IN THE SUPREME COURT OF ESWATINI

Case No. 23/2021

HELD AT MBABANE

In the matter between:

BRANHAM HORTON **1st Appellant**

BRENDA PHINDI HORTON **2nd Appellant**

And

ANTOINETTE CHARMAINE HORTON N.O. **Respondent**

Neutral Citation: *Branham Horton and another Vs Antionette Charmiane Horton N.O. (23/2021) [2024] SZSC 67 (15th April 2024).*

Coram: **S.B. MAPHALALA JA.**

N.J. HLOPHE JA.

M.R. FAKUDZE AJA.

Date Heard: **9th NOVEMBER 2023.**

Date Judgment Handed Down: 15th April 2024.

SUMMARY

Civil Appeal - High Court granted order inter alia interdicting the then Respondents from among other things interfering with or preventing the then Applicant from performing her duties as the executrix testamentary in the estate of the parties' late mother, one Jean Horton.

Order issued also entailed directing the then 1st Respondent (First Appellant herein), to keep and maintain peace towards the then Applicant (Respondent herein) as well as directing the then 1st Respondent (First Appellant herein) to hand over the keys to the premises to the then Applicant (Respondent herein), so that she could perform her duties as the testamentary Executrix.

A further order sought and granted interdicted and restrained the 1st Respondent from approaching the Applicant's place of work, place of residence or even the deceased's premises; just as another one interdicted the then 1st Respondent from threatening or interfering with the execution of the Applicant's function as executrix in the Estate of the Late Jean Horton.

Whether the then Applicant was entitled to the orders in question.

Whether a case has been made for this Court to interfere with the decision of the court a quo as concerns the issued orders.

If it can interfere what an appropriate order should be in the circumstances of the matter.

JUDGMENT

HLOPHE JA.

[1] Serving before this Court is an Appeal by the Appellants, one Branham Horton and his sister, one Brenda Phindi Horton who challenge and seek to have overturned in its entirety, an order issued by the Court *a quo* when it granted in full, certain orders sought before that Court by the then Applicant (now the Respondent).

[2] A summary to the background facts of the matter can be put as follows;

2.1 The late Jean Horton was a mother to all the protagonists herein. She allegedly died of the dreaded Covid 19 disease that was engulfing this country around the 5th January 2021. She left a Will in terms of which she appointed the current Respondent, Antoinette Charmaine Horton, one of her daughters, as the Executrix testamentary in her estate. She also bequeathed her assets to some of her children and grandchildren, whilst leaving out others, with the homestead in which she resided namely Farm 281, Grand Valley, Manzini being bequeathed to her son, the First Appellant herein.

2.2 It is clear that a misunderstanding ensued among her children upon her demise. It is unclear why there had to be such a development in a case

where the deceased had dealt with her assets in terms of a Will. When the current Respondent instituted these proceedings she claimed that the First Appellant was forcefully hindering her from performing her functions as the Executrix. She alleged that she was not being allowed access to the premises in order for her to be able to identify the deceased's assets, prepare an inventory of all such assets and generally be able to carry out her duties, unhindered. The person identified as the source of the hindrance *ex - facie* the papers is the then First Respondent, the current First Appellant. He was described as forcefully having refused with the keys to the house claiming it was his bequest just as he was said to have threatened violence against anyone who went to the homestead of the late.

[3] What is certain though is that after his (1st Appellant's), having allegedly locked the premises and kept the keys to the house in an obvious attempt to exercise control, the current Respondent appears to have, after gaining entry to the said premises, installed her own gadgets locking out anyone from gaining entrance to the said premises. It is unclear between the two of them who genuinely locked the premises to enable himself or herself fumigate same as they at different times, each claimed to have had to ensure that the said premises were safe from the said disease.

[4] Testifying on the alleged conduct of the Appellant in her papers, the First Respondent herein (the executrix per the will of the deceased), said the following at paragraphs 10 – 14 of her founding affidavit:-

"10. Our mother died of Covid -19, a fact known to the 1st Respondent, the homestead at Farm 281 Grand valley has not been fumigated as he continues to deny the executrix access to the premises. Annexed hereto is a copy of the Medical Certificate of the cause of death marked "A 4".

