R E P O R T

Of the

J U D I C I A L C O M M I S S I O N O F I N Q U I R Y

Into ALLEGATIONS of

IMPROPRIETY, MALADMINISTRATION and ABUSE Of POWER

At the

OFFICE of THE MASTER of THE HIGH COURT of ESWATINI

REPORT OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF IMPROPRIETY, MALADMINISTRATION AND ABUSE OF POWER AT THE OFFICE OF THE MASTER OF THE HIGH COURT OF ESWATINI

THE HONOURABLE CHIEF JUSTICE, M.C.B. MAPHALALA**,**

Your Lordship,

The Judicial Commission was established by His Lordship, the Honourable Chief Justice, under Section 139 (5) of the Constitution by Gazette dated 1st February 2024, for diverse purposes central of which is enquiry into allegations of impropriety, maladministration and abuse of power at the Office of the Master of the High Court of ESwatini.

Unavoidably, the term of office of the Commission has had to be extended a couple of times as the Commission could not finish its assignment as initially envisaged.

As the purpose of the Commission well indicates, the work of the Commission began with the hearing of persons complaining about various forms of treatment they received at the different Master's offices in the four Regions of the Kingdom.

As the Report will show, the complaints were not always strictly in terms of the purpose(s) of the Inquiry. But as the complaints were about estates administered by the Master's office, it was difficult for the Commission to reject any of these complaints as not relevant. In the result, the Report is largely middle-of-the road.

The Report of the Commission duly subscribed to by the Commissioners is herewith humbly presented.

Honour to be,

Justice Majahenkhaba Dlamini Chairman …….

Justice Mzwandile Fakudze Deputy Chairman ……

Justice Sifiso Nsibande Member ……..

Justice Maxine Langwenya Member …….

Justice Lorraine Hlophe Member ……..

Siphiwo Vuyisile Masuku Secretary …….

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Acknowledgements

The Commission wishes to express its gratitude to all the persons who and bodies which assisted it to perform the task the Honourable Chief Justice mandated it to do. In this regard the Commission acknowledges the following in no particular order of consequence:

(a) The Secretariat of the Commission for all they have done to facilitate the workings of the Commission.
(b) The legal practitioners who represented certain parties who participated in the proceedings of the Commission for the input and their submissions which have been of assistance in the preparation of this report.
(c) The Police Service who efficiently served subpoenas and other legal processes issued by the Commission.
(d) The media for the coverage they gave to the work of the Commission which enabled the public to follow what was happening.
(e) The members of the families of the deceased who have attended the proceedings of the Commission and made submissions about their experiences in dealing with the office of the Master.
(f) Ms B. Ndzimandze who acted as interpreter during hearings of the Commission and Mrs J. Dlamini and Ms X. Sukati who typed the report.
(g) The staff of the Master's Office.

November 2025

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CHAPTER ONE

GENERAL

1.1 Introduction

By Legal Notice No. 18 of 2024 (the Notice), the Honourable Chief Justice appointed the Judicial Commission of Inquiry to investigate allegations of maladministration, impropriety and corruption regarding the office of the Master of the High Court (The Master). The appointment of the Commission was published in the Government Gazette No. 10 of 1 February 2024 under Section 139(5) of the Constitution of Eswatini Act No. 001 of 2005.

The office of the Master of the High Court is a government office established in terms of the Administration of Estates Act No. 28 of 1902. The office also deals with the administration of deceased estates, insolvent estates, liquidation processing and winding up of companies and the guardianship of minors and mentally challenged persons. The Master ensures the proper administration and distribution of assets in deceased individuals' estates, including overseeing the appointment of executors and the distribution of assets according to the Will and the Law.

The Master is responsible for paying out beneficiaries of deceased's estates monies deposited in the Guardian's Fund (the Fund). The Fund is a trust account held and administered by the Master on behalf of minors. It also consists of monies received by the Master in trust for unknown persons and people who are mentally incapable of controlling their own affairs. The Fund is controlled by the Master and disbursements from it by the Accountant General.

The Master submitted before the Commission that on paper, the Fund is Account No: 364 and is part of one Government General Account and not a stand-alone Account in the Master's office. This contributes to the delay in the processing of payments to beneficiaries within the statutory period of six months.

1.2 The Commission's Terms of Reference

The Terms of Reference of the Commission as set out in paragraph 4 of the Notice are as follows:

"4. *The Commission shall inquire into, make findings, report on and issue recommendations concerning the office of the Master of the High Court in accordance with the following terms of reference-*

4.1 *allegations of impropriety in the handling of deceased estates; winding up of companies and the administration of the Guardian's Fund.*

4.2 *whether there were any irregularities, undue enrichment, corruption and undue influence in the appointment of executors in contested estates and/or the appointment of liquidators in the winding up of companies.*

4.3 *to inquire into allegations of lack of accountability, effectiveness, efficiency and oversight in the execution of functions by officials employed at the Office of the Master of the High Court and to establish whether such officials received benefits whether directly or indirectly from estates of deceased persons and/or were involved in any acts of corruption.*

4.4 *to inquire into allegations of embezzlement by officers employed in the Master of the High Court of estate funds and in particular those in respect of the Guardian Fund.*

4.5 *to consider whether there is a need to review the present legislative and operational framework relating to the Master of the High Court and to make recommendations on-*

4.5.1 remedial actions, if any, to address deficiencies identified in congruence with the terms of reference.

4.5.2 any amendments to the current legislative framework to address deficiencies identified in congruence with the terms of reference.

4.5.3 measures to be taken to give effect to the pronouncements made by the Courts."

1.3 Commencement

The Commission commenced its duties on Tuesday 16 January 2024 and was required to submit its report within ninety days of the commencement of its work[1].

The periods referred to in paragraph 14 of the Notice were extended:

(a) To 16 April 2024 by Legal Notice No. 84 of 2024 in terms of which the Commission was called upon to submit its report within one hundred and eighty (180) days after the date on which it completed its investigation.

(b) To June 2025 by Legal Notice No. 62 of 2025 in terms of which the Commission was called upon to submit its report within one hundred and eighty (180) days after the date on which it completed its investigation.

It became necessary to apply to the Chief Justice for extensions of time because of the scope and magnitude of the work involved. Even with such extensions of time, it has not been possible to entertain and to follow up all the complaints.

[1] See Paragraph 14 and paragraph 13 of Legal Notice No. 18 of 2024

1.4 The Process Followed in Conducting the Proceedings

The hearings were held continually from 22 January 2024 until 30 May 2024; then intermittently from June 2024 until May 2025. But the Commission continued to sit until 14 November 2025.

The sittings of the Commission were widely publicized, which together with the testimonies of certain witnesses given in public, we believe encouraged people, particularly those who had sought assistance at the office of the Master, to come forward to testify. We thank the media for the coverage they gave to the work of the Commission which enabled the public to follow what was happening. It is regrettable that the Law Society did not attend despite being invited. The Commission stood to gain a lot from their contributions.

Where a witness appearing before the Commission implicated another person, the Secretary of the Commission was directed to notify the person within a reasonable time and advised to lodge a statement or an affidavit in response should they so wish or appear before the Commission to cross examine the witness concerned and to give evidence.

The Commission interviewed members of the public and invited certain stakeholders to make their input. The aim was to take complaints from them and at the same time ascertain how the office of the Master was being run in accordance with the highest standards of ethics, integrity and efficiency and consequently meet the needs of the people it serves. Regrettably, associations such as Umhluma Widows Association failed to attend notwithstanding that they are crucial stakeholders.

1.5 The Commission's visit to the offices of the Master

The Commission visited various offices of the Master to see for itself the working conditions and the state of work infrastructure of the offices. The building housing the office in Hlatikhulu we saw and were told that it was long declared unfit for human habitation. The windows were broken, the roof was leaking and the house was in a serious state of disrepair. There is a need for proper and well-maintained administrative offices in all the regions particularly the Hlatikhulu office.

Except for the office in Mbabane, the Master's offices in the regions did not have proper storage for Wills. The office in Mbabane has a safe for Wills but even that safe is full and Wills are now stored in open boxes in the assistant Master's office. The Commission heard that in certain matters, the officials in the office of the Master are attacked by disgruntled family members while discharging their duties. To this end, there is need for the provision of security.

All the offices of the Master still use the manual filing system with its attendant shortcomings. The offices have more files than the storage area can keep. The Commission heard that some estate files could not be found either because they were misplaced, mis-filed or stolen. Some estate files were hollow inside because important correspondence was removed from the estate files. We recommend that the electronic filing system be installed.

The Commission further met for administrative purposes during which time it perused files from the Master's office. Particular attention was paid to individual cases which in the Commission's view constituted examples of impropriety on the part of the Master's office, executors, attorneys and or beneficiaries. Recommendations were made relating to these and other matters.

From our investigations and inspections, the following matters became apparent and recommendations were made: shortage of staff, shortage of office space,

problematic manual file management systems, no safes to store important documents such as Wills, flagrant disregard of the provisions of the law[2], lack of customer care and outright theft by some executors of money belonging to some deceased estates.

1.6 Complaints against the Offfice of the Master

During *Sibaya* in 2023, there were submissions regarding misappropriation of funds and corruption in the office of the Master. This resulted in misappropriation of estates in the hands of attorneys whether appointed by Will or by the Master as executors[3].

It was further alleged that the office of the Master is responsible for non-disbursement of funds to beneficiaries, delays in the provision of its services, poor and slow systems, loss of clients' documents and money, poor infrastructure and long queues. For instance, there are reports of a widow who threatened to sleep at the office of the Master due to non-payment of her portion of her late husband's estate dating 2019. The Master's office sought the intervention of the police to remove her from the office.

The Commission heard and investigated serious allegations of maladministration, abuse of power and embezzlement of estate monies at the office of the Master[4] including the regional offices.

[2] Administration of Deceased Estates Act; The Companies Act and The Insolvency Act.
[3] https://cango.org.sz (visited on 21 September 2025).
[4] The Commission heard that some officials were subjected to the criminal justice system and arrested, their ill-gotten gains were taken from them through POCA and they were charged for embezzling estate funds. The Commission heard that the officers were suspended pending finalization of their matters in the courts but were subsequently reinstated and transferred to other government departments presumably because they are innocent until proven guilty and their matters are still pending before the courts.

1.7 Challenges

The limitations of the Commission included the following:

(a) The Commission was not afforded services of transcribers. As a result, it relied on its notes and at times had to listen to the recordings before it could ask questions from the witnesses regarding their evidence and in writing the report. The result was a considerable delay in the conduct of hearings and writing the report.

(b) The Commission failed to have access to certain files in respect of deceased estates from the office of the Master. Such files were reportedly missing without trace until the end of the sitting of the Commission.

(c) In some of the files, crucial documents were missing i.e. requisition and acquittance forms, payment vouchers and general correspondence.

(d) Certain reports from the Master's office could not be availed to the Commission on time because of shortage and unavailability of staff in some regional office like in Piggs Peak. The problem was acutely felt after the contracts of Assistant Masters who were working on a temporary basis came to an end and were not renewed.

(e) Non-renewal of contracts for Assistant Masters.

(f) The work of the Commission was delayed each time the Industrial Court of Appeal was sitting. At times the hearings would be held in the conference room.

(g) The Commission was unable to visit similar offices in the SADC Region for comparative purposes and to make appropriate recommendations.

1.8 The Structure and Functions of the Office of the Master

In terms of Section 160(2) of the Constitution, the appointment of the Master[5] and the supervision of the office of the Master vests in the Judicial Service Commission (JSC).

The office of the Master is decentralized to all four regions of the country. When the Commission began its work, there were seventeen Assistant Masters who were employed on short term contract basis. The offices in Manzini and Mbabane had six and four assistant Masters respectively while the offices in Nhlangano and in Piggs Peak each had two assistant Masters while Siteki had three and Hlatikhulu had one assistant Master working on short term contract basis. The Hhohho and Manzini regional offices each have two full-time Assistant Masters and the Shiselweni region has one Assistant Master who is employed full time. In the latter half of 2024 and in 2025 only four public officials served as Assistant Master of the High Court for the whole country. The rest were working on short term contracts which were not renewed when they expired. At the time of the writing of the report, the office of the Master in Piggs Peak was closed because of unavailability of staff. The Master's office currently operates without a full staff complement and that negatively impacts service delivery of the office.

The organisational structure and functions of the office of the Master are set out here so that the Commission would be in a position to assess and explain whether any findings of impropriety could be located in structural deficits or organizational pathologies impeding the proper functioning of the office of the Master. As the testimony and explanation of the structure indicates, sound

[5] The appointment of the Deputy Master also vests in the JSC in terms of Section 160(2) of the Constitution.

structures and operating procedures were not in place but these alone cannot act as a complete check on the presence or otherwise of corruption of public officials in the office of the Master.

The organogram of the office of the Master reflects further that the office only has one position for a senior accountant; one position for an accountant and eight positions for assistant accountants. The accounts' office at the Master's office is centralized in Mbabane and this makes processing payment of beneficiaries a circuitous, cumbersome and arduous task. The decentralization of the office of the accounts' office is necessary so that the processing of payment to beneficiaries can be expedited.

Currently, before payment is made on a file it makes three trips between the regional office and the office of the Master at headquarters in Mbabane. The estate examiner examines the file and makes calculations for payment due to beneficiaries. The file is then transmitted to the accountant who approves or disapproves the calculations done by the estate examiner. If the calculations are approved, the file is then transmitted to the controlling officer at the High Court for her to approve payment. The Principal Accountant and the Registrar then go to Treasury to confirm the particulars of each beneficiary to be paid before payment is done. If the amount to be paid to a beneficiary is less than E15, 000, payment is done through mobile money but if the payment is above E15,000, payment is done through transfer of the money to the beneficiary's bank account.

1.9 Questions Raised by the Commission to the Master

Following questions raised by the Commission on the operations of the office of the Master, the Master responded as follows:

Question 1

With regards to the Master's directive in terms of Section 54, 95 and 120 of the Administration of Estates Act, does the Master tax the executor's fees as envisaged by Section 54?

RESPONSE

Yes. The Master does tax the executor's fees as envisaged under Section 54 of the Administration of Estates Act, 1902. In terms of Section 54, every executor is entitled to claim fair and reasonable remuneration for administering, distributing, and finalising an estate. In practice, the Master examines the Liquidation and Distribution Account and the supporting documentation to determine whether the executor's claimed fees are justified. The fee is taxed in accordance with the prescribed tariff and the Master's Directive.

Question 2

Are executors paid at the end? Does the Master comply with this requirement; if not, why is Section 54 not complied with?

RESPONSE

Section 54 states that an executor is entitled to be paid for administering, distributing, and finalizing an estate. The payment can be: The amount fixed by the deceased in a will or other document, or if not specified, a fair and reasonable amount determined and taxed by the Master. The Master's decision can be reviewed by the High Court if the executor or anyone with an interest in the estate applies for it.

However, if the executor fails to lodge the estate account within six months after being appointed and has no valid reason, the Master may reduce or cancel the executor's fees.

Remuneration of executors.
54. Every executor shall, in respect of his administration, distribution and final settlement of any estate, be entitled to claim, receive or retain out of the assets of such estate, or from any person who as heir, legates or creditor is entitled to the whole or any part of such estate, such remuneration as may have been fixed by the deceased, by will or deed, or otherwise a fair and reasonable compensation, to be assessed and taxed by the Master, subject to the review of the High Court, upon the petition of such executor or of any person having an interest in such estate:
Provided, that if any executor fails to lodge the account of his administration and distribution of the estate within six months from the date on which letters of administration were granted to him, and has no lawful and sufficient excuse for such failure, the Master may disallow the whole or any portion of the fees which such executor might otherwise have been entitled to receive in respect of his administration of such estate.

Question 3

The directive gives the Master authority to allow a special fee in note 2 of the Master's Directive, is this permitted in terms of the law and under what circumstances can this be done?

RESPONSE

Yes, In terms of Schedule A of the statute, the Master is permitted by law to allow a special fee. This discretion may be exercised where the executor has undertaken duties that go beyond the ordinary scope of estate administration, and where the estate has sufficient funds to bear such additional cost. The allowance of such a fee must also not be opposed by the beneficiaries or interested parties.

Section 54 of the Act further provides that any remuneration allowed by the Master, including such special fees, is subject to review by the High Court on petition by the executor or any person with an interest in the estate.

Examples of circumstances that may justify a special fee include:

- Where the executor personally conducts complex litigation on behalf of the estate rather than instructing an attorney.
- Where the executor undertakes the sale or management of business assets or income-generating property, requiring extensive supervision beyond normal duties.
- Where the executor is required to perform valuation, tracing, or recovery work to identify or reclaim estate assets.
- Where the executor must handle cross-border assets or navigate foreign legal processes to finalise the estate.

In such instances, the Master may reasonably assess that the executor's additional effort, time, and professional skill warrant a special fee beyond the standard remuneration ordinarily prescribed.

Question 4

With regard to Section 120, master's fees; are these fees still collected through the provision of revenue stamps as per the Act prescribes?

RESPONSE

Although Section 120 of the Act provides that the Master's fees should be collected through revenue stamps affixed to the relevant documents, in practice this method is no longer fully in use. Some of the low-value revenue stamps, such as those for E0.10, E0.25, and E0.50, are no longer issued by the local revenue offices.

At present, the Master's fees are collected through the use of postage revenue stamps, which are valued at E2 each. These are affixed to documents such as the death notice, inventory, and wills to indicate payment.

In addition, the Master's fees payable in respect of the executor's remuneration are calculated at 10% of the executor's fees, as per current administrative practice. This approach has effectively replaced the strict use of revenue stamps originally prescribed under Section 120 of the Act.

Question 5

Is the Master aware that the accounts department in her office is collecting revenue stamps?

RESPONSE

No, the Master is not aware. Upon enquiry, the accounts section reported that revenue stamps are being affixed to affidavits sworn by claimants for estate monies. However, the accounts department should not be collecting or handling any revenue stamps for any purpose. The proper procedure is that documents such as affidavits bearing stamps are received and processed by the records office only.

Question 6

As section 120 does not prescribe any percentages for Master's fees; on what basis does the Master permits the varying percentages?

RESPONSE

Section 120 provides that the Master shall charge and recover such fees as are specified in the tariff contained in Schedule "E." While the section itself does not prescribe any percentages for the Master's fees, the practice of applying varying percentages has developed as an administrative measure guided by Schedule "E" and long-standing departmental practice.

In effect, the Master determines the applicable fee based on the nature and value of the work done or the transaction involved. For example, in estate matters, the Master's fee is generally calculated as 10% of the executor's remuneration. This approach provides a consistent and practical method for assessing fees where the statute does not specify exact percentages, while still remaining within the authority granted under Section 120 and Schedule "E."

Question 7

Is schedule E titled "tariffs of fees" being put to use?

RESPONSE

Yes, it is put to use for those stamps that can still be purchased at the revenue offices.

Question 8

Please explain the operations of the Estate Late Account and whether

such operations are in compliance with Government controls?

RESPONSE

Estate Late Accounts are opened to facilitate the proper management and control of estate funds during the administration process. These accounts serve as holding accounts for monies belonging to a deceased estate and are opened in the name of the estate by the Executor, but are under the authority of the Master who signs for all withdrawals.

Funds paid into these accounts typically include proceeds from institutions outside the country, such as Old Mutual, TEBA, or other financial entities, as well as funds received from the Guardian's Fund on behalf of deceased beneficiaries. The account allows the executor to collect, manage, and eventually distribute the estate's assets in accordance with the approved Liquidation and Distribution Account.

The use of Estate Late Accounts also provides a clear audit trail of estate transactions, ensuring accountability and transparency in the handling of estate funds. However, while the intention behind operating such accounts aligns with proper estate management, full compliance with government financial controls and public finance regulations has been raised as a concern. The estates accounts are not provided for in the Administration of Estates Act but was a measure to ensure safety of monies in the hands of the Executor in the process of distributing the estate. The matter is currently under review, and corrective measures are being considered to align the management of these accounts with established government accounting and control procedures.

Question 9

Please explain the Administration of the Guardian's Fund.

RESPONSE

The Guardian's Fund is established under Section 96 of the Administration of Estates Act, 1902. The section provides for the creation of a fund to be administered by the Master of the High Court, consisting of all monies paid to the Master in trust for minors, persons of unsound mind, or unknown or absent heirs. In law, the Master is the administrator of the Fund and is responsible for opening accounts in the names of the persons or estates to whom the monies belong.

In practice, however, the operational management of the Fund involves both the Office of the Master and the Treasury Department under the Ministry of Finance. The arrangement functions as follows:

- Legal and Administrative Management (Master's Office): The Master's Office is responsible for the legal administration of the Fund. This includes identifying beneficiaries, compiling and verifying all supporting documentation, and ensuring that each estate is properly wound up through a completed and approved Liquidation and Distribution Account. The Master determines the amounts due to beneficiaries and prepares the necessary requisitions for payment. This constitutes the administrative management of the Fund.

- Financial Management (Treasury Department): All monies forming part of the Guardian's Fund are deposited with the Central Bank of Eswatini in government accounts managed by the Treasury Department under the Ministry of Finance. The Treasury Department handles the financial management of the Fund, which includes maintaining the accounts, processing payments, and releasing funds to beneficiaries upon receipt of approved requisitions from the Master's Office.

- Joint Operational Oversight: The Master, in coordination with an accountant from the Treasury Department, oversees the release of funds to beneficiaries once all verification steps are completed. This dual oversight ensures both legal compliance and financial accountability in handling public funds.

Therefore, while the administration and beneficiary management of the Guardian's Fund remain the responsibility of the Office of the Master in terms of the Act, the custody and financial control of the funds rest with the Treasury Department through the Central Bank. This shared structure aligns the process with government financial controls while preserving the Master's statutory role as administrator of the Fund in law.

Question 10

Has the audit query regarding the loss of funds in the Guardian's Fund been reconciled to the satisfaction of the Auditor General; kindly provide the Commission with the further details including the reconciliation statement?

RESPONSE

The exercise is ongoing.

Question11

How many deceased estates are registered in a year for regions? How many are settled within the requisite six months. Please furnish detailed records:

Response

The figures provided below represent numbers of deceased estates registered in 2024 at the various regional offices. These numbers fluctuate from year to year depending on the number of deaths reported, the efficiency of estate reporting by families, and the workload within each registry.

	HHOHHO	**MANZINI**	**LUBOMBO**	**SHISELWENI**	**TOTAL**
Deceased Estates reported	581	721	147	181	**1630**
Next of Kin meetings held	527	521	146	111	**1305**
Executors Appointed	491	501	183	100	**1275**
Wills Registered	145	23	4	16	**188**
Trusts Registered	0	-	-	-	-
Finalised Estate Files	354	502	43	64	**963**
Pending Estate Files	227	219	106	99	**651**

Companies in Liquidation	37	2	-	-	**39**
Companies Finalised	4	1	-	-	**5**
Companies Pending	33	1	-	-	**34**

Question 13

In the Master's view, is there any legislation that needs to be amended and why?

RESPONSE

Yes. Several pieces of legislation governing estate administration, insolvency, succession, and related matters are outdated and require amendment to reflect current social, economic, and legal developments in Eswatini.

The main laws in need of review include:

1. Administration of Estates Act, No. 28 of 1902

This Act is over a century old. Many of its provisions no longer align with the realities of modern estate administration. It does not address contemporary issues such as electronic records, online banking, or the management of complex financial instruments. The Act also places excessive reliance on manual processes and lacks clear accountability measures for executors. There is a need for modernization to improve efficiency, protect beneficiaries, and harmonize it with the Constitution and current financial regulations.

2. Insolvency Act, No. 81 of 1955

This Act has not been updated to accommodate modern commercial practices or international insolvency standards. Amendment is necessary to introduce fairer creditor protection, modern liquidation processes, and efficient asset recovery systems.

3. Wills Act, No. 12 of 1955

The Wills Act remains rigid and does not cater for modern family structures or evolving succession patterns. It fails to address digital wills, joint wills, or the protection of surviving partners. The Act also does not provide for the recognition of electronic documents or digital signatures, which are now integral to legal documentation globally. Reform is needed to align the law with constitutional principles of equality and to make it more accessible and reflective of present-day family arrangements.

4. Intestate Succession Act, No. 3 of 1953

Revision is needed to promote fairness, gender equality, and consistency with constitutional and human rights standards.

5. Marriages Act, 1964 and Related Family Laws

These laws are outdated and fail to address issues such as marital property regimes, and the rights of spouses in estate matters. Amendments would help harmonize inheritance

rights across different marital systems and prevent conflicting interpretations in estate administration.

6. Curatorship and Guardianship Provisions (within the Administration of Estates Act)

The current framework for the Guardian's Fund and the appointment of curators is cumbersome and lacks digital oversight mechanisms. Modernization is required to improve financial control, introduce transparent audit systems, and safeguard the interests of minors and persons with mental disabilities.

7. Deeds Registry Act 37 of 1968

In summary, the existing legislative framework was designed for a much simpler society and economy. Modern realities such as financial digitization, the recognition of diverse family structures, and constitutional equality require a comprehensive overhaul of these statutes to create a system that is fair, efficient, and reflective of current social and economic conditions in Eswatini.

Question 14

Ideally, what should the Master's organogram look like in your view: please provide a draft?

Response

See attachment.

Question 15

Why are the Wills being kept in drawers and in a safe that does not lock?

Response

Wills are currently being kept in drawers and in a safe that does not lock due to several practical and infrastructural challenges. The Office of the Master faces a shortage of secure storage facilities and lacks adequate office space to properly house sensitive documents such as wills and estate files.

In addition, there are limited resources to procure sufficient lockable safes or fireproof cabinets for document preservation. The current infrastructure is outdated and not designed for the volume of records now being handled.

Another contributing factor is the absence of a computerized records management system. Most wills are still kept in physical form, which increases the need for physical storage space and exposes the documents to risks such as damage, loss, or unauthorized access. Efforts are being considered to improve storage security through digital archiving and improved recordkeeping systems once resources allow.

CHAPTER TWO

PRINCIPLES APPLIED BY THE COMMISSION IN CONDUCTING ITS PROCEEDINGS

2.1 Principles Applied by the Commission in Conducting its Proceedings

It is at the outset necessary to refer to the generally accepted principles applicable to Commissions of Inquiry. A useful starting point is the remarks made by Van den Heever JA in the reports of the Durban Riots Commission. The proper function of a Commission of Inquiry, he said, is-

> '*…to find answers to certain questions put…in the terms of reference. A Commission is itself responsible for the collection of evidence, for taking statements from witnesses and for testing the accuracy of such evidence by inquisitorial examination-inquisitorial in the Canonical, not the Spanish sense*[6]*.'*

The functions of a Commission of Inquiry are generally not truly judicial because there are no facts in issue to be decided judicially, therefore rules of evidence may be relaxed. In *S v Sparks and Others*[7] Human J (with Theron AJP and Franklin J) said:

> '*A Court of law is bound by rules of evidence and the pleadings, but a Commission is not. It may inform itself of facts in any way it pleases-by hearsay evidence and from newspapers reports or even through submissions or representations or representations on submissions without sworn evidence.*'

[6] See UG 36-49: Report of the Commission of Inquiry into riots in Durban
[7] 1980 (3) SA 952(T) at 961B-C

2.2 Fact-finding by the Commission of Inquiry

It is well established that a Commission of Inquiry such as the present is mainly a fact-finding body[8]. It is not a court of law nor even a quasi-judicial body.

The inquiry on which the Commission is engaged is not a law suit brought by one party against another. The Commission's task is, amongst other things, to make factual findings on matters which are in dispute. If it cannot do so, it must say so. There are no parties in the strict sense of the word and no one can be said to bear what the Appellate Division in *Mabaso v Felix*[9]called the 'overall onus of proof,' what Wigmore[10] called 'the risk of non-persuasion.'

The Commission has in the course of its work had regard in the main to oral evidence given on oath or after affirmation made by the witness which was subjected to cross examination. It has also heard oral and written evidence which was not subjected to cross examination but in doing so it has been mindful of the need to bear in mind the fact that evidential material of this kind must be used with care.

2.3 Standard of Proof

The Commission has evaluated all the available evidence and come to a view of the probabilities on the facts. The Terms of Reference of the Commission enjoin it to inquire, make findings, report and make recommendations on the matters set out in the Legal Notice establishing the Commission. The recommendations it may make include recommending further investigations and possible prosecutions. When it comes to making recommendations regarding possible prosecutions, the Commission will consider:

[8] Bell v Van Rensburg NO 1971 (3) SA 693(C) at 719.
[9] 1981(3) SA 865(A) at 871H
[10] 9 Evidence 2485.

(a) whether there is a preliminary case against the person in respect of whom the institution of a prosecution is to be considered; and

(b) if not, whether there is a reasonable prospect that further investigation will uncover a preliminary case against that person.

2.4 Hearsay Evidence

Some of the evidence presented before the Commission was hearsay evidence. The nature of the allegations being investigated by the Commission made it unavoidable that some element of hearsay makes up a component of the factual matrix. The Commission has, nevertheless, treated such evidence with caution and has considered the extent to which the hearsay evidence is corroborated by other evidence led during the proceedings.

The possibility of prejudice in admitting the hearsay evidence is sufficiently ameliorated by calling the persons implicated by the evidence. Where hearsay evidence was relied upon, the persons implicated by the hearsay evidence were given an opportunity to testify to contradict the evidence and to apply for leave to cross examine the relevant witness.

CHAPTER THREE

DECEASED ESTATE MONEY AND THE GUARDIAN'S FUND

3.1 Introduction

The Administration of Estates Act directs that funds belonging to the following categories of people namely: minors, people who are mentally incapable of managing their affairs, unknown people as well as people who are absent from eSwatini should be paid to the Master in the Guardian's Fund. The Master is required to administer the said funds in accordance with the provisions of the Act[11].

Money belonging to people who die and do not fall into the above categories is secured and managed by the executor. The Master supervises the executor. Money belonging to insolvent estates and of companies that are being liquidated is not deposited in the Guardian's Fund, it is secured and administered by the Trustee under the supervision of the Master. The executor either opens a new estate late account in the name of the deceased or changes deceased's bank account into an estate late account in the name of the deceased. The Commission heard that money in the estate late bank account is not deposited in the Guardian's Fund but is administered by the executor or the trustee under the supervision of the Master.

3.2 Keeping Proper Accounts

An executor must account to the Master and to the beneficiaries for all the assets of the estate including all receipts and disbursements occurring over the course of administration. Beneficiaries and the Master are also entitled to review invoices, cheques and other voucher material in support of the accounting.

[11] See Sections 96-109 of the Administration of Estates Act 1902.

Accordingly, it is important that an executor keeps an accurate and complete accounting of his dealings with the estate assets, along with supporting voucher material. An executor who cannot account for all assets, receipts and disbursements, may be personally liable for any losses or assets not properly accounted for in respect of the estate.

The Commission heard that the office of the Master sometimes issues instructions to banks to pay certain individuals from deceased persons' accounts before such accounts are closed and proceeds transferred either to the custody of the Master or executors. These withdrawals related to funeral expenses, medical expenses, funding for ongoing businesses and other related expenses. In the estate files seen, letters from the office of the Master instructing banks to pay certain individuals were found but requests from the payees could not be found. The Commission is of the view that such requests were made to the office of the Master verbally.[12] The payees did not submit to the Master an accounting record with supporting documents showing how the money was spent after withdrawal. The Commission recommends that the office of the Master must demand written requests for funds which requests must be filed in the estate file. The office of the Master must limit the amounts of withdrawals in respect of burial expenses to avoid prejudice to creditors and beneficiaries to an estate.

The Commission heard that the office of the Master works with executors who manage and administer estate late accounts on behalf of deceased estates. The Commission then requested to be furnished with the files of estate late accounts where such accounts were operated as there are problems of executors misusing estate funds. The Master promised to give the Commission the said files but did

[12] See estate late Dumsani Mngomezulu where deceased's sister was given large sums of money from the estate ostensibly for the funeral of the deceased, for livestock feed and for payment of labourers employed in deceased's company. Deceased's sister was neither a curator nor was she an executor to be entrusted with huge amounts of money from the estate to the detriment of deceased's spouse and children.

not. Instead, the Commission was furnished with a list of estates where monies were not banked. The matters in the list were allegedly submitted to the police.

3.3 Estate Late Accounts

According to information given to the Commission, the executor converts a deceased person's bank account into an estate late account and withdraws money from the said account once prior authorization by the Master is granted. The Master will authorize the executor to withdraw money from such an account and pay for maintenance of minors and spouses of deceased persons. The complaint is that the Master is selective in that she readily approves payment by some executors and not others. A lot of estate money is disbursed in this way before a final liquidation and distribution account is prepared.

The Commission heard that certain executors used money belonging to deceased estates for their private benefit to the detriment of beneficiaries[13]. The Commission further heard that an official from the office of the Master directed an executor to give her an amount of twenty thousand Emalangeni (E20, 000.00) from the estate late account and the executrix complied. The Commission heard that on the instruction of the Assistant Master, two executors each shared ten thousand Emalangeni (E10, 000.00) of estate money[14]. This, it was stated, was to ensure that the Assistant Master and the executors were all complicit in engaging in the theft and misuse of estate funds.

[13] Attorney Ernest Mavuso and attorney Vusi Thomo are some of the attorneys who admitted before the Commission to have used estate money and promised to reimburse the estates in question. However, at the time of writing this report, both attorneys had not made good on their promises.

[14] See: Estate late Sipho Thulani Bhembe EH 408/2021B.

3.4 Six Months to Wind-up Estate

The Act prescribes that the time within which an estate should be finalized is six months. This hardly ever happens as some estate late files have not been finalized after ten, twenty and forty years from the time they were reported. As examples see estate late *Mahawukela Simelane,* the estate late *Alvit Dlamini* and the estate late *Mathuthuka Shongwe*. The office of the Master submitted that there are deliberate delays in winding up deceased estates by executors so that they may earn more money. This happens where the estate has rentals coming in and such rentals are not paid into the estate late account by the executor[15].

3.5 Executor's Remuneration

The Commission recommends that in the proposed Administration of Estates Bill the executor's remuneration should be clearly prescribed. Same applies to the interim curator's fees.

The Master should retain a discretion to reduce or increase or disallow the remuneration in certain circumstances where the executor fails to discharge his duties satisfactorily.

The Act should specifically provide that the executor shall not be entitled to receive his remuneration before completion of his work or until the estate has been distributed.

