeleoane at the time under the Master's supervision to-date."

[3] The dispute before *Moiloa J.* resulted in a "final court order" couched in the following terms:

- “1. The Master is interdicted from proceeding with the issuing of letters of administration of an executor testamentary and/or executor dative to administer the deceased estate of the deceased in terms of the will dated 7 February 2014 pending the institution and finalization of an action to declare the last will and testament of the deceased null and void;
2. Paragraph 1 operates with immediate effect as an interim interdict pending institution and finalization of an action to declare the will null and void;
3. The applicants are to institute an action to declare the will null and void within 20 days of the date of this order;
4. The First Respondent shall make the original will of the deceased, together with the signature specimens of the deceased, referred to in paragraph 1 to 8 of the report of Mr. JV Bester, dated 26 August 2015, available to the applicants' and the second respondent's attorneys on/or before Monday 2 November 2015;
5. Costs of the application stand over for determination at the action to be instituted.
6. Pending finalization of the action the status quo – namely the appointment of the Second Respondent [1<sup>st</sup> Respondent in casu] as *curator bonis* of the estate – will remain.”

## Relief

[4] The applicant now sues the 1<sup>st</sup> respondent and others seeking the following relief:

*“(2) That a rule nisi be issued returnable on the date to be determined by this Honourable Court calling upon the Respondents to show cause (if any) why the following prayers shall not be made final:*

*a) That pending finalization of the main case herewith, 1<sup>ST</sup> RESPONDENT (DENISE SEKELEOANE) shall not be removed as curator bonis of THE ESTATE OF THE LATE SEKELEOANE with effect from the date of grant of this order and an independent and neutral person shall not be appointed by THE MASTER OF THE HIGH COURT.*

*b) That THE MASTER OF THE HIGH COURT (3<sup>RD</sup> RESPONDENT) shall not be ordered to appoint an independent neutral and qualified person as Curator Bonis to administer(sic) Estate of (sic) Late DANIEL SEKELEOANE pending finalization of the main case CIV/T/769/2015.*

*3. That 1<sup>ST</sup> RESPONDENT be directed and or caused to give full, detailed and comprehensive inventory of all assets which fall under THE ESTATE OF THE LATE DANIEL SEKELEOANE to date since her appointment as Curator Bonis pending finalization of the main case pursuant to the provisions of SECTION 23 of THE ADMINISTRATION OF ESTATES PROCLAMATION NO.19 OF 1935.*

*4. That pursuant to the provisions of SECTION 118 (2) the 1<sup>ST</sup> RESPONDENT be directed to produce the bank statement or other sufficient evidence of the position of THE ESTATE ACCOUNT to THE MASTER OF THE HIGH COURT within 7 (seven) days of the grant of this order.*

*5. That the original appointment of 1<sup>ST</sup> RESPONDENT (DENISE SEKELEOANE) by THE MASTER OF THE HIGH COURT as curator bonis be reviewed corrected and set aside OR alternatively be varied and a neutral and independent person(s) be appointed to assume the reins as such.*

*6. That PRAYERS 1, 3 and 4 be granted as interim reliefs pending conclusion of the reliefs in the main in the current application.*

*7. Costs of suit at attorney and own client scale in the event of opposition hereof.*

8. *Further and/or alternative relief.*”

## II. MERITS

### **Applicant’s case**

[5] The applicant seeks the removal of the 1<sup>st</sup> respondent as *curator bonis* on the following grounds:

5.1 She (the applicant) is the executrix of the estate of her mother who until her demise in 2002, was married in community of property to her late father *Daniel Sekeleoane*.

5.2 Her appointment as an executrix was made in South Africa in June 2016. She thereafter presented her Letters of Administration to the Master in terms of section 41 of the **Administration of Estates Proclamation No.19 of 1935**.

5.3 Since the 1<sup>st</sup> respondent’s appointment as a *curator bonis*, she refuses to account to her (the applicant) and the Master “about her activities and the status of and state of the assets under her curatorship.”

5.4 Although she does “not have concrete evidence of her unlawful activities, I harbour a reasonable apprehension that

the 1<sup>st</sup> respondent is dissipating the assets of the estate. This much is supported by her own refusal to account for her activities.”