11. The 1st Respondent is extremely violent and threatening towards any person who attempts to reason with him to hand over the keys to the Executrix.

12. On or about the 8th January 2021 and out of sheer frustration and in fear for her own safety and the safety of 3rd parties that may attempt to enter the premises, the Executrix approached the Master of the High Court's offices in Manzini to attempt to reason with the 1st Respondent.

13. The Assistant Master Makhosazane Mdluli, telephoned the 1st Respondent to request an audience with him to discuss the matter. The 1st Respondent refused to attend to the Assistant Master's request and instead hurled insults at her and persisted in his refusal to hand over the keys. Annexed hereto is a confirmatory affidavit of the Assistant Master marked "A5".

14. *From that point until today, the 1st Respondent continues to harass employees of the homestead and to refuse anyone access to the premises. In an attempt to mitigate the situation, the executrix has since hired a security guard and affixed chains to the gates in an attempt to keep third parties out of the premises".*

[5] It so happened that after a few days of the proceedings having been instituted at the High Court by the Executrix, the electricity units got exhausted causing the electricity to go out. According to the current Respondent, her attempt to get the cooperation of the First Appellant to enable her gain access to the premises to attend to that problem proved futile. The Attorneys of record for the Appellant were not helpful despite being sent messages proving the desperate nature of the situation. The Respondent approached the High Court again on an urgent basis seeking an order granting her such permission which included an order to break and enter the premises in order to restore the electricity supply. The unavailability of the said units was allegedly threatening the pork and poultry stock said to have been kept in the freezers by the deceased. The First Appellant did not oppose the application whilst not cooperating with the executrix. The non cooperation of the First Appellant which formed the basis of the interlocutory application, confirmed in my view the first Appellant's persistent refusal to allow access to the premises.

[6] In his own papers, the Appellant had sought to refute the allegations by the Respondent despite that some of them were obvious basic examples of the one recorded in the foregoing sentence and those confirmed by

independent witnesses such as the Assistant Master of the High Court, one Makhosazane Mdluli.

[7] The Appellant had otherwise raised two points in *limine* claiming the following:-

> *"(i) The Applicant's averments had not established a case.*
>
> *(ii) The second and Third Respondents in Brenda Phindi Horton and Charlotte Horton had been misjoined in so far as there were allegedly no averments or contentions that established or suggested that there was any wrong doing on their part".*

[8] Expatiating on the points in limine, the then First Respondent argued that the case of the then Applicant lacked averments that disclosed a *prima facie case* or even the case itself for the then Applicant. Among other things the then Respondents contended that whereas statements or allegations to the effect that he was threatening the Applicant with violence alongside refusing with the keys to the premises were being made, it was allegedly not being disclosed when, where and how he had allegedly done that which he was being accused of. For this reason it became clear, he contended, that the Applicant had allegedly not established a case as required of her in law and that her case was founded on speculation or that there was no basis for it hence his call for the application to be dismissed at this point and without even going into the merits.

[9] With regards the point on the then 2nd and 3rd Respondents being allegedly misjoined in the proceedings, the then First Respondent contended that his then co-Respondents should not have been joined in the said proceedings because they had no interest of their own in them and that indeed the then Applicant had not established any such interest in his papers which necessitated that they be cited as parties or Respondents. It was argued that the two had no interest because even the deceased's will which dealt with the assets of the late had excluded them from benefitting.