When determining the actual amounts that should be paid, the Master will typically consider the following factors: the value of the estate; the care and responsibility involved; the time occupied in performing the executor's duties; the skill and ability displayed by the executor and the success achieved in the administration of the estate.

[15] This submission was made by Ms Ziphozonke Fakudze, Assistant Master, Manzini.

It is however a concern that the Master issued a directive which is not in line with Schedule E. The authority of the Master to issue this schedule is questionable. It will also appear that the Master does not tax the executor's fees/remuneration as enjoined by the Act. In some estates some executors claim for both fees and remuneration. The executor as administrator of the estate is that, he may be called upon to process his own fees as counsel for the estate. This clearly creates a conflict of interest which should be avoided at all times.

Ideally, the executor's compensation should be paid once the executor has finalized winding up the estate. The Commission heard and saw in certain files that there was high turnover rate of executors who were paid before they finalized the winding up of an estate and without submitting a report of work done. In other instances, it appeared that certain files were feeding troughs for executors who simply made a quick buck out of the estate late files.

3.6 Collection of the Master's Fees

The Administration of Estates Act provides that the Master is entitled to certain fees in certain circumstances.[16] Schedule 'E' is meant to regulate the fees payable to the Master. It is very old and still has fees as low as .50c. There is a need to amend this Schedule. The Master's fees are supposed to be collected through the use of stamps. The Master's office was however found during the Commission's visit to their various offices, collecting the said fees by cash and putting it in drawers using some form of receipting not known to Government.

Section 120 of the Administration of Estates Act provides that;-*"The Master shall charge, and may recover in respect of the acts, matters and things done or caused to be done by him or in his office all such fees as are specified in the tariff contained in Schedule "E", and shall collect these fees by means of revenue*

stamps to be affixed to the relevant documents: Provided that the fees for searches shall be affixed opposite to entries in a book kept for the purpose: and Provided further that nothing herein contained shall affect any law requiring any stamp to be used for any purpose, or any stamp duty to be paid in respect of any proceeding, except in so far as any provision shall be expressly made in Schedule "E".

It is thus imperative that the Master steps up the collection of the Masters fees, by first of all ensuring that all the officers are aware of the provisions of section 120; and designing a uniform procedure for receipting these fees for the eventual benefit of the Consolidated Fund. Schedule E should also be amended to increase the fees payable.

3.7 Use of Unauthorised General Receipt Forms

The Commission discovered that there were certain receipts issued to the general public using forms titled "temporal general receipt", to collect money. These so called 'receipts' do not have serial numbers, nor are they issued in duplicate as required by financial instructions in government. We list herein under some estates and money that reportedly went missing as a result of the use of these unauthorised receipts. The Commission also learnt that the Master had reported the loss suffered by Government as a result of the use of this form to the police. Some of the reported losses date back to 2020 and the matters remain pending to date.

NAME OF DECEASED	MASTERS REF.	AMOUNT RECEIPTED
1. Charles Sihlongonyane	EH 134/2020	E28,000.00
2. Elliot Lotinga Maseko	EP 7/2011	E24,000.00
3. Sibongile Sithole	EM 232/2018	E18,000.00
4. William B. Vilane	EP 34/2019	E12,000.00
5. Bhutana Vilane	EP 34/2019	E12,000.00
6. Media Mdluli	EH 159/2017	E17,310.00

3.8 Comment on the Report of the Auditor General

The Auditor General issued the audit query hereinunder:

> **159. Understatement of Guardian Fund Investment Balance**
>
> The Guardian Fund Investment Balance being a bank account number 100016207016 was understated by E338 176 157.12. The deposit account indicated that E531 868 415.79 was deposited but the investment account only showed that there was E193 692 258.67 in the account, resulting in a shortfall of E338 176 157.12 which could not be accounted for.

The Auditor General's report to Parliament repeated the query above because he had allegedly not received satisfactory responses from the Judiciary. The Master and Mr. Sithole the accountant in the office of the Master explained to the Commission that this was not so much an issue of money that has disappeared as it was a matter of reconciliation of accounts. The Commission invited the Auditor General to clarify the audit query. He made a presentation in which he did not agree with the position of the Master on the matter. The audit query related to the imbalance between money collected by the Master and money available at the bank. He promised to assist the Master with the reconciliation. The matter of the reconciliation is ongoing.

3.9 Conclusion

The keeping of estates money in the Guardian's Fund in terms of the Act in 1902 was a good thing as families did not have as much needs for money as nowadays. Section 99 of the 1902 Act provides that "all monies paid to the Master under the provisions of any law for the purpose of being placed to the credit of the Guardian's Fund it shall be paid into the Consolidated Fund to the credit of the Guardian's Fund, 'Special Fund' and the Master may from time to time withdraw any part of such moneys through the Accountant General, in accordance with such financial regulations as the Minister of Finance may approve."

CHAPTER FOUR

FINDINGS IN RESPECT OF TERMS OF REFERENCE

4.1 Allegations of impropriety in handling of deceased estates, winding up of companies and the administration of the Guardian's Fund.

(a) Allegations of impropriety in handling of deceased estates.

The Commission hereunder provides summaries of certain estates wherein allegations of impropriety were made against the office of the Master. Further cases can be found in Chapter Six.

(i) Estate Late Martha Khabonina Vilakati EM178/2014

In this estate a sum of E67000.00 was withdrawn from the account of the deceased held at Eswatini Bank in Manzini. A letter allegedly bearing the signature of the Deputy Master of the High Court authorised the bank to release the said sum. The Commission was told that the person who withdrew the money was arrested and is undergoing trial at the Manzini Magistrates Court. The Commission was told that the Deputy Master was exonerated by the accused who denied getting the letter of authority from her. Further the Commission was told that the police had advised that the handwriting expert had not made a conclusive finding on the authenticity of the signature on the letter of authority. The Commission came to the conclusion that there was collusion between the office of the Master and those responsible for the unlawful withdrawal (and possibly the bank) because no one would have known there was the said amount at the bank for them to withdraw the exact amount held therein.

(ii) Estate Bongani Sandile Mngometulu EH 290/2014

In this estate the office of the Master negligently enabled the sister of the deceased, Maggie Mavuso, to have access to cash in the estate and also to sell and transfer vehicles belonging to the deceased and/or his company. Maggie was neither an executor nor a beneficiary in the estate. Maggie has now failed to properly account for the estate assets and for the proceeds of the sale of the motor vehicles she was allowed to sell.

(iii) Estate Late Martin Ndzinisa EL161/2001

The office of the Master improperly diverted an amount of E875, 577.00 being gratuity paid to the estate of the deceased, to the office of Attorney SC Dlamini who was not the executor of estate of the deceased at the time. At a later point, Attorney S.C. Dlamini was unilaterally appointed by the Master as a joint executor of the estate with Attorney Mzamo Nxumalo. Attorney Mzamo Nxumalo received an amount of E103 625.53 (One Hundred and Three Thousand Six Hundred and Twenty-Five Emalangeni Fifty-Three Cents) from the Master. Both executors failed to raise the required security bonds. The allegation is that the co-executors were unable to account for the amounts received from the Master despite being put to terms to do so. The result was that an amount of over a million Emalangeni was allegedly misappropriated. The co-executors are now both deceased. It is not clear if any officer of the Master's office received any gratification in this matter. What is clear though is that the office of the Master failed in its duty to properly supervise the administration of this estate which resulted in the beneficiaries of the estate suffering loss.

(v) Estate Late Alpheus Mthethwa EL40/2017

In this matter the Assistant Master at Siteki virtually took over the administration of the estate from the executor who was the surviving spouse. The deceased had children born out of wedlock and it appears that the assistant master conspired with these children not only to remove the surviving spouse as executor (in favour of one of the children) but also to disinherit her by declaring that her marriage to the deceased had not been proved despite that her in-laws confirmed same. Over thirty cattle were quickly distributed among the three children born out of wedlock, collected from the dip tank and sold *en masse*. At the time of writing this report the surviving spouse had filed an Application for the return of the cattle at the High Court. This is a matter that requires further investigation by the police.

(b) ***Allegations of Impropriety in the Winding up of Companies:***

The Commission did not receive any complaints or submissions regarding the winding up of Companies. The Commission received one complaint regarding an insolvent personal estate. We deal with the said insolvent estate under terms of reference number 4.3.

(c) Allegation of Impropriety in the Administration of the Guardian's Fund

While the reconciliation is ongoing we must point out that the Guardian Fund is likely to show a deficit for two reasons – firstly, towards the end of the Commission the Master admitted that there were mistakes made in paying out some beneficiaries out of the Guardian Fund and that there were monies withdrawn unlawfully from the Fund and although there had been arrests for some of these

unlawful withdrawals no one had been surcharged for them and that money remained unaccounted for. Secondly, there was no indication of whether the Fund was kept in an interest-bearing account or an investment account that would adequately cushion it when it was to pay the statutory 6.5% per annum interest on payouts due to minors.

The following estates serve as examples of the misappropriation:
-Estate Late Media Mdluli EH159/2017
-Estate Late William Bhutana Vilane EP34/2019
-Estate Late Sibongile Kate Sithole EM232/2018
-Estate Late Elliot Lontinga Maseko EP7/2011
-Estate Late Charles Mashesha Nhlengetfwa EH134/2020

(i) Estate Late Hebert Dube E342/1994

In this estate there were three beneficiaries (Sanele Wilfred Dube, Thandeka Bhekiwe Dube and Bhekinkosi Sandile Dube) whose identities were copied and an attempt to claim their inheritance was made. The fraudster produced identity documents matching those of the beneficiaries and filed a claim for payment. The Commission was told that the attempt failed and no money was paid to the fraudster/s. The Commission was told that an officer at the office of the Master was responsible for the attempted fraud. Her efforts were however intercepted and no money was paid. It appears that no action was taken against the fraudster despite her attempt. We recommend that this matter ought to be reported to the police for further investigation despite that the fraud attempt allegedly did not succeed. This matter is an example of the exposure the office of the Master may find itself as result of the failure to follow up and close

estates within the time given by the legislation due to lack of proper supervision.

(ii) Estate Late Patrick Bafana Sihlongonyane EH192/2004 and Estate Late Sibongile Sihlongonyane (born Christie) EH 60/2005

In this estate one of the deceased's children was due to receive an amount of E682 771.85 from the estate. This amount was inclusive of interest and was held in the Guardian Fund. The Commission was told that an officer at the office of the Master successfully fraudulently claimed the whole amount due to the child. The Commission was told that the officer was arrested and appeared in court where she was admitted to bail. The trial has never commenced since 2018 when the officer was admitted to bail. The Commission was told that the child was never reimbursed. The Commission recommends that the Master must ensure that the criminal matter is pursued by the Director of Public Prosecutions. The Attorney General must also ensure that the officer is surcharged following that she apparently remains an employee of the Government. Finally, following a decision of the High Court directing that the child be reimbursed, the Attorney General must ensure that Government makes payment as ordered by the Court.

4.2 whether there were any irregularities, undue enrichment, corruption and undue influence in the appointment of executors in contested estates and/or the appointment of liquidators in the winding up of companies.

(a) Undue enrichment

(i) Estate Late (Chief) Naphtali Mahlalela EL 22/2020

In this estate Lawyer Ernest Mavuso was appointed by the Master as an executor of this estate. One of his duties was to collect rentals from properties owned by the deceased in Piggs Peak. He indeed collected the rentals but has failed to account for the monies collected. According to the Master, there is a disagreement as to the amount of money allegedly misappropriated by the erstwhile executor. The beneficiaries allege that Mr. Mavuso took over E110 000 while he admits to taking E70 000 or so and undertakes to pay through the fees he expects to receive for performing his duties as executor. The estate finds itself in this position because of the inefficiencies of the office of the Master. Clearly there was no supervision of the executor particularly with regard to the collection of rentals. It further appears that there was no bond taken out by the executor as required by law and which would now cover the misappropriated funds.

(ii) Estate Late Magdeline Msibi EH55/2018

Attorney ?? Thomo was appointed as executor of this estate. As part of his duties, he collected rentals on behalf of the estate and then failed to account for a portion of the same (about E9069.00). He told the Commission that he had used the amount for his own purposes and undertook to reimburse the estate. He paid part of the debt and has been unable to pay the balance. The Master to pursue the matter.

(b) Corruption and undue influence in the appointment of executors

(i)Estate Late Sipho Thulani Bhembe EH408/2021B

The complaint was directed at an Assistant Master at that time, and the executor. The Commission was informed that the Assistant Master had asked the surviving spouse to pay her E20 000.00 in order to fast track the winding up of the estate. This amount was allegedly paid to the Assistant Master at the Swazi Plaza parking lot. Subsequently, the Assistant Master asked for more funds from the estate for her private and personal benefit. She allegedly further advised the executors to help themselves to estate funds for private use. Consequently, she directed the surviving spouse to requisition an amount of E60, 000.00 for running costs of the business instead of E30, 000.00 that she had initially sought. From the extra E30 000 claimed, the Assistant Master received E10, 000.00, executor one and Mrs Bhembe confirmed that they each received an amount of E10 000.00. The Commission recommends that disciplinary action ought to be taken against the Assistant Master and that this matter be handed over to the Anti Corruption Unit for further investigation and possible action.

(ii) Estate Late Alvit Zide Dlamini

The attorneys S.C. Dlamini, Q.M. Mabuza and the Deputy Master (Mr Isaac Dlamini) met and decided to appoint the two attorneys as executors of the estate. There was no meeting of the next of kin in which the attorneys were nominated.

(iii) Estate Late Martin Ndzinisa EL161/2001

In this case the Deputy Master of those days unduly favoured one of two possible executor candidates. In the result, the qualifying

candidate was undermined and the result was unremitted disaster for the beneficiaries of the estate.

(c) Appointment of liquidators in winding up of companies

Estate Late Dumisa Mbusi Dlamini EMIE/001

In this estate, the trustees were initially appointed by the order of the High Court of South Africa and later recognised by order of the High Court of Eswatini. To the South African trustees was added the Late Paul Mhlaba Shilubane, a local Attorney. Whether the Master had any role in the appointment of the trustees is not clear. What is clear, however, is that the insolvent estate of the late Dumisa is still crying out for a just and peaceful resolution (winding up) by the Master, the sole trustee and the creditor, Swazi Bank, some twenty years later.

4.3 To inquire into allegations of lack of accountability, effectiveness, efficiency and oversight in the execution of functions by officials employed at the Office of the Master of the High Court and to establish whether such officials received benefits whether directly or indirectly from estates of deceased persons and/or were involved in any acts of corruption.

2(i) Estate Late Alvit Zide Dlamini EM55/1992

In this estate, the Deputy Master at the time (1992) appointed an attorney as executor of the estate against the wishes of the family of the deceased. The family sought the removal of the executor but he was removed only a few years later only to be replaced by another executor whom the family of the deceased did not want. Ultimately attorneys SC Dlamini and QM Mabuza were appointed as co-executors without a meeting of the next of kin being convened. A litany of irregularities appears to have happened in this estate including a complaint that some beneficiaries did not receive their

inheritance despite that such inheritance appeared in liquidation and distribution accounts; a sum of E300 000 appears not to have reached the beneficiaries. In short there is no proof that the beneficiaries received all that was due to them. A further investigation by the police may be necessary even though more than 30 years has passed since the estate was reported.

(ii) Estate Late Dumisa Mbusi Dlamini (Insolvent Estate) EMIE/001

The trustees in this estate were appointed in South Africa and subsequently recognised in Eswatini by court order. Attorney Paul Mhlaba Shilubane was added as one of the trustees. The Master did not appoint these trustees but had the responsibility of supervising them. Makhosemvelo, representing the beneficiaries, has complained, accusing the Master and the trustee (Mr. Motsa) for failure to wind up the estate. Against the Master mainly is that she has failed to ensure that all of the trustees had security bonds and the supervision was ineffective; and against the trustee is the alleged embezzlement of estate funds and failure to conclude the winding up of the estate. The Master is the main culprit in this matter for failure to exercise effective oversight. There has got to be a way of holding the officers of the Master's office accountable for the manner they carry out their duties.

(iii) Estate Late Thulani Sipho Bhembe EM408/2021

The wife of the deceased was unlawfully removed as an executor by the Master but later reinstated by the court. The reason for the removal was because she asked that the DNA for one of the deceased's children be done. The Commission was informed that

one officer in the Master's office requested that she be given ten thousand Emalangeni (E10,000) from the estate for her personal use so as to fast track the winding up of the estate.

(iv) Estate Late John Fly Simelane ES53/2019

The Master took a decision not to accept an abridged marriage certificate as a valid civil marriage certificate. As a result, Fihliwe, the surviving spouse who produced the disputed certificate was excluded from benefiting and Andrina who had been married by custom was appointed the executor. The Master later changed and recognised the abridged certificate as valid but Andrina challenged the purported change. It is said that the Master should not have taken the decision to reject the abridged certificate. The matter is pending in court. The question is whether it was proper for the Master to appoint Andrina in the circumstances. The office of the Master is accused of failure to show the required accountability, effectiveness and due oversight in the discharge of its functions.

(v) Estate Late Zazi Mabuza EH212/2001

The Master appointed Mrs Mthembu as executor without ensuring that she provides security bond. She allegedly sold a property undervalue and did not account for the proceeds. The matter remains pending.

(vi) Estate Late Richard Nxumalo EH128/2001

The issue **i**n this matter is that the Master failed to take the decisive step of removing the executor resulting in severe prejudice to the beneficiaries in the deceased estate, a house, being uncared for over

a long period. The matter is still pending and the house is deteriorating. The executor stays in South Africa.

(vii) Estate Late Walter Nganani Dlamini SEM 234/2020 & SEM 16/2016

There were reportedly two files in this matter arising from the fact that the estate was reported in 2016 and 2020. There were delays in finalising the estate resulting in the initial file missing. Consequently, a new file had to be opened in 2020. Assets of the deceased were reportedly misappropriated in the process. Had the office of the Master been more effective, the misappropriation would not have happened.

(viii) Estate Late Peter J. Dlamini

The manner in which the Master's Office handled this estate is indicative of a lack of oversight and effectiveness. It will appear the executor was left to do as he pleased with the estate. The Master had to oversee the transfer of certain property to the spouse of the deceased. The estate remains pending since 2004 when the estate was reported to the Master.

(ix) Estate Late Luke Mlungu Mbingo EH9/2007

The deceased passed away in 2006. One of the spouses of the deceased, Margaret Mbingo, filed a court application to challenge her disinheritance in the estate. There is no indication that the Master kept track of the matter. The matter remains pending to-date. The delay is indicative of a laid-back attitude to matters.

(x) Estate Late Bongani Sandile Mngometulu EH290/2014

The Master and the curator negligently enabled Maggie to have access to cash in the estate and also to sell and transfer vehicles belonging to the deceased and/or his company. Maggie was neither an executor nor a beneficiary in the estate. Master failed to cause Maggie to properly account for the estate assets (vehicles that were sold improperly).

(xi) Estate Late Carol La Grange EM/EH 199/2010

The Master's office was negligent to have convened a meeting with people who were neither heirs nor 'next of kin' and to allow the distribution of the estate to people who were not beneficiaries of the estate. The LaGrange estate is in law considered as property without a rightful owner. The property reverts to the State. Where no heir is found, the deceased's estate is forfeited to the State. Section 103 of the Administration of Estates Act[17] (immovable property as opposed to unclaimed monies) states that unclaimed estate funds are placed in the Guardian's Fund and they should remain there for forty years before they are forfeited to the State.

The Master should approach the Attorney General to initiate legal action to reclaim the land that was fraudulently sold and transferred to people who made baseless claims against the estate.

The manner the executrix sold parts of deceased's land is a matter for further criminal investigation.

4.4 To inquire into allegations of embezzlement by officers employed in the Master of the High Court of estate funds and in particular those in respect of the Guardian's Fund.

(i) Estate Late Martha Khabonina Vilakati EM178/2014

[17] No: 28/1902.

In this estate a sum of E67, 000.00 had reportedly gone missing from the Swazi Bank account of the deceased. The Commission is of the view that the unlawful withdrawal of E67 000.00 from the estate account could not have happened without the collusion from the office of the Master.

(ii) Estate Late Martin Ndzinisa EL161/2001

The office of the Master failed to properly supervise the administration of the estate as shown by the amount of E875, 577.00 gratuity that was diverted to the office of Attorney SC Dlamini who was not the executor of the estate. The Master's Office (Mr Isaac Dlamini) gave SC Dlamini the gratuity even though he had not paid the security bond. The office of Master was negligent in the manner it handled the gratuity payment. The office of the Master has to compensate the beneficiaries of the estate for the lost gratuity. The Master must find an executor, with the assistance of the beneficiaries, to ensure the estate is duly wound up.

4.5 To consider whether there is a need to review the present legislation and operational framework relating to the Master of the High Court and to make recommendations on-

4.5.1 Remedial actions, if any, to address deficiencies identified in congruence with the terms of reference.

It is recommended that this country put in place legislation to provide for the maintenance of surviving spouses. (Maintenance of Surviving Spouses Act as in South Africa). The legislation must take into account the following:

(a) The amount in the estate of the deceased spouse available for distribution to heirs and legatees;

(b) The existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage; and

(c) The standard of living of the survivor during the subsistence of the marriage and his age at the death of the deceased spouse.

4.5.2 Any amendments to the current legislative framework to address deficiencies identified in congruence with the terms of reference.

There is need to review and amend the current legislation relating to the Master's office.

The Master uses the Administration of Estates Act 1902, the Recognition of External Trustees and Liquidators Act 1932, the Intestate Succession Act 1953, the Insolvency Act, the Companies Act and the Wills Act 1955.

Besides that, these statutes were passed during the colonial era and pre- constitutional dispensation, most of their provisions do not address certain most crucial matters relevant to the present times.

It is important that these laws be improved in order to enable the Master's office to carry out its duties with efficiency, effectiveness and transparency, and ensure that there are better checks and balances. There is a need to also embrace technology in the administration of estates.

Recent amendments by some countries,[18] which we also suggest and recommend include -

(a) The establishment of an independent oversight Board/Ombudsman for the Master's office through legislation. To investigate complaints and maladministration against the Master's office. To handle complaints received from beneficiaries, executors and other stakeholders regarding their interaction with the office of the Master and to consider the merits of a matter, review the decision taken and advise as may be appropriate.

(b) Increase the number of offices from which the services of the office of the Master can be received. The introduction of designated service points such as Magistrates Courts and traditional Authorities is suggested.[19] The same should be introduced by legislation.

(c) Beneficiaries should have a choice to report an estate to the Master or a service point.

(d) The appointment and management of the office of Executor should be improved[20]. The Administration of Estates Act, 1902 of Eswatini addresses this matter in requiring that a fit and proper person should be appointed as an Executor. The definition of fit and

[18] Zimbabwe recently introduced provisions in her legislation that enables the surviving spouse to inherit their matrimonial homes in term of Section 3 (A) of the Deceased Estates Succession Act.

[19] Some countries have introduced the administration of intestate deceased estates at service points to increase efficiency and reach rural communities.

[20] Only qualified individuals should be appointed to manage estates as Executors, in line with what prevails in other jurisdictions such as Zimbabwe. The Republic of South Africa has a practice of Estate Planning and Administrators who are professionally trained monitored by their body.

proper has not been defined. In addition to the 'Fit and proper person' requirement, there is a need to expand the category of persons who can administer estates such as adding other professionals with the requisite qualifications belonging to a professional body, such as professional accountants that would regulate their conduct and provide for the keeping of a fidelity fund to secure the property of estates from abuse/mismanagement by such professionals.[21]

(e) The Government of Eswatini should devise a system for better management of finances and payment systems should be implemented. Whilst Governments Financial Regulations should be adhered to at all times, enabling EFT payments can be explored. There is a requirement that proper checks and balances be introduced with regard to the estate late account to safeguard the interests of beneficiaries in an estate.

(f) There is a need to add a layer of oversight by changing the method of obtaining consent to sell estate property. Section 66 in Eswatini Administration of Estates Act provides that the Master can give consent to sell estate property for the payment of debts of the estate. It may be proper to require consent to be obtained through an application to the High Court.

[21] Additional training should also be provided to lawyers and others who administers estates. The regulation of the Lawyers fidelity fund should be improved so as to provide better protection for the public.

(g) Payment of funeral expenses before the appointment of an estate executor should be properly regulated by the Master taking into account the bare necessities as the Master can allow.[22]

(h) In addition to the use of newspapers for notices other alternative means such as a website with public access be established.

(i) For small estates, the figure of E20, 000 set in terms of the Act should be increased to E100, 000. The Minister by notice in the Government Gazette may change this amount. There should be no need to appoint executors in small estates unless prescribed in a will.

(j) A conflict of interest may arise where the same person acts as an executor and legal representative of the estate or some beneficiaries. It is not desirable that the same person be legal representative and executor in the same estate.

(k) The Intestate Succession Act, 1953, must be updated to be in line with socio-economic developments in the country. It should not be applied to customary marriages which are regulated differently.

(l) Eswatini should consider putting in place legislation to provide for the maintenance of surviving spouses as some of our neighbouring countries have done, taking into account the following:

[22] A practice directive can be issued by the Master from time to time to guide and revise the amount as necessary.

(i) The amount in the estate of the deceased spouse available for distribution;

(ii) The existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage; and

(iii) The standard of living of the survivor during the subsistence of the marriage and his/her age at the death of the deceased spouse.

(m) The following are some suggested amendments and additional definitions to the Administration of Estates Act and Intestate Succession Act as suggested by the study[23] -

"**Matrimonial home**(s)" means the principal residence(s) of the spouses in which one or both of them has or have a proprietary interest.

"Child" means the offspring of the deceased regardless of the age of the offspring and includes children naturally born or adopted, either under common law or by custom, within or outside marriage.

"Spouse" means a person who, at the time of the death of the deceased,

(i) was married to the deceased under any law, such as -

(a) The Marriage Act

(b) SiSwati law and custom or

[23] Georgetown Law Journal "The Promise of a New Constitution: page 587.

(c) The foreign law by which marriages are conducted.

(ii) lived with the deceased for a period of five or more years as husband or wife.[24]

"Reasonable provision" means this clause as provided for in the Constitution [should be defined].

"Dependant" (for the purposes of the administration of estates)

"Marriage" means marriage as defined in any law written or unwritten**.**

4.5.3 Measures to be taken to give effect to the pronouncements made by the Courts.

The most relevant decisions by our courts that require to be given effect by the Master are in respect of the constitutionality of section 2(3) of the Intestate Succession Act 1953, the interpretation of Section 34(1) of the Constitution of the Kingdom of Eswatini and the interpretation of Section 68 of the Administration of Estates Act 1902. We consider these decisions below with a view to recommending measures to be taken to give effect to the pronouncements made by the Courts.

(a) Section 2(3) of the Intestate Succession Act, 1953.

Section 2(3) reads as follows:

'If the spouses were married out of community of property and the deceased spouse leaves any descendant who is entitled to succeed ab intestato *the surviving spouse shall succeed to the extent of a child's share or to so much as*

[24] Georgetown Law Journal "The Promise of a New Constitution:

does not exceed one thousand two hundred Emalangeni in value (whichever is greater).'

In 2014, in the matter of *Wezzy Ndzimandze and 16 others vs Titselo Dzadze Ndzimandze and* 13 *others (981/2014) [2014] SZHC234 (23 September 2014);* the High Court held that Section 2(3) of the Intestate Succession Act 3 of 1953, was unconstitutional. In that matter, the deceased, a chief, had died and was survived by three of his wives and 26 children. Deceased was married under customary law. In terms of Section 2(3) each wife was to be allocated a portion equivalent only to that of a child from the estate of the deceased or so much as did not exceed E1200.00, whichever was the greater**.** The widows argued that Section 2(3) of the Act, infringed upon their constitutional right as provided for in section 34(1) of the Constitution. Section 34(1), prescribes for the surviving spouse a 'reasonable provision out of the estate of the deceased spouse.' At paragraph [26] of its judgment the Court stated the following:

'It is also abundantly clear that contrary to the expressed wishes of the Applicants, section 2(3) of Intestate Succession Act of 1953 (Act 3 of 1953) is irreconcilable and in stark violation of section 34 (1) of the Constitution of Swaziland (now Eswatini). It would be foolhardy, heartless and with callous disregard of its constitutional mandate, for the High Court to order its continued usage. It violates and undermines the rights of intestate spouses married under customary law, which relegates a wife to a mere child in the distribution of a deceased estate, instead of being entitled to a reasonable portion thereof, testate or intestate, married in whichever way permissible under the laws and customs in existence.'

The Court ordered the Master of the High Court to distribute the estate in accordance with section 34(1) of the Constitution. This High Court decision was unsuccessfully challenged by the Attorney

General at the Supreme Court. In confirming section 2(3) as unconstitutional, the Supreme Court stated the following:

> *'...the far-sighted framers of section 34 of the Constitution conferred upon all surviving spouses, the entitlement to a reasonable provision out of the estate of the other spouse. This was clear abrogation of the manifestly discriminatory provisions of the Intestate Succession Act 1953 which limited the surviving spouse's entitlement to a maximum of a child's share or E1200 whichever is greater.'*

On appeal, the Supreme Court upheld the judgment of the High Court which had declared and struck down Section 2(3) of the Act as unconstitutional. The Supreme Court also quoted with approval the following statement made by the High Court in paragraph [56]:

> *" . . . we are therefore convinced that an appropriate order in the circumstances of this case would be one ordering a striking down of the relevant provision of our law of succession, pertinently crystalized in section 2 (3) of the Intestate Succession Act, 1953(Act 3 of 1953). Until Parliament fills the void with appropriate legislation, the Master of the High Court shall be ordered by this Court to deal with all estates in consonance with the clear dictates of section 34(1) of our constitution as ordered below."*

The Supreme Court on review had occasion to again hear a matter concerning section 2(3). That was in *The Attorney General v. The Master of the High Court*, [2016] SZSC 10 (30 June 2016). This time the unconstitutionality of Section 2(3) was reversed (and likewise the judgment in *Titselo Dzadze Ndzimandze* on appeal).

As already stated, a review application was subsequently filed at the Supreme Court in the **Attorney General v The Master of the High Court (55/2014) [2016] SZSC10 (30th June 2016).** The decision of the Supreme Court on appeal in **Attorney General v Titselo Dzadze Ndzimandze and 27 others** was consequently overturned by the Supreme Court on review, holding that the High Court and

the Supreme Court on appeal failed to recognize that the *Intestate Succession Act* was applicable only to deceaseds' estates in cases where spouses were married through civil rites. The Supreme Court said:

> '*The Supreme Court on appeal did not consider the principles of Swazi law and custom applicable to the deceased estate where the spouses were married in terms of customary law. The principles of Swazi Law and Custom should have been analyzed and assessed in order to ascertain whether they are in conformity with the provision of section 34 (1) of the Constitution. The reference by the Supreme Court on appeal to the Intestate Succession Act is, with due respect, irrelevant and misconceived since the Act has no application to customary law marriages. The real issue for determination was whether the principles of customary law of succession are in contravention of section 34(1) of the Constitution.*'

The Court noted that the Constitution mandated Parliament in terms of Section 34 (2) to enact laws that govern the property rights of spouses. Some Emaswati still marry in terms of custom and adhere to tenets of Eswatini Law and Customs. Section 34 (2) was meant to harmonize the property rights of spouses, considering the dual legal system and the Constitution as the highest law in the country. Ultimately, the Court held that in the absence of legislation as Parliament is enjoined to enact in terms of Section 34 (2), the Judiciary should not meddle with the highest legislative authority of King-in-Parliament. In the King and Parliament vests the supreme authority to create laws for the peace, order, and effective governance of Eswatini. The Supreme Court on review held that the decision of the Supreme Court on appeal be set aside in its entirety. The Court proceeded to order the Minister of Justice and

Constitutional Affairs, together with parliament to adhere to section 34 (2) of the Constitution within twelve months of the court order.

The main question connecting these two cases is the constitutional challenge of the Intestate Succession Act that does not acknowledge a spouse married through Swazi law and custom in relation to inheritance. The current ***status quo*** regarding estates of emaSwati married in terms of custom is that the varied treatment of civil and customary spouses by our inheritance laws contradict sections 20 and 34 of the Constitution that establish equal treatment under law and prohibit discrimination between spouses in their proprietary rights. Consequently, Section 2(3) remains in force and is applied by the Master to customary estates when it should not.[25]

(b) Section 34 of the Constitution

In the case of ***Salom Seyama Dlamini v Sipho Madzinane and others***, the Supreme Court on review had to decide what the expression 'reasonable provision' meant or entailed. The court found that the Applicant (surviving spouse) and the other wives who were excluded in terms of their husband's Will were entitled to claim a reasonable financial provision from the estate. The Supreme Court said the expression entailed a demonstration of financial need and the computation of a reasonable maintenance to cater for their immediate and future needs. The Court held that the Will could not be set aside in its entirety. Only the provisions that sought to exclude

[25] Langwenya M, also suggests that women's rights to land as guaranteed by the Constitution should be secured by way of legislation in order to enable women to fully enjoy these rights. (Langwenya M; Historic Step towards the Equality of Women; Analysis of the Marry Joyce Doo Aphane v Registrar of Deeds, Open Debate OSISA Johannesburg 2011).

the widows from benefiting were to be expunged. Section 34 of the Constitution reads:

> ***Property rights of spouses***
>
> *34 (1) A surviving spouse is entitled to a reasonable provision out of the estate of the other spouse whether the other spouse died having made a valid will or not and whether the spouses were married by civil or customary rites.*
>
> *(2) Parliament shall, as soon as practicable after the commencement of this Constitution, enact legislation regulating the property rights of spouses including common law husband and wife.*

In reaching its decision the Supreme Court drew support from South Africa and United Kingdom legislation that had similar provisions relating to a 'reasonable provision' benefit for surviving spouses from the the estate of the first dying spouse. The Court noted that the introduction of the expression 'reasonable provision' in the Constitution was not unique to our jurisdiction.