5.5 Since 2015, she lodged her concerns with the Master that the curator *bonis* “was syphoning funds from the estate of my later father *Daniel Sekeleoane* and was not accounting to the Master in terms of the law”.

5.6 She has established that the curator *bonis* has “flagrantly refused to cooperate with the Master of the High Court in so far as the administration of the estate of the late *Daniel Sekeleoane* is concerned and the same applies to the estate of my late mother who jointly owned several properties with my late father.”

5.7 The Master “has not been able to put the 1<sup>st</sup> respondent to order and this has caused significant prejudice to both the estate of my late father and that of my late mother as well.”

5.8 The court order, in terms of which the 1<sup>st</sup> respondent was to remain a *curator bonis* pending finalization of the main case needs to be varied to allow her removal.

5.9 By the court order, the Court arrogated to itself a role that belongs to the Master under section 30 of the Proclamation and made the 1<sup>st</sup> respondent an executor dative over the estate of *Daniel Sekeleoane*.

### **Curator *bonis*'s defence**

[6] The curator *bonis* puts up the following defence:

6.1 The applicant has no *locus standi* to bring this application to enforce an alleged entitlement to the joint property on the ground that it belongs to her mother.

6.2 She was married in community of property to *Daniel Sekeleoane*. She brought property into the estate upon marriage which she owned before.

6.3 The immovable property in the joint estate is jointly held with the late *Daniel*. After his death, she remains the sole holder of title to the property.



- 6.4 The alienation of landed property by will requires the consent of the other spouse and this is done only in terms of a joint/massed will.
- 6.5 In June 2016, the Master demanded audited accounts and a report was duly submitted.
- 6.6 The applicant has no business complaining about anything in relation to her as the *curator bonis* of the estate that jointly existed between the her and *Daniel*.
- 6.7 As the *curator bonis*, she can only be removed by the court upon application by the Master. The application is incompetent and an abuse of process.
- 6.8 The Master appointed her as the *curator bonis* and not the Court. The appointment is consistent with sections 27 and 30 of the **Proclamation**. The applicant has no right to review the order.

6.9 The court order is intended to maintain the *status quo ante* pending finalization of litigation over the validity of the will. It is neither *pro non scripto* nor reviewable.

### **III. ANALYSES**

- [7] The applicant is before Court in her “official capacity as the executrix of the estate of my late mother *Edith Sekeleoane*”. But her complaint is directed to the administration of the estate of her father and not the estate of her mother. Thus, she can only be complaining as a legatee/beneficiary of the will of her father. Her appointment as the executrix of the estate of her mother then becomes irrelevant and confuses the lines of accountability between the *curator bonis* and the Master of the High Court.
- [8] Once it is accepted, as it must, that the 1<sup>st</sup> respondent was appointed by the Master as a *curator bonis* in the estate of her husband, the late *Daniel Sekeleoane* and a court order subsequently issued interdicting the Master from appointing an executor to administer the deceased husband’s estate pending finalization of the main case, it stands to reason that the only issues for determination are the *locus standi* of the applicant to bring these proceedings and the competency of this court to vary the interdict.

## **Locus standi**

[9] The applicant is the daughter of *Daniel* in the first marriage to *Edith* (her mother). *Edith* pre-deceased *Daniel* in 2003. Thereafter, Daniel got married to the 1<sup>st</sup> respondent in community of property. After his death, the 1<sup>st</sup> respondent was appointed by the Master as *curator bonis* over the joint estate pending finalization of the legal dispute over the validity of a will.

[10] The applicant seeks the removal of the *curator bonis* despite her admission that she does “not have any concrete evidence of her (the *curator bonis*) unlawful activities” but “her refusal to account for her activities”.

[11] The removal of a curator is provided of in section 101 of the

### **Administration of Estates Proclamation No.19 of 1935** thus:

“101. Every executor, tutor or **curator** shall be liable to be suspended or **removed from his office by order of the Court**, if it be satisfied that by reason of his absence from the Territory, or other avocations, or failing health, or **other sufficient cause**, the interest of the estate under his care would be furthered by his suspension or removal: Provided that the Court may, if it issue and order of suspension, substitute some fit and proper person to act during the suspension in the place of the person suspended, subject to such conditions as to the giving of security and the conduct and administration of the estate as the Court may deem it just to impose.” [Emphasis added].