[10] The Court *a quo* had said the following at paragraph 21 of the judgment on the said points in limine:-

> *"The points in limine are in my view not worthy of any merit and thus cannot be upheld. The Applicant is the Executrix Testamentary of the Estate and thus has every right from the moment the Will and Testament of the deceased was read, to take charge and prepare an inventory of all the assets of the Estate timeously. Further, the 2nd and 3rd Respondents have a direct and substantial interest because they are beneficiaries in this estate hence their joinder and citation is justified because the orders herein sought have a direct effect on their interests in the estate".*

[11] Challenging directly this conclusion in his Notice of Appeal, the Appellant said the following at paragraphs 1.1 and 1.2 of the Notice of Appeal, which is where in my understanding the said conclusion of the court a quo was dealt with:-

"*1.1. The finding of the Court a quo that the Respondent as the Executrix Testamentary of the deceased's estate had the right to take charge of the assets of the Estate had no bearing and was not germane to the legal point that Respondent had failed to make out a case for the grant of the final interdict that was prayed for in prayers 2 up to 5 of the Notice of Motion.*

1.2. The finding of the Court below that the joinder of the 2nd and 3rd Respondents was justified in the circumstances, was totally inconsiderate of the fact that the Respondent's application in the Court a quo, did not relate to the proprietary interests of the deceased's estate as a whole. Instead it related to the Respondents' personal rights in the estate and the prayers being sought were solely against the 1st Appellant only. Hence the other Respondents (2nd and 3rd Respondents) were misjoined, since no Orders were being sought against them. Neither were they going to be affected by the grant of the Orders sought."

[12] My views on the first of the two points in *limine* is that it is more akin to the very merits of the matter because the Appellants would only be entitled to the reliefs prayed for if they could make a case for them. The Appellant says that the observation by the Court *a quo* that the Executrix, as the authority or person in charge of the estate, had the right to enter and take charge of the estate was of no moment to his contention that the executor had not made

a case for the reliefs sought. I cannot agree that the Court a *quo's* finding or observation in that regard had no bearing on the relief's sought.

[13] The starting point is that the thrust of the current Respondent's case in the Court *a quo* was that she was not being able to perform her functions as an executrix because the 2nd Appellant was frustrating her efforts. He was allegedly refusing to hand over the keys to her for her to be able to perform her said functions. I cannot therefore blame the Court *a quo* for effectively saying that the Executrix was entitled to have access to all the assets of the estate as the person tasked with winding it up. This had to be emphasized because it had already been averred that the First Appellant was forcefully refusing with the keys and threatening violence on those who insisted on going into the deceased's home bequeathed to him.

[14] I therefore cannot agree that the Respondent as executrix had not made a case to deal with what is otherwise the thrust of the Application, which was the alleged refusal by the Applicant to allow her access to the said premises as well as his refusal to hand over the keys of the premises to her so that she was able to do her job, just as it was alleged that threats of violence to the Respondent as well as to the others who engaged Appellant about the matter of the estate, who included the Assistant Master, were being made. It may be true that the Respondent did not give details of the threats and their nature including their timing as such; but that threats were allegedly made by the Appellant cannot be down played and made to look like they were never made. The making of the said threats were confirmed by means of a confirmatory

affidavit by the Assistant Master of the High Court one Makhosazane Mdluli when she revealed what was allegedly said to her by the Current First Appellant herein.

[15] That a case was made for the relief sought, at least with regards refusing the Executrix access to the deceased's house is confirmed by the First Appellant's failure to deal with the allegations by the then Applicant in the interlocutory application that resulted in her gaining access to the house through having to break and enter those premises to inter alia load electricity units to save the poultry and pork stock from going bad whilst enhancing security to the property itself as it would not be allowed to go dark without redress. It made it worse, in my view, that throughout the proceedings and even now on appeal, the Appellants have not alleged and proved the real prejudice they are to suffer if the orders were granted.

[16] Consequently, for the foregoing reasons, I am of the firm view that there is completely no merit in the point that the first of the two points in limine should have been upheld as such. I therefore cannot find fault with the Court *a quo* in that regard and it confirms my firm view that the current Respondent as the Applicant had established a case for the relief sought namely that Appellant be interdicted, among other reliefs, from refusing the then Applicant access to the house of the deceased.

[17] Turning to the point on the 2nd and 3rd Respondents (that is Brenda Phindi Horton and Charlotte Horton), having been misjoined in the proceedings,

(which is to say the two have been joined when they should not have been), it is important to observe not only on the roles played by them to prompt the proceedings against them, but also to consider who they are visa – vis the deceased, the First Appellant and the current Respondent. The point is that the latter two hereinabove are, like the 2nd and 3rd Respondents in the Court *a quo*, biological children of the deceased.