The Supreme Court referred to the English case of *Llott v The Blue Cross and others [2017] UKSG 17 Case ID UKSC 2015/0203,* where Lord Hughes said the following:

> *"1. Unlike, some other systems, English law recognises the freedom of individuals to dispose of their assets by Will after death in whatever manner they wish. There are default succession rules in the event of intestacy, but by definition those only come into play if the deceased left no Will. Otherwise, the law knows of no rule of automatic succession or forced heirship. To this general rule, the statutory system of family provision imposes a qualification. It has provided since 1938 for the court to have power in defined circumstances as to modify either the Will or the intestacy rules if satisfied that they do not make reasonable financial provision for a limited class of persons. That power was first*

introduced by the Inheritance (Family Provision) Act 1938 ('the 1938 Act'). The present statute is the Inheritance (provision for Family and Dependants) Act 1975 ('the 1975 Act').

2. The key features of the operation of the 1975 Act are four. First, it stipulates no automatic provision; rather the Will (or the intestacy rules) apply unless a specific application is made to, and acceded to by, the Court and a specific order for provision is made. Second, only a limited class of persons may make such an application; they are confined to spouses and partners (civil or de facto). Former spouses and partners, children, and those who were actually being maintained by the deceased at the time of death. Third, all but spouses and civil partners who were in that relationship at the time of death can claim only what is needed for their maintenance: that cannot make a claim on the general basis that it was unfair that they did not receive any, or a larger slice of the estate. Those three features are laid down expressly in the 1975 Act. The fourth feature is well established by case law both under this Act and its predecessor of 1938. The test of reasonable financial provision is objective; it is not simply whether the deceased behaved reasonably or otherwise in leaving the Will he did, or in choosing to leave none. Although the reasonableness of his decision may figure in the exercise that is not the crucial test."

The English Court went on in paragraph 13 to state that: "…… *That court had by then relatively recently acquired expanded powers to make lump sum and property adjustment orders, which were not limited to maintenance provision but increasingly recognised other factors such as the length of marriage, the contributions to the family and so on (see section 25 Matrimonial Causes Act 1973).* ***The mischief to which the change was directed was the risk of a surviving spouse finding herself in a worse position than if the marriage had ended by divorce rather than by death***. *For claims by*

persons other than spouses the maintenance limitation was to remain, and has done so." (Emphasis by the Commission).

The Supreme Court was of the view that the South African position was different in that the Maintenance of Surviving Spouses Act 27 of 1990 of South Africa limits freedom of testation by enabling a claim for financial provision from the estate of the first dying spouse. Both the English and South African legislation appear to affect the terms of a will where that will does not seem to have made reasonable provision for the surviving spouse.

In **Salom Seyama Dlamini** the Supreme Court also referred to the *Attorney General v The Master of The High Court (supra),* which also dealt with the 'reasonable provision' clause in section 34 of the Constitution. The Court stated the following:

> *"[32] Section 34(1) of the Constitution confers proprietary rights of spouses, accordingly the surviving spouse is entitled to a reasonable provision out of the estate of the deceased spouse irrespective of whether or not the deceased died intestate or whether the marriage was civil or customary rites. However, this constitutional provision does not define 'a reasonable provision out of the estate of the other'."*
>
> *Similarly, section 34(1) of the Constitution does not revoke customary marriages; it does not repeal or override section 4 of the Intestate Succession Act or Section 68 of the Administration of Estates Act. Furthermore, it does not subject customary marriages to administration of the Master of the High Court. This provision seeks to afford the surviving spouse with a reasonable provision from deceased's estate.*
>
> *The task of defining 'a reasonable provision within the context of the recognised marriages in the country has been given to parliament in terms of section 34(2) of the Constitution. Parliament has been given the arduous task of enacting*

> *legislation regulating the property rights of spouses, including common law husband and wife. When interpreting the Constitution courts should not venture into the terrain of parliament and legislate. The Constitution gives a mandate to parliament to make laws."*

The question that required immediate attention of the court was whether the 'provision' cannot be given effect in the absence of legislation defining what a 'reasonable provision' is or what the purport of the sub-section is. It would seem that Section 34(1) has significantly changed the law of succession from what it was before the 2005 Constitution, by the introduction of the 'reasonable provision' clause.

It is noted that the test for 'reasonable provision' is objective, determined in light of the wealth or economic wherewithal of the surviving spouse. In some cases the 'provision' could result in nothing or merely a nominal or token amount. In the determination of the 'provision' the needs of other beneficiaries must be considered.

Indeed, Section 34 has radically changed the law from what it was since now, for instance, freedom of testation has been severely limited. The section applies regardless of whether the parties were married by civil rites in or out of community of property, with or without a will or married under customary law or whether common law wife or husband. In the absence of legislation explaining what 'reasonable provision' entails, the Master cannot just fold her arms and assume business to be as usual. The 'expression' is not dead without further legislation. The purport of the expression is clear: it was intended to ensure that a surviving spouse does not lose out in the distribution and find herself/himself in a situation unreasonably

worse off. The expression is flexible. In the result, a 'child's share' or 'E1200' (whichever is the larger) as provided in section 2(3) of the 1953 Act is not necessarily unreasonable; it depends on the specific facts of the estate distributed.

It should be remembered that customary estates are as a rule not liable to formal distribution. But where distribution is effected, it seems to the Commission, section 34(1) should be adhered to and the distribution should be under the supervision of the Master. Further, it should be borne in mind that ordinarily where parties were married by civil rites in community of property the surviving spouse gets half plus a child's share from the joint estate. Accordingly, section 2(3) of the Intestate Succession Act should not be considered or looked at as some kind of polecat to be avoided at all costs. In some instances, a reasonable provision could be less than a child's share. The concern is not one of status (child or parent) but the equity of the distribution.

(c) **Section 68 of the Administration of Estates Act 1902**

"68.(1) If any African who during his lifetime has not contracted a lawful marriage, or who, being unmarried is not the offspring of parents lawfully married, dies intestate, his estate shall be administered and distributed according to the customs and usages of the tribe or people to which he belonged; and if any controversies or questions shall arise among his relatives, or reputed relatives, regarding the distribution of the property left by him such controversies or questions shall be determined by a Swazi Court having jurisdiction.

(2) The Master may not be called upon to interfere in the administration and distribution of the estate of any such African.

> *(3) For the purpose of this section, 'African' shall mean any person belonging to any of the aboriginal races or tribes of Africa south of the Equator, or any person one of whose parents belongs to any such race."*

The effect of this section is to oust the Master from administering the estates of Africans who die intestate or either married in terms of Eswatini law and custom or who were unmarried and born of parents married by customary law. The administration of estates of such deceased persons was to be done in accordance with customary law and the Swazi Courts are empowered to adjudicate on disputes arising in these estates. The fact that a marriage falling under section 68 is 'lawful' does not necessarily bring it under the administration of the Master. It still falls under customary admistration unless statute brings it under the Master. The Master's jurisdiction does not embrace all 'lawful' marriages or estates but only those for which statute has provided. The Supreme Court must find time to set the record straight.

The matter of **Scelo Mpanza N.O. v Jabulile Lucy Mpanza and Others (28/2023) [2023] SZSC 59 (18/12/2023)** appears to settle the legal position regarding the estates of deceased persons married by custom or unmarried or born of customary marriage. Having considered the cases such as ***Attorney General v The Master of the High Court*** *and* ***Thandi L. Dlamini and Two Others v Regina T. Dlamini SZSC 60/2019,*** the Supreme Court came to the conclusion that the proposition that a marriage contracted in terms of customary law was not a "lawful" marriage for purposes of section 68 and therefore excluded from the Master's jurisdiction was incongruous with the current law. The Court took into consideration the recognition of such marriages by the Marriage Act 1964 and further

the recognition of customary law as a part of the law of the Kingdom of Eswatini by section 252(2) of the Constitution, to come to the conclusion that the jurisdiction of the Master of the High Court shall not be ousted simply because a deceased person was married in accordance with customary law.

But the Marriage Act, 1964 which was passed by a Legislative Council at the threshold of independence, appreciated the need for persons even when married by civil rites to choose to exclude their estates after death from the ambit of the Master's jurisdiction. To this end, Section 25 allowed for choice of proprietary consequences to be governed by civil or customary law. In other words, civil marriage ought not to subject deceased estates to the mandatory administration of the Master where the spouses prefer otherwise. Section 34 of the Constitution has not altered this position. It is the proposed 2025 Bill by Section 3 that seeks to subject all estates to the jurisdiction of the Master unless otherwise exempted. The recognition of customary law as part of the Law of the Kingdom should be seen as providing alternative ways of dealing with deceased estates in the country. The effect of section 3 must be carefully considered as it seems to undermine the established siSwati traditional and customary ways and values regulating deceaseds' estates.

The effect of this **Scelo Mpanza NO** decision seems to be that all estates in Eswatini stand to be administered in terms of the Administration of Estates Act. This appears to be the route taken by the Administration of Estates Bill, 2025. Section 3 of the Bill seeks to exclude from application of the Bill only the estates of (a) *Umntfwanenkhosi* and (b) community property (*Umphakatsi)* which

is held in trust by a Chief (*Sikhulu)* for Ingwenyama. The exceptions to these exceptions are where the *Umntfwanenkhosi* has executed a valid will and where a Chief has executed a will disposing of private property. The private property of a chief who dies intestate appears to also fall to be administered by the office of the Master.

The problem that seems to arise, is that there is increasing economic activity taking place in property administered under customary law. The Bill does not give any guidance on how such property should be administered. We found a number of situations where property with economic activity was taken over by one wife on the death of a polygynist who had been using the said property to take care of his entire family. The basis of the takeover is that the wife will usually have been the one the man *khontaed* with or she will claim to have either assisted the man to build on the property or that she started or grew the business herself. This has been the position in respect of a number of estates in the Kwaluseni - Matsapha area as well as at Enhlambeni. A proper consideration must be given to these situations. In terms of the *Mpanza NO* decision and the new Bill, all these estates fall to be dealt with by the office of the Master.

The Commission submits that the position of the law as pronounced by the Courts is not very helpful to the Master. The Master continues to administer and supervise distribution of estates using the Intestate Succession Act in particular section 2(3). As customary law does not have room for the application of the concept ‘in community’ or ‘out of community’, the Master should not be applying this provision to customary marriages.

Where a matter has the effect of changing the law, the Supreme Court should quickly be approached to make final determination on

the issue. The Courts should be consistent in the manner they adjudicate on matters relating to estates in particular. The view of the Commission is that the courts should endeavor to implement section 34(1) which prescribes a reasonable provision for the surviving spouse. As earlier proposed, the understanding of what is a 'reasonable provision' should not await Parliamentary enactment. The courts should take an active role in showing the way forward.

We recommend that we follow the proposal contained in the ***Salom Seyama Dlamini v Sipho Madzinane N.O. and others.*** To be sure, the decision in the *Salom Seyama Dlamini* case is in line with the position stated in the **Maintenance of Surviving Spouses Act 27 of 1990** of South Africa and in the case of *Llott v The Blue Cross and others* (*supra)* of the United Kingdom on the understanding of the expression 'reasonable provision'.

(d) SiSwati Norms and Values

One continuing issue and concern in the Master's office is the dual nature of our legal system. This in itself is not a bad thing as it seeks to address the dual character of our population. But when it comes to the administration of deceased estates, as highlighted above, there is frequently encountered an almost insurmountable problem. The law entrusts the administration of deceased estates to the Master. With estates governed under the 1902 Act, the Master has no problem. The problem arises where the Master is called upon to administer estates ordinarily subject to siSwati law and custom. Section 68 of the 1902 Act excludes customary estates from the responsibility of the Master. Since the judgment in **Sicelo Mpanza NO** and as also shown by the 2025 Bill (supra), there seems to be a growing push /call for the Master to also deal with customary estates.

Where does the Master begin? The law requires the death of every person in the country to be reported at the Master's Office. But the law has not done away with siSwati law and custom; it has instead up-graded it to be part of the law of the land. As a general practice, the customary law system knows no formal distribution of deceased's assets. Under siSwati custom there is no office of Master or its equivalent responsible for managing with a view to distributing deceased's estates in the formal sence. It is true that siSwati customary marriage is a 'lawful' marriage, but it differs from the statutory civil rites marriage in its consequences.

The proposed drive towards the common law to the neglect of customary law should be undertaken with due care and respect. While section 252(1) of the Constitution re-affirms the Roman Dutch Law, as may be varied by statute from time to time, as the 'common law' of the country, subsection (2) of the section recognises the unwritten siSwati law and custom "applied and enforced as part of the law of eSwatini." It would seem then that custom applies where the common law does not. The application of custom is also subject to certain limitations set out in subsection (3) of section 252 which reads: *"The provisions of subsection (2) do not apply in respect of any custom that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute or repugnant to natural justice or morality or general law of humanity".* So far, nothing has been done in terms of subsection (4) of section 252 which calls upon Parliament to legislate for proof and pleading of a rule of custom, the regulation of the manner in which custom may be recognised and enforced and the resolution of conflicts of customs or conflicts of personal laws. Until this

subsection (4) is duly attended to by Parliament, it would be hard for the Master to entertain customary law estates as expected. The Master must prepare her office well if that office is to assume full responsibility for the administration of customary estates. For the time being, customary estates must be administered according to custom under the authority of **umndeni** (family unit) and **lusendvo** (family council). Appeals may be directed to the Swazi Court (of which very little is heard these days). It is said that *umndeni* is chaired by **inkhosana** while *lusendvo* is chaired by **lisokanchanti.**

Likewise, Section 60 of the Constitution as one of the directive principles of state policy and as such is not necessarily enforceable. If conducive circumstances arise, however, the provision must be given effect. Section 60 (10) reads: ***"The State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole."***

By these provisions, the Constitution acknowledges that our society – in particular, the traditional part of our society – is growing and evolving so that what was no longer is. Government is accordingly encouraged to take formal and informal steps and integrate suitable customary values into the fabric of mainstream society. This means adapting and growing the good customary and family values and incorporating them into modern siSwati normal way of living. These customary values will mostly rest on the *umndeni* and *lusendvo* traditional structures at the heart of siSwati life. The subsection then seeks to strengthen these structures and breathe new life into

customary family values, which should not be overlooked in the administration of customary estates.

The effect of the new 2025 Bill seems to be that all deceaseds' estates must be subject to distribution willy-nilly, save as may be exempted. If so, that would be most unfortunate. The customary offices of ***Inkhosana*** and ***Lisokanchanti*** would be severely circumscribed if not condemned to the dustbin of history. [It seems that the word *Indlalifa* derives from the Bible and is as such unknown to emaSwati. The word seems to signify an heir who takes over the property of the deceased parental relative for his own personal benefit. If this is correct, *Indlalifa* is not part of siSwati custom, unless it is understood to be the same as *Inkhosana*].

Inkhosana*ship:** This is a form of trusteeship where the deceased estate is left to be overseen by the heir of the deceased nominated as ***Inkhosana, designated by the deceased or determined according to customary practice. *Inkhosana* is not *Indlalifa*. *Inkhosana* or customary trustee or estate overseer manages the deceased estate, usually livestock, for the family of the deceased and may be called upon to account or even be dismissed by the next of kin if he embezzles the estate. Inkhosana assumes the position of the deceased with the purpose to ensure that all members of the family are taken care of as circumstances may require.

The situation described here was practically captured in a real life late estate case described by the late Musa Hlophe in an article to the *Times of Eswatini SUNDAY* of March 22, 2020 on p.42. Pertinently, the article reads: **"Regarding what was said to have been *Make* Nxumalo's Will, which is said to have been that her last born son 'G. N' was to be the one to take over her house as well as her**

fields; but not for his personal benefit, but instead to use these for the benefit of all her children as well as her orphaned grandchildren." That is the siSwati way! The deceased matriarch appointed her last born son to be **inkhosana**, by what seems to have been an unwritten Will which was 'witnessed' by her elder sister and younger brother. [We have no information on how ultimately the dispute among her children was resolved.]

It will be noted that *inkhosana* and *lisokanchanti* are male descendants of the deceased. That is how it must continue to be. Where the deceased had no male heir, siSwati law and custom is not without an answer. The Constitution does not demand that we do away with our culture and way of life. The Constitution has not done away with gender. The equality prescribed by the Constitution should not be read out of context or be taken too far. Otherwise family values and *buSwati* might be destroyed.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

Recommendations

1. Traditional authorities to be empowered as the law requires them to administer customary law estates.
2. There should be no discrimination between widows in as far as the marital home is concerned.
3. Businesses in Swazi Nation land should be properly regulated including the distribution of such businesses.
4. The issue of fostering should be considered.
5. If there are rising issues in matters involving a sugar quota that should be addressed by the Regional Administrator.
6. To consider that customary law is gradually changing.
7. To consider what should be done in the case of an attorney who misuses estate property/funds if he dies?
8. To consider the issue of executors being attorneys representing the estate and also executors. What determines the fees to be paid to them as attorneys? There is the issue of conflict of interest.
9. Master to ensure that executors provide periodic reports before the final Liquidation and Distribution Account.
10. Master's office to have Legal Officer to handle complex issues including company shares in estates and to follow up on matters involving estates that are pending in court.
11. The Registrar of Companies to put in place guidelines/procedures for the proper management and the transfer of shares and other related matters where a shareholder/director dies. It should be known and understood that the shares of the deceased and the

value thereof which should be declared represent assets that should form part of the estate.

12. Determination as to who remains responsible or head of family after the deceased had passed.
13. The administration of estates of chiefs and *bantfwabenkhosi* should be reconsidered.
14. Private pension schemes should work hand in hand with the office of the Master in the disbursement of benefits to dependants.
15. Where a child is born out of wedlock but is proved to be a child of the deceased, the Master should be able to issue a directive that the child should inherit from the estate.
16. Master's policy/criteria in determining the provision for maintenance including the age which is currently being considered.
17. The Master's office should have power to subpoena next of kin members to attend next of kin meetings. If they refuse to attend the meeting, the Master should ask for help from the police to effect the subpoena.
18. File management system must be computerized to ensure data capturing and better management of files at the office of the Master. This will expedite the administration of estates.
19. Executor to be based in eSwatini for ease of winding up of the estate.
20. There should be thorough scrutiny of the documents presented for payments to avoid paying the wrong people with the same name and surname.
21. Rotation of staff from time to time.
22. Periodic training of the staff at the Master's office.

23. Law regulating Trusts should be put in place.
24. Master to always bear in mind the provisions of the Children Protection and Welfare Act wherever minor children are concerned.
25. Master to adopt a follow up policy on cases that are in court.
26. Decentralisation of payments in the Master's office to regions to process claims in estates. Request Accountant General to deploy senior accounts personnel to Master's regional office.
27. Additional staff for the busiest offices.
28. Qualifications for Master's office personnel to be upgraded through appropriate training.
29. Master and Deputy Master to conduct rotational supervision visits to regions.
30. Estate Late bank accounts to be regulated.
31. Master's office to conduct civic education.
32. Security to be improved to safeguard the staff and documents.
33. Provision of strongrooms/safes to keep files and Wills.
34. The Wills Act should be upgraded.
35. When an attorney who is executor is appointed Magistrate or Judge he/she should relinquish the position of executor.
36. A lifestyle audit is recommended on the officers of Master's Office.
37. The matrimonial home not to be sold or disposed of or distributed without the consent of the surviving spouse. The home must be kept for the use by the surviving spouse while still alive. In the event the children want to sell the home they are at liberty to do so pursuant to the death or remarriage of the surviving spouse.
38. Estate property unclaimed by anyone under the common law or in the Guardian Fund to revert to the State after 25 years.

39. Children who were supported by the deceased to continue being maintained until they reach majority age.
40. The Chief Justice and Attorney General should formulate guidelines to assist the Master in distributing some assets in customary law estates.
41. The devolution of homes in customary estates as governed by customary law should not be changed but it should be stressed in the guidelines that the the surviving spouse should assume the home.
42. Customary estates where there are company shares and or privately owned properties should be administered by the Master and *Inkhosana.*

Conclusion

The Commission has laboured under difficult conditions to meet the purposes of the Inquiry being allegations of impropriety, maladministration and abuse of power at the office of the Master of the High Court. To meet the terms of inquiry the Commission relied almost entirely on persons who came to present complaints about the office of the Master to the Commission. Unless a complainant presented a factual situation implicating the office of the Master there was no way of directly confronting the Master on any issue relevant to the inquiry. On the whole the findings of the Commission tended to cover the organisational operations of the Master's office. It is mainly the structural and administrative shortcomings of the office that tend to cause complaints to beneficiaries and other persons dealing with the office of the Master. There are of course also administrative deficiencies and inefficiencies to be grappled with by persons dealing with the Master's office. These shortcomings frequently show their ugly heads in instances of delays in

winding up of estates. For compliance with the law, the executor must be under constant pressure from the office of the Master.

Also, the space in which the Master works leaves a lot to be desired. The offices are crammed and not easily accessible particularly for elderly persons. The office space also affects the security of documents, files and wills kept by the Master. On the findings of the Commission, it is difficult to say that the office of the Master is or is not clean. There are of course those isolated instances of deviation and corruption that call for stringent attention by the Master by way of further inquiry to establish the full scale of the irregularity.

PART II

CHAPTER SIX

SUMMARY OF HEARINGS

1.0 ESTATE LATE MARTIN MUSA NDZINISA EL 161/2001

Deceased died on 25 July 2001 as reported by his mother Monica Bhembe by death notice dated 9 August 2001. Phindile Ndzinisa was the surviving spouse by customary law but had no child with deceased. Deceased had two children, Nokulunga Ncane and Sakhile Simphiwe. He had movable and immovable properties: a plot in Siteki, a motor vehicle (being Toyota Hilux), money at Standard Bank Tshaneni, a gratuity of E875, 477.00 from last employer, Mhlume Sugar Company.

Phindile, the surviving spouse, was not preferred by the Ndzinisa family as executor dative. She was accused of having been in separation with deceased and that she had caused the death of the deceased who died in a car accident. She was also accused, by the family, of denying one of the children, Sakhile, as being deceased's child. Phindile denied these allegations against her.

Phindile was against the appointment by the Master of Mzamo Nxumalo as executor dative. She complained that the Master passed to Siboniso Clement Dlamini (S.C. Dlamini) an amount of E875, 477.00 paid by Mhlume Sugar Company as gratuity even though S.C. Dlamini was not the executor. She also alleged that S.C. Dlamini squandered a large part of this amount resulting in Phindile getting only E50 000.00. Phindile appeared before the Commission on 7 March 2024, on 8 August 2024 and on 3 September 2024. She was an aggrieved and troubled widow.

The first next of kin meeting was held on 13 September 2001 in Manzini. Even though according to the chairperson, Ms Phumzile Thomo, the Acting Assistant Master, the meeting had not been properly advertised, the attorneys insisted that

since all the parties concerned were present the meeting should proceed. There were thirty participants at the meeting including three attorneys, being LR Mamba, Sipho Gumedze and SC Dlamini.

As may be imagined, this estate was fraught with accusations and counter-accusations emanating from the suspicion that the surviving spouse had brought about the 'accidental' death in a road accident of the deceased. It is said that the nomination of the surviving spouse as executrix dative was 'vehemently' opposed by various family members of the deceased who cited the fact that the surviving spouse was in separation with the deceased and that she did not accept one of the children, Sakhile, as being the deceased's biological child and she did not have children with deceased "*and merely came to the Master's office after the death of the deceased to claim benefits*", a family member is alleged to have complained.

Phindile admits having no child with deceased but denies rejecting Sakhile as deceased's child as stated by Sabelo Ndzinisa.

Phindile complained that though she was the only wife/widow to deceased by customary rites, her in-laws rejected her and excluded her from participating at the funeral of the deceased accusing her of having killed or having a hand in the 'accidental' death of deceased in a car accident. Lawrence Ndzinisa, Phindile's father-in-law denied that she was a lawful wife of the deceased in High Court Case No. 1796/2004 with judgment after his demise in 2008. He was unsuccessful. Phindile says she opposed the appointment by the Master's Office of Attorney Mzamo Nxumalo as executor and even challenged, albeit unsuccessfully, in court in Case No 2774/2001. See also Case No. 3761/2010 and Case No. 69/2014. She complained that the Master's Office adopted a negative and hostile attitude towards her and never gave her a fair hearing. Mr Isaac Dlamini handled the deceased's file for the Master's Office.

Phindile's attorney was the late Mr S. C. Dlamini. In the effort to have Mzamo removed as executor, Siboniso somehow 'manipulated' the situation and reached a compromise with Mzamo whereby both Mzamo and Siboniso became executors. In March 2002, the two attorneys had been issued letters of executorship as co-joint executors of the estate. How this 'marriage' was achieved leaves a lot to be desired in light of the alleged opposition Phindile had towards Mzamo and SC Dlamini had been engaged to attend to Mzamo's removal as executor in court. It seems, when Mzamo, as executor, could not raise the required security bond (of E500, 000.00), Isaac Dlamini allowed deceased's former employer, Mhlume Sugar Company, to pay to Siboniso deceased's gratuity in the amount of E875, 477.00 (as if Siboniso was the executor). Phindile later complained that Siboniso misappropriated the gratuity pay as well as an MVA payment. She blamed Isaac Dlamini for all this.

Isaac Dlamini, who was Deputy Master at the time, denied responsibility and said that Mr Churchill Dlamini, the Master, was the officer holding final responsibility for the Master's Office. He admitted that the Mhlume Sugar Company payout was not given to Mzamo for failure to raise the required bond. Isaac also denied responsibility for the appointment of Mzamo as executor. Isaac, however, had some difficulty adequately responding to some of the alleged issues by complainant and the Commission concerning the manner the file was handled by the Master's Office and the attitude the office had towards Phindile, the surviving spouse. Phindile also alleged that the matter of the estate had been to Ludzidzini in the presence of the Master, Ms. P. Thomo and that the Ludzidzini Council ruled that Phindile be paid as Isaac was wrong to give the gratuity to Siboniso who was not officially the executor at the time. It becomes necessary to know when exactly the gratuity was paid and when Siboniso became executor. Of the deceased estate it is said that the co-executors, Mzamo and Siboniso, could not account for over E1 Million they received respectively E103 625.53 and E910 018.99. The estate

account also shows a requisition withdrawal of E34, 541 and E103, 625 given to Siboniso and Mzamo respectively but it does not show what the withdrawals were for. When Mzamo and Siboniso died, both of their trust accounts were said to be without funds.

It is curious to note that the death of the deceased was fraught with controversy from onset. The surviving spouse had been in separation with deceased around the time of his demise. The surviving spouse was alleged by deceased's kin to have had a hand in deceased's untimely death. Mzamo Nxumalo, the executor dative had his appointment hotly opposed by the surviving spouse – see High Court Case No. 2774/2001. Mzamo died in May 2005, and was followed by Lawrence Ndzinisa not long after he instituted proceedings in the High Court challenging the legality of surviving spouse's marriage with deceased – see High Court Case No. 1796/2004. Phindile's attorney, Siboniso Clement Dlamini lasted a little longer, passing on in 2022. It is also worth noting that when Siboniso 'resigned' from executorship in 2014 he reported as follows: *"... in order to avoid further harassment our Mr Siboniso Clement Dlamini hereby forthwith resigns as executor of this estate*". And the Liquidation and Distribution Account that Siboniso submitted when he resigned was not approved by the Master. The Account does not show what happened to the amount of E875 000.00.

It appears that until the next of kin meeting in August 2019, the estate was without executor or curator. It is observed that in that next of kin meeting co-joined executors were to be appointed. Phindile as surviving spouse was due for appointment in terms of Section 25 of the Administration of Estates Act, 1902. However, Phindile refused to be co-joined with Mxolisi Ndzinisa, a relative of the deceased. Phindile is reported to have angrily left the meeting after stating "*that will never happen; I must enjoy the right of winding up the estate of my husband… I will not allow that to happen; I will consult my lawyer concerning this.*" The meeting proceeded to nominate and appoint Mxolisi as executor.

Phindile went on to lodge a complaint with the Ministry of Justice alleging ill-treatment by the office of the Master.

In a report to the Principal Secretary, Ministry of Justice and Constitutional Affairs in December 2019, then Assistant Master (Ms X. Nkambule) who had chaired the August next of kin meeting, stated, among other things: "**by her conduct she (Phindile) waived her right to be elected as an executor**." From the Master's records it appears that Phindile only became co-executor with Mxolisi in September 2020 following an agreement by the family to that end. This arrangement was confirmed by Ms Nkambule in a letter of January 2023 to Mxolisi requiring that the two share the executor's fee of E6, 500.00. Mxolisi presented the final distribution account in 2023 covering the plot in Manzini **that** Siboniso had not included in his liquidation and distribution account of 2014.

Regarding the paternity of Sakhile, even though the DNA proposal was not pursued by Phindile, as late as 20 March 2023 at a next of kin meeting at the Magistrate's Court in Siteki, Phindile is recorded as saying: *" . . . I was present with my lawyer at the first meeting and the family wanted me to accept a child that I did not know, even my husband disputed his paternity"* (emphasis added). Clearly, notwithstanding the court decisions and passage of time since 2001, Phindile was not reconciled with the Ndzinisa family and the prevailing *status quo* accepting Sakhile as deceased's child.

Was the so-called "Amended First and Final Liquidation Account" presented by S.C. Dlamini when he resigned from being executor on 23 January 2014 ever approved by the Master? On its face, the Account has several question marks. That account totally dissipated assets in the amount of E1, 050, 018.99. That liquidation left behind the plot in Siteki which was later sold and sale price distributed between Phindile and the two daughters of deceased each getting E73, 535.70 in 2020. But Sakhile was not to receive her share at all until Phindile had

conducted the paternity tests. At the time of the Commission, Sakhile still had not received her share, 23 years since the demise of her father.

From the foregoing account, there is no complaint with regards the sale of the Siteki plot from which each beneficiary got E73 000.00. The complaint mainly concerns the administration of the gratuity pay out by Mhlume Sugar Company of E875 000.00 that the office of the Master allowed to fall into the account of Attorney S.C. Dlamini, who at the time was not executor of the estate. The liquidation and distribution account prepared by SC Dlamini on resigning in 2014 does not appear to have been approved, presumably, because it was unsatisfactory. The estate reflected that it has neither executor nor funds remaining for distribution.

Observation

1. The office of the Master failed to properly supervise the administration of the estate as shown by the amount of E875, 577.00 gratuity that was diverted to the office of Attorney SC Dlamini who was not the executor of the estate.

2. The Master's Office (Mr Isaac Dlamini) gave SC Dlamini the gratuity even though he had not paid the security bond.

3. The Master did nothing to avoid the embezzlement.

Conclusion

1. The office of Master was negligent in the manner it handled the gratuity payment.

2. The office of the Master has to compensate the beneficiaries of the estate for the lost gratuity.

3. The Master must find an executor, with the assistance of the beneficiaries, to ensure the estate is duly wound up.

4. The amount for the distribution not approved in 2014 must be accounted for by the Master.

5. The amounts embezzled by Mzamo Nxumalo and SC Dlamini must be accounted for by the Master, being E103, 625 and E910, 018, respectively.

2.0 ESTATE LATE GUNDWANE ISAIAH DLAMINI EM 326/2021

Gundwane died on 8 September 1993. The death was reported at the office of the Master in June 2021, after 28 years, by Busisiwe Precious Dlamini who became appointed executor. Zanele Getrude Dlamini nee Mkhaliphi was the widow but since also deceased. Busisiwe is the only known child of deceased. She says that her grandmother, Ntfombitakangwane Eunice Dlamini, the mother of the deceased, had requested Themba Dlamini, deceased's brother, to care for Busisiwe. From this account, Busisiwe must be over 30 years old now. Busisiwe and her grandmother are the only known beneficiaries rated by the Master's office at 80% and 20% respectively. The basis of the ratios is not clear.

The complainant, Busisiwe Dlamini, appeared before the Commission on 5 March 2024, 9 April 2024 and 19 August 2024. She alleged that her late father's estate had not been distributed for two decades. She was not getting anything from the estate property in Nhlangano. The rentals (of about E8, 000.00 per month) were collected by her aunt Tfolwaphi and not remitted to the estate account opened after the death was reported in June 2021. Tfolwaphi was subsequently removed by the family from being co-executor.

The inventory reflects a plot No.263 at Mathendele Township, Nhlangano, and another suspected to be at Piggs Peak. There is a rental business in Nhlangano next to Masengula.

The death notice shows that deceased was single and self-employed; that he had no movable property or bank account. Rather strange! The death notice is dated June 2021 and signed by Busisiwe, the daughter of the deceased, who was born the year deceased died in 1993. Chances are, unknown to Busisiwe, deceased's movable assets were dissipated by relatives between 1993 and 2021 and any bank account could have become dormant and lost to the beneficiaries.

At the next of kin meeting held on 28 September 2021, Tfolwaphi Dlamini, a sister of the deceased and executor is said to have complained in writing that Busisiwe was not the daughter of the deceased. But Eunice, mother of the deceased and Busisiwe's grandmother could hear none of it insisting (as minuted) that "*the child belongs to my son, all of us know that; there is no dispute*". Apparently, Tfwolwaphi's claim was dismissed. The next of kin meeting also heard that deceased's property was leased out to an unnamed brother of the deceased who was collecting rentals without accounting. This would seem typical of neglected estates.

The Liquidation and Distribution Account is dated October 2022; it shows that the plot at Nhlangano is valued at an amount of E2, 364, 000.00 and there was cash at Swazi Bank in the amount of E72, 558.00 but no movable assets. The distribution account shows that Busisiwe's 80% amounted to E1, 891, 200.00 while Gogo Ntfombitakangwane's 20% equalled E472, 800.00. The executor's certificate concludes by stating that, "*there are further assets and liabilities to be accounted for*". Accordingly, the liquidation has not concluded.

Observation

The Commission would want to be assured that the estate has been fully wound up and the beneficiaries have received their benefits. The Master's report of 26 June 2025 shows no change since October 2022. Need for explanation. There is

need to preach the gospel of reporting estates timeously. This estate was probably reported because of the immovable property, which could not be easily looted.

Conclusion

There is a liquidation and distribution account outstanding from the executor for more than six months and no explanation for the delay. Master to ensure the estate is wound up without further delay.

3.0 ESTATE LATE ZODWA PAULLET DLAMINI EM 222/2017

Zodwa Paullet Dlamini nee Nxumalo died on 9 August 2017 and the death was reported at Master's Office in Manzini on 13 September 2017 by Mfanzile Jethro Dlamini, the surviving spouse by customary law and executor dative, following next of kin meeting on 28 November 2017. Angelinah Lomthandazo Mnisi of Motjane, Hhohho Region, alleged to be mother of the deceased and Jethro to be her son-in-law. Inventory prepared by Jethro shows a plot at Ngwane Park, Manzini, a car and money.

