

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 2244/06

In the matter between:

ZONKE WILTON MAGAGULA N.O.

PLAINTIFF

and

PATRICK MUIR N.O.

DEFENDANT

In Re:

PATRICK MUIR N.O.

APPLICANT

and

ZONKE WILON MAGAGULA

RESPONDENT

CORAM
FOR THE PLAINTIFF

: Q.M. MABUZA-J
:
: MR. P. SHILUBANE OF
SHILUBANE, MASEKO &
PARTNERS

FOR THE DEFENDANT

: MR. T.L. DLAMINI OF T.L.
DLAMINI AND ASS.

RULING 17/10/08

[1] An exception was raised herein. At the hearing counsel for the Defendant did not pursue same nor did he withdraw it. He instead advanced from the bar certain points ***in limine*** which he argued.

[2] The points ***in limine*** raised were that the estate of the late Robert Martin Muir had no ***locus standi***, that there should have been joinder of Wilhemina Myanga Dlamini and David Louis Muir who have a direct and substantial interest herein.

[3] Clause 5 of the Will of the late David Henry Muir sets out the conditions in respect of the immovable property situate at Fonteyn on which is the family home.

[4] Clause 6 of the Will sets out conditions in respect of the residue of the deceased estate wherein he bequeaths in equal shares to his children (including the late Robert Martin Muir) subject to certain condition namely:

- The whole residue is to be vested in the administrator in trust for the deceased's children as heirs (this includes Robert Martin Muir).
- The Administrator shall be entitled to administer the Estate in its sole, absolute and undisturbed discretion for the benefit of the Estate with full powers of realisation investment and re-investment.
- The income derived from the Estate shall be paid to Wilhemina during her lifetime for her maintenance and in the maintenance and education of the children (which includes Robert Martin Muir).

- When Wilhemina dies the trust continues to provide for the maintenance of David who is mentally challenged. Any income from the trust which is surplus to his needs is to be paid to the other children (which include Robert Martin Muir) in equal shares.

[5] There is adequate reference by the deceased to his children who include Robert Martin Muir and by extension the said Robert Martin Muir's Estate. In my view Robert Martin Muir's Estate has a direct and substantial interest in the relief sought.

[6] I agree with Mr. Maziya that Robert Martin Muir had not yet acquired the right to benefit from the assets at the time of his death. He however, had an interest so does his estate that his deceased father's Estate be administered and managed prudently by the Defendant.

So too his siblings who ought to have been joined herein. They have an interest that their father's Estate be administered properly so that when the time comes for them to inherit their shares there shall be worthwhile assets in the Estate. This makes it imperative that there are periodic statements of account sent to them. They need to see the Estate asset and investment portfolio. Clause 6 (a) of the Will clearly states that realisation, investment and re-investment is for the benefit of the Estate which will devolve upon them in due course. Should the Estate not be doing well because of maladministration by the Administrator there are certain causes of action open to them to take against the administrator. They cannot do this if they are in the dark with regard to the goings on of the estate administration.

[7] I have not had sight of the trust wherein the Defendant was appointed trustee but I should imagine that it was set up with good intentions that he as a brother would carry out his duties in an honest transparent and upright manner. His refusal to account for his administration may be misconstrued as wishing to conceal something.

[8] I agree with Mr. Maziya that Wilhemina Myanga Dlamini and David Louis Muir have an interest in these proceedings. However, their interest extends to the enjoyment of the Estate and they may not wish to upset the appercart. Consequently it will serve no useful purpose in joining them.

[9] The exception and the points in limine are dismissed with costs.

Q.M. MABUZA-J