[18] It is difficult to contemplate a situation where only a portion of the children of the deceased are interested in the estate of the deceased when others born of the same deceased would have no interest. This consideration takes one straight to the point; when are parties to be joined in proceedings? Should it happen only where the parties are to be joined as of necessity or even where it is out of convenience and is allowed by the Court in exercise of a discretion? The position of our law is that parties are joined in proceedings on the basis of either necessity (the so called Joinder of Necessity or on the basis of convenience (the so called joinder of convenience).

[19] **Herbstein and Van Winsen's, The Civil Practice of The Supreme Court of South Africa, 4th Edition Juta & Company at page 170**, puts the position as follows with regards joinder of necessity:-

> *"If a third party has, or may have, a direct and substantial interest in any order the Court might make in proceedings or if such an order cannot be sustained or carried into effect without prejudicing that party, he is a necessary party and should be joined in the*

proceedings, unless the Court is satisfied that he has waived his right to be joined".

This principle was enunciated in such cases as **Amalgamated Engineering Union V Minister of Labour 1949 (3) SA 637 (A), Erasmus V Fair Will Motors (EDMS) BPK 1975 (4) SA 57 (T)** and **Harding V Basson & Another 1995 (4) SA 499 (c).**

[20] With regards the position of the law on the joinder of convenience, the esteemed writers, **Herbstein and Van Winsen** in their said book - **The Civil Practice of The Supreme of South Africa, 4th Edition, Juta and Company, at page 166** – said the following:-

"At Common Law the Court had a discretion to allow joinder of a party on the basis of convenience, but the power to do so was uncertain. Some cases held that the Court could allow such a joinder only when the person sought to be joined was a necessary party but the better view seems to be that there was no such constraint. The uncertainty which previously prevailed has now been cured by the introduction of the Rules of Court relating to joinder of parties. In ***Vitorakies V Wolf 1973 (3) SA 928 (w) at 930*** *it was stated that our modern rules of Court are so explicit on this point that there is now hardly anything left of the basic common law approach to joinder and intervention. However in* ***Rabinowitz & Another NNO V Ned- Equity Insurance CO. LTD and Another 1980 (3) SA 415 (w) at 419 E,*** *the Court held that the rules were not intended to be exhaustive of the cases in which a party may be joined and the Court could still*

exercise its common law power to allow joinder whenever convenience so requires".

[21] It is therefore noteworthy that whether a party is to be joined in proceedings would be a question of it either being necessary or convenient to join such a party. In the case of joinder for convenience the Court exercises a discretion whether or not to join such a party. Unlike in the case of joinder for necessity where the joinder has to occur, in matters of joinder for convenience it is the Court that has a discretion whether or not to allow it. Explaining that in the case of joinder of necessity the Court has to ensure that two tests, which are 'whether that third party has *locus standi* to claim that relief and whether a situation could arise in which, because the third party had not been joined, any order the Court might make would not be res judicata against him, entitling him to approach the Court again concerning the same subject matter and possibly obtain an order irreconcilable with the order made in the first instance.' (See **Herbstein and Van Winsen (ibid)** at page **173**). The same writers said it in the following words on the same page 173:-

"It is not necessary to apply the test of a direct and substantial interest at all when joinder on the basis of convenience is considered. In fact to do so is a contradiction in terms because the Court has a discretion to order joinder on the basis of convenience, but once a direct and substantial interest becomes apparent the Court has no discretion and must order joinder."

[22] Turning to the facts of the matter and with regards the alleged misjoinder of the two parties in question (that is the 2nd and 3rd Respondents *a quo*), I am of the view their joinder could be done on either of the grounds of joinder referred to above which are either the joinder of necessity or that of convenience.

[23] Beginning with that of necessity, I am of the view that in so far as the said parties were bound to be impacted upon, one way or the other, by the order prayed for issuing and interdicting them from going to what had hitherto been their family home, it was necessary to join them. In that sense they have a direct and substantial interest and it would not matter much whether or not they were bound to benefit from the Will of their mother.