Lomthandazo is the complainant. She came to the Commission on 5 March 2024 accompanied by Ephraem Mnisi. She said after the demise of Zodwa, Jethro took her to the Master's Office in Manzini. Not much was said at the Master's but Lomthantazo told the Assistant Master that Jethro had never paid anything by way of lobola for her daughter, Zodwa. She told the Assistant Master that Zodwa had a child named Nowethu Shabangu but changed to Dlamini by a person she did not know. Zodwa also had a child with Jethro (apart from Nowethu). There were therefore three beneficiaries, four if Lomthandazo is included. She also stated that Zodwa had property which Jethro wanted for himself. Zodwa was buried at Lomthandazo's home area. Zodwa was employed in the Public Service. Lomthandazo seemed rather uncomfortable with Jethro being recognised as the surviving spouse.

As per the Death Notice, Zodwa had two children namely Nowethu Kimberly Dlamini and Simangaye Saziwengaye Dlamini. According to Lomthandazo, Nowethu's surname was Shabangu and she did not know who changed Nowethu's surname to Dlamini. She said Nowethu never got anything from the late Zodwa. But the Master (Ms M. Mdluli) stated that there were three beneficiaries to Zodwa's estate, namely Jethro and the two children, Nowethu and Simangaye: but Nowethu had not yet been paid. There was no reason to hold back Nowethu's share even if her paternity was in doubt because she was benefitting from her mother.

Observation

1. Ms. Mdluli says that Nowethu's share of E71 000.00 has not been collected at the Guardians' Fund. Ms Mdluli says she informed Angelinah several times to collect the share of Nowethu (E71 000.00) but Angelinah never responded, and that the title deed to the plot at Ngwane Park and the key to the estate vehicle were never submitted by Angelinah.

2. Ms Mdluli in an update dated 15 May 2025, submitted that Nowethu's share which had accumulated to E75, 014.90 was collected by Mfan'zile Jethro Dlamini under Requisition Form dated 28 April 2025. That concludes the matter and the file may be closed.

Conclusion

1. File is closed.
2. Master to ensure that Nowethu Shabangu/Dlamini has recieved her inheritance.

4.0 ESTATE LATE SIPHO KHABO MASINA EM 252/2018

Mcolisi Senzo Masina in the company of Sipho Masina came to the Commission on 29 February 2024. Mcolisi told the Commission that Sipho Khabo Masina from Mhlane, Matsapha, died in July 2018. The death was reported at Master's Office, Manzini, the same month by Mzwandile Masina, deceased's elder brother. The next of kin meeting was held in Manzini where Mcolisi and Lindiwe Setsabile Masina (nee Shongwe), surviving spouse, were appointed co-executors. Lindiwe is Mcolisi's stepmother. Lindiwe had no child with deceased. Lindiwe and deceased were married by civil rites in community of property. Deceased had about 4 children born before marrying Lindiwe.

The inventory reflects deceased as having had motor vehicles, trucks and rental flats in Matsapha and Ntamakuphila.

Mcolisi told the Commission that at the time of family kin meeting he was not aware that his late father's revolver was still in the house at home and could be used against him. Lindiwe presumably was aware of the revolver's presence in the house. According to Mcolisi, Lindiwe acted as if the estate was insolvent but Mcolisi was not so convinced. Mcolisi said Lindiwe expelled him from home in Matsapha for unknown reason. That Lindiwe was the cause for stalling the liquidation of the estate; even though she collected rentals from the flats of the estate, the accounting, if any, was not known to Mcolisi as co-executor; that Lindiwe operated some of the motor vehicles of the estate without proper authority. That Assistant Master Ms M Mdluli tried without success to bring order within the family. Since no distribution had occurred, the minor children were the biggest losers.

Assistant Master, Ms. Z. Fakudze, told the Commission that the matter was known to her office but the file had been lost or misplaced and could not be found. The office was still looking for it and was also aware that Lindiwe was being very difficult in winding up the estate. Even the assets were not easily traceable.

Umphakatsi supported Lindiwe. Although not eager, the office may end-up removing Lindiwe as co-executor.

Assistant Master Ms. M. Mdluli told the Commission that at deceased's home they found two (2) plots but some of the assets had been dissipated: one motor vehicle was not found and another was allegedly sold by Lindiwe for E33 000.00 without the Master's approval. On one plot there were 46 rental flats running over E530.00 a month, which amount was not accounted for by Lindiwe as no estate account had been opened by Lindiwe despite warning and reminders. Overall, there were about 90 rental flats within deceased's homestead. Lindiwe, however, stated that there was only one plot and not two. The Commission ordered that the necessary estate account be opened that day or so soon thereafter as it might be done. The matter was returned to the Master's office for further consideration.

The report of the Master dated 30 June 2025 states that Lindiwe has been written to several times to deposit rentals into the estate account but Lindiwe persists on refusing to do so. Instead, there has grown bad feelings between Lindiwe and Mcolisi resulting in Lindiwe applying for a protection order returnable 28 January 2025. In December 2024, the Master's office wrote to the Masundwini Royal Kraal seeking assistance since some of the rented flats are on Swazi nation land.

Lindiwe is reported by the Assistant Master as saying that the assets of the estate belong to her alone and is refusing to share. Yet the law only allows her half of the estate (plus a child's share). The children she is unhappy about were there before she became a part of the family. She should be willing to share with these children. After all, the children are also entitled to a reasonable provision from their late father's estate. This should be so whatever be the ruling of the Masundwini council or the Magistrate's court. Matters of deceased estates are not concerned with ownership; they are concerned with entitlement according to law.

The protection order should not be used by any of the parties as a shield to avoid compliance with the Act.

Conclusion

The Assistant Master should write to the co-executors; give them time within which to produce an acceptable liquidation and distribution account of the available assets. If in her observation Lindiwe continues being difficult, then the Master must consider removing her from co-executorship of the estate

5.0 ESTATE LATE MESHACK LANGWENYA EM 138/2021

Meshack Langwenya died in August 2017 leaving behind Ntombi Langwenya, nee Dlamini, as surviving spouse by civil rites and three children. Death was reported by Sifiso Langwenya, an outside of marriage child and complainant before the Commission. Yvonne Babhekile Langwenya, a child of Ntombi, is the executor. File was opened in 2020. There are six children in all. There were four rental stands at Logoba, one at Mhlane, three motor vehicles, Sihlongo Investment Company (transportation service), a home at Mbekelweni and bus permits.

Sifiso, the complainant, told the Commission that in about 2020 he was chased away from deceased's home in Mbekelweni. Sifiso said he had been staying at this home from about 2004 while deceased was still alive; only to be chased away when the deceased died. When invited by Alpheus Langwenya to a family meeting, Bongiwe Langwenya, a half-sister of Sifiso, alleged that Sifiso was not a Langwenya; he was not family. Surviving spouse, Ntombi, passed on in 2020 and the death was reported by Babhekile. Assistant Master, Ms M. Mdluli said paternity tests were ordered in 2020 but so far nothing had happened.

At the follow-up hearing on 6 August 2024, the executor, Babhekile, confirmed that there were rumours that Sifiso was not a Langwenya but the family had since

accepted him. There was therefore no more need for DNA tests. The paternity issue having been resolved, the estate should be wound up without further ado.

Observation

The Commission is of the view that where a claimant child had stayed with the father as a child of that father without any challenge, no one should be heard challenging the paternity of that claimant child just because the father is no more.

Conclusion

Since the issue of paternity has been swept under the carpet, distribution should go ahead and Sifiso treated as one of the children as the Constitution provides.

6.0 ESTATE LATE DAVID VUSUMUZI NHLEKO SEL 90/2017

David Vusumuzi Nhleko died in July 2017. The death was reported by LaMagagula, the second of deceased's two surviving spouses and LaMkhabela being the first. Deceased had four children but two predeceased him. LaMagagula had reported that she was the only wife and that there were no children, no assets and only E5000.00 in the bank. Of the two live children, one belonged to LaMkhabela and the other belonged to Sthembile Sukati (from Mbelebeleni) who was not married to deceased. LaMagagula (Phumzile) disputed the paternity of Sthembile's child. Ndumiso Khumalo was appointed executor but was later replaced by LaMagagula.

Sthembile is the complainant. She appeared before the Commission on 7 March 2024. Sthembile produced the birth certificate for the child. Sthembile said that LaMagagula prevented her from visiting deceased's home. Sthembile also alleged that deceased's former employer, Unitrans paid E60 000.00 but LaMagagula did not deposit that amount to the estate account.

This replacement of Ndumiso as executor made things more difficult for Sthembile who could not even see LaMagagula nor have access to the estate file that was then reported as missing. Sthembile wrote to the Master in Mbabane complaining. Out of the pay from Unitrans, Sthembile's child got about E16 000.00. The deceased also operated a cane-farming business at Phuzamoya but Sthembile's child got nothing from it. Nkosiyazi Zikalala, the Assistant Master in Siteki, declined to pursue for verification of the Unitrans pay not declared by LaMagagula and the Master also failed to follow-up on the assets denied by LaMagagula. No explanation given. And for some unclear reason KaMkhweli Council allegedly fined Sthembile E500 for coming to the council with people not accepted by LaMagagula. From a distribution done, Sthembile said only E10, 000.00 was paid to her for the minor child. Sthembile was of the feeling that the administration of the estate should be revisited.

Observation

1. Executors should be made to understand that their position as such is one of trust and should not be used to further the interests of the executor.
2. The Assistant Masters at Siteki should be called upon to explain their reluctance to follow up on the assets allegedly not disclosed by LaMagagula.
3. Officers of the Master's office should pay close attention at the filling of the death notice and inventory forms as important sources of information about the estate.

Conclusion

The Master must pay close attention to the distribution account to be presented by the executor to avoid undue differential treatment of the children.

7.0 EST. LATE MANDLENKHOSI BERLY SHONGWE EM 141/2016

Mandlenkhosi Berly Shongwe died on 31 May 2016. The death was reported on 12 July 2016 by Mduduzi Shongwe, deceased's brother. Deceased had one wife, Busisiwe Malindzisa by Siswati law and custom and together had three children, namely, Gugu, Telukhetfo and Lwazi. A fourth child, Machawe had his paternity challenged. Sandile Shongwe, a brother of deceased, was appointed executor at a next of kin meeting and held the position until he resigned in 2023. Deceased had fifteen rental flats and nothing else. In 2021 Sandile presented the first distribution account. This was after four years since the demise of Mandlenkhosi. Gugu, Telukhetfo and Lwazi, each received E7000.00 but Busisiwe was not sure how much she got. The Master insisted that only legitimate children were to benefit. Need to explain why Machawe was left out.

Busisiwe as surviving spouse and her three children are the complainants. They came to the Commission on 11 March 2024. Their complaint was on the distribution of E70, 000, money collected by the executor from the rental flats.

The complainants alleged that from the rentals they were not paid on a monthly basis, but the money said to be at the bank did not add up. They also discovered that a certain Bongekile who was not one of deceased's children was also being paid from the estate account. There was no explanation why Bongekile was being paid or who she was. The Master ought to provide information. In the result the estate account showed that there was money unaccounted for. The explanation from Sandile that the rooms were not always occupied and needed repairs was not satisfactory. Complainants admitted that they had problems as a family and not meeting as required to deal with the estate matters. Gugu stayed in South Africa and found it difficult to be home for meetings.

In 2023 the complainants visited the Master's Office because they needed some money for a specific cable. The Assistant Master in Manzini (Ms L Sibandze)

refused to write a letter releasing the money needed by the complainants. The complainants also found that Sandile had resigned by merely submitting a letter and the complainants had not known about it. Sandile had prepared the 4th liquidation and distribution account that distributed E70, 000 from rentals as well as the 3rd, 2nd and 1st liquidation and distribution accounts which distributed E71, 000, E82, 000 and E68, 000 respectively. The accounts were approved by the Master's office.

In July 2023 Telukhetfo replaced Sandile as executor. Telukhetfo did not find it easy with his mother, Busisiwe. Busisiwe wanted to know the rentals monthly collection and was apparently unhappy with the annual distributions. Sandile said that when he resigned in January 2023 there was about E4000.00 in the FNB estate account that he had opened after initially paying the rentals at Revenue/Treasury. There are four distribution accounts in the file.

Ms Nkosiyazi Zikalala of the Master's Office said she only met the family in July 2023 when executor was replaced.

Observation

Who is Bongekile; how was she paid from the estate without the Master's knowledge? What happened to Machawe? Should an executor just resign without the beneficiaries being informed? Were the rentals duly accounted for?

Conclusion

The Master must ensure that benefits in deceased estates are distributed -

(a) among persons entitled to the benefits;

(b) as the benefits become due; and

(c) bearing in mind section 31of the Constitution where necessary.

8.0 EST. LATE MATHUTHUKA MESHACK SHONGWE EH 65/1998

The passing on of Mathuthuka Meshack Shongwe was reported by his uncle Mshengu Shongwe. The complainants, Jabulani and Pholile Shongwe (Mrs Mashinini) are children of deceased. There is a Will appointing executor but was contested. The Will did not apply for unknown reason, according to the complainants. They also alleged that the Master did as she pleased. Late attorney, Thulani Masina, was executor. Deceased had a farm, 103 cows, 2 shops, tractor, 2 trucks (vans), 60 cows at a Shongwe homestead (for Rose Shongwe); 18 cows at Mlungisi Dlamini's homestead (for Beauty Shongwe). The deceased left three widows (now two) by custom and eight children. As it turned out, the reason for the Will not applying was that the Will was set aside in High Court Case No. 1143/2000.

This matter was heard on 13 March 2024 and 12 August 2024. The complainants, from Madvubeni area, next to Sitfobelweni, said they got nothing from their late father's estate. The farm and cows were sold but the cars were rotting at home. 60 cows were collected from home on the Master's instruction with the assistance of the police. At Master's office, complainants had very little to say as the Master acted as he pleased. Mr Churchill Dlamini of the Master's office was involved. Elder brother spent a night in police cell and complainants were fined E5000.00 for an offence they were not sure of other than that '*sisebentisa kabi lihhovisi laMaster'* (we are abusing the Master's Office). Thulani Masina, the executor, was allowed by the Master's Office to sell some of the estate assets and "we were not consulted". Law Society assisted in getting the final distribution account. A curator, Irene Mlotsa, was found for the two shops that, however, soon closed as they could not operate. According to the complainants the estate was looted; motor vehicles were kept rotting, with blue books at the Master's office; Master doing nothing about it.

The Will was challenged by *Mamkhulu* (senior wife) who claimed that she was married by civil rites. The late Colin Ntiwane was her attorney.

Ms L. Magagula the Deputy Master told the Commission that there was a file showing about 165 cows, 2 shops, 4 cars. That the Will was challenged but Masina the executor concluded that only Kheselina was the lawful wife of deceased. Masina with Master's permission sold the farm for E300, 000.00 and lodged the liquidation and distribution account in 2002. About 86 cows were sold by Irene Mlotsa, the curator, with the approval of the Master's Office. With all this, the complainants are not satisfied and insist that they benefitted nothing from the estate. Acting Assistant Master G. Langa told the Commission that a distribution account was filed in 2003 but benefits did not reach beneficiaries.

As for Jabulani's undelivered share, George Langa explained that Jabulani had not accounted for about 90 cows and that in all fairness these cattle were lost to the estate and had to be accounted for by him as part of his benefit. Jabulani is said to have shared in an estate shop at Madvubeni as well as in other residue assets.

The only question is whether he did actually get what is said to have been his share.

On 26 February 2025, the Master's office submitted a liquidation and distribution account dated 4 April 2003 prepared and certified by Thulani Masina in his capacity as executor and was approved by the Master on 7 April 2003. In that account, it appears that the whole estate was distributed to all qualifying beneficiaries. The only issue as described by the Acting Assistant Master George Langa was that the benefits did not reach some beneficiaries. It appears in that account that deceased had seven children, only one of them was legitimate. The names of the children are Maphiwase (the legit one), Nomsa, Mduduzi, Nhlanhla, Jabulani, Dumsile and Mandla. The complainants as stated above were Jabulani

and Pholile, who said that they did not get anything from the deceased estate. The excluded eighth child must be Pholile Shongwe (Mrs Mashinini). According to the account by George Langa, Pholile was not a beneficiary but the reason is not given. During the hearing, Pholile told the Commission that her *lobola* cattle were kept separate from deceased's cattle but were nevertheless forcefully collected by the executor with the assistance of the police and added to the estate assets. These cows included the *insulamnyembeti* cow (wiper of tears cow). If this account is correct, then Pholile was a beneficiary, even though she had left the deceased home to be married. The only real problem which needs to be answered is whether a daughter having been married and lobola paid should on the death of her father come back and share in her lobola as part of the late father's estate. Is this SiSwati? The related question is whether *lobola* should form part of the deceased distributable estate as presently understood by the office of the Master? The issue of distribution is unknown in SiSwati culture.

Observation

1. The estate is very old. Final distribution seems to have happened. The problem is whether the beneficiaries got what belonged to them.

2. The administration of the estate was not supervised properly by the office of the Master and the distribution was not transparent.

3. It is difficult now to ascribe fault with any certainty. Some of the beneficiaries have since died.

4. About 90 cows were unaccounted for by Jabulani who denied all knowledge of these cows.

5. Jabulani says the Master gave the cows to Masina and kept the complainants out of what was happening in the estate and for the same reason not all beneficiaries could claim their share from the estate.

Conclusion

1. Due and close supervision of the administration of estates cannot be over-emphasised.
2. The Master's office should be sufficiently empowered to ensure executors abide by the terms of their appointment and deliver accordingly.
3. There would be no point in reopening the estate without being assured of assets still available for distribution.

9.0 **ESTATE LATE AMON MSHIYENI KUNENE EM 406/2002**

Mshiyeni died on 29 July 2002 and his death was reported on 30 September 2002 by Tryphina Kunene-Tfwala, the mother of the deceased. The deceased was reported to have had neither movable nor immovable property, with only a small estate. Death Notice states that deceased was married but left no known surviving spouse – probably died or separated. But Tryphina the mother of the deceased and informant who filled the Death Notice by affidavit deposed to on **9** September 2002 told the Master that deceased had neither wife nor children. Tryphina was appointed executrix and did all that was necessary to wind up the estate. She was the only beneficiary of E19 162.00 (from the Swaziland Building Society) and also a plot No. 351, Ngwane Park, Manzini valuated at E225 000.00. Seemingly, the death notice and inventory do not reflect the truth. Tryphina's truthfulness is suspect; she told the Master's office that deceased had neither child nor valuable assets and stood to be the sole beneficiary of over E200 000 .00. Tryphina was reported dead as of December 2022.

At a next of kin meeting held on 28 November 2002, Tryphina was nominated and appointed executrix. No security seems to have been required. The death

notice which was filed by Tryphina has its last page missing with the result that it is not clear how Tryphina signed it or whether deceased had any children as is usually indicated on that page. The inventory also filed by Tryphina reflects that she used her thumbprint for signature; in a similar manner she signed for her affidavit and, likewise, the first and final liquidation and distribution accounts dated January 2003 (without stamp of approval) and October 2005 respectively. This state of affairs raises the question whether Tryphina could read or write and, if not, whether she could manage the duties of an executrix without assistance and if assisted who was her assistant. By the same reckoning, did she get the E19 162.00 and the plot officially distributed to her? Who exactly assisted her in managing the wealth that suddenly fell into her hands? Her own estate file becomes relevant.

Bonginkhosi Charles Kunene, the complainant, appeared before the Commission on 6 March 2024, and on 12 March 2024. He told the Commission that he was not aware but heard that the estate file had been opened and that his paternity was disputed and that he was chased from deceased's home at Kwaluseni by among others, Zweli Kunene, a brother of the deceased. Bonginkhosi also stated that his grandmother (Tryphina) had told the Master's office represented by Isaac Dlamini that he (Bonginkhosi) would get his share; but no such share has reached him. But, as already stated, in an affidavit, Tryphina denied that deceased had a wife or child; and so did Zweli by affidavit dated in November 2023. This was before the Commission was established and was as a result of Bonginkhosi having lodged a complaint to the Master by letter of December 2022 that he had been wrongfully excluded from his father's estate. Accordingly, the complaint was independently raised and can not be suspected to have been motivated by the announcement of the Commission.

As for his paternity, Bonginkhosi produced a birth certificate registered in 1991 by the deceased and the mother of Bonginkhosi, one Maria Mntshali. It is worth

noting that at the second appearance before the Commission, present with Bonginkhosi, were Nora Kunene and Queeneth Kunene and Zweli Kunene. Even though not verified, the ladies must have been Bonginkhosi's aunts. Zweli told the Commission that it was not true that Bonginkhosi had been thrown out from deceased's home, but that Bonginkhosi had left on his own and he was recalled when deceased became critically sick but before he died. In our view, such behaviour acknowledged Bonginkhosi as a Kunene family member and a child of the deceased. Importantly, Bonginkhosi did not just show up after the death of deceased, but had been staying with the deceased at deceased's home before deceased died. The Human Rights Commission is also reported to have noted in 2022 that Bonginkhosi had been unduly denied his benefits.

It is not clear why Bonginkhosi applied to court on the issue of his paternity. Unless the respondents can point a fault or defect in the birth certificate, their success in court is very doubtful. Following an update required by the Commission, the Master's Office per Ms Makhosazana Mdluli concluded its report as follows:

> **"We acknowledge that Bonginkhosi Charles Kunene is deceased child but unfortunately when the deceased passed on the status of illegitimacy of person born out of wedlock was not yet abolished, hence he was unable to inherit. On the other hand he was unable to claim maintenance since he was above twenty-five (25) years of age …"**

The first question that arises is why was the certificate not discovered in 2002 when the estate was being wound up? Bonginkhosi was not aware of what was happening. The birth certificate was there since 1991. The above explanation by the Assistant Master was not the initial reason for excluding Bonginkhosi. In 2002, Bongnkhosi was simply not in the picture at all. Something must have gone wrong with the winding up of this estate leading to the exclusion of Bonginkhosi from benefitting. There was no evidence that the deceased had been married

under civil rites. It must be a strange system of law that would go out in search of faraway relatives to the exclusion of near relatives. Our SiSwati legal system knows no such hard and fast rule that totally ignores nearby relatives in favour of distant relatives. For instance, had Bonginkhosi married a wife, would the deceased be heard to say Bonginkhosi was illegitimate and refused to provide *lobola* for his wife? Quite unlikely! Had the next of kin meeting been handled properly the issue of Bonginkhosi's paternity would not have stood in the way of his sharing in the deceased estate. Our customary law is not like the Laws of the Medes and Persians. There was nothing compelling the application of the Common Law in distributing this estate.

It is worth noting that at the next of kin meeting held on 28 November 2002 to nominate the executor, (chaired by the then Acting Assistant Master, Ms P Thomo), no question was ever asked whether deceased had a wife or children. The meeting was attended by the deceased's mother Tryphina Kunene, Joseph Kunene, Maria Kunene, Zweli (Zwelithini) Kunene, beside Ms. Thomo. Except for the mother, the other Kunenes were brothers and sisters of the deceased. In the absence of a wife or child, the Kunenes stood to inherit from their mother, Tryphinah, in due course. To note, as well: The Death Notice filed by Tryphina states that deceased was married. No indication that deceased was divorced or widowed. The part of the death notice where children of the deceased are listed had initially listed the Kunene brothers and sisters of the deceased, only to be cancelled and replaced by "No Children". Further, the death notice shows a thumbprint for Tryphina's signature, but the Requisition Form dated 16 January 2003 by which Tryphina withdrew the inheritance of E19, 686.76, bears a signature which is not a thumb signature. How this happened has not been explained. As already pointed out, the requisition form is dated 16 January 2003 and has the Master's date-stamp of 26 March 2003. How is all this to be explained? Did someone else cash out the E19 686.76?

On 9 November 2006, Mr Isaac MF Dlamini, the deputy Master, wrote to Sigwane and Partners giving consent to the transfer of Lot No. 351, Ngwane Park, Manzini, from the deceased estate to the name of Tryphinah Kunene, a transfer that was "to the advantage of the persons interested in the estate". Who were these persons interested in the estate other than Tryphina, one might ask? And so, the property was transferred to Tryphina.

On 4 December 2022, Tryphina reportedly died and her estate was reported as EM 29/2023. The Plot 351 at Ngwane Park which was valued at E225,000 in 2002 had increased to E1, 100, 000.00 in 2022 and her estate was distributed in terms of a liquidation and distribution account dated 22 March 2023. Only Tryphina's six children inherited. Again, Bonginkhosi Kunene got nothing because he was illegitimate! Illegitimacy is a common law notion. It is doubtful that the Master was correct in her application of this principle in this matter. There being no other children, Bonginkhosi should have been considered

Observation

1. Tryphina and Zweli seem to have deliberately excluded Bonginkhosi by chasing him away from home and hiding the fact that he was related to the deceased when the estate formalities were compiled.

2. As the only known child of the deceased, it was most inequitable to deny him of all benefits from his father's estate. It should never be forgotten that the Roman Dutch common law is not the only operating system of law in the country. And its application in this matter is doubtful.

3. The allegation by Tryphina and Zweli that deceased had no child when in fact he had one, seems somehow conspiratorial. Tryphina died on 4 December 2022 leaving behind no movable assets except for a distributable estate of about one million one hundred and fifty thousand Emalangeni

(E1,150 000.00) from which Bonginkhosi has received nothing. Ref. EM 29/2023.

Conclusion

In the absence of any other available assets, Bonginkhosi should remain at and 'inherit' the home in which he stayed with his father while the father was still alive.

10. ESTATE LATE CALEB FANA DLUDLU ES 35/2019

This matter was first heard by the Commission in March 2024. The deceased Caleb Fana Dludlu died on 7 February 2019, leaving Lina Thoko Dludlu (LaNxumalo) as surviving spouse by customary rites. The deceased had first married LaMkhabela, in Nelspruit, South Africa, in 1963 in terms of the Black Administration Act, 38 of 1927. LaNxumalo was tekaed in 1991. LaMkhabela died in 2004. It is also said that deceased had also married by SiSwati custom one LaMamba in 1983 and had two children with her, but her whereabouts are unknown and is not party to the present hearings. Deceased had 8 children.

The death of the deceased was reported by Lunga (son of deceased) who also filed the Death Notice and Inventory. The deceased had a farm (A/103) in Nhlangano, two plots at Phola Township, Nhlangano, a tractor, planter, 27 cows and a motor vehicle, all valued at about E1 458, 900.

Lunga, born of LaNxumalo and Veli, born of LaMkhabela were appointed co-executors.

The complainants are Lunga (Mlungeleli) and Cwabisile, who are son and daughter of deceased. They hail from Ngololweni, KaMchoza. The bone of contention is that the complainants do not agree that LaMkhabela was by virtue of her marriage in South Africa under the 1927 Act married in community of

property as asserted by other beneficiaries including the Master's office. The real issue before the Commission according to Veli was the type of "our mother's marriage. Otherwise all is fine." Thobile Maziya of the Master's office in KaHlatsi agreed as to the issue before the Commission and that the marriage itself was not in dispute. The question is whether the civil marriage was "in community" thereby entitling late LaMkhabela to a half-share of the joint estate at the time of her death in 2004.

At their next hearing in September 2024, the complainants told the Commission that the matter had been in Court and the Court did not entertain the merits but ruled that the matter had prescribed. The complainants were not happy with the Master's ruling that the civil marriage was in community of property having been entered under the Black Administration Act of South Africa.

LaMkhabela's estate had not been wound up. Whatever the type of marriage the deceased and LaMkhabela had been married under it had become necessary that the estates of the two deceased be separated. The attempt to reconstruct the late LaMkhabela's estate, separated as it is by 12 or so years from that of deceased, would be untidy. One would have to know what assets were already in the possession of the couple at the time of the first dying, that is, in 2004. In the case where the couple had been the only parties to the assets the separation might not be so tedious. In the present case, where the couple was joined by another party since 1991, the exercise becomes very complex. How in the present matter the executor will reconstruct late LaMkhabela's estate is any one's guess. LaNxumalo's purported customary marriage may be bigamous but her contribution to the estate is itself not bigamous. Happily, her marriage is not in issue.

Regarding the recognition of the Dludlus' marriage in Nelspruit in 1963 in terms of the then Black Administration Act, 1927, the Honourable Attorney General, in an opinion of November 2024 to the Master, seems to have taken the view that

the 1927 Act was repugnant and not enforceable in eSwatini. The relevant section of the Act granted a civil rites marriage to Black couples but without community of property unless certain measures were adopted and incorporated into the marital arrangement to ensure community of property. The Master's report of April 2021 states that the Dludlus were married in community of property. There is however no evidence that the preliminary steps were taken by the couple to establish community of property as the Act provided. Even though attacked as repugnant, the 1927 Act did not entirely deny community of property to Africans; it left it to the marrying couple to do what needed to be done to achieve the desired community of property status.

If the 1927 Act is repugnant and unenforceable in Eswatini, then LaMkhabela was never lawfully married.

Caleb, a person of eSwatini, married Lydia Mkhabela in Nelspruit, South Africa, in 1963 in terms of the Black Administration Act 38 of 1927. Section 22(6) of the Act applied. In terms of that section if the couple wished their marriage to be in community of property, they were expected to so declare before a magistrate before entering into their marriage. There is no evidence that the couple made the requisite declarations to avoid their marriage being out of community of property as the section provided. The couple had a clear choice before them.

It is hard to understand how the section can now be said to be or to have been unconstitutional and invalid. Or for that matter, that it cannot apply in eSwatini or that the marriage cannot be said to be or to have been out of community of property. In his opinion to the Master of the High Court, the Honourable Attorney General stated that section 24 of the Marriage Act 1964 did not apply because the Caleb-Lydia marriage was not in terms of the 1964 Act. However, the Attorney General was of the opinion that the Common Law applied to the marriage because of the domicile of the couple in eSwatini, and accordingly "the proprietary consequences of the marriage are regulated by the Common Law". In other

words, neither the 1927 Act nor the 1964 Act apply, so that the Common Law apply by way of 'default'. On this account, the Caleb-Lydia marriage was a marriage in community of property, the Learned Attorney General concluded.

Conclusion

The Commission is of the view that the marriage was out of community of property as provided by the law of the place where the marriage was celebrated.

11. ESTATE LATE WALTER NGANANI DLAMINI SEM 234/2020

Nganani of Logoba (Matsapha) died on 21 November 2015. He was married to Catherine Sihlongonyane and had seven children. Malahle Emmanuel Dlamini is one of deceased's children. Malahle and Esther Nomsa Kunene reported the death of Nganani on 18 December 2020. The inventory shows that deceased had an account with Eswatini Bank with an amount of E553.10 only. Hence the Master's reference number SEM (Small Estate, Manzini). Deceased had a home at Mathangeni, Matsapha. Other than the bank account, the inventory reflects no other assets.

The estate has two reference numbers SEM234/2020 and SEM16/2016. The explanation being allegation that Agnes Jabu Dlamini, deceased's sister who appears to have acquired the death certificate of the deceased, two days after his death on 23 November 2015, had access to the deceased's bank accounts and had succeeded to withdraw money from the deceased's account. This then means that the death had been reported to the Master's office in 2016 unknown to some family or interested members. But search at the banks did not confirm the allegation. How then did Agnes obtain the death certificate so soon after death without the knowledge of the surviving spouse? The usual Death Notice on file by N. Dlamini, said to be dceased's son, is dated 8 December 2020. The Assistant Master reports that letters in 2020 and 2023 to the Eswatini Bank on the issue of

the bank accounts remain unanswered. The Swazibank Account Statement on Account 77011540710 shows only E553.10 and no history to it, such as of earlier withdrawals.

Malahle and Esther are the complainants. They appeared before the Commission on 19 March 2024. Esther told the Commission that she had two children with deceased born in 2002 (Malahle) and 2004 (Welcome). Malahle Dlamini and Esther Kunene reported the death at the Master's Office and Esther submitted the children's birth certificates. But the death notice is signed by 'N. Dlamini' as the informant. Esther says that following the death of the deceased she got nothing for the children from deceased's estate even though deceased provided for the children when still alive. She also told the Commission that the Master's Office in Manzini (Ms M. Mdluli) told her to take the children to an orphanage. The children are entitled to maintenance from the deceased's estate. The children in issue are Malahle (2002) and Welcome (2004). Ntombikayise Dlamini, Assistant Master in Manzini told the Commission that deceased had 7 children and an account at Eswatini Bank. Deceased's surviving spouse was LaSihlongonyane and Esther was a girlfriend.

Jabu Agnes Dlamini, deceased's sister told the Commission that deceased died when he had been taken 'somewhere' by Esther. Jabu said she accepted the two children as her brother's children. The file had not been opened because deceased had no assets. The bank account had only about E550.00 which was given to surviving spouse, Catherine Sihlongonyane. This was confirmed by Ms. Mdluli, the Assistant Master.

Observation

The Master's office must explain how the first file was opened in 2016 and what happened to that file. The two children of Esther are now adults; they are not entitled to inheritance from deceased. There was nothing in the estate from which

to pay for the maintenance of the two children when they were minors after the death of their father.

Conclusion

1. File to be closed, there being no more assets to distribute.

2. The Master's office must respect and deal respectfully with all persons who appear before them.

12. ESTATE LATE ROSEMARY SPRINGLE EM 55/2016

Rosemary died in December 2015. She had been married to Cecil Springle who died in 1988. Rosemary was mother-in-law to Verah Springle and mother to Hendrick Springle and granny to Wandile Springle. Henry reported the death of Rosemary in 2016. There is a Will and Mzwandile Ntjangase is testamentary executor. The Will was read to next of kin but was challenged unsuccessfully in court. Application to rescind the judgment was dismissed and confirmed by the Supreme Court. The Will leaves most of the assets to Sydney Springle, is dated 2015. Hendrick complains that he was not consulted when the portion of land bequeathed to him was separated from Farm 273. This is portion 5 of the farm.

By letter dated 20 July 2024 Hendrick raised some issues in connection to his portion 5, but no satisfactory response. There is also the issue of transfer costs in connection with the transfer of the excised portion(s) to Hendrick. Hendrick also feels that the subdivision of his portion is not in line with the Will. In fact, Hendrick has a litany of complaints about the division, evaluation and distribution of their mother's estate (the deceased) and the manner the executor handled it as well as a false accusation by his brother Sydney that he (Hendrick) had misappropriated some E500, 000.00 paid by Manzini City Council through the office of Chiyanda Property Consultant to the deceased sometime before Chiyanda died in 2009 after having confirmed that the money was due from him

to deceased. Hendrick also has a complaint against Attorney Thabiso Fakudze regarding instruction Hendrick gave to Fakudze relative to a property of the estate in Nhlangano not included in the distribution and denied by the executor Ntshangase. Hendrick alleges that he reported Fakudze to the Law Society and a hearing is pending.