[12] Section 109 provides for the review and setting aside of the appointment of the curator by the Master “upon motion at the instance of any person aggrieved thereby”.

[13] The scheme of the **Proclamation** is to provide for court challenges against the appointment of *curator bonis* by the Master by persons who are aggrieved by the appointment. Another challenge can be directed to the removal of a curator. This species of challenge is reserved for the Master only and is brought in terms of the procedure provided for under section 105 which reads:

“Whenever by this Proclamation the Master is required or authorized to take civil proceedings against any executor, tutor or curator, he may proceed by way of application or motion and may when so proceeding report to the Court in writing the facts upon which he relies instead of stating them in an affidavit, anything to the contrary notwithstanding in any law or rule of Court.”

[14] Insofar as removal of the *curator bonis* is concerned, it seems to me that the only sensible interpretation to be that this can only be done by the Court on application by Master as the appointing authority. Any complaint by other persons, heirs or residual legatees about the performance of duties by the *curator bonis* warranting removal must be directed to the Master to judge whether it constitutes the requisite statutory basis for her action in that regard.

[15] The applicant concedes that she has nothing concrete to prove or suggest any unlawful activities by the *curator bonis*. She only has a “reasonable apprehension” of dissipation of assets. The *curator bonis* disputes this and pointedly asserts she is performing the statutory duties for which she has been appointed and is duly reporting. Even assuming the applicant has *locus standi*, there is no sufficient cause to remove the *curator bonis*.

[16] Insofar as the “original” appointment by the Master is concerned, the applicant’s competence to litigate seems to be there under section 109 as “a person aggrieved” by the appointment.

### **Variation of Court Order**

[17] The applicant contends that the “final court order” cementing that “original” appointment of the curator *pendente lite* must be either varied or disregarded as being *pro non scripto* because it ties the hands of a judge presiding in the main application. Mr. *Rasekoai*, for the applicant, advances the proposition that the order usurps the Master’s statutory functions under section 30 and makes the 1<sup>st</sup> respondent an executor dative over the estate of *Daniel*.

[18] Two questions arise here. The first is whether the court order, though “final” in form, is in effect final, in which case it is incapable of being

reviewed by another judge of equal rank: **Mosuo v. Judge Peete NO And Others** LAC (2007-2008) 275; **Teaching Service Commission v. Judge of the Labour Appeal Court And Others** LAC (2007-2008) 284. The second is if though final in form it is not final in effect, can the judge in the main case vary it at the instance of the applicant?

- [19] The operative paragraphs of the court order are paragraphs 1, 2 and 6. Paragraph 1 interdicts the Master from issuing letters of administration of an executor, either testamentary or dative to administer the deceased *Daniel's* estate pending finalization of the main case. Paragraph 2 says paragraph 1 operates as an interim interdict. Paragraph 6 decrees that the 1<sup>st</sup> respondent's appointment as *curator bonis* of the estate remains.
- [20] A sensible interpretation of these paragraphs is that there will be no appointment of an executor and the *curator bonis* will be in charge until the main case is heard to finality. If the order, though titled "final court order" is not final in effect, as discern it to be, the law remains that as an interim interdict and interlocutory, its terms are susceptible to variation or discharge if circumstances change: **LAWSA** Volume 11 (2<sup>nd</sup> Edition) para 427.

[21] The hurdle facing the applicant is that she has not made a case for change of circumstances as to warrant variation of the order cementing the “original” appointment by the Master. The order merely says, “Let things remain as they are until the big fight is over”. It is not an instrument of judicial appointment or a fetter of the discretion of the presiding judge in the main case to review the order upon proof of jurisdictional facts of change in the circumstances.

#### **IV. CONCLUSION**

[22] The application seeking the removal of the *curator bonis* as well as the variation and jettisoning of the order maintaining her remaining in office is destitute of factual and legal bases.

#### **Order**

[23] In the result, the following order is made:

1. The interlocutory application is dismissed.
2. Costs will be costs in the cause.

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**S.P. SAKOANE  
CHIEF JUSTICE**

**For the Applicant:** M.S. Rasekoai

**For the 1<sup>st</sup> Respondent:** M.E. Teele KC  
With L. Molapo