[24] On the other hand and on them having had to be joined on the basis of convenience, I think it was indeed advisable for the two to be joined given that they deserved to know what was happening to their mother's estate including their observing and ensuring that her wishes were carried out as expressed. There was also the major consideration that none of those entitled to associate himself or herself with the exercise was made to suffer prejudice by not being joined. In that sense I cannot fault the Court *a quo* for having exercised its discretion in favour of allowing the second and third Respondent's joinder in the proceedings thereby dismissing the point in *limine* of misjoinder raised. The reality is that it was up to the said two parties upon becoming aware of the proceedings to decide whether to file any papers or to waive their right to join issue.

[25] Consequently, I agree with the Court *a quo* in rejecting or dismissing the points in *limine* as raised by the Appellants now (the Respondents then).

[26] Concerning the merits of the matter, the Appellant's grounds relating thereto are the rest of those contained in the Notice of Appeal as are revealed in the early paragraphs of this judgment together with the two I have just dealt with as points in limine. These grounds are for the record set out as follows:-

> *"3 The Court a quo erred in law and in fact in granting prayers 2 and 4 of the Respondent's Application. In so doing the Court a quo misdirected itself by failing to take into account the fact that the Respondent, in her founding papers, failed to prove the particulars and the nature of the alleged threats and violence attributed to the 1st Appellant. The Orders that were eventually issued by the Learned Judge a quo were not supported by any findings of threat and violence on the part of the person of the 1st Appellant against Respondent.*
>
> *4. The Court a quo erred in law and in fact when interdicting the 1st Appellant from attending at the deceased's premises to wit; Farm 281 Grand Valley Manzini, when the said premises were, in terms of the Will and Testamentary document of the deceased, bequeathed to the very same Appellant.*

5. *The Court a quo erred in law and in fact in finding that the Appellant interfered with the duties of the Executrix per prayer 5 of the Notice of Motion which was never proved. The Learned Judge a quo misdirected himself in placing reliance on annexure "A6" in coming to this finding. This is more so because the said annexure "A6" did not prove any interference. Furthermore it was filed in reply by the Respondent and thus the Appellant was denied the right to respond thereto.*

6. *The Court a quo erred in law and in fact in finding that annexure "B1" did not advance the case of the Respondent. This was considerate of the fact that the deceased was not the registered owner of the house. Neither was she a descendant of the registered owner nor did she acquire full ownership thereof.*

7. *The Court a quo erred in law when mulcting the 1st Appellant with an adverse costs order. The nature of the dispute and circumstances of the case did not warrant the grant of the adverse costs order against the Appellant.*

The Appellant reserve the right to supplement or amend the grounds of Appeal herein."

[27] Looking at the judgment as a whole one gets the sense that the Court *a quo* concluded that the Respondent as Applicant had made a case for the reliefs

sought. The Court *a quo* had specifically recorded that in its finding, the case of the then Applicant (now the Respondent), complaining of the then First Respondent (now the First Appellant), as having uttered threats of violence towards her and anyone else who sought to go to the house occupied by the deceased during her lifetime, had been established; just as there had been established the interference with the authority of the then Applicant and now the Respondent.

[28] Speaking of my own, I cannot find fault with the Court *a quo* in concluding as it did. The Respondent is not the only one who deposed to an affidavit about the first Appellant having behaved in a violent manner towards her, which included making certain threats towards her or the others involved, one way or the other, in the matter. The Assistant Master of the High Court, Makhosazane Mdluli, confirmed as much through a confirmatory affidavit she deposed to, which showed the Appellant as having engaged in unpalatable behavior towards her. That behavior she alleged, included his having insulted and threatened her with violence.