Mr Hendrick Springle also says that he should be paid for the effort deployed in securing the sale and payment of an amount of E500, 000.00 for a strip of land for road project by the Manzini City Council through the office of G.S. Chiyanda Property Consultants. Referring to an earlier project undertaken by Eswatini Electricity Company from which on its success deceased had paid him for effort provided, Hendrick is of the view that similarly on this said road project he deserves to be compensated. *"The responsibility, effort and time I invested in the MCC Road Project warrants that I get a share of the proceeds. I deserve it. In the past, Eswatini Electricity Company had a similar project, I oversaw it and mother gave me a share."*

Due to the delay in payment of the E500, 000.00 as a result of the fact that Chiyanda had deposited the amount from the MCC to his own account and was thereafter sick until demise, Sydney had accused Hendrick of having received and misappropriated the amount and had offered no apology even after Chiyanda owned up and eventually paid it.

Mr Hendrick's other complaint was in connection with the estate property he alleged to exist in Lavumisa, but was not reflected on the distribution account. Hendrick's belief in the existence of such a property was purportedly based on "invoices requesting my late mother to pay rates from Lavumisa Town Board as late as 2019, addressed to her." In pursuit of the property apparently denied by Ntjangase the executor, Hendrick says he engaged Mr Thabiso Fakudze to assist in the search. Hendrick says he gave attorney Fakudze documents for evidence and paid him consultation and file fees. But Mr Fakudze kept making empty

promises about work being done and a year went by. Ultimately, Fakudze vacated his rented office without letting Hendrick know where to find him. After some consideratble search, Fakudze's abode was located but did not want to meet Hendrick. Hendrick says he later heard that Mr Fakudze and Ntjangase had talks where Ntjangase pleaded that he be not removed from executorship. After tracking down Mr Fakudze, the latter agreed to let Hendrick have the file. But to-date no such file has been returned.

By July 2024, the estate dating from 2015 had not been finally distributed. The First Liquidation and Distribution Account distributing an amount of E4, 184,789 was submitted by the executor and approved by the Master. The distribution was generally in terms of the Will. The Account gave to Sydney immovable property valued at E3230k and cash plus movables valued at E456k and to Henry (Hendrick) a plot of E440k. The other children got nothing from the distribution. Importantly, number 2 of the Executor's notes denied the existence of the Lavumisa property mentioned in Clause 3 of the Will. The Note reads: *"In all records and searches, there s no evidence that the deceased owned a property in Lavumisa. Even a Deed's search has yielded no results"*.

In terms of the Will, the property is in Lavumisa Township. Hendrick says he went to the extent of hiring Thabiso Fakudze to look for the property but Fakudze disappeared without reporting back. How did the executor and Fakudze miss the property? Had it not been for the insistence of Hendrick the property would have been lost to the estate. The Master's report of 18 August 2025 does not say how the plot has since been found. The plot is valued at E60k and by a second distribution account, in terms of the Will, the plot is transferred to Sydney.

Observation

1. The matter was reported to the Law Society of Eswatini where it may still be pending.

2. How the Executor failed to locate the Lavumisa property in the first place is hard to say. Evidence has been exhibited before the Commission of the existence of this property and its transfer to Sydney Springle.

3. The distribution of the estate in terms of the Will is unfair and not reasonable.

4. The issue of payments for work done is a matter for the family.

Conclusion

Even though Parliament has not yet given effect to section 29(7)(b) of the Constitution, the section is clear enough that a child is entitled to a reasonable provision out of the estate of his parent(s). Hendrick, like the other children of the deceased, is entitled to a reasonable provision from the estate of his mother.

13. EST. LATE ESTHER PHAMBEKILE HADEBE EL 56/2012

AND

ESTATE LATE ROBERT SAMKELO HADEBE EL 96/2016

Esther and Robert were husband and wife and parents of Graham Mandla Hadebe of Siteki and the complainant before the Commission. The deceaseds were married by civil rites in Barberton RSA in 1952 and also by Siswati customary rites.

The Death Notice of Esther shows that she died on 18 May 2012 but was registered in November 2016. She died in Siteki and was survived by her husband (Robert) and three children Graham, Fritz and Maryline. Esther's death was apparently notified at or after the death of Robert in November 2016. From the Death Notice it is not stated who reported the death. The Death Notice only shows a signature, probably that of Graham. Esther's Death Notice and Robert's

Death Notice record the 10th and 11th of November 2016 as the respective dates on which the Master's office was informed of their passing. The strange part though is that Esther's file number is EL56/12 indicating that it was reported in 2012 and the file must have been opened then. How the Death Notice records 2016 is hard to tell, but does raise the question of how the Master's Officers operate. Mr N. Xulu, then Acting Assistant Master, Siteki, told the Commission that there is a temporary file with no inventory in respect of Esther's death, and that file is pending. The reason for its pending is not stated.

The file, EL96/2016 in respect of Robert is also pending. There is a Will (of 2011) and Elphas Dlamini is the testamentary executor but no executor for Esther's estate. Graham says he did not see eye to eye with his father, the late Robert.

Graham says the Master's Office did not respond to their query about Esther's estate. Instead, the Master said Robert's estate be wound up first. According to Graham, Esther's file disappeared and a case is pending in court. Graham says his grievance is that there is a trust deed that does not account for Esther's estate. Administration of the two estates is stalled and the Commission is prayed to unlock and speed up the process.

The failure to properly report and deal with Esther's estate is partly explained by what Robert had done. It appears that in October 2011, Robert executed a Will in terms of which he bequeathed to his grandchild Sandile Hadebe his rural homestead and fields at Ezulwini area. Robert also installed Elphas Dlamini as testamentary executor. The Will was not a joint Will. The rest of Robert's movable and immovable assets in Siteki and Maphatsindvuku were apparently reserved for donation to Samkelo Family Trust which Robert founded in October 2013 of which he became the sole Founder and (1st) Trustee. In the list of more than ten (10) beneficiaries, Graham was excluded. The Trust was created after the death of Esther.

It is further worth noting that Esther's Death Notice was apparently signed by Graham on 10 November 2016, Robert's Death Notice was signed by Ms Maryline on 11 November 2016. Esther's death notice reflects only three children while that of Robert reflects nine children. We are not told that the deceased had another wife or extra-marital children. Not only was Graham excluded from the list of the trust beneficiaries, he was also required on death of the Trustee to vacate the farm house and demolish the structure built by him from which he was conducting business. This further alienated rather than reconciled Graham and the deceased. Deceased was to be replaced by Marilyn as Trustee. Unhappy about all that had been done to him and banking on some relief from Esther's estate on the belief that his late parents were married in community of property. Graham complained in April 2020 that Esther's estate had not been liquidated although older than that of Robert. He wrote to the Master:

> *"Graham and Fritz approached your office for assistance without any success on several occasions. Graham opened file No. EL56/2012 and submitted an inventory of all assets. Graham and Fritz wrote several letters to your office for assistance all of which the Assistant Master (Cebile Ngwenya) disregarded. In 2016 Robert died and you immediately proceeded in winding up his estate despite letters of objection to that (copies of objections are available). When you published a death notice in the Times of Swaziland in September 2017 Graham wrote a letter objecting to the dissolution which you again disregarded. In one of Graham and Fritz's visits to your office, the Secretary (Mrs Gwebu) informed them that your office had concluded winding up Robert's Estate and therefore will not go back to Esther's Estate. Her words were in vernacular.* ***"Ingoto seyengce indlela" (***the damage must lie where it has fallen***).***

What appears to have happened is that Graham was not told why his mother's estate was not (separately) wound up. Graham does not believe that his father

(Robert) had the right or power to refuse complying with the law. Graham concluded his letter of April 2020 (above excerpt) thus; "*Having narrated the events on Esther and Robert Hadebe's Estates, I humbly request the honourable High Court's intervention by ordering the Master of the High Court to initially dissolve Esther's Estate as dictated by law."* Graham is said to have also challenged the Trust for incorporating the parents' 'joint' estate without the late mother's consent. According to Graham's thinking if their parents were married in community of property then Esther was entitled to half of the 'joint' estate from which Graham would have reasonably benefitted; if married out of community, then still Esther's estate should have been clearly separated and dealt with as required by law. Neither of these happened.

The Master's Office is responsible for not explaining the true situation to the complainants. In the Will of November 2011 (whilst Esther was still alive) Robert does not mention Esther at all. The Will is Robert's own Will. In the Samkelo Family Trust Robert does not say that he was widowed. In both documents, Robert presents himself as single or unmarried. (Check the Trust Capital referred to under paragraph 1.2.7 of the Trust). The explanation subsequently forwarded by the office of the Master that the marriage of Robert and Esther in 1952 in Barberton in terms of the then Black Administration Act 38 of 1927 was out of community of property unless certain ameliorative corrective measures were undertaken -which had not-, and that the later amendments to the Act did not affect Robert and Esther, did not dissuade Graham.

The question becomes whether in terms of the Constitution (2005) Graham has been lawfully disinherited by his father (and or mother) by lumping the mother's estate with the father's estate. Section 29 (4) of the Constitution reads: **"Children whether born in or out of wedlock shall enjoy the same protection and rights."** Has Graham been accorded the same rights of inheritance as his siblings? Born in wedlock, Graham has a full right of inheritance from his

parents. Could Robert by Will or Trust legally divest and disinherit Graham? The answer must be a resounding "No." The subsection may further be read together with subsection (7) (b) of the same section 29: **"Parliament shall enact laws necessary to ensure that ….a child is entitled to reasonable provision out of the estate of its parents."** In our opinion, subsection (7) **may be enforced to achieve** a 'reasonable provision' **for the child** from a parents' estate.

In our view, and notwithstanding the terms of the Will and Trust, Graham was entitled to be allocated his child's share from Robert's estate. Graham may be excluded from the Family Trust but not from his reasonable child's share in the estate. On the assumption that the Family Trust is still functional, Marilyn or her successor in title, should find common ground with Graham and or Fritz with the assistance of the Master's Office. Graham may join the Trust or be given his share.

The Commission notes that in the case of **Nontokozo Marilyn Hadebe N.O. vs Graham Mandla Hadebe [2023] SZHC 243 (2024)** instituted on 28 July 2017, dismissed on 26 February 2019, but on appeal, returned to the High Court by the Supreme Court, for consideration and determination of certain issues, *inter alia*, the validity of vesting in the Samkelo Family Trust of family assets such as Farm 1005 of which 75% of the purchase price was paid by the late Esther, but without first winding up Esther's estate, it being accepted that the deceased were married out of community of property. Regarding the status of the marriage, the Learned Mamba J stated under paragraph [4] of the 10 October 2024 judgment; **"…The marriage certificate specifically states that community of property is excluded in terms of the applicable law. The applicable law of course being the law of South Africa. It is trite law that in terms of Private International Law, the law governing or regulating the validity or otherwise of the marriage is the law of the country where the marriage was celebrated *(Lex loci celebrationis)*, the Republic of South Africa, in this case."**

The Commission has not been told whether there is an appeal against this judgment on this point. Finally, on the lumping together in the Family Trust of the late husband and wife estates, the Learned Judge ruled as follows: **"[22] (b) The donation and transfer of Farm 1005, Siteki, Lubombo District, Eswatini by Robert Bennett Samkelo Hadebe to the Samkelo Family Trust is null and void *ab initio* and is hereby set aside."** This ruling, eminently in favour of Graham, paves the way for the separate liquidation of the two estates, unless challenged. If Graham is no longer alive then his children stand to benefit from Graham's share in Esther's share in Farm 1005, in particular.

Even though section 22 (6) of the Black Administration Act 38 of 1927 provided that Africans contracting their marriage under it that marriage *"shall not produce the legal consequences of marriage in community of property between the spouses",* it contained a proviso making it possible for such spouses to have their marriage to be in community of property, in these terms: *"Provided that…. it shall be competent for the intending spouses at any time within one month previous to the celebration of such marriage to declare jointly before any magistrate…. that it is their intention and desire that community of property and of profit and loss shall result from their marriage, and thereupon such community shall result from their marriage……"* Act 38 of 1927 was lawful by the Constitution of South Africa. On its face there is nothing repugnant or racist about it, it could, as easily, have applied to whites, as well. If this Act is considered unconstitutional, the counterpart law that applied to whites must also be considered unconstitutional. "In community of property" is not necessarily or inherently superior to "out of community of property'. So long as there was freedom to choose, the Act was enough and legitimate. By not acting in terms of the proviso, the couple must be presumed to have voluntarily married out of community of property. The amendments to the Act and the revocation of the section do not affect the marital status of the couple.

As already stated, in the High Court judgment in, **Nontokozo Marilyn Hadebe N.O. v Graham Mandla Hadebe** [2023] SZHC 243, the Learned Mamba J (as he then was) held that the law of a marriage in terms of section 22(6) of Act 38 of 1927 is the law of the place where the marriage was celebrated. In other words, to understand the marital consequences of a marriage in terms of that section 22(6) one needs simply read the section and follow what the parties have done, if anything, to affect the ordinary consequences flowing from a marriage under that section.

Observation

The Supreme Court may have to intervene to set the legal position beyond doubt. The matter is said to be pending at the Supreme Court.

Conclusion

The Commission takes the position that the marriage in issue was marriage out of community of property. This conclusion is subject to what the Supreme Court will finally decide.

14. ESTATE LATE GEORGE EDWIN CRADDOCK EH 247/2001

George Craddock of Ekupheleni died on 17 August 2001. He left a Will and a lady partner. The death was reported at the Master's Office. In 1990 Craddock bought 200 shares in Elangeni Estate (Proprietary) Ltd operating a farm at Ekupheleni. The 200 shares entitled Craddock to 50% stake and directorship in Elangeni Estate. The Elangeni Estate Company had been formed by Peter George in 1975 and had its main asset, the Elangeni Farm, a part of a Land Concession, Farm No. 308, Hhohho District. When Craddock died in 2001 Jan Borrel of Timbutini, Motjane area, became testamentary executor and the lady partner Ms Cynthia Nzima was nominated "to be the sole heiress of all my estate, property

and effects ….” but subject to the estate passing to Craddock’s sons Dean and Lee of Gillingham, (Kent) England, on the death of Ms Nzima. George bought the farm at a public auction at the instance of the Sheriff of the High Court of Swaziland by virtue of a warrant of execution.

When Craddock died in 2001, George said he was abroad in England. When George returned he laid a claim on the late Craddock estate arising from what George alleged to have been ‘theft’ of gum timber by the late Craddock from Elangeni Estate. However, according to George, Craddock estate had no assets to satisfy his claim of E95 000.00. In the result, in his distribution account of May 2004 Borrel agreed to the transfer of 200 shares from estate late Craddock to Peter George. The effect of this transfer was that the Craddock estate lost every share in the company and in turn the entire Craddock farm hitherto represented by the shares deceased had in the Elangeni Company.

Incidentally, Borrel’s distribution account was not approved by the Master. Borrel resigned as executor in 2007 alleging that he had been accused by Ms Nzima’s lawyer of being ‘**biased towards Mr George … I deny this charge (and) I feel that I should withdraw as Executor … and hereby hand in my resignation.”**

In an agreement reached in 2002 between George and Estate Craddock, the value of the lost gum trees was placed at E96 890.00 being the equivalent of 130 shares in Elangeni Estate Company and further estimated to be about 29,03 hectares of the company land. The remaining 70 shares in the late Craddock estate after the transfer of the 130 shares had a linked right to a portion of land measuring 9,47 hectares of the farm. The foregoing share – land transaction was seemingly unacceptable to Ms Nzima as testamentary beneficiary of the estate late Craddock. In the result, another agreement was reached in 2004 between George and the Estate. By this agreement the Estate was to retain 30 hectares instead of the 9,47 earlier agreed upon. In the process, George was to regain the earlier

remaining 70 shares. How Ms Nzima understood this transaction is hard to comprehend, but Ms Nzima signed the agreement. In effect, the Estate no longer had anything in the company. The long and short of it is that the claim of Peter George in Estate late Craddock was settled. George confirmed that he no longer had claim in the Estate Craddock during his February 2024 appearance before the Commission.

The 2004 agreement however, did not ensure peace to the Estate late Craddock. After Borrel's resignation, between 2008 and 2013 there was no executor for the Estate. Ms Nzima who had remained in a house on the Estate was forced to abandon it and eventually died about 2018 without ever fully enjoying her usufructuary benefit as provided by Craddock's Will. In the meantime between 2008 and 2013 the house on the Estate was burnt down. In 2014, Attorney, Mbuso Simelane was appointed, by the Master, as executor for the Estate and George says he regrets the day Mr Simelane was so appointed.

As soon as Simelane became the executor in 2013, he submitted a claim for the Estate against Peter George. For instance, in a letter of August 2013, Mr Simelane wrote to George, *inter alia*, stating, **"5. I confirm that all previous agreements that you entered with Cynthia Nzima have been annulled (as per her claim) and in any event I am not bound by them. 6. Mr Borrel never filed a Distribution Account to incorporate your agreements in a Redistribution Account. 7. I further confirm that in order to generate estate funds I have authorised Cynthia to cut timber within the 38,5 hectares belonging to the Estate.**" Significally, however, Mr Simelane alleged that George was involved in illegal sale of 'concession land' and removal of building materials and other memorabilia belonging to the Estate – but of which there is no sufficient evidence to prove.

Mr Simelane presented a distribution account in January 2015 in terms of which the (former) 200 shares in Elangeni Estate Company were as per the Will, to be

inherited by Craddock's two sons in Gillingham, England and an amount of E2, 091.00 to Cynthia Nzima (then still alive). An amount of E450 000.00 was left outstanding to be dealt with in a later distribution account. That account has not been presented and Mr Simelane resigned from the role of executorship in 2023. The Distribution Account that Mr Simelane presented has itself not been approved so far. Currently, the Estate has neither executor nor curator. The Master must ensure that the estate assets are not dissipated. The many other issues, accusations and counteraccusations, between George and Simelane on the one hand, and between George and the Master on the other and the manner that George alleges to have been treated by Mr Simelane, the police and the Master would call for further and thorough investigation to decide as to who is guilty and who is innocent.

George said he was complaining about the Master (Ms. Thomo) who had suggested Mr. Simelane as executor describing him as a "very experienced and honest lawyer", in 2013. George said he handed to Mr. Simelane all the papers he had on the estate, which had already been wound up: *"Mr. Simelane wrote several letters in which he accused me of lying and that I should hand to him the shares and directorship of the company. I refused."* "Simelane", continued George, ***"wrote and said if I do not agree to transfer the shares he will change the documents,"*** but the Master did or said nothing despite several meetings George says he had with her.

About 2018 – 2019, George says his file disappeared from the Company Registry and he could not submit company (income) returns. That was the position for about three years. In 2023, George says he met the Attorney General and Minister of Justice resulting in the file returning: *"I do not know where from; may be Mr. Simelane knows"*. In August 2018, the Times (of Swaziland) published something about George based on a letter *"by Mbuso Simelane and mysteriously inserted in the request for costs and had nothing to do with the matter before*

court. The letter was headed **'Racist Farmer, Peter George . . .'** [26] *said to have used the 'k' word to Mr. Simelane in the presence of the Police. The letter described me as a* ***'racist'****; it hurts me very much to be called a racist. I have been married to a lady from Soweto."* The letter also said Peter George had stolen E2.5M from the deceased estate – including trophy from the estate. The Master was made aware of all this. The letter was totally untrue, a fabrication, said George.

The gum tree on the farm is a source of income. Simelane removed and sold some of the gum trees for various reasons purportedly to administer the estate or allegedly that the labourers were the persons stealing the gum timber. George says he reported this to the Master but nothing happened – not even a response. On three occasions, George says he called the Police and opened dockets. The Police allowed the removal of the timber on a lorry after Mr. Simelane spoke to the Police. So, the theft continued until nothing remained. The Master was informed of the damage all the time but no intervention.

George says he also approached the Ministry of Agriculture who prepared a report a copy of which was handed to the Master. Damage due to the improper cutting of the gum trees was estimated at about E1.2M. The Master never responded save for a document stating that no permit has ever been granted for removing of the gum trees from the farm. Where is the money for all the gum trees removed from the farm, George wants to know. The deputy Master is said to have promised to look into the matter but has done nothing so far.

As far as this Commission is concerned, George having no claim against the Estate, that closes the door on George pursuing any such course. Any other claim that the George might have against estate or any other person is a matter for the next executor to determine. So far there is no approved distribution account for

[26] See **Times of Swaziland,** Wednesday 29, 2018 at p. 18

this Commission to consider and decide. Considering the period it has taken since 2001, the urgency for closure bears rather heavily on the Master.

George accuses the Master of failure to respond and take action to several letters of complaint. George is of the view that the Master's failure to act in the matter of complaint is what has encouraged Mr Simelane and the police to also do nothing. Importantly, however, George's grievance against the Master and Simelane and the Police is that the Master wrongly accused George of 'bragging' that he regained the 200 shares Craddock had bought from Elangeni Estate Company that Mr Simelane, *inter alia*, falsely published that he (George) was racist and was selling concession land by way of 'land clearance' and the police did nothing when a lorry unlawfully removed gum trees from his farm. In the view of the Commission these complaints are not estate issues. This is not to justify or condone any wrongful or malicious treatment that Mr George may have suffered in the process. Other forums may be available to George. It is further the Commission's opinion that the Master should do more than hitherto to ensure the late Craddock estate – 25 years old – is brought to an expeditious close and importantly to treat all complainants with an even hand.

Observation

1. As for the allegation that Peter George has been engaged in the sale by way of 'land clearance' of 'concession land', Mr Simelane is currently in a better position to do the necessary research as to the legal fate of the so-called 'perpetual' concessions as the Elangeni Estate is, that is "Land Concession No. 30P".

2. In the case of **Peter George and Another vs Mbuso Simelane N.O. [2018] SZSC31 (13/08/2019)** the Supreme Court, by majority, held that Peter George was "the registered owner of a land concession". What this means in practical terms is yet to be unravelled. For present purposes, it

means that a 'land concession' is amenable to private ownership. There must be a law to permit this and that is what the office of the Attorney General needs to consider and put to rest any prospective allegations concerning similar instances.

3. On the understanding that Elangeni Farm is private property, the success of the bequest to Craddock's two sons in England, with no clear address, is doubtful. The land bequeathed might end up being *"un-owned"* in time to revert to the State.

4. The manner that Peter George alleges to have been treated by the executor, Mr. Mbuso Simelane, the Master's office and the Police may warrant further investigation by an appropriate body.

Conclusion

1. If there is still property outstanding, the Master should appoint an executor to complete the winding up and close the file.

2. Where property falls to be inherited by persons the whereabouts of whom are to the executor and Master unknown, the property must remain in the Guardian's Fund or other appropriate account known to the Master and its status checked by the Master annually and reaffirmed by the Attorney General every five years until its takeover by the State after thirty years if still unclaimed.

3. The Master is cautioned on the need to take her duties seriously and respond to situations as necessary.

15. ESTATE LATE DUMA SIMBAPHI DLAMINI EH 145/1992

Duma of Mgazini, Mankayane died on 28 March 1992. The death was duly reported by Homeboy Dlamini, who was later appointed the executor until 2010

when Langa, Sandile and Pholani (all sons of deceased) became executors. Deceased left three surviving spouses by customary rites. The first was LaMasuku who had ten children; the second was another LaMasuku who had seven children and the third was LaShabangu who had nine children, totalling 26 children as reflected on the distribution account. Homeboy is first of senior LaMasuku's children.

Homeboy had prepared the first liquidation and distribution account which was disputed by Mabili (son of deceased). This resulted in the removal of Homeboy and his replacement by the three co-executors in 2010. The co-executors submitted a final liquidation and distribution account that the Master approved in June 2024. It is noted that in a judgment delivered on 19 June 2014 at paragraph [15] it is stated that **'…. the Final Liquidation and Distribution Account has been approved by the family as well as the second respondent in the absence of any objections.**" See *Langa Dlamini N.O. and 2 others vs Mandla Homeboy Dlamini and the Master of the High Court [2014] SZHC124* (19 June 2014).

The immovable assets of the estate consist of nine farms valued between twenty and twenty-five million Emalangeni. There are other smaller movable assets such as tractors and farming equipment, over two hundred and fifty (250) cows and a shop, to name a few. The surviving spouses had their own separate self-supporting homes. Some of the farms were leased to Montigny, a forestry company.

The complainants are Homeboy Mandlenkhosi and Sanele Sydney, both sons of deceased. The two appeared before the Commission on 21 March 2024. Homeboy stated that he was also representing other beneficiaries including three sisters. Homeboy and some of the beneficiaries were unhappy with the distribution affecting several of the immovable assets of the estate. As a result, in 2023, they (complainants) approached the Master's Office and met with the Deputy Master. They were also unhappy that there was a trust of which they

knew next to nothing as they were not consulted on its formation in 2020 at the instance of the three co-executors as revealed by Attorney Lewis Ndlovu of MJ Manzini and Associates. The complainants were also unhappy that trees were grown close to LaMasuku's (senior) homestead by Montigny Company as they did not know the terms and conditions thereof. The Deputy Master's response was that there should first be distribution before the complainants could be attended.

At the last hearing of this matter on 2 September 2024, Ms Joy Maphanga, Assistant Master Manzini, with reference to the complaints by Homeboy, stated that a draft distribution account was not approved as the real properties were put in the trust deed by the co-executors without the consent of some beneficiaries. A new distribution account was required from the executors. The new account was approved as it benefitted all the beneficiaries, including those that had since died since the demise of the surviving spouses were not affected by the final distribution. This account was approved on 27 June 2024. As a Commission we see no problem in the approval by the Master's Office.

The removal of Homeboy from being executor in 2010 was also supported by Mabili. There were complaints that Homeboy was taking time winding up of the estate. It was said that Homeboy did not convene family meetings and, importantly, a large number of cattle belonging to the estate were not accounted for by Homeboy. He was generally slow in processing the winding up and the valuation of the farms to the prejudice of beneficiaries. It is, however, explained that due to the large transfer costs of the farms to beneficiaries, a trust was preferred against the sale of the properties. Several distribution accounts were submitted but not approved by Master. In 2010, with judgment in June 2014, the tripartite executorship went to the High Court for an order:

> **"… interdicting and restraining the first respondent from dealing with assets of the late Duma Simbaphi Dlamini, Estate no. 145/1992. They**

further sought an order ejecting the first respondent … from the immovable property of the Estate. They also sought an order directing the first respondent to account to the current co-executors in his capacity as a former executor of the Estate."

The application was dismissed on account of its failure to meet the requirements of a final interdict. The first respondent referred to in the above excerpt was Homeboy Mandla Dlamini, the leading complainant before this Commission. The second respondent was the Master of the High Court. Ref [2014] SZHC 124, the judgment per M.C.B. Maphalala J (as he then was) further states:

"3. The applicants contend that the first respondent continues to interfere in the affairs of the Estate by using the assets of the Estate for personal gain and denying others access to the farm situated at Mankayane. They further contend that the first respondent is in the process of disposing (of) a herd of cattle belonging to the Estate to the prejudice of the other beneficiaries. They further contend that the first respondent, after using the assets of the Estate, he leaves them unattended and idle. To that extent they referred to a tractor which was abandoned and left idle and unattended after he had used it. They argued that the conduct of the first respondent borders on contempt of the court order made by this Court on the 5th December 2008."

True enough, the first respondent denied interfering with the winding up of the estate as alleged. He also denied misuse of the Estate's assets or the use of foul and insulting language towards the co-executors.

From a communication of August 2024 between the Attorneys representing the co-executors and the Attorneys for Homeboy and his sisters it appears that the establishment of the family trust has not been entirely successful. Homeboy and his two sisters have not signed on as beneficiaries; instead they require their own

shares from the Estate. The information required by the executors' Attorney seems to the Commission likely to unduly delay the winding up of the Estate. The family trust being stuck for lack of consensus, the estate should remain in the Master's Office to oversee its ultimate liquidation. Where some of the beneficiaries are not immediately available, the Master knows where to keep their shares until they are collected. Distribution of estates of deceased persons is the province of the Master's Office and not attorneys. In the instant case, the family trust (as may be reconfigured) may be continued after the distribution has been effected. The Master should call upon the co-executors to present a final distribution account. The continued delay can only be to the prejudice of the beneficiaries and undue benefit to attorneys. In this regard and in conclusion reference is made to the letter of the then executor, Mandla Homeboy Dlamini, dated 8th October 2006, paragraph 2 of which reads in part:

> *"The delay in distributing the remaining assets consisting mainly of plots and farms and some cash is caused by failure of the family members to reach a common ground on whether to transfer the assets to a family company in which all of us shall be shareholders each holding equal shares,"*

or distribute the assets equally among the three houses and their children. The executor had considered, as reflected in paragraph 2.2 of his letter that:

> *"... it will be impossible to agree on the use of the assets under the family company as we are unable to agree to meet as a large family each wanting his or her views to prevail over the others."*

Observation

1. Paragraph [15] of the Judgment in part refers to a Final Liquidation and Distribution Account as having been approved by the family and 'the

second respondent', i.e. the Master. That account could be used to advance the winding up of the estate.

2. Indeed, in light of the letter dated 15 August 2024 from the Attorney of the co-executors, Homeboy seems to be correct in above observation of the family being unable to meet as may be required.

3. Distributing according to the three houses, represented by the three widows would be a shortcut to a long and uncertain process.

4. The beneficiaries who agree to a Family Trust would then regroup and constitute the Trust as envisaged. Even now, the administration of the estate could be brought close to finality if the share-benefits of the beneficiaries not easy to reach, as shown in the letter of 15 August 2024, would be left in the Guardian's Fund for collection as and when they come home from abroad.

Conclusion

A final liquidation and distribution account acceptable to the family should be presented for consideration by the Master's office. The distribution should not be understood as denying or doing away with the trust idea.

16. EST. LATE MSHAMNDANE BENJAMIN SIBANDZE EM 47/2021

Mshamndane died on 13 January 2021. At time of death Mshamndane was widowed since October 2005. The deceased and his former wife had a joint Will. The death was duly reported on 21 January 2021 at the Master's office by his daughter Phumzile Esther Mdladla. The deceased was survived by four children, three girls and one boy, Rodwell Vusani Nsibandze. For some reasons hard to understand and may be unnecessary to detail, Vusani had a birth certificate, purporting to have been informed by the deceased as his parent (father). But

Vusani claimed not to be a 'Nsibandze' as shown on the certificate. He was the eldest of the siblings. Whilst the Death Notice lists Vusani as one of the children, there is a warning against his name "Pending paternity test." In the view of the Commission there is no serious legal challenge to Vusani's paternity, no matter what he or anybody else might say, short of a court order or a DNA. Deceased had five plots (three in Manzini and two in Mbabane), valued at about E16, 228, 000 as shown on the inventory. Movables valued at E469, 000 being motor vehicles, mechanical farming equipment and firearms, and an undisclosed amount of cash from various financial institutions. In terms of their joint Will the deceased appointed the survivor to be executor/executrix, failing which the three daughters namely Phumzile, Bongiwe and Busisiwe were appointed as co-executors. The paternity of Vusani was mentioned at the first next of kin meeting amidst protest by Vusani as to its relevance. The Assistant Master, Ms M. Mdluli referred the issue for consideration by the family. Phumzile and Busisiwe were confirmed co-executors.

Vusani has challenged in High Court Case No. 1633/2024 the Joint Will of his parents for an order that the Will is "null and void, *pro non scripto* and invalid." Having lost in an earlier case at the High Court, in Case No. 298/2022, the appeal to the Supreme Court was struck off the roll in Case No. 17/2023 for failure to file record on time. Case No. 1633/2024 was in turn dismissed on the basis that the earlier appeal was pending as it had not been dismissed but only struck off the roll.

The Commission notes that applications like that of Vusani in this matter ought to be discouraged as ill advised. Of what benefit to Vusani would be an order invalidating the Joint Will and declaring deceaseds to have died intestate. The estate would probably be divided and if Vusani is not a 'Nsibandze' then he would share with his sisters from the late mother's estate and lose out from Mshamndane's estate which would be shared only by the three sisters. In the

event, Vusani is a loser; such litigations should be discouraged as only benefitting the attorneys at the expence of the estate.

On 14 March 2024, came before the Commisssion, Rodwell V.O. Sibandze and Lydia Nkosazana Sibandze and Artwell Dlamini all from Lwandle, the usual area of residence of the deceased whilst still alive. The appearers presented themselves as son and nephew and a friend (of the son of the late Mshamndane Benjamin Sibandze). The trio was led by and its spokesman, Rodwell (Vusani) Sibandze. The deceased, husband and wife, were married by civil rites in community of property.

Vusani complained that only the family members – excluding the extended family – were called by Gigi Reid (Attorney for the co-executors) and the Master. The Will was found with Knox Nxumalo (since late). Vusani (clearly implying that he was against the Will) stated that his interest was "to keep the customs of my family as my father did;" he refers to 'incwala tradition'. He alleges that Gigi wrote to say "I do not belong to the family". The Will from Knox is forged; the Will was signed on 17 October 2005 and Bhacile (the mother) died on 19 October 2005. Vusani further complained that the executors deny that he is one of the deceased's children. Lydia supported Vusani. She stated that (they), meaning Vusani and Lydia, were adopted by deceased. That deceased told them about the Will but not the one read before the family. There was also a complaint about the file being lost and that they reported the loss to the Chief Justice.

On 22 August 2024 the matter was again before the Commission. The executors reported that the liquidation and distribution account was being contested as the earlier court case had dealt with the Will only.

The issue of Vusani's paternity, if still live, should be considered as a non-starter in light of the Birth Certificate. In the absence of any other pending issue, the Estate should be considered free for final liquidation and distribution. Indeed, in

the Master's recent report of 14 April 2025, a liquidation and distribution account, approved by the Master, is attached; it is the first and not the final account.

Conclusion

Complaint(s) dismissed as unsustainable.

17. ESTATE LATE JOHN FLY SIMELANE ES 53/2019

This matter first came before the Commission on 6 March 2024. Cecilia Ndzimandze (LaSimelane) and husband Musa Patrick Ndzimandze from Mahlalini, KaHlatsi presented. Fly died on 25 April 2017 and his death was reported by Andrina Simelane, purporting to be surviving spouse by custom. Andrina was also appointed executor. It would appear, however, that deceased had allegedly first married Jane Fihliwe Simelane by civil rites. If this is true then deceased's marriage with Andrina was bigamous. There are five children, a plot at Ngwane Park, another at Mathendele Township. Fihliwe claimed to have been married to Fly by civil rites in community of property. To support this claim, Fihliwe presented an ABRIDGED certificate that the Mater's office did not approve. In the result, Fihliwe was excluded from benefiting when the complainants had expected a half plus child's share from deceased's estate. Jane Fihliwe is said to have died in February 2019. Fihliwe was the mother of Cecilia.

Musa also complained that the Assistant Master, Ms T. Maziya, was not accessible for their case. Maziya, however, denied the accusation alleging that she met Musa only once. Ms Maziya, however, confirmed that the first wife (Jane Fihliwe) was excluded from benefitting. The problem with the purported civil rites marriage was that Fihliwe had presented an abridged and incomplete certificate alleging it was evidence of a civil rites marriage in community of property. The assistant Master did not recognise the abridged version. However, Cecilia and Musa subsequently obtained a so-called full version of the abridged

certificate of 1968. The full version is dated 6 March 2024 and undersigned by one Nkosinathi Mboneni Zwane in the capacity of 'Regional/Assistant Regional Civil Registrar' and purports to be a 'certified true copy of the original'. The full version, purporting to be a 'true copy', was presented to the Assistant Master. The appearance of this alleged 'true copy' seemingly made the Assistant Master to change her mind and declare Andrina's customary marriage bigamous and void. Andrina challenged this change of status that motivated the Assistant Master to want to replace her as executor. The matter is pending in the High Court.

The Commission has some difficulty understanding why a 'true copy of the original', 1968 certificate, should bear a signature of March 2024.

The ABRIDGED MARRIAGE CERTIFICATE [B.M.D. 25] is stated as [Issued in terms of Sub-Section (2) of Section twenty-two of the Births, Marriages and Deaths Registration Proclamation (Chapter 131 of the Laws of Swaziland)]

According to the affidavit of Andrina, the Master had initially rejected the ABRIDGED certificate as evidence of a civil rites marriage in community of property. The Master only changed tune when a usual marriage certificate was submitted in replacement of the ABRIDGED. Unlike the first certificate, the second certificate purports to be "issued in terms of Section 29(1) of Births, Marriages and Deaths Registration Act (Chapter 131 of the Laws of Eswatini)". On its face, the Abridged certificate is silent as to the type of the marriage it represents. It cannot be said to represent a civil marriage in community of property unless the law/Act in terms of which it is produced is known. That law is reflected as Section 22(2) of Chapter 131 of the Laws of Swaziland. A perusal of the relevant Chapter at the Law Library has not supported the assertion. Cecilia must produce the relevant evidence to support the authenticity of either the Abridged version or the alleged 'true copy'. The said 'true copy' is itself suspect.

The ABRIDGED version of the Marriage certificate seems to be a simpler version of the UNABRIDGED MARRIAGE CERTIFICATE found in the case of John Solomon Mncene Nxumalo EH 4469/1985 below. The Abridged version does not even state the type of marriage involved. All the certificate records are the Name and Age of Husband; Name and Age of Wife; the Date and District where marriage solemnised. Even presuming the marriage to be a Civil Marriage there is still a challenge as to whether it is in or out of community of property. The Abridged certificate bears on its top the official British Insignia / Coat of Arms with the letters 'E' and 'R' usually standing for 'ELIZABETH REGINA'. The Simelane marriage was solemnised in November 1968, three months after Independence. The said certificate could very well have been official. The 1964 Marrige Act was already in force. Under this Act 'civil marriage' unqualified would be marriage in community of property. A qualified marriage officer would have been aware of the Act.

In respect of the Ngwane Park plot, there is a case pending before the Supreme Court. On the second appearance of the matter on 12 March 2024 it was revealed that there had been an objection to the distribution account as then submitted, requiring amendment. That is, the 'second and final' distribution account which excluded Fihliwe to which she objected. The account distributed the value of Plot 1061 Ngwane Park in the amount of E1 200 000. The account had been approved by the Assistant Master in July 2023. Question is whether Fihliwe should be included in this distribution and Andrina excluded.

Observation

1. The so-called 'true copy', contrary to the Abridged version, purports to be in terms of Section 29(1) of Chapter 131 of the Laws of Eswatini. Beside the fact that there are no 'Laws of Eswatini' in this country, the section 29(1) has nothing to do with the subject matter at issue.

2. Even accepting the marriage to be a "Civil marriage" how do we know if it is in or out of community of property unless we know the law in terms of which the marriage was solemnised.

Conclusion

1. The Commission is unable to reach a conclusion on the facts before it.

2. The request made by the Commission to the Births, Marriage and Deaths department at Home Affairs yielded no response.

18. ESTATE LATE CHARLES SANGWENI DLAMINI EH 16/2006

The deceased (Sangweni) died on 4 January 2006 and was reported by Zanele Fikelephi Dlamini (daughter) on 19 January 2006. As appears on the Death Notice, Sangweni of kaLamgabhi, eTiyeni area, left behind his widow Thulie Dlamini, nee Hlopheand ten (10) children. Fikelephi also filled in the inventory. At the first next of kin meeting on 1 March 2006 Thulie was appointed executor.

The complainant is Lindiwe, daughter of the deceased. She appeared before the Commission on 4 July 2024. Her complaint was that their mother Thuli, the executrix received the same amount of money as the children of the deceased from the distribution, Lindiwe thought that was wrong.

The Master's Office explained that in accordance with the law and notwithstanding the Constitution, Thuli the surviving spouse under customary law received a child's share from deceased estate. As per the complaint, that is what Thuli got, a child's share. Lindiwe then explained that the 14 herd of cattle that had not been declared as part of the inventory were either lost or died and nothing remained for further distribution.

On further checking, the Master's Office showed that the following beneficiaries, Thulie, Temlandvo and Hlulizitha had not collected their monies. George Langa,

the Acting Assistant Master responsible for the file arranged for the beneficiaries to collect their shares. The Commission was later informed that by end of August 2024 Hlulizitha had collected his share of E4 896.48 but not Thabile and Temlandvo.

It would seem then that the deceased estate was liquidated and distributed in two accounts. The 1st Account was certified and signed off in June 2006 for an amount of E31, 559.40. The 2nd Account distributed an amount of E13, 164.96 in October 2006.

From the report submitted in respect of the 1st Account, it appears that three beneficiaries had not collected their shares from the Master's Office when the matter was first heard on 4 July 2024. But since then, one of the three, Hlulizitha, is said to have collected his share on 11 July 2024. By the end of August 2024 the remaining two, Thabile and Temlandvo, had not collected their shares. The 1st Account shows no stamp of approval by the Master's office although duly advertised. This Account is dated June 2006.

By end of June 2025 the Commission had not been told that the outstanding shares have since been collected. The Master's report does not show what the Master's office had done to ensure that the two beneficiaries collect what belongs to them. The beneficiaries have their parental home at kaLamgabhi (eTiyeni area), less than an hour's drive from Msunduza Location, Mbabane. The Master might say that is none of her business. May be 'yes'; may be 'no'. It is now twenty years and the file has not been closed.

The 2nd Account of October 2006 shows a distribution to (11) eleven beneficiaries supported by payment vouchers and requisitions. But there is no statement in the report that all the beneficiaries have received their benefits. And it would be strange that all distributions in the 2nd Account have been collected but Thabile and Temlandvo have still not collected their benefits from 1st Account. The two

Accounts do not have the usual Master's stamp of approval. There is no statement that the estate has been finalised. 14 herds of cattle have not been accounted for – said to have died or got lost.

As to the main complaint, Lindiwe may be right. It is not really a half or child's share that Thuli is entitled to but a reasonable provision from the estate. It has not been explained whether a child's share was considered a reasonable share/provision in the circumstances of this estate. The Master must take a position in such cases. The executrix did not give a clear explanation for the herd of 14 cattle. If the 14 cattle are accounted to her then a reasonable provision in terms of the Constitution is achieved in the circumstances of this estate. But the situation should be explained to the complainant.

Observation

1. Ultimately, the Master is responsible for all reported estates, if not to close the files herself then to ensure that someone closes them.

2. Overall, the executrix has received a fair or reasonable provision in the circumstances of this estate if the 14 'lost' cattle are accounted to her.

Conclusion

The complaint is dismissed, considering all the facts presented.

19. ESTATE LATE ESTHER THEMBA NXUMALO EM 113/2010

Esther Nxumalo nee Ntsele died on 16 April 2010. She was a widow since 1997 and had no children except for her deceased husband's child. She left a Will executed on 31 March 2010. The Will instituted Busisiwe O. Ntsele, a grandniece of the deceased, as executor. Deceased was Buyisile's aunt. Buyisile said she had reported the death on 21 April 2010. The death notice does not confirm this.

The complainant is Buyisile M. Ntsele from Mzimnene, Manzini district. Ms Ntsele appeared before the Commission on 3 July 2024. Her complaint was that whilst she was a beneficiary in terms of the Will in a first account, she was excluded from benefitting under a second distribution account. The first account distributed over E600, 000 cash found at Standard Bank. Deceased also owned Hhelehhele Rest camp and an Isuzu. There were about seven or eight beneficiaries under the Will.

On the day of the hearing, Busisiwe was not present, said to be away in Italy.

After two distributions in June and September 2010, the Will was contested by the Nxumalo relatives, the 'children and or grandchildren' of the deceased's late husband. The deceased was rendered intestate when her Will was set aside by order of the High Court under **Case No. 337/2013**, granted on 12 July 2013, by His Lordship S. B. Maphalala PJ (as he then was). Reasons for the judgment were not given other than that the application was not defended, abandoned by Attorney Ms Da Silva, on the day of hearing. No explanation for her absence at the hearing. The Will having been set aside, the deceased rendered intestate, the question of who were the beneficiaries arose. Who were to be the heirs in intestacy as the deceased had no children of her own? The Master was reluctant to take immediate action until August 2017. The Nxumalo relatives not being children of the deceased applied to Court for an order that the Master recognise them as intestate heirs. The order was granted **by Her Ladyship D. Tshabalala J.** Again, the reasons for the recognition are not on file. At that point, most of the assets had been distributed except for the Rest Camp.

At a next of kin meeting before the Master, Sipho Nxumalo and Sonto Dlamini were appointed co-executors. The executors sold the Rest Camp and paid to the Guardian's Fund.

The application for recognition of the heirs, before Her Ladyship Tshabalala J, was successful, and gave rise to the liquidation and distribution account of January 2018, which the office of the Master examined and approved. The amount distributed was E750 000 indicated as the price of the Remainder of Portion 26 (A portion of portion BO Farm No. 11 Manzini). The actual amount available was distributed to Sipho Nxumalo, Nomasonto Nxumalo, Thembeni Nxumlao, Bonkhe Nxumalo and Sonto Dlamini. The Nxumalo beneficiaries are indicated as 'major sons and daughters'. The Ntsele part of the deceased family was entirely excluded. Ordinarily, deceased having no children, the estate should devolved on deceased's Ntsele nieces, the children of her brothers.

How these Nxumalo 'sons and daughters' qualified to be recognised as intestate heirs is not clear. The complainant is part of the excluded Ntseles who were legatees under the Will. The second and final account was certified in January 2018 by the co-executors and approved by the Deputy Master.

The report filed by the Master's office consequent upon the complaint states that the last-mentioned account was in fact implemented in about June 2018 and only an amount of E97 804.00 remains in the Guardian's Fund. The implementation of the account seems to have been a mistake because the court order of August 2017 was challenged in court by the complainant in September 2017 with a view to a rescission. An interim order for a stay pending the finalization of the matter was obtained in October 2017 by Gigi A. Reid Attorneys, representing Buyisile Ntsele, the complainant. In June 2019 the complainant's attorneys wrote to the Master's office enquiring whether the stay order was still observed since judgment had not been delivered by Honourable Tshabalala J. The response was that the account had been distributed since the Master's office said that they were not aware of the stay order referred to by Gigi A. Reid Attorneys.

The application for rescission was first heard on 2 November 2024 and on three dates in 2020, once in 2021 and twice in 2025 and finally judgment delivered on 23 July 2025. See High Court Case No. 1097/2017 (23 July 2025).

Soon after the rescission application was granted on 23 July 2025, the Applicant, Buyisile Mildred Ntsele, filed an application to interdict the Master and her Nxumalo cousins from distributing the account that had been prepared by the co-executors after being recognised as intestate heirs. That application was heard on 30 July 2025 and judgment delivered on 21 August 2025. The interdict was denied on the ground that Applicant had delayed the application. By then, distribution had already taken place in the face of the interim order staying execution. The applications were heard before Justice D. Tshabalala J.

Observation

How the Master's office was not aware of the interim stay order is hard to understand. Similarly difficult to understand is why the attorneys allowed this matter to remain pending in court for so long. The Attorney for the co- executors, Mr SC Dlamini, also, should have known better and not allowed his clients to distribute in the circumstances. The prejudice to potential beneficiaries must have been evident. How did the E97 804.00 remain in the Guardian's Fund?

Conclusion

The co-executors, Attorney SC Dlamini and the Master's office were negligent in allowing the distribution by the Nxumalos while the matter was pending in Court. Unless otherwise justified, the amount of E97 804 should be distributed to the Nxumalos and the Ntseles.

20. ESTATE LATE PHILEMON LUDAWU DLAMINI ES 85/2013

The death of deceased was reported by Mabizela Dlamini. Deceased died testate in 2013. Mabizela is testamentary executor. Florence Hadebe was surviving

spouse by civil rites and (late) Maria Masuku had been married by customary rites. Deceased's assets consisted of a farm, 149 cows and 20 goats, 2 tractors, 1 lorry, 4 cars and farming equipment. Executor has not distributed nor followed the Will and the cars were said to be roting at home and the beneficiaries were not getting anything from the estate. The Will was not challenged. The Will gave 40 cows and 20 goats to Maria and similarly to Florence.

Attorney T. Mlangeni read the Will at complainants' home. The Will divided the farm into "two equal portions, each portion to be registered in the name of my respective wives". The Will envisaged, among other things, the farm being divided between the two families made up of the two wives and their respective children, each family getting half of the estate, that is, Mabizela's mother and Mzikayise's mother. The cows were branded according to the families.

Mzikayise Dlamini (a son of deceased with Maria) complained that Mabizela decided to throw out the cows and goats belonging to Maria from the farm to become the responsibility of Mzikayise.

In 2017 the cows and goats belonging to the two families were separated. Mabizela said the cows and goats belonging to Maria owed E98 000.00 to Mabizela's part of the farm. This decision resulted in 13 cows being handed over to Mabizela by Muzikayise. At the time of the hearing, according to Muzi, available money in the estate had not been distributed by Mabizela. The office of the Master objected to any suggestion by the beneficiaries that did not seem to be in accordance with the Will. It was only after the complainants had been to the Commission that the Master's office urged Mabizela to release a car and a tractor for use by Mzikayise's side of the family while still working on the subdivision of the farm. Before the Commission, Muzikayise also stated that money from farming and the sale of trees had not been divided by Mabizela.

At a next of kin meeting, the deputy master (L Magagula) told Muzikayise that it was not true that the Will was not followed. According to the Deputy Master distribution happened in 2016 according to the terms of the Will.

The families or beneficiaries have not been to the Master since the last meeting with the Commission. They meet at home but not much progress has been made. A stumbling block seems to be just where the dividing line should be placed on the farm. When Mabizela and Muzikayise, with their supporters, returned to the Commission on 7 August 2025, it was evident that agreement would not be easy to reach short of a radical change of heart on one or both sides of the divide. Primarily, the farm should be legally divided and fenced to avoid the situation resulting in Mabizela demanding payment from Muzikayise..

It would seem, the testator had only generally indicated where the divide should be, along a certain river, but that was challenged by Muzikayise as likely to confuse the living arrangements of the respective families on the farm. In the result, Mabizela indicates the line differently from Muzikayise. There is need for a neutral chairperson to assist in the family meetings on this issue.

As regards the proceeds of the farm, being trees that have to be harvested from time to time, that is another difficult aspect faced by Mabizela and Muzikayise on behalf of their respective families. If the division of the farm does not include the division of the trees thereon, there will always be problems as the goodwill of working together is not there. One cause of the tension between the families would seem to be that of civil rites beneficiaries versus customary law beneficiaries represented by Mabizela on the one hand and Muzikayise on the other hand. Ordinarily this should not be a problem for the beneficiaries as they are all children of the same father, particularly since the passing of the Constitution in 2005 nullifying the illegitimacy of children. Another thorn in the flesh would seem to be the E440k loan secured from SIDC by the deceased and Mabizela for Sandulele Investments (Pty) Ltd.

The shareholders and directors of Sandulele are deceased and Mabizela. To Muzikayise, therefore, the loan and its repayment were the concern of Mabizela and Mabizela's side of the family. The use of the estate trees for the repayment of the loan did not go down well with Muzikayise's side of the family. Unless otherwise explained, when deceased died Mabizela as executor assumed control of the shares and directorship of the deceased and single-handedly managed Sandulele and the repayment of the loan by harvesting trees from the farm affecting both sides of the families. This raised the issue of transparency in the process. For instance, when the butchery which had been part of the loan project was sold for E150k, the entire sale price is shown in the Distribution Account of 2016 to have gone towards the repayment of the loan, yet in minutes of the next of kin meeting of 3 July 2014, it is reported that E75k went to SIDC and the other E75k was kept at the bank. In February 2015, eight of the thirteen children of the deceased led by Mabizela undersigned an affidavit authorising the sale of 20 herd of cattle to clear the remaining E57k debt of the loan.

Mabizela presented a liquidation and distribution account in 2016 purportedly in terms of the Will. The account purported to distribute everything and left nothing for further distribution. In terms of that account, the two widows each received 40 herds of cattle and 20 goats; Hlobozonke got 2 cows and Mabizela got E74 256.64 executor's remuneration fees plus Farm No. 881(valuated at E4.8M). The rest of the estate is not accounted for. Even the division of the farm is not indicated. The account placed the farm under Mabizela. The reality however is that the complainants are justified in their cry that they have so far got nothing from the estate. There is no reason why it is taking so long to divide the farm as per the Will. That Mabizela and Mzikayise do not agree on where to draw the dividing line is not a valid excuse for not complying with the Will in this regard. In terms of the 2016 distribution account only Mabizela appears to have so far benefitted. Five vehicles were authorised for transfer to Mabizela: a Mercedes

Benz (1986), a Mazda (1990), a Toyota (1989), a Mazda B 1600 (1972), a Massey Ferguson (1979). These transfers were not part of the alleged distribution.

Until the farm is divided, and Mabizela is freed from the control and supervision of all the activities within the farm, there will be no real distribution to speak about. Cash found or accumulated in the estate is not shown how it is distributed. Other than the 40 cows and 20 goats to each widow, there is no transparency in the administration of the estate. Mabizela has to be accountable and this can only be achieved by periodic accounts overseen by the Master until Mabizela is discharged from being executor.

If actual distribution has not happened and beneficiaries have received nothing, notwithstanding the 2016 distribution account, one would expect that Mabizela, the executor has, over the years, been depositing the benefits from the farm in a bank account for the day of reckoning.

As for the various other claims: Homeboy's claim of E22k is disputed by the executor. It remains for the Court to decide if moved by claimant. Another claim of E5k appears to have been settled when the account at the bank was closed by order of the Master. A claim by Absolute Dlamini has since been dismissed by the Eswatini National Court, Hlathikhulu, as informed by communication of 19 November 2024. Mlamuli's claim was resolved by Ndabazabantu.

Recommendation

It is recommended that the Master assist the family to get an independent person to divide the farm without further delay.

Conclusion

What remains to be done is the division of the farm and, may be, an up-dated distribution account of other benefits not accounted in 2016, such as farm proceeds.

21. ESTATE LATE MANDLA ISAIAH NHLABATSI ES 52/2016

Sizakele Nhlabatsi nee Simelane, from Maseyisini, Nhlangano, is the complainant. She appeared before the Commission on 4 July 2024. She is the surviving spouse by custom. She has no children with the deceased. Deceased died on the night of 8 January 2016. He was shot dead at home by unknown persons. The deceased and the surviving spouse slept in separate houses as relations between the two had been sour for some time. Sizakele says on the following morning she discovered the body of the deceased at the gate with gunshot wounds lying in a pool of blood. She reported the death to the Police and the Master. The Master appointed Justice Mangosuthu Mzizi as executor. The Police opened criminal investigation. Deceased had a home at Mathendele Township, Nhlangano and 2 motor vehicles. The home at Mathendele has been put on sale and has a buyer for E430, 000. The executor has prepared a liquidation and distribution account which the Master has approved in terms of which the beneficiaries, including Sizakele, benefit equally. According to the executor, distribution has been held up by the police investigation where the persons who were at the house on the fateful night are all suspects. In a correspondence from the Regional Commissioner, Shiselweni, dated 23 October 2024, it is stated as follows: *"All statements of the witnesses and evidence have been considered by the investigating team. However no arrest has been made. Hence the matter is still pending".*

Sizakele says she does not know nor has she met the executor who was appointed by the Master. The complainant wants to know the whereabouts of the money for the sale of the home at Mathendele and her maintenance and that of the children. She admits having sold 2 cars for E15 500.00.

The Master's office seems eager for distribution to occur. The office does not understand why the executor is not distributing. The answer however is simple. Under the common law, a person does not benefit or inherit from a person he is

criminally responsible for their death. The Police are urged to decide one way or the other to prosecute or not to prosecute so as to permit distribution. So long as the file is not closed, nothing much can be done except may be in very extreme situation.

Conclusion

1. The concern of the complainant is appreciated but nothing much can be done by the executor at this point in time.
2. Pending the distribution, the amount of E430k should be kept in an interest-bearing account or the Guardian Fund.

22. ESTATE LATE JAMESON MBHABHA DLAMINI SEH 137/2021

On 4 July 2024, Sicelo Dlamini from kaSiko, eHhukwini area (also from Gelekeceni) came to the Commission to complain about an amount of E104, 648.00 from the Royal Swazi Spa Company which was supposed to be, but was not, deposited to his late father's estate. Sicelo is the executor and son of the deceased, who died in 2010. Selina Malindzisa is the surviving spouse by customary rites. Deceased did not leave much save for three (3) children and three (3) cows at home, narrated Sicelo. Deceased had been employed by Royal Swazi Spa until 1992 when deceased and several other Royal Swazi Spa employees were retrenched. That resulted in years of protracted intermittent negotiations and court proceedings through the employees' union.

The position of the company was that when the retrenchment occurred the affected workers were paid their terminal benefits as required by law. As far as the company was concerned, negotiations ended in August 1996 when a settlement Agreement was signed and made a court order in **Case No. 101/1993** at the Industrial Court. This case was settled by Attorney P.R. Dunseith on behalf of the 'Applicant' being "Sarah Dlamini and one hundred and forty-five others."

Then, the employees agreed to a voluntary retirement and some payment on a date specified on the agreement.

Although the name of the deceased does not seem to appear on the list of the retrenched employees who were part of the 'Applicant' at the Industrial Court proceedings and settlement, the name of the deceased does appear on the list of retrenched employees who were part of the High Court proceedings in Case No. 411/2022. There was, however, another employee by the name of *Sarah* Dlamini different from *Nomsa* Dlamini. In **Case No. 411/2022** *'Nomsa Dlamini obo 242 employees retrenched in 1992'* were the Applicants (sic). It is here noted that Nomsa's other name is 'Sara'. Even though it is not clear, 'Nomsa' must be the 'Sarah' who had applied to the Industrial Court in 1993. In the 2022 High Court application, the Applicants were represented by SM Jele Attorneys and judgment was delivered in November 2022 by Mlangeni J. Since the deceased died in 2010, he was in the court proceedings represented by his son Sicelo Dlamini who has brought this complaint to the Commission.

In her founding affidavit to the High Court application, Nomsa acknowledges that on retrenchment they filed an application in the then Industrial Court of Swaziland claiming compensation for automatically unfair dismissal; and that in that case the retrenchees were represented by Bheki Simelane who later withdrew his services citing that the union was unable to pay him Nomsa continues:

> "*9. To our surprise and dismay and also in the year 1993 a purported settlement agreement was produced to us. The agreement provided that we had agreed to be paid a severance package of an equivalent of 2 months' wages to each of us.*
>
> *10. In the conclusion of the agreement, the Applicants were represented by one Peter Dunseith who was an attorney resident in Mbabane at the time. The said attorney was not known to us and we had not given him any*

instructions to conclude this agreement. We were also not aware that the matter was in court on that day for purposes of making the purported agreement an order of court.

11. We have made several attempts in a number of forums but all our efforts have been in vain…..

12. In and around 2021, it came to our attention that the Royal Swazi Spa and subsidiaries was undergoing liquidation and creditors were called to submit their claims. We duly submitted our claim and we were part of the meeting of creditors held at Ezulwini in September 2021. Thereafter we received a schedule filed by the Liquidator indicating that our claim had been rejected.

13. I submit that myself and the further applicants endeavoured to find out why our claim had been rejected and the reasons were not forth-coming ….."

It is noted that there is no explanation given what happened in the twenty-four years between the signing of the agreement in 1996 and the resuscitation of the claim in 2021.

Sarah Dlamini, whosoever she might be, did not file an affidavit explaining how she and 145 others ended up in a settlement in 1996. It is surmised that it must have been in recognition of the 1992 payment that has not been denied.

Justice Mlangeni in Case No.411/2022 stated as follows:

> "**[17] Whilst I accept that the present application was precipitated by the rejection by the Master of the Applicants' claim in December 2021, I am of the firm view that the true cradle of the issue is in the period 1992 – 1996 when the workers' retrenchment was deliberated upon and finalised through the Agreement of**

Settlement that was made an order of the court. It is clear, for instance, that if the liquidation process was not started this application would most probably not have been instituted. … At paragraph 11 of her founding affidavit, she alleges that they 'have made several attempts in a number of forums but all our efforts have been in vain. We have even approached the traditional authorities at Nkanini including the King's Council but were advised to approach the civil courts for redress. …"

The Agreement of Settlement seems to have been premised and predicated on the undisputed fact that the retrenched employees were paid their terminal benefits in 1992. The Agreement in part records:

"The following Applicants acknowledge that they accepted Voluntary Retirement and the Application in respect of these Applicants is withdrawn: Johannes Hlophe (no.84); Joel Nhlabatsi (No.845)"

Hlophe and Nhlabatsi were part of the retrenched employees, in the result the application to the Industrial Court was withdrawn and agreement made order of the court which neither the Master nor the Liquidator had power to overrule. The appeal by Nomsa, in person, was dismissed by a Single Judge of the Supreme Court in December, 2023. This Commission also cannot overrule the decision of the courts – Industrial Court, High Court and Supreme Court – effectively ruling that Applicants, including the deceased, have no cause for complaint.

Even though the deceased is said to have died in 2010, the death was apparently not reported as required by law until 2021. The reason for reporting in 2021 is not hard to find. It is contained in paragraph 12 of Nomsa Dlamini's affidavit as reflected above. The flipside of this belated report would seem to be that the 'Applicants' had for all intents and purposes given up the pursuit of their claim as far back as 1996. Thus, in 2010 deceased's son Sicelo who represented him in

the pursuit of the claim since 2021 saw no purpose in reporting the death. In 2021 there was the possibility however farfetched of the claim being accommodated in the liquidation proceedings of the company then instituted. If successful, the amount received would be paid into the estate of the deceased.

Observation

We now know that the claim of the retrenched employees was not successful.

Conclusion

The complaint of Sicelo Dlamini against the Master must be rejected as unsustainable.

23. ESTATE LATE CAIPHAS LUDAKA MAVUSO EP 19/2023

Caiphas Ludaka Mavuso was a resident of eNdlembeni, Nginamadvolo area, Hhohho. Ludaka died on 18 March 2023 leaving behind Annah Khanyisile Mavuso nee Dlamini as surviving spouse by civil rites in *ante nuptial contract.* There is a Will and Thobile Sithabile Mavuso (daughter) is executrix testamentary. The death was reported by Nono Mavuso (daughter). Deceased had 13 children. The deceased had assets in excess of E3Million.

The complaint is against the executor, Thobile. The complainants are the beneficiaries of the estate. They complain about the progress of the winding up of the estate and the inclusion of Khanyisile in the distribution account when she is excluded by the ante nuptial contract (ANC) as well as by the deceased Will. The other beneficiaries also challenged Thobile for being not educated. This made meetings at home difficult as Thobile could only listen to the Master.

There was money at bank, three kraals, 86 cows, 3 vans and a tractor, lorry and car, a business Khefase and Son Investment (Pty) Ltd where deceased and Appolo Mavuso were directors; two plots at Piggs Peak, 2 stores, 3 tigayo, 18 goats, home

at Jubukweni (kaLaLukhele), another home for Khanyisile at Jubukweni. Also a home at Ndlembeni, a house and a shopping complex at Ka-Zwane.

Due to the challenges at home, Thobile says she and her sister were allocated old and not well functioning cars. Luckily, Grace (another daughter) had a copy of the Will. The name of the company was changed by Appolo and other share-holders. Because of difficulties Thobile met with the Assistant Master (Ms Maziya) at Piggs Peak, she came to Mbabane but was prevented by officers at the Master's Office. Thobile said she also had difficulty collecting some of the estate assets in the possession of some of the beneficiaries resulting in her application to Court in High Court case No. 2210/2024 which is still pending.

When assets from the company were sought from Appolo there were problems. There was a suggestion to create a trust. The family proposed that Thobile be paired with another family member as executors. So far, nothing has been distributed.

The first Distribution Account shows residue in an amount of E2, 861,378.00. The amount was shared equally among the beneficiaries including Thobile who got E204, 384.00. As residue this was amount not allocated to any one by the deceased. The beneficiaries are of the view that Thobile is excluded even from the residue by the ANC.

The distribution still awaits the decision of the High Court on the assets alleged to be in the possession of the three respondents, namely, Bhutana, Dumisile and Nono. That is the position as of the beginning of September 2025.

Conclusion

Save for the inclusion of Thobile on the residue, which is left for the Court's decision, the executor has done her duty reasonably well in the circumstances.

24. EST. LATE MAHAWUKELA EPHRAIM (ELPHAS) SIMELANE EL 22/2011

Mahawukela Simelane passed on in 2011 and Tfoliwe Myeni, surviving spouse passed on in 2022 **[EL 26/2022]**

Simiso Maphalala and Tololo Dlamini (LaShongwe) from St Phillips, kaNgcamphalala came to the Commission on 8 July 2024. It appears Mahawukela had a Will and Siphiwe Dlamini - Simelane is deceased's daughter and executor for both deceased estates but was not present on 8 July 2024. Siphiwe was expected to appear before the Commission in less than two weeks. Master was to arrange for her appearance. But that did not happen. Mahawukela had about 48 cows and unknown number of goats.

Simiso, daughter of deceased, wants about E3million from the deceased's estate. She has even contacted the Human Rights Commission. Tololo who apparently supports Simiso's claim, also wants E4million from the two deceased estates. The basis for the claims is not very clear. The claimants were known to the family and their complaints were to be dealt with at family level. Confirmed claims would have to appear in a distribution account.

At the second appearance before the Commission, present were Thandekile, Dumisile, Mary Masondo, Tandzile, Simangele and Sibusiso Mamba. Sphiwe the executor did not attend as she had done at the first appearance. The complainants do not seem to have cearly separated the estates of Mahawukela (2011) and his wife Tfoliwe (2022). The complaints were wide ranging. Mary, a widowed daughter in-law of deceased, thanked the establishment of the Commission and pointed out that she had been in this family for the past forty years as LaMasondo. She told the Commission that a week after the funeral Attorney Mrs Mthembu came to read the Will to the family. The Will excluded outsiders, like Mary. The matter of the reading of the Will is said to have attracted the newspapers. There

was allegation that only live children would benefit. This adversely affected Mary since her husband was one of the deceased children of Mahawukela.

Later, Lindelwa from the Master's office came and addressed the family on the Will. Since nothing had been distributed, Lindelwa asked the executor to give the beneficiaries like Mary some money and they got about E90k that they took because they were hungry, said Mary. The recipients did not sign for the amounts. Overall, the Master's office did not treat the complainants well and the executor often did not come to the family meetigs. Petros, the former executor before Sphiwe had for some unknown reason sold about 33 cattle for an amount that Sphiwe later shared with the beneficiaries. There was money at different banks and about E150k was used for unknown purpose. Mary went on to say they did not know how Sphiwe became executor. At the Master's office, Lindelwa spoke privately with Sphiwe. Most of the movable assets were disposed of without following the Will. Sibusiso confirmed that Themba Gwebu of the Master's office at Siteki did not treat them well.

On 31 July 2024, LaMasondo continued and summed up her submission. They were unhappy with the Will that left some children of Mahawukela from benefiting because they were dead. Dumisile said Sphiwe stopped other complainants from challenging the Will. With respect to LaMasondo's late husband, Khuluma, the Will in clause 3 (b) bequeathed to deceased's children, as follows, to "Khuluma Simelane or his descendants", various properties on a sharing basis including immovables. Some of these assets have been sold but there is no formal distribution. There was also complaint about one of the immovable properties, Sinyamantulwa, being sold before the expiry of twenty years from death of deceased as the Will had provided.

THE WILL It will be noted that in terms of Mahawukela's Will, the deceased bequeathed 95 shares he had in Mbulane Company to his wife Tholiwe. When Tholiwe died in 2022, she in turn gave all 96 shares she had in Mbulane Company

to her daughter Sphiwe. The Master has seen nothing worth questioning in this arrangement. It will be recalled that in terms of the Constitution, a wife is entitled to a reasonable provision from the estate of her husband. Likewise, children are entitled to a reasonable provision from the estate of their parent(s). The shares are property in the estate of a deceased person. The Master has a right however limited to intervene in company affairs where there are shares belonging to a deceased person. Were the shares in the two dispositions reasonably shared among the beneficiaries? The Master may have to revisit the late husband and wife dispositions to effect a reasonable provision for the deceased's children.