[29] In my view, these instances sufficed as a justification for the Court *a quo* to grant all the prayers that the Respondent sought. She showed the Appellant as having used threats of violence, intimidation or even insults against the Assistant Master. This conduct towards the Assistant Master justifies Respondent's contention she and others were treated the same way by the First Appellant. An order calling on the First Appellant to keep and maintain peace towards the Respondent and also to refrain from coming anywhere near her

including going to where she resided or worked was warranted in the circumstances. It was also a justification for an order restraining him from issuing threats and insults towards her including the intimidation complained of.

[30] Although she had not spelt out the nature of the threats, or the insults, including the particulars on how they had occurred or arisen, it does not, in my view, detract from the fact that no one is allowed to use threats or insults or even to intimidate other members of the public. If the interdict merely emphasizes that the Appellant had no right to do that, the interdict sought cannot just on that ground alone, be said to be prejudicial to the First Appellant when it merely ensures that he does not embark on what is undoubtedly unbecoming behavior towards others.

[31] It also cannot be correct to say that a case was not established in the Court *a quo* that the Appellant had unlawfully interfered with Respondent in carrying out her duties of winding up the estate of their late mother. It had been alleged and even shown that the Appellant had locked the premises and refused the Respondent access thereto. This was in fact not only shown as having occurred with a likelihood to recur, but to be ongoing because contrary to the order of court that was eventually obtained to compel the Appellant to give the Respondent access and the keys to the house, the First Appellant has to this day not done so. This has the effect of hindering or preventing the Respondent from performing her duties as the executrix. Such conduct on the part of the Appellant satisfied the requirements of an interdict and justified its

grant. There can therefore be no error in the court *a quo* having so concluded and granted the interdict sought.

[32] Over and above the analysis of the facts to establish that the Appellant had engaged on acts or behavior which justified the Court a quo to grant the order for an interdict one way or the other against the Appellant, there is also a more logical reason in law why the Court had to grant the Orders prayed for. It is in this form. The deceased had died testate. The Administration of Estates Act is clear on what should happen in the case of testate succession as observed by the Court *a quo* when it resorted to sections 22 and 23 of the Administration of Estates Act No. 28 of 1902.

[33] Section 22 provides that the estates of all deceased persons, be they testate or intestate at the time of their death, are to be administered and distributed according to law under Letters of Administration issued by the Master of the High Court as shown in Schedule "B" to the Act.

[34] Section 23 on the other hand, provides what should happen in the estate of a person who dies testate, with an executor or administrator of the estate having been appointed by the testator in a Will or testamentary document. The appointed executor or administrator, is entitled to apply to the Master for him or her to issue the said applicant with Letters of Administration. The Master is authorized to issue the Letters of Administration requested as soon as the said will would have been registered in his or her office. If however any person in writing, lodged with the Master of the High Court, objects that any

will or codicil, in terms of which any person claims to be the testamentary executor to the estate of any deceased person, is not sufficient in law to warrant and support such a claim, the issuance of such Letters of Administration may be refused by the Master until such objection has been withdrawn by the person who made it or until such person having had sufficient time to apply to Court for an order restraining the issuance of the Letters of Administration has not done so.

[35] The Court *a quo* noted that there was no objection to the Letters of Administration being issued. On the basis of that, the Respondent was entitled to do what he was required to do in law, which was to administer the estate in accordance with the law. This process entailed the identification of the estate's assets among other things; their liquidation where that had to happen and their eventual distribution.

[36] The Court *a quo* was obviously giving effect to this reasoning when it emphasized the power of the Respondent as the executrix, as being entitled to have access to the house where the assets of the estate were situated including that house itself. I cannot find fault with this approach and reasoning by the Court *a quo*. It seems to me that but for what I shall say below with regards the latter portion of prayer 4 of the Notice of Motion, all the requirements of an interdict were met which therefore means that the conclusion reached by the Court *a quo* cannot be faulted in the main.

[37] I now turn to the reservation I indicated above that I had with regards the latter portion of prayer 4 of the Notice of Motion. It is in connection with the interdict restraining the Appellant from approaching inter alia their deceased mother's house situated on Farm 281, Grand Valley, Manzini in the Manzini District, which from the papers they all treated as their family home. The problem with this portion of the prayer is that it sought to restrain the Appellants from visiting or going to the house their mother used to occupy situated on Farm 281, Grand Valley, Manzini, which they viewed as their family home. My problem with this order is that it interdicts the appellants from going to what had always been their family home.