Discussions at home even with Attorneys did not yield any sustainable result. It was felt that the Commission should provide the solution. Indeed on their last appearance on 22 September 2025 no progress had been made since last appearance. But a viable solution should come from the executor and the Master for the Commission to consider. The problem appears to be with the executor, Sphiwe. She is stalling the distribution, resulting in some beneficiaries dying without having received their benefits from the estate. The supervision by the Master's office is not adequate, and Sphiwe does as she pleases.

What happened in this case is that the deceased donated all 95 shares he held in Mbulane Company to the surviving spouse, Tfoliwe who had a share in the company. In time Tfoliwe passed her own 96 shares she had in Mbulane to her daughter Siphiwe, the executor. These shares were then worth about E3.5M. The shares are not the only donation to Siphiwe. The donation to Siphiwe was disproportionately larger in comparison to the donations to the other beneficiaries. Even without the act of Parliament envisaged by the Constitution, the donation to Siphiwe is contrary to the Constitution's reasonable provision for children from the estates of their late parents. It is not proper for the Master to just say because Parliament has not acted, the old position depending on freedom of testation will continue no matter how disproportionate the testamentary

disposition. A Will must be respected to the extent that it respects the spirit if not the letter of the Constitution.

In response to complaints that the estate was not administerd according to the Will, the Acting Assistant Master in Siteki, Nkanyezi Xulu reported in April 2021 that although Gajimbe and Khuluma were mentioned as beneficiaries in the Will, they or their descendants had not received their herds of cattle. Siphiwe was advised by the office of the Master as far back as 2020 to speed up the distribution, but still nothing had been received at the time of the hearing. Mary Masondo was present and still openly aggrieved by the slow manner Siphiwe (who was also present) conducted the winding up of the estate. As late as early November 2025, the Commission received a letter from Simiso still complaining that nothing serious was happening on the estate as Sphiwe was continuing to frustrate agreements reached at family meetings.

Conclusion

The Master's office is a public office; it must treat its visitors with respect at all times. The Master must subject executors to effective supervision at all times. In this matter, the Master's supervision leaves a lot to be desired. Siphiwe, the executor, is doing as she pleases and stalling the winding up of the estate(s).

25. ESTATE LATE SABELO MBUZU TSABEDZE EM 374/2005

The death of Sabelo Mbuzu Tsabedze on 10 September 2005 was reported by his brother Sikhulile Paul Tsabedze who also filed the Inventory on 14 September 2005. Nelsiwe Cynthia Tsabedze nee Makhunga is civil rites surviving spouse and executrix following nomination at a next of kin meeting held on 17 November 2005. Executrix presented the first liquidation and distribution account in June 2006, which was amended in July 2006. (Not stated whether approved). The inventory registers 3 motor vehicles only.

The complainant, Tsembani Tsabedze, who is the mother of the deceased, appeared before the Commission on 9 July 2024 in the company of Sisekelo Tsabedze, Ntombikayise Tsabedze, Simnikeliwe Hlophe and Meluleki Hlophe from Mafutseni, Manzini area. Sisekelo is deceased's child but said to be from out of wedlock.

The Commission heard that money in the bank, probably from the employer, U-Tech, has been distributed; 2 cars that were taken by the Master's Office in Manzini have not been accounted for, instead suspected to have been lost at the Master's Office. One of the motor vehicles, a van, was allegedly sold by the executrix to someone in Piggs Peak. Tsembani said that the two motor vehicles were collected from her by the Sheriff in the company of police officers. That was in terms of a court order that had interdicted Tsembani from disposing of any estate assets in her possession. But no one seem to know what happened to the assets collected from Tsembani per the court order of Justice Annandale ACJ of November 2005. The distribution account dated July 2006 distributed an amount of E232, 416.81 being death gratuity from Government (Ministry of Education) and cheque from Swaziland Royal Insurance Corporation.

There were claims against the estate amounting to E82, 800.00 plus E40 000.00 said to be provision for maintenance of Sisekelo Tsabedze. The beneficiaries were Nelsiwe Cynthia Tsabedze, the surviving spouse, who got a half share of the balance of E96 502.64 (i.e. E48 251.32) plus a child's share of E24 125.66 and Tsembani Tsabedze got E24 125.66. It is not explained why Tsembani who was deceased's mother got paid. Instead Sisekelo, assisted by the Constitution, should have been paid the child's share as well. The distribution account, however, has no evidence of being approved.

The Master has reported that there was a court order that directed the surviving spouse to attach the motor vehicles and other movable assets in the possession of Tsembani for purposes of winding up the estate but no proceeds were deposited

at the Master's Office if, indeed, the vehicles were sold by the surviving spouse as alleged or suspected and there are no copies of blue books in deceased's name left with the Master. The family has alleged that the surviving spouse relocated to Richards Bay, South Africa, her home place. At the hearing the complainant stated that the executrix was from Mahlabaneni, near Big Bend; they had looked for her in vain, and were not sure if she was still alive. All that the Assistant Master in Manzini, Ms Zadzisai Melisa Dhliwayo, could say is that "*The office has no knowledge as to what happened to the motor vehicles, no proceeds deposited at the Master's Office … and no copies of blue books in deceased's name."*

Observation

There is evidently no satisfactory answer to Tsembani's complaint. Chances are that the motor vehicles and other assets collected by the executor following the court order disappeared with the executor.

Conclusion

1. The Master's office must take the blame for inadequate supervision of the winding up of estates by the executor.

2. The executor did not complete her job and the account remains open.

3. The Master to ensure proper closure of the estate file.

26. ESTATE LATE REUBEN TSHONGWA TSABEDZE EL 88/2022

This matter was brought to the Commission by Zandile Mdluli of Malindza on 24 July 2024. The death of Reuben was reported by Zandile Mdluli, second wife, the first wife having died in 2005. There are (10) ten children and a Will. Ndaba (son) and Sibusani (daughter) were appointed testamentary co-executors. The

Will was read by by Ms. Zikalala the Assistant Master in Siteki at a next of kin meeting. The Will prescribed a family trust.

The deceased had a buchery, supermarket, hardware, tractor, home and cows, guns and cotton farming. The Will prohibited the sale of any of the assets that were to be property of the trust.

Mabandla (son of deceased) recounts that in another family meeting, the Assistant Master (Ms Zikalala) told them that the estate had been wound up and all assets belong to Ndaba and there was no trust as far as the children were aware. That Ndaba has divided the family with one part benefitting and the other getting nothing. The children are now at war among themselves, allegedly divided by Ndaba between those who benefitted and those who did not. Ndaba was authorised by the Assistant Master to hold the estate as his own property. And *"Ndaba has chased me (from home) for what I did during deceased lifetime,"* continues Mabandla. So far, nothing has been distributed but assets are squandered. There are court orders preventing some of the children from 'abusing' property of the deceased in their possession. Thembi Gwebu (. . .) is reported to have made deceased to sign a document (the Will?). Mabandla and Sotja were present and heard the conversation on the date of the signing of the document. The Will was signed by testator on 29 November 2020 but is witnessed on 29 November 2021 (probably an error).

Ms Zikalala denied having told Ndaba owned all the estate assets as alleged by Mabandla or that Mabandla had power to chuck out from home other siblings.

In light of the trust, the Master's office has no serious role to play.

27. ESTATE LATE SIPHO DANIEL NDLOVU EM 243/2012

Ntombi Joyce Ndlovu, Calisile Nhlengetfwa and Sibongile Tsabedze appeared before the Commission on 8 July 2024 in connection with the above referred estate. Sipho Daniel Ndlovu died on 18 August 2012. The death was reported at the Master's Office on 27 November 2012 by Ntombi, the surviving spouse by customary law. Ntombi it seems was not the first wife; the first wife had apparently died, leaving children with deceased. The deceased had homes at Teteni, Matsapha, at KaPhunga and possibly at Mkhondvo as well. Had (5) five cars, a lorry and tractor, farming implements and 18 children from different mothers. Also had a (6 rooms) garage and 61 rental flats at Teteni. It seems Calisile and Sibongile were common law wives of deceased. Calisile had a handicapped child. For some time Ntombi had left deceased's home to 'protect her life'.

According to Sibongile there has been a breakdown in the administration of the estate as support was not forthcoming as a result of rentals not being collected by Ntombi who was away from home. Ntombi had been ousted from home by some of the elder children of the deceased. These children had then taken over the rental collection for which they did not account. This also resulted in some of the school-going children having to abandon learning for lack of financial support.

Ntombi, who was the executor, told the Commission that on demise of the deceased, the Ndlovu children forcefully took over the rental collection but did not account to the estate. *"The children of the late wife told me to leave their mother's home and the umphakatsi did not assist me. They forced me to leave in my black gowns as they took over the contents of the home where I stayed with my (late) husband. Aunt Ntongolozi Ndlovu (Gwebu) took most of the papers and documents which were supposed to be in my possession. Khanyisile and Ndumiso collect rentals and run the garage. A number of the children still need support*" said Ntombi.

At the follow-up hearing on 15 July 2024, the Commission was told that Khanyisile, Ndumiso, Welile and Lungile Ndlovu collect rentals; there is an account in Khanyisile's name where the rentals are deposited. Ntombi's minor child not maintained is 16 years. Ndumiso responded by stating that there were problems at home partly resulting in the house furniture being removed. Wellie recalled a day when Ntombi arrived home with police and a sheriff and took away some of the 8 vehicles, including a BMW and a Pajero. Ndumiso is a soldier and part-time motor mechanic.

It is said that there have been two approved distributions.

The Master's report dated 31 March 2025 reads:

> "N*umerous meetings were held after a dispute over ownership of the rental rooms situated at eTeteni arose. Our office had written letters to tenants instructing them to make monthly rental payments into the Guardian Fund and Ndumiso Ndlovu prevented the tenant from complying with the Master's instructions. Deceased was previously married to Regina Dube who predeceased Daniel Ndlovu and had four children born of that union. Regina's children are claiming the home as theirs since accused allegedly acquired and built the home with the assistance of their late mother. They further alleged that Ntombi Ndlovu married the deceased after the home was already built."*

The report also reveals that the matter of rentals has been taken to court in two High Court cases, resulting in Ntombi being removed from being executrix at Khanyisile's instance.

The real issue concerns the distribution of rentals and the maintenance of minors.

From the two letters emanating from the Kwaluseni King's Council, one dated November 2014 and the other dated January 2025, the Commission is not sure

who the legitimate occupant of the homestead at eTeteni (Kwaluseni) is. The letters are contradictory.

The Commission is of the view that if Ntombi has stayed at this homestead with the deceased after the death of Regina, the first wife, and there is no other home for Ntombi to go to, then Ntombi should continue to stay at this homestead. Ntombi will not own the homestead, but will occupy so long as she is alive. After all, the home was built by her husband, the deceased. It is the fault of the deceased not to have provided Ntombi with a separate home. The children of Regina are adults and should not want to own their parent's home at all costs**.** Regina would not have owned the home and so Ntombi will not own the home. That is, Ntombi cannot sell the home but only occupy it as she did during lifetime of deceased. Ntombi is also entitled to a fair share of the rentals collected. Ntombi shall not bring her lover(s) to this Ndlovu homestead. She must leave the homestead on her getting married.

In her affidavit in Case No.1541/2014 Khanyisile challenging the employment of Rise Estate Agents to collect rental at flats situated at Kwaluseni which estate agent she avers she tried to track down in vain, wrote: "*23. We were suspicious of this Agency as for us it had become extremely difficult dealing with the office of the Master of the High Court. Access to the file of our late father had become impossible. We could not get money to provide for deceased's children and never got to know how much was recovered from sale of the motor vehicles. 24. With the attitude shown by officers at the offices of the Master we decided that even if my brother [Ndumiso] no longer collects the rentals I should continue to do so and ignore the letter referred to above."* Note: The letter referred was a letter allegedly advising Khanyisile and brother that Rise Agency would be collecting rentals. Khanyisile further stated in her affidavit, *"34. The lady from the Master's Office refused to hear that and clearly told me that Rise Estate Agency were to collect rentals… 37. It is also important that 1st Respondent [Zodwa] gives a full*

account of all she has done in the estate since she assumed office. As matters stand, I, with my siblings, find it strange that the 2nd Respondent [the Master] has not bothered to call us to hear on progress of the winding up but are seemingly interested in the rental collected and a desire to destroy our home". Note: rentals were stated by Khanyisile to be over E21, 000.00 (per month?). Khanyisile concluded her affidavit by saying that she believed *"the sooner the distribution of the cash obtained from the sale of assets of the estate and proper administration of income from the flats, then all disagreements would be settled".*

Ntombi Zodwa Ndlovu says that she married deceased on 18 July 2005 at deceased's home in KaPhunga. We are not told when Regina the first wife of the deceased died. But Khanyisile in her affidavit referred to above says that 'after the death of her mother (Regina) "*my father went on to have children with a number of girlfriends until he subsequently married the 1st Respondent with whom one child was born".* The impression given is that Regina died some time before 2005. Ntombi adds that during the marriage "*we lived together as husband and wife at Eteteni area in Kwaluseni Matsapha".*

The complainants – Ntombi Ndlovu, Sibongile Tsabedze and Calisile Nhlengetfwa – complained about not receiving their children's share from the rentals collected at Eteteni flats. Even though Ntombi was the executor, she was not collecting the rentals because Khanyisile (daughter of deceased) was monopolising the collection and not depositing same into the Guardian Fund. Even after a meeting was convened by the Master's Office in August 2024, Khanyisile did not attend and still did not deposit rentals into the Fund. Khanyisile with her attorney only attended a rescheduled meeting on 18 February 2025. It was at this meeting that Khanyisile is said to have presented the letter of 26 November 2014 from Kwaluseni Royal Kraal stating that the Eteteni homestead and flats belonged to Khanyisile's deceased mother Regina Dube. The Master's Office found itself in a deadlock as a result of the contradictory

communications regarding the rightful widow to the Eteteni homestead and flats. The Kwaluseni Royal Kraal has not unravelled the contradiction. The Eteteni homestead is on Swazi Nation Land. Question is: How did deceased maintain his children? Was it not from the rentals? If so,why change now?

In the opinion of the Commission, if the Eteteni homestead was built by the deceased with the late Regina but had also been used as home for Ntombi during the lifetime of the deceased, then Ntombi should not be thrown out on the street by Regina's children. The Eteteni homestead was not really a home; it was more of a *lilawu* because deceased's real home was at KaPhunga. That explains deceased's stay with Ntombi at Eteteni 'home' as he had stayed with Regina.

Conclusion

1. Ntombi and the rest of deceased's minor children must continue being maintained from the rentals collected in the way they were maintained during deceased's lifetime.

2. If there is money remaining after the maintenance of Ntombi and any minor children, then the major children could share the residue.

3. The Eteteni home and flats belong to the family as they belonged to the deceased.

4. Ntombi shall not own the homestead as late Regina also did not own the homestead. Only a next of kin meeting can decide the status of this 'home'.

5. The procedure that applied before deceased died should continue to maintain the family and share the rentals accordingly.

28. ESTATE LATE DAVID MANDLENKHOSI TFWALA EM 91/2006

The death of David Mandlenkhosi Tfwala on 8 February 2006 was reported by William Magagula on 3 March 2006. William is deceased's cousin. Irene Dudu Tfwala from Zombodze (Mdzimba) appeared before the Commission on 9 July 2024 and explained that she and deceased had *khontaed* and had a home at Zombodze where they also had rental flats on Swazi nation land.

Dudu is one of the two surviving spouses by customary rites. The Master's report shows that the two widows together had 9 children. There is a last Will and Testament. Beside the rental flats, deceased had three (3) motor vehicles, cows and an account at Nedbank. The inventory and death notice were filed by William.

Before the Commission Dudu complained about the Will. She apparently had not known about the Will until just after death of deceased. She felt the Will just cropped up and deprived her of everything, including the home and rental flats at Zombodze. The Will was executed on 23 February 2005 and was read at a next of kin meeting at Master's Office on 23 March 2006. The Will appointed William Mngumane Magagula as the executor.

The Will distributed the various assets of the deceased to members of his family and gave nothing to Dudu even though the Will recognises her as one of deceased's wives. Specifically, the Will gave to the other surviving spouse (Elizabeth Tfwala nee Shongwe) "*the whole homestead and flats at Emakholweni area as I khontaed for the place solely for her*". Other than the bare recognition in the opening clause, nowhere else does the Will mention Dudu. Dudu had an attorney at the next of kin meeting. Dudu objected to and challenged the Will. In the first court order of 24 March 2015, the Executor (William) and the Master of the High Court were ordered *"to provide [Dudu] with a reasonable share in their Distribution Account of the Estate….."* The second court order of 24 April

2016 directed that in terms of Swazi law and Custom Dudu *"may retain and enjoy (the) use of her homestead at Ludzeludze and the flats thereat."* A third court order dated 27 November 2019 required the Executor (William) to file the Distribution and Liquidation Account *´in terms of the Will*", and *"Thereafter each child or beneficiary must donate the share of his or her flat situate in the homestead of [Irene Dudu Thwala] to [Irene Dudu Thwala]".*

As per the court order, William Magagula, the Executor, prepared and filed a liquidation and distribution account that the Master's Office approved on 22 December 2020. Paragraph 9 of the account reads: *"Each beneficiary is to donate his or her share of the flats at Ludzeludze to Irene Dudu Thwala…."*

The Will executed just before the coming into force of the Constitution in 2005, was apparently not set aside by the Judge even as the Judge gave to Dudu a reasonable share of the estate. How the Will was to be given effect as ordered by the court is hard to tell. The Master can assist the executor in this regard. As stated above, Dudu came to complain before the Commission after the liquidation account had been approved but not implemented.

On 17 November 2023 Dudu (and others) withdrew an application she had made to court. On proper advice, Dudu was satisfied with the resulting ***status quo***.

The Will reflects that there were 26 or 27 flats at the Ludzeludze homestead. All of the flats were bequeathed to the seven children of the deceased. The Will, however, does not appear to have bequeathed to any of the beneficiaries the Ludzeludze homestead. The Will therefore did not deprive Dudu of everything. If the homestead alone was not enough, in a subsequent court order the Judge returned all the flats to Dudu as part of the homestead. This is the court order of 27 November 2019 that directed that "each child or beneficiary must donate the share of his or her flat(s) at [Ludzeludze to Dudu Thwala]…" The Ludzeludze home is on Swati nation land and the flats, when all functional, were said to raise

about E7, 800 a month. The High Court probably considered this to be a reasonable provision for Dudu, bearing in mind that a reasonable provision does not have to be half of the deceased estate. The Second Amended distribution account of November 2020, which was apparently *Approved* by the Master's Office on 22 December 2020, also provided the return of the flats to Dudu as per the court order. The Commission is, however, of the strong view that Nontobeko should retain her flats at Ludzeludze since she has nothing else bequeathed to her in terms of the Will. The Will had bequeathed to Nontobeko flats 25, 26 & 27.

On 28 March 2025 Dudu wrote to the Commission further complaining about the handling of the estate by the office of the Master and the executor (William) and the High Court. Dudu said that the executor was failing to distribute the estate according to law and the beneficiaries were not getting their shares in particular in respect of the rentals from flats all of which are on Swati nation land. Dudu also expressed unhappiness with the distribution account based on a Court Order providing for donation of flats to her. The donation had not been carried out nor had the other court order providing for a reasonable share been effected. Dudu expressed the view that the only person who was benefited by the distribution account was Gcina, assisted by the executor to enjoy "full benefits to the exclusion of his brothers and sisters".

In the aforementioned letter Dudu also complained about 'cash found in the estate' which had not been dully accounted for but seem to have been used for purposes unknown to the beneficiaries. According to Dudu, the executor was supported by the office of the Master in the poor administration of the estate. Dudu concludes: "The administration and liquidation of the estate has divided my family and my children are now enemies to each other". She is "adversely affected and stressed".

The Commission is of the opinion that the Master and executor must file the final report attaching the latest distribution account which we hope will answer Dudu's

continuing issues such as, for instance, the whereabouts of the cash said to have been found in the estate (FNB account of E35, 000).

Dudu also is aggrieved by the attachment of her motor vehicle valued at E90, 000 questionably sold at a public auction to pay for costs of suit amounting to E34, 034.45 in case number 1660/2022. She wants to know why sell her motor vehicle when there were five applicants. The executor and Master must provide the requisite explanation.

The last hearing of this matter was on 22 November 2024. The distribution account approved by the Master's office shows that the flats rental collections were distributed to all the beneficiaries.

Conclusion.

Dudu having earlier withdrawn her court application, all the issues raised by Dudu have been settled. Only a final report by the executor remains to be submitted and hopefully approved.

29. EST. LATE NDZINGASE LEPHINA MNDZEBELE SEL 22/2021

Ndzingase Lephina Mndzebele died on 12 February 2021. The death was reported by Luzamo Mndzebele. Deceased had a home and cane fields at Mafucula. Ndzingase had no child of her own. The complainant here Thabitha Simiso Mndzebele is a stepdaughter. Thabitha and Luzamo are co-executors.

The complainant, Thabitha, appeared before the Commission on 11 July 2024. She was alone. Thabitha's complaint was that distribution since the demise of her stepmother was at the discretion of deceased's grandchildren, and she was not benefitting. The file was handled by Nkhambule and Zikalala at Master's Office in Siteki. But Xulu responded for the office. He stated that there was money at Swazi Bank and the co-executors were the children of the deceased.

At the second hearing on 27 July 2024, Thabitha was not present; only Luzamo and Nhlanhla a grand child, were present. Luzamo told the Commission that deceased had nominated grandchildren as beneficiaries together with their parents. The first distribution had excluded the grandchildren but that was challenged. The Master's report of 9 September 2024 reflects that Thabitha reported the demise of the deceased. The Death Notice however shows the date of death as 2 December 2021 and that children of the deceased were Luzamo and Thabitha. The Inventory shows the deceased to have had only the money at the bank E19 798.44. In the first distribution account of 13 April 2021, the amount was shared between Luzamo and Thabitha with the approval of the Master's Office at Siteki.

The Form for membership of deceased in Phakama-Mafucula Farmers Association signed by deceased on 8 March 2017 lists Luzamo and Thabitha (plus seven others) as beneficiaries each allocated 50% share. How that was to be effected is not clear. A Lubombo Principal Magistrate's decision of 26 January 2022 at the instance of Thobile and Lomcebo (grandchildren) against Luzamo (executor) and Phakama-Mafucula ordered the Association to pay the funds *"in accordance with the wishes of the parties, which is 40% to both Luzamo Mndzebele and Thabitha Simiso Mndzebele"*; and that *"60% be paid to Vusi Mndzebele on behalf of all the grandchildren".* To note that Vusi was also a beneficiary in terms of the Form signed by deceased.

The Master reports that the grandchildren led by Vusi were of the view that the distribution was not in accordance with the Form signed. On the face of the Form the grandchildren were correct; the distribution only to Luzamo and Thabitha was wrong. Unfortunately, Vusi did not appear before the Commission. The Form gave to all the nine beneficiaries made of children and grandchildren the same amount represented by 50% each. And the Master's report reads; *"....it was*

unclear how the proceeds were to be divided as it seems to give a 50% share to more than 12 beneficiaries."

Thabitha seems to doubt the authenticity of the Form allegedly signed by deceased and is unhappy with the 40% to her and Luzamo against the 60% to Vusi and the other beneficiaries confirmed by the Principal Magistrate. Thabitha's complaint is essentially that the grandchildren were already benefitting from other farms within the scheme itself. She is also of the view that there is a Will left by the deceased, which however, has not been produced. As to the authenticity of the Form, the Master averred that Phakama Mafucula Company confirmed that the Form was legitimate and not fraudulent as Thabitha believed. But she is of course free to go to court if still unhappy.

The Master's Office is of the opinion that the matter of the complaint is outside the mandate of their office. If it is a case of succession or who is entitled to benefit and what to benefit the scheme to which deceased belonged has the authority to resolve any arising dispute.

The Commission agrees with the Master's view. The only damning aspect is that the Master's Office did entertain the matter by supporting a liquidation and distribution account benefitting only two of the beneficiaries. As already observed elsewhere in this Report matters of the kind arising from a particular scheme such as are now familiar do not ordinarily constitute a distributable estate in terms of the 1902 Act. In the result, the Master's Office ought to be careful how it gets involved in cases of this kind. But what does this mean? Is it that members of such schemes have no assets to distribute? If so, pity must be their children. For some of these schemes might not be designed to meet or accommodate the purposes of the 1902 Act relative to estates of deceased persons.

Conclusion

Matter resolved.

30. ESTATE LATE DINGANE JETRON SHABANGU EH 230/2004

Dingane Shabangu died on 9 September 2004. The death was reported at the Master's by Thulani Shabangu on 29 September 2004. Leah Busi Shabangu (LaZwane) of Motjane area and Sibongile Jele of Nkhaba area are the surviving spouses. Deceased had twelve (12) children. Busi is the surviving spouse by civil rites in community of property, dating January 1976 but registered in August 1995. The Master's report reads: *"A second marriage certificate indicates that the same parties [Busi and Dingane] were also married through Swazi law and custom on the same date, 17th January 1976, with registration recorded in 1987. Notably, a divorce decree dated 22nd January 1986, where Leah Busie Zwane was the plaintiff, was also submitted. This decree was issued under Case Number 114/86 by the Subordinate Court for the District of Hhohho".*

Deceased had also purported to marry Sibongile Jele under customary law in June 1982 and registered in June 1986. It will be noted that in June 1986 Busi's civil marriage was said to be no longer subsistent. There is a third marriage certificate between Dingane and Tholakele Jane Mavuso recording a Swazi law marriage of January 2004. The validity of Sibongile's and Tholakele's marriages depends on whether the marriage of Busi was still subsisting. Three marriage certificates of the three widows were shown to the Commission.

A next of kin meeting was held on 2 November 2004 chaired by Isaac Dlamini at the Master's office for the purpose of nominating the executor. Due to differences among the family members, especially the three wives, the purpose of the meeting was not achieved. Busi denied that she had been divorced which resulted in her

being overlooked for the role of executor, who was then appointed by the Acting Master.

Busi came before the Commission on 10 January 2024. Busi told the Commission that due to a dispute raised by Sibongile, she (Busi) was overlooked for executorship in favour of Velaphi Dlamini, with Letters issued on 18 September 2006 by Isaac Dlamini, then Acting Master. It does not appear that the security bond was paid. Velaphi and Sibongile proceeded in the absence of Busi to deal with the estate, complained Busi. Cows that belonged to Busi were sold by the executor and Sibongile. Sibongile had her own cows at Nkhaba (her home place). Some of the cows belonging to Busi were taken to Nkhaba according to Busi. Busi said she had five children while Sibongile had four with the deceased. There are also outside children, totalling 12 in all. Busi also spoke of a vehicle that she had used with deceased but Sibongile had problems about it.

There is no Will. Assistant Master George Langa, told the Commission that Busi and deceased had been divorced since 1986. There was produced what appears to be a Court Order dated 21 January 1987 granting Leah Busi Shabangu divorce from Jethro Dingane Shabangu who did not defend the action. The Master's report states that deceased estate received from the Public Service Pension Fund E62, 788.67 which was deposited into the Guardian's Fund. This amount however is reflected in the First Liquidation and Distribution Account of December 2009 as gratuity. The Master's report also states that funds from the SwaziBank and Swaziland Building Society were never deposited with the Master of the High Court. The First Account however shows amounts from these two financial institutions as "Cash in the Estate."

The deceased had a number of properties: cash, movables and immovable. The cash alone amounted to E103, 378.00. On or about 10 October 2006, the executor is said to have requisitioned about E54, 091.67 from the monies that had found way into the Guardian's Fund. The purpose for the requisition (paid into the

executor's 'law firm') and not depositing with the Master the money at the Swazibank and the Building Society is not stated. Busi requisitioned with the Master's approval an amount of E8, 692.00 in August 2006 and this payment is reflected in the liquidation and distribution account of December 2009 approved in February 2010.

From the Master's report (per Assistant Master Ms T. Shongwe), there seems to be some uncertainity as to whether an approved distribution has occurred in this estate. Yet the First account seems to have been approved by the present Master as Deputy Master in December 2009 as indicated above. Some assets however still remain to be accounted for. The First Account excluded Tholakele from inheriting as one of the widows. The Account was not advertised which probably explains the uncertainty about actual distribution. The executor is said to have needed a court order to lawfully exclude Tholakele from benefitting. No such order has been applied for. The report is not clear why Tholakele was excluded and not treated like Sibongile. The validity of Busi's marriage is still not decided in light of the divorce order. It is Busi who should have been candidate for exclusion from benefitting.

On the information on file and subject to the availability of the distribution account referred to above, the executor is allegedly still holding in trust the amount of E103, 378.00 or E54 091.67 referred to above, the motor vehicles and plot in Mathendele Township and other funds from sale of cattle (16). Regrettably, over the period since 2006, the estate has not been finally wound up. No reason for this lapse. The Commission notes that in April 2025 the Assistant Master wrote reminding the executor of the need to complete the winding up of the estate but by end of September there had been no response from the executor.

Assistant Master Ms T Shongwe, the Commission received a report informing that the executor, Mr. V. Dlamini, (now Honourable Judge of the Industrial Court) resigned by letter dated 22 July 2025 and deposited an amount of E56,

516.00 with the Guardian's Fund. That amount no doubt represents the E54, 091.67 Mr. Dlamini had been keeping since 2006, as shown above. What the report by the Assistant Master does not say is what has been happening in the estate since the first liquidation account in 2009. The executor and the Master must explain. But importantly, the report is silent on the Plot at Mathendele Township, Nhlangano said to have belonged to deceased and the vehicle. The report also tells that Busi, the complainant, has since died.

Observation

1. The Master is said to have ruled that the executor should apply for a court order to justify the exclusion of Tholakele but executor has not acted. In the result and in light of her marriage certificate, Tholakele remains one of the surviving spouses as such entitled to benefit from the estate.

2. The plot at Mathendele Township, the amount held in trust and the two vehicles are still to be accounted for in a liquidation and distribution account.

Conclusion

1. A new executor is supposed to be appointed to replace Velaphi Dlamini who is said to have resigned when he became Judge of the Industrial Court.

2. The Master and the former executor are responsible for the delay in winding up the estate.

31. EST. LATE NTFOMBIKAYISE THEMA DLAMINI EM 466/1999

Ntombikayise Thema Dlamini (LaZwane) died on 7 January 1998 and was reported by Dorcas Dlamini, her daughter, on 16 December 1999. The deceased had been married to Daniel Dlamini who predeceased her. Deceased had 13 herd

of cattle as shown on the inventory. Nhlanhla's uncle Zephania Dlamini, younger brother of Jikijela was appointed executor to late Thema's estate.

Complainant in this matter is Jikijela Dlamini who was represented before the Commission on 10 July 2024 by his son, Mbongiseni Nhlanhla Dlamini, from KaShali, Manzini. Mbongiseni said that Thema was his grandmother, as she was the mother of Samuel Jikijela Dlamini, Nhlanhla's father. He further said that his father, Jikijela, was sickly, otherwise he would have come to the Commission. Late Aaron P. Dlamini was Nhlanhla's grandfather.

The complaint of Jikijela was that he should be included in the estate among Thema's beneficiaries and did not know why he was excluded.

Nhlanhla further averred that in July 2019 they went to the Master's Office, in Manzini. Present were Zephania and an aunt. At the Master's Office, Nhlanhla said his father, Jikijela, complained about being excluded from benefitting in Thema's estate. There, Zephania, the executor explained that Jikijela was excluded from benefitting because he was removed from home by the deceased. Apparently there had been a long outstanding dispute among the family. The Assistant Master in Manzini (Makhosazana Mdluli) had visited the family at kaShali to see for herself. However, Nhlanhla said, Mdluli did not tell the court the whole truth about what she saw or found at kaShali. At deceased's home in kaShali, there was a house that was built with contributions, including Jikijela's, said Nhlanhla; but Mdluli did not mention this in court. Instead Mdluli told the court that Jikijela was the cause of the division within the family.

When Zephania addressed the Commission, he lamented that Jikijela was not present before the Commission. Zephania stated that Jikijela was removed from deceased's homestead by *Umphakatsi* for having said that deceased was a witch. It seems clear that there was no sufficient reason for excluding Jikijela from benefitting in his late mother's estate. A ruling of 28 June 2023 by His Lordship

N. Maseko J. in Case No. 1576/2022 ordered that Jikijela be "added as a beneficiary to the estate of the late Thema Ntombikayise Dlamini (nee Zwane) EM 466/1999".

Assistant Master, Ms M. Mdluli told the Commission that the estate in question had been wound up in 2000; that there was nothing else to add. In a follow up report of her visit to deceased home at KaShali in November 2019 Ms Mdluli concludes as follows: *"From my observation, there are no issues in this estate. Mr Jikijela Dlamini is just causing trouble. Each child was allocated a piece of land and there is no need for this dispute".* Somewhat curiously, the death notice filed by Dorcas reflects only four children of deceased and does not include Jikijela as another of those children. Why? Where did Jikijela come from?

A liquidation and distribution account certified by Zephania in March 2000 was filed. The account reflects that the 13 herds of cattle belonged to Dorcas and stood as a claim against the estate and were accordingly transferred to Dorcas. The transfer of the cattle in 1999 to Dorcas was minuted as having been attended by 'Reuben Dlamini' the chief's runner. But there is no affidavit supporting the transfer. The transfer left the estate without any assets for distribution. That is how Jikijela's claim collapsed. The claim had nothing to do with the family squabbles. On enquiry by the Commissioners there was no explanation from the Master's office how Dorcas owned the cattle that had been in deceased's name and which Jikijela did not know about.

A similar fate befell the claim on rentals. The story accepted by the Master's office was the house from which alleged rentals were supposedly due had been built for the deceased by Zephania. In other words, the rentals did not belong to deceased to be part of the estate. Again, Jikijela lost out. The alleged rentals are not even reflected on the account. How Jikijela and son did not know about all this to make an issue of it after twenty years boggles the mind. Or, did the family

gang against Jikijela for having insulted the deceased? Only a thorough independent investigation can help dispel the lingering doubts and suspicions.

Conclusion

Jikijela's claim for inclusion as a beneficiary in his mother's estate must lie where it has fallen. The estate has no assets from which Jikijela could inherit. This means that the claim is unsustainable.