[38] I do not think that such would be a fair order if it interdicts them instantly without first having granted them an opportunity to behave properly at their family home and in particular without interfering with the duties of the executrix which are required to be performed unhindered. This order would in my view only be justified if it was after the Appellants had deliberately shown an inclination not to be bound by the order stopping them from interfering with the winding up of the estate by the Respondent. The effect of the order as it stands is worse against the First Appellant who it is clear the house concerned was bequeathed to him. It cannot be that he would be entitled to a house from which he had had to be banned from even approaching until after the winding up of the estate was finalized. It seems to me that the real issue is whether the Appellants can visit what was hitherto their family home without hindering the Respondent from performing her duties as an executrix if they observe such an order I do not see what the problem is.

[39] Whereas I do not think there is a doubt about the entitlement of the Respondent as the executrix to the interdict restraining the Appellants from issuing any insults, threats of violence or even from unleashing acts of violence and/or intimidation towards her as well as from approaching her place of work and residence anyhow, I do not think she is entitled to interdict the Appellants from going to their parental home which in any event was bequeathed to the First Respondent, if it cannot be shown that the Appellants fail to conduct themselves properly or fail to observe an order directing them to keep and maintain peace with the Respondent. The same thing applies if it cannot be shown that they in any way interfere with the Respondent's execution of her duties as the executrix particularly following the issuance of the orders referred to above.

[40] I say this assuming that the Appellants are capable of behaving well, observe the Court orders issued as well as maintain peace and the general dictates of the law. I expect very little problems in the case of the First Appellant as I understand from the papers filed of record that he is a Police Officer which means that he is a person trained in the observance of law including what keeping it is all about. I am therefore minded to relax the interdict granted in prayer 4 by removing from the prayer granted that part which sought to restrain the First Appellant from approaching the deceased's premises as described herein above. I only emphasize that I do this purely on condition that he does not interfere with the assets of the deceased which only the Respondent is entitled to keep and deal with according to law at this stage. He is also to keep the peace and he shall not threaten, intimidate or insult the

Respondent, nor shall he do any act that will have the effect of breaching the peace upon him being allowed to be in those premises.

[41] Consequently, and for the foregoing reasons, the Appellant's appeal does not succeed except for the relaxation of the interdict as originally prayed for in the original prayer 4 to the Notice of Motion. This related to the First Appellant being sought to be interdicted from approaching the deceased's house which was in any event bequeathed to him.

[42] Lastly a lot was said in the Appellants grounds of appeal about the award of costs to the current Respondent as having not been in accord with the Law. I do not know what the basis for this contention is, but it does not seem to make any impact on the known considerations that underlies the award of costs. It all starts from the premise that costs are a discretionary matter and that they general follow the event.

[43] In this matter the award of costs did follow the event as the losing party was ordered to pay same to the successful one. I have not been shown any basis nor do I see any for interfering with this long standing rule which has always been viewed as salutary in law.

[44] It has also not been shown how the discretion that the Court is seized with in a matter and is entitled to exercise, can be said to have been exercised in a manner that warrants an interference with it.

[45] Accordingly I have come to the conclusion that the Appellant's appeal cannot succeed in its entirety as it only succeeds to the extent mentioned above which is the removal of the latter portion of Prayer 4, in so far as it purported to interdict the First Appellant from approaching the house which was the home of their late mother and is now a bequest to him. For this Appeal each party is bear its own Costs whilst at the High Court the order for costs stands as granted by that Court.

N.J. HLOPHE

JUSTICE OF APPEAL

I Agree.

S.B. MAPHALALA

JUSTICE OF APPEAL

I Agree.

M.R. FAKUDZE

ACTING JUSTICE OF APPEAL

For the Appellant: Mr M. Manyatsi of Manyatsi and Associates

For the Respondent: Mr Mntungwa of Dynasty Inc. Attorneys