32. ESTATE LATE PATRICK HLOPHE EL 99/2016

Patrick Hlophe died in 2016 and Thuli Zandile Hlophe (LaNdzimandze), surviving spouse by customary rites reported the death to the Master's Office. Ntombikayise is the other widow. Melusi and Benson, deceased's children were appointed co-executors. Thuli says she declined nomination to be executor as she was tired after death and burial activities. She had arranged the burial and bore the expenses. Deceased had (8) eight children.

On 9 July 2024, Ntombikayise Tsabedze, Siniketiwe Hlophe, Melusi Hlophe and Meluleki Hlophe from Hlane came to the Commission. They complained that the estate had been distributed by Thuli's relatives and at the Master's office they were not welcome or treated properly. The Master did not want to hear them. They had complaints about what was going on with the estate assets. Cows and goats were sold or transferred to Thuli's parental home or kept at Thuli's family home.

On 15 July 2024 Thuli was present before the Commission. Thuli said she was the first wife. She was there when deceased died; reported the death and arranged for the funeral and its expenses but declined to be executor. Thuli said she once heard from deceased that deceased had a relationship with one LaTsabedze but

they had parted. The LaTsabedze referred to is Ntombikayise Tsabedze who was also present at the first hearing of the matter on the 9 July 2024.

Deceased had cows and goats; a bank account (not sure where) and permanent shares at Swaziland Building Society to the tune of E29 000.00(?)

Ntombikayise alleged that they were not properly treated at the Master's Office in Siteki. The Assistant Master did not want to listen to them (Ntombikayise and Siniketiwe Hlophe). The estate was distributed in favour of Thuli's relatives. The cows and goats were kept at Thuli's marital home. Ntombikayise further complained that the cows and goats were either sold or transferred to Thuli's paternal home. Meluleki Hlophe (child of deceased) later stated that there were about 100 goats at the time of deceased's demise and not 30 as Thuli had stated. Many of the goats were sold or disposed of in the short period between 2016 and 2019. Meluleki did not know why his mother moved away from home or sold the animals.

It appears that Thuli had first married the deceased by custom but had deserted and married someone else by civil rites. The 'someone' however died and Thuli returned to deceased's home. When deceased died Thuli said she was told by her in-laws (the Hlophes) to return to her parental home. She said when she left she took some 30 goats and the cows had gone ahead to her parental home. Most of these goats had since died, Thuli alleged, as the Master had advised that they not be sold. As to the bank account, Thuli said they were informed that the Swaziland Building Sociey was owed by the deceased but not sure of amount. Thuli also said the cows and goats had been obtained by the deceased during her time with him. The Master agreed that the 3 remaining cows be sold so as to pay the herdboy.

At the follow-up hearing on 15 July 2024, the Master's Office told the Commission that the estate had E9000.00 from sale of the cows; E6000.00 at

Swaziland Building Society and deceased had two wives and 8 children. There was a dispute as to the marital status of Thuli in light of the fact that she had been purportedly married to someone else between her initial marriage by custom to and death of the deceased. The purported civil marriage was, of course, invalid since the customary marriage with deceased had not been dissolved. Thuli applied to court and succeeded to have her first marriage to deceased validated.

By the end of September 2025**,** no distribution had occurred. The winding up has not been effectively supervised by the Master's office.

33. EST. LATE ALFRED MHLUPHEKI MKHATJWA E 4292/1984

On 10 July 2024 Thuli Orania Nxumalo and Zethu Petronnela Nxumalo from Maphungwane appeared before the Commission. The two are the complainants on behalf of their mother Susan Khombani Mkhathwa nee Maziya who died in 2000. The deceased was their father. Their grievance, in short, was that when their father died Cecilia Nkambule was *tekaed* by custom. This resulted in a dispute about the estate, which to the knowledge of the complainants has never been distributed. There was money from deceased's place of employment that was paid to the Master's Office. The dispute went to the extent "where the Master said both spouses must share but our mother said no, she refused".

The Acting Assistant Master George Langa told the Commission that since the application of Susan Mkhatshwa to court challenging the distribution account prepared by Luke Malinga as executor in 1988 there has been no distribution. *"Things have become stagnant since then. There is no court order in file."*

On 15 July 2024 Langa said he met Mr Luke Malinga about this estate. Mr Malinga is reported by Mr Langa to have said that he (Mr Malinga) had *"no recollection of this matter."* Mr Langa then sought the help of Judge Qinisile

Mabuza (former Attorney for Susan) who promised to assist where possible. But not much assistance has been forthcoming.

Mhlupheki died on 26 July 1983. Deceased left behind Susan Khombani Mkhatshwa nee Maziya as surviving spouse by civil rites. Another woman Cecila Nkambule a long-time girlfriend, with children of deceased was allegedly married (*tekaed*) by custom during the preparation for deceased's burial, and was accepted by the family as a surviving spouse. This was in 1983. Deceased and Susan were married in 1963 after due publication of banns. It is said by Susan that at their marriage in 1963 the relatives of Cecilia objected to the marriage but the objection was over ruled by the DC's office as not good enough to stop the marriage. It would seem that Cecilia was an earlier girlfriend of the deceased as she already had children when Susan got married. In paragraph 9 of her affidavit challenging the status of Cecilia in the deceased's estate Susan deposed: *"When we got married with the deceased the first respondent Cecelia Nkambule was one of many girlfriends and had children from him (the deceased)."* It would also seem that the love relationship between deceased and or family of the deceased and Cecilia was not ended by the marriage between Susan and deceased.

Susan Khombani Mkhatjwa reported the death of the deceased on 26 July 1983 at Master's Office. Petros Msongelwa Nxumalo was appointed the first executor dative in July 1984 with letters issued on 30 January 1985 by the Master's Office. From correspondence on file, it also appears that before Petros assumed executorship, Robin Scott-Smith and Company had been instructed to wind up the deceased estate. Petros died about July 1985 and his death was communicated to the Master's Office, it would appear, by Mrs Hlanze who was Susan's attorney. Mrs Hlanze (Ms Q. M. Mabuza) was then employed at Robin Scott-Smith and Company.

Attorney Luke Malinga replaced Petros as executor in July 1986. A distribution account of February 1988 prepared by Luke Malinga as executor dative (not sure

if approved) gave to the civil rites surviving spouse half of the estate and the other half to LaNkambule described as 'Mrs Mkhatjwa' "*by virtue of marriage by Swazi Law and Custom*." The children of the deceased apparently got nothing from the distribution, if it was ever affected. With regard to this account, the Master's report explains as follows under paragraph 16: *"…. Kindly note that the Liquidation and Distribution Account bears no Master's date stamp. That's how things were done back on the day. Nowadays, the Liquidation and Distribution Account bears the Master's stamp of approval and signature."* This means that, that Account flawed as it was, was approved by the Master's Office. The Account was duly advertised, but met with objection from Susan. The objection challenged the marriage of LaNkhambule and that the distribution account prepared by Mr. Malinga did ot show an amount from deceased's Big Bend Barclays Bank account. The court application had two appearances in 1988 and one in March 1990. According to George Langa, the Assistant Master, the court file cover is written 'Settled." There are no details as to how the matter was 'settled.' For the applicant was QM Hlanze and for the respondent was D Lukele. The distribution account was duly advertised.

The Account prepared by Mr Malinga and approved in the manner then in practice distributed the available balance as follows: *"1a. To Mrs Susan Khombani Mkhatshwa (born Maziya) ½ share by virtue of marriage in community of property - E8 473.89; 1b. To Mrs Mkhatshwa (LaNkambule) ½ share by virtue of marriage by Swazi Law and Custom – E8 473.89.*" The distribution treated Susan's civil rites marriage as a customary marriage like that of LaNkambule. And gave nothing to deceased's eight children.

The Master's report reflects that three payments amounting to E18, 874.70 were made in 1991 and 1992 to "Susan Nxumalo" and "Susan T. Nxumalo". By letter to the Master dated 14 October 2024 Susan Mkhatswa's daughter, Zethu Nxumalo, disputed that the payments were made to her mother who was known

as “Susan Mkhatshwa” not as “Susan T. Nxumalo”. Since two of the payments were apparently made to ‘Susan Nxumalo’ and the only one was made to ‘Susan Nxumalo’ in one instance and shown as ‘Susan T. Nxumalo’ in another instance, the commission is of the view that on balance the payments were made to Susan Nxumalo and should not be a problem. Of the whole amount, the payment reflecting Susan T. Nxumalo is only for E500.00. In several instances in the Master’s report and her affidavit in the court application, Zethu’s mother, Mrs Mkhatshwa is referred to as ‘Susan Nxumalo’ or ‘Susan K. Nxumalo.’

What the application to Court and Zethu’s letter of complaint did not raise was the whereabout of an amount of E20, 160.00 belonging to deceased’s estate that Attorney Luke Malinga, as executor, by letter dated 1 July 1986, demanded from Messrs Robin-Scott Smith. Robin Scott-Smith and Company had received the amount from the Regional Administrator, Siteki by cheque dated 6 July 1984. That amount is not reflected on the distribution account prepared by Mr. Malinga. It is however not clear if Robin Scott-Smith did surrender the money to Mr. Malinga. Mr. Malinga’s account is presented as “Final Final Liquidation and Distribution Account . . .” It is necessary that the E20, 160 be accounted for.

Conclusion

1. In the view of the Commission, the amount of E20, 160.00 which did not appear on the distribution account prepared by Mr Malinga should be followed up and returned to where it belongs.

2. It is necessary to know how the application to Court was ‘Settled’ in light of the distribution account which treated Suan and Cecilia as equals.

3. If Zethu can show that the E500.00 was by error paid to Susan T. Nxumalo who is not Susan K Nxumalo Zethu can lawfully demand reimbursement from the Master who allowed the error to happen.

4. After 40 years, the file must close.

34. ESTATE LATE PORTIA HLOPHE EM 282/2018

Portia Hlophe had a home at Ngwane Park, Manzini, as well as rental flats and money at bank. She died in 2017 and Sibusiso Hlophe, her son and executor reported the death to the Master's Office. Distribution has occurred but the file did not contain or reflect the rental houses/flats owned by the deceased.

On 11 July 2024, Khangezile Nontobeko and Sibusiso came to the Commission and stated that as a result of the deficiency shown in the file/distribution account, they wrote a letter of complaint to the Master. The Master's Office told the complainants to go to court. Sibusiso claimed the flats to be his, even though deceased used to collect rentals from them. The title deed to the home was also changed to Sibusiso. At the Master's Office in Manzini, Shadile Tshabalala handled the complainants' file. "Shadile told us she did what Sibusiso told her. She then told us to write a letter of complaint, which we did. We never heard from Shadile again".

Sibusiso told the Commission that he regularly convened family meetings. Plot No. 527 Ngwane Park was subdivided and he got a portion. The flats were finished in 2015 and the plot with the flats moved from deceased to Sibusiso. Sibusiso admitted that the move of the plot to his name was a mistake he committed. Since Sibusiso has confessed his transgressions, the road to distribution is plain.

Conclusion

For lack of proper supervision by the Master's office, Shadile, the executor has disappeared without concluding the winding up of the estate. Another executor must be found.

35. ESTATE LATE MYEKENI SAMUEL MABUZA EM 163/2004

Myekeni Samuel Mabuza of Ngwane Park, Manzini died at the Manzini Clinic on 30 March 2004. The deceased had married by customary law his wife Ntombi Catherine Mabuza (LaNgcamphalala) and had 8 children. The death was reported by Ntombi assisted by Sibongile Dlamini on 14 April 2004. Sibongile is sister-in-law of the deceased. Sibongile also filed the inventory.

The deceased left a Will in terms of which, among other things, Ntombi was appointed executor. It appears that deceased also had another female acquaintance or partner, whose legal status is not very clear. Her name is Masesi Goodness Sacolo. She stayed or had a home at Fairview, Manzini. The inventory reflects deceased as having had a plot at Logoba, Matsapha. The Will indicates that deceased had a Plot on Thelma Street, Ngwane Park, Manzini and another Lot 250 Cluny and Mendip Roads, Fairview, Manzini. Ntombi says that around the time of the death of Myekeni, Masesi had deserted the Mabuza family and gone to Nhlangano, leaving her children with Ntombi. Both Ntombi and Masesi were present at the hearing on 10 July 2024. Either due to lack of diligent supervision by the Master's Office or the challenge of the Will, with the matter said to be still pending in court, nothing had been distributed as at the date of the hearing in July. Masesi alleged to have written to the Master objecting to the Will and the slow pace of the winding up of the estate. Masesi's standing to object to the Will is doubtful. She is not mentioned in the Will and has not filed a marriage certificate to show who she is. Ntombi is also unhappy that there has been no distribution over the twenty-year period. She is the executor and ought to know better.

The Master's report dated 16 July 2024 by Ms Ntombikayise P. Dlamini simply notes that Masesi Sacolo is not a beneficiary under the Will. This means that her complaint is bad. But in the absence of any distribution, the Master's report does not respond to Ntombi's complaint. The relationship of Masesi with the deceased

is not indicated other than that of being girlfriend. Even if Masesi gets nothing under the Will, she may still be entitled to maintenance considering that she has children with the deceased. Not sure if the Will has been challenged in court.

In terms of the Will, deceased bequeathed his house on Lot No. 250 Cluny and Mendig Roads, Fairview, Manzini to his named beneficiaries, being the surviving spouse (Ntombi) and 8 of his children. To Ntombi, deceased bequeathed the exclusive use and enjoyment of his house being Plot No, 233 Thelma Street Ngwane Park Township. Although the deceased reserved the right to alter any of the bequests, it does not appear that he did exercise that right. On the Logoba plot, further search must still be carried out.

Observation

1. The Master's Office has clearly not done its supervisory function in this matter. The Master should be satisfied that executors understand their duties under the 1902 Act.

2. The Commission notes that deceased estate inventories must be filled by persons who are related to deceased and have reasonable knowledge of the life of the deceased. Otherwise, estate assets could be left out to property predators to the prejudice of legitimate beneficiaries.

3. The Master's Office should oversee the filling in of the inventory form and be satisfied that the form is properly filled.

Conclusion

1. The Master must keep an eye on the winding up of estates so as to advise on corrective measures and ensure estates are wound up within the statutory period.

2. Masesi's standing to raise complaint is doubtful, but her children with deceased would qualify for maintenance, and even inheritance.

36. ESTATE LATE SYBIL GUGU YVONNE MUIR EH 111/2016

On 18 July 2024, Wayne Friedman, Mark Friedman, Rejoice Muir and Glen Muir (a nephew) claiming to be children of the deceased, Sybil Gugu Yvonne Muir, appeared before the Commission. The deceased was formerly married to a Mr Friedman. Rejoice alleges to have been adopted by deceased. To this end there is attached an affidavit by her mother consenting to her adoption by the deceased. The affidavit is dated August 1983. But there is no court order in support of the adoption and the Master is said to have disputed the alleged adoption.

The deceased Sybil Friedman (Muir) died on 8 September 1986. Deceased had a home and stayed at Fonteyn Mbabane. Deceased had a farm (Plot No.121) at Fonteyn, money from Royal Swazi Sun where she had worked as a croupier after having worked as a teacher. She also had a car that was allegedly sold by C.J. Littler as executor. It is said that the file moved from Littler and Co. to Knox Nxumalo as a result of lack of progress in the winding up of the estate. But the death was only reported in 2016 when the Mbabane Municipality sought payment of rates for the property.

It appears that as a result of the Master disputing the adoption of Rejoice the Friedman brothers do not want Rejoice to benefit from the estate of their late mother. The brothers also want Rejoice to account for rentals collected from a house that Rejoice alleges to have built by herself. Rejoice is accordingly complaining that the Friedmans compensate her for the structure she built on the estate farm as the brothers do not want her to be part of the family and beneficiary. Apparently, the executor, Mark Friedman, is agreeable to Rejoice's main complaint. The executor considers that Rejoice could be compensated for the structure at issue and be bought out from the estate.

The Mbabane Municipal Council has since evaluated the property in issue at E1, 032, 000.00 as at 25 July 2024. This amount represents E656, 000.00 for the land

and E376, 000.00 for the structure on the land. The executor is to present a distribution account along the above valuations.

The Municipal Council is owed large amount for rates by the estate and has been threatening to attach and sell the property. It is confusing how the rates accumulated over so short a period, resulting in a threat to attach the property. There is an order of court reflecting rates due as at December 2019. But as at March 2024 the same Municipal Council has filed a claim of E50, 448.00 for rates on the same property; hence the threat to attach and sell.

Conclusion

Rejoice should be bought out by compensating her for any structure she may have constructed on the farm.

37. EST. LATE MFANAWENDLELA Z. SIMELANE EM 209/2017

The death of Zeblon on 10 August 2017 was reported by Mlungisi Simelane. Phindile and Mlungisi were appointed co-executors. Phindile is surviving spouse by custom. Deceased had ten (10) children with a home at Mafutseni, Manzini District, three (3) cars, one (1) tractor, forty-seven (47) cows, money at bank and another home at Duze. At the time of the hearing, no distribution had happened; reason for the delay not clear wile assets are squandered in the meantime. The family would not agree most of the time on the way forward. Part of the trouble was attributed by Mlungisi to Assistant Master, Ms Z. Fakudze.

Present on the first hearing on 2 July 2024, were the following Simelanes: Phindile (surviving spouse); Siphelele, Mlungisi, Nkosinathi, Nompumelelo and Nokwanda (the children of the deceased). Other children are Lungile, Sihle, Mlondi, Bonsile and Phila. The inventory was also compiled by Mlungisi; it indicates that deceased had 3 motor vehicles (a tractor and 2 Toyotas) and money at Eswatini Bank, to which must be added the assets mentioned above.

The complainants are Nkosinathi, Nompumelelo, Nokwanda and Phindile. The complaint is mainly about the delayed distribution when there are minor children to be maintained. In the meantime, the assets are being squandered. There was also an issue about whether Lungile has been *tekaed*. It is also complained that Phindile is not willing to have the cows used for family needs.

Observation

1. There is no clear explanation from the Master's Office why the delay in distribution. On 22 November 2024, Mlungisi reported that a liquidation and distribution account has been prepared subject to approval by the Master. A year later, no distribution account has been forwarded to the Commission by the Master as requested.

2. The complaints are of a general kind and can be resolved by discussion at home or in the presence of the Master.

Conclusion

The final report with liquidation and distribution account should be filed without further delay.

38. ESTATE LATE NDUNA (MDVUNA) NGWENYA EL 93/2023

Nduna (Mdvuna) Ngwenya died in 2004; he was resident at KaNgcamphalala (St Phillips). The death was reported by Mntfwana Ngwenya. Sibongile Ngwenya is executor and surviving spouse. There are two other widows, all by customary rites. Deceased had a home in a chiefdom, had cows, goats and sheep and a tractor. Most of the assets had been wasted by the time of the hearing, allegedly by Boy, Delly, Bhobosa and Mfana. The death was not reported in 2004, thereby facilitating the depletion of the estate assets. Only 3 cows and the cane fields remain. Assistant Master Magagula called for a family meeting but some of the male children who did not want the estate to be reported did not attend the

meetings. Instead, these defaulters used the sheep and goats as they pleased. Nothing much is harvested from the cane fields.

There is also the Matimavu Investment Scheme that has been part of the ESWADE companies from about 2009. Phiwokwakhe Ngcamphalala, said that the Umphakatsi told the Ngwenya family not to pay to the Master or deceased estate instead pay to members of the Matimavu Scheme. This was in connection with work on the cane fields and profits therefrom.

The complainants are sisters who are not members of the investment scheme. They are Sibongile Ngwenya (the executor), Mntfwana Ngwenya, Sara Dlamini, Sidudla Ngwenya. They were present before the Commission at the first hearing on 11 July 2024. Also, present were Phiwokwakhe Ngcamphalala and Nkosingivile Sibandze, a Matemavu board member.

The hearing continued on 23 July 2024 and three Ngwenya brothers were in attendance. These were Delly, Mfana and Bhobosa. The complainants told the Commission that these three attendants were their brothers who were represented by their wives in the cane fields. The complainants said that these three brothers told the complainants to go to their own marital homes and leave the cane fields. But these cane fields are "our parents' cane fields".

The brothers claim that the cane fields were given to them by Umphakatsi. Delly told the Commission that he did not know their father's fields; but the cane fields in question were returned to the Umphakatsi when the Matemavu Investments was formed, which scheme they then joined. *"Our sisters were not there, they were at their own marital homes"*, said Delly, who also denied knowledge of any goats or tractor asserting that deceased had neither cows nor tractor. Three cows that were at deceased kraal did not belong to deceased, Delly continued. But Gogo Sibongile disagreed with Delly's story on the cows and goats. Sara agreed with Gogo, and said that the brothers do not want to attend meetings and ignore

that some of the sisters are not married and have nowhere to go and earn a living. Yet in other families married sisters are included in the scheme but not in the Ngwenya family, complained Sara.

Assa Shongwe intervened pointing out that in about 2005 ESWADE introduced the cane farming scheme and land settlement development in the area. ESWADE explained about how it was all going to be managed for the benefit of *lidladla, (*household).

Conclusion

1. The complainants should be treated like other females within the area and not be discriminated by their brothers.

2. The complaints are to be resolved in terms of the rules of the scheme/association.

3. The Master's role, if any, is very limited.

39. ESTATE LATE ALVIT ZIDE DLAMINI EM 55/1992

Before considering the issues raised in this estate at this Commission, it has been deemed appropriate to refer briefly to what was stated in the Masuku Report of March 2001, at page 87, on this same matter:

> *"The deceased died on the 15th February 1992 and Attorney D. Lukhele was appointed executor. He was subsequently removed after an Order by the High Court issued in terms of section 54 and he was replaced by Attorneys QM Mabuza and SC Dlamini.*
>
> *The deceased's sister Mrs. Sibongile Sihlongonyane (nee Dlamini) complained that the deceased's next of kin were not sufficiently consulted in the issue of the winding up of the estate. Furthermore, one of the*

deceased's wives LaMagongo was excluded from inheriting from the estate, notwithstanding that she had a marriage certificate.

Ms. QM Mabuza stated that the reason for not including the wife in question was that she was married to the deceased posthumously. It is common practice for such marriages to be concluded in Swaziland. Ms. Mabuza conceded that LaMagongo should have been included, particularly because her minor child with the deceased was awarded a hefty inheritance in terms of the final liquidation and distribution account."

LaMagongo was included as a beneficiary in her late husband's estate. But the problems inhabiting the estate did not end. Instead, more and grave problems ensued as will appear from the litany of complaints presented at this Commission. For instance, Masuku refers to "the final liquidation and distribution account". But at the dissolution of this Commission, the estate was far from a final and liquidation account.

On 21 March 2024, Duma Carlson (Calvin) Dlamini, son of the deceased Alvit Zide Dlamini came before the Commission. Duma came from Logoba, Manzini region. Duma told the Commission that his father died on 15 March 1992 – killed by unknown persons. Attorney Douglas Lukhele reported the death at the Master's Office. Mr Lukhele who was the attorney for the deceased was later appointed executor with the full support of the Deputy Master, Isaac Dlamini, very much against the wish of the family. The letters of appointment of Lukhele were issued on 20 July 1992 by the Acting Master, Mrs B.T. Stewart (LaMakama). Deceased had movable and immovable property. Deceased had three wives by customary law, namely Busisiwe, Girlie and Siphiwe and nine (9) children. Lukhele did very little, if anything, over a period of four years until he was removed in December 1996 by court order issued by Justice Sapire ACJ. On

vacating the executorship, Lukhele did not account; many movable assets and rentals were depleted under his watch.

From the outset, the administration of the estate was mired in intractable controversies. The family did not want Lukhele as executor. On 24 May, 1993, five of the beneficiaries wrote to the Master complaining:

1. We have written a letter of complaint (on the 6th February, 1993) against the conduct of Mr. Douglas Lukhele (executor of the estate) for which we got neither a confirmation of receipt nor a reply addressing the issues in that letter;
2. The executor of the estate, Mr. Douglas Lukhele has been working for a whole year without any results . . .
3. The assets of the estate are being depleted on a daily basis and that at the end of the day the estate must pay the executor on a daily basis;
4. The businesses of the estate are still running and we cannot account for the money which is being collected daily;
5. The executor of the estate has become our undeclared enemy.

We hereby resolve that . . .

The resolution was in essence to have the executor removed for failure to perform his duties.

The negative stance of the family towards Mr Lukhele resulted in some beneficiaries refusing to hand over to the executor estate assets in their possession. In his letter of 16 June 1993 to CJ Littler and Co., Mr Lukhele wrote, among other things: *"The mother of Dumisa and Ayanda, Girlie Dlamini has continuously obstructed the Executor from preparing the Executor's Inventory in that she refuses to give possession of the assets in the estate for valuation purposes.*

Dumisa has been unlawfully using a sedan motor vehicle without the executor's consent and has stripped some motor vehicles of certain parts thereof;" (sic).

At about the same time, in 1993, Lukhele moved a Court application against Girlie Dlamini, one of the surviving spouses, to deliver to him certain estate assets listed in an annexure alleged to be in possession of the respondent. That was High Court Case No. 826/1993.

On 23 May 1994 PR Dunseith Attorneys representing Mrs Girlie Dlamini, responded to D. Lukhele in these terms – *" (a) A bar situated at Malandzela Farm trading as 'Zide Wine and Malt' was closed down in 1993 due to non-renewal of the liquor licence; (b) The credit facilities extended to Assegai Bar in Nhlangano have been repudiated due to non-payment by both the Swaziland Breweries and Swaziland Liquor Distributors….(c) More than thirty (30) herd of cattle have gone missing from the estate farm and no action has been taken ….; (d) Various other items belonging to the estate have been sold and not accounted for; (e) School fees for the children of the deceased have not been paid and the wives of the deceased have not been maintained; (f) Further, rates for various properties belonging to the estate are not being paid timeously or at all (. . .)*

These complaints were confirmed in a letter of 2 September 1996 by Girlie Dlamini to the Master complaining about the manner Douglas Lukhele administered her late husband's estate. She expressed having "reasonable grounds to suspect maladministration of the estate by my late husband's attorney, Mr. Douglas Lukhele"; how Mr Lukhele did not inform the family of the number of cattle at Malandzela farm which were 700 in 1991; how some cattle were removed from estate farms by Mr. Lukhele without informing the complainant; how Ncabaneni farm was leased to Libby's without permission and benefits not accounted; how Zwide Malt and Wine was leased by Lukhele without the knowledge of Girlie and rentals lost to beneficiaries; leasing of a house at

Fairview South, no benefits obtained while the house deteriorated; and no maintenance for school-going children.

As may be seen, this estate had so many questions and complaints that itemising these would serve no gainful purpose. This Commission and the time allowed was not in a position to list all and every such complaint and response thereto, if any. This estate requires its own time and special investigator who would leave no stone unturned. The beneficiaries have a legitimate reason to complain not only about the mysterious way their father died but also the manner the estate has been administered, hounded, as it were, from the very start by seemingly irremediable irregularities at the hands of persons who were supposed to protect it. Later in this report, we come across some of the observations of then Deputy Master of the High Court, Isaac Dlamini in the report that he prepared for the Police where he points out some serious concerns about the manner this estate was harvested.

The fact that 35 years later the estate has not been legally wound up is a serious indictment to our administration of justice: potential culprits and some beneficiaries have moved on or died and assets no longer traceable for proper accounting in the dust of time: **"We hereby appeal upon the conscience of the honourable Master to see the pains and injustice that the heirs in this estate have suffered over and above the pain of losing a loved one in such a violent manner as was the death of the deceased."** Thus wrote Sonke N Dlamini, son of deceased, to the Master on 19 April 1997, on behalf of the family. On 28 April 1997, again Sonke wrote to the Master:

> *"We as a family have never had the opportunity to elect an Executor. Mr Douglas Lukhele was elected behind closed doors by the so-called elders of the family, a meeting in which we were banned. . . . From the murder of the deceased, the estate had been hijacked by cousins that he [deceased] had not talked to for a number of years. They made themselves Crown*

Princes of the estate. They elected their own 'executor'; they have been benefitting from the estate for the past 5 (five) years. There is good reason that they are widely implicated in the arson that resulted in the death of our grandmother (LaMkhabela). She was obviously an obstacle to their new-found fortune … She is said to have burned herself with a forgotten candle in a house that had electricity."

The removal of Mr Lukhele as executor was set out in High Court Case No. 1242/1995 in which seven of the beneficiaries combined to have Douglas Lukhele removed as executor of the estate. The application was moved by attorney, Mr. SC Dlamini. Mr Lukhele was removed from being executor in December 1996. Interestingly, Mr SC Dlamini was Master of the High Court and presided over the next of kin meeting on 22 May 1992 which nominated Mr Lukhele for executor of the estate. Also worth noting is that that meeting was attended by the three widows namely Girlie, Busisiwe and Siphiwe, two sons of the deceased namely Duma and F, eight 'brothers' of the deceased, a sister and sister-in-law of the deceased. Clearly, the beneficiaries were outnumbered and that was another cause for complaint by the beneficiaries in that they were not fairly represented in the nomination of Mr Lukhele as executor. In other words, the next of kin meeting was not properly constituted.

For some unknown reason, Isaac Dlamini had wanted to replace Lukhele with Ms QM Mabuza as shown in the letter of Mr Dlamini dated 6 March 1997 purporting to 'appoint' Ms Mabuza as executor and that of SC Dlamini of 22 April 1997 referring to the "proposed appointment of Attorneys QM Mabuza as executrix dative" which was opposed by the heirs. Sonke stated in the letter of 28 April 1997: *"This Miss Qinisile Mabuza, ... is not our choice of executor, and if the honourable Master does not reverse this decision, then we are prepared to take it to court or even (to) His Majesty the King."* The move to appoint Ms Mabuza as sole executor was thus scuppered by the strong and relentless opposition of the

estate beneficiaries who wanted SC Dlamini to be executor. Application to the High Court was made by SC Dlamini representing the majority of the beneficiaries to oppose and or remove QM Mabuza as executor. Instead, the application was withdrawn following a 'compromise' reached at a meeting of SC Dlamini and QM Mabuza chaired by Isaac Dlamini on 24 June 1997, where it was agreed that SC Dlamini be joined as co-executor with QM Mabuza.

On 24 June 1997 the Attorney General's Office (per Ms. TP Nkwanyana) advised the Master's Office that the initially purported appointment of QM Mabuza as executor on 6 March 1997 could not be defended as section 24 of the 1902 Act had not been followed. The advice went on to observe and opine that *"both Siboniso Dlamini and Ms. Mabuza could be nominated as joint executors, <u>if that is what the heirs want"</u>*. (Emphasis added) What the heirs wanted could properly be shown at a next of kin meeting. No such next of kin meeting was held for the nomination of QM Mabuza and SC Dlamini as joint executors. In the result, section 24 was again violated. The Attorney General's advice was directed to Isaac Dlamini at the Master's Office. Incidentally, the date of the advice, i.e. 24 June 1997, was the very date on which the appointment of QM Mabuza and SC Dlamini as co-executors took place. Why did the Deputy Master, Isaac MF Dlamini, flout the advice and the law? Thus, the administration of the Late Alvit Zide Dlamini estate was flawed and defective from outset.

It was not until a year and a half later, on 27 August 1998, that the Master (Mr Churchill Dlamini) issued the letters appointing QM Mabuza and SC Dlamini as co-executors. Could it be that the Master suspected something amiss with nomination of the two executors and had vainly hoped that an interested party would challenge it? It is hard to say. The beneficiaries, it would seem, were never reconciled to Ms Mabuza being executor. Duma says they, as beneficiaries, never knew how the compromise came about. This means that SC Dlamini was never instructed by his clients to withdraw the application: High Court Case No.

1643/1997. The tripartite meeting – comprising Isaac Dlamini, QM Mabuza and SC Dlamini - itself was not a meeting fit to nominate an executor, which is the duty of the next of kin. The concerns of the beneficiaries were never seriously entertained by the Deputy Master. However, in her letter/affidavit to this Commission, Ms. Mabuza has written: **"5. His second wife, LaMnisi hired me as her lawyer. . . . 6. The proceedings instituted to remove me failed because of LaMnisi's insistence that I represent her. The applicants were the LaMaseko side, this excluded LaMnisi and her children. A compromise was reached and I remained as LaMnisi's lawyer. It is incorrect that I manipulated my way into the estate."**

Three Liquidation and Distribution Accounts of October 1999, August 2002 and November 2002 were certified and signed by QM Mabuza alone. The 1st Account of September 1999 does not show who certified it for lack of the last page (page 6), but appears to have been approved. The 5th Account of September 2007 was certified by both QM Mabuza and SC Dlamini, while the 6th Account does not have the certification page and does not appear to have been approved. Considering that in effect SC Dlamini was appointed in June 1997, it took him ten years to append his signature to any Account. Why? The family had wanted him to be executor. Surely, SC Dlamini betrayed the family by his inconspicuous presence or being a 'sleeping' executor. Whatever the reason for not signing some of the Accounts, the legal position is that both executors are bound by the accounts presented. See **Tabethe vs Mtetwa** 1978 (1) SA 80 (A).

On 3 September 2024 Isaac Dlamini was present before the Commission. Dlamini complained that the matter had been heard more than once (more than 3 times, he said) and all he could offer was to refer the Commission to a report he had prepared for the Police dated 23 February 2022. The report is more than 40 pages and the only issue it covers even then not in detail is the E40, 000.00

provision for costs. Dlamini told the Commissioners to first read the report and then call for him. That the Commission did.

In the introductory remarks to the Police Report, Mr Dlamini noted certain features about the police inquiry and cautioned that it be free from negative or derogatory connotations. In particular, Mr Dlamini cautioned:

> *"1 (a) How to approach 'the Executor' who drew up the 4th Account and put aside the amount of E40, 000.00 which is the source of this very inquiry so that the 'approach' should not be seen and/or viewed by the 'Executor' as an 'exercise' aimed at undermining* (his/her) *dignity, status and/or reputation.*
>
> *"1(b) The approach must be done with 'greatest' respect the Executor deserves to be accorded. Taking into account, the Executor's respect, status and station in the Kingdom and also in the SADC REGION.*
>
> *1 (c) This estate is one of the most 'sensitive estates.' It need to be handled carefully and with utmost respect so that the Executor in question should not feel insulted, embarrassed, ridiculed and/or defamed etc.*
>
> *"That the Executor in question should not at any stage regard the enquiry in its entirety as defamatory. The 'slightest element' of defamation may result in civil litigation in which massive sums of money for 'reparation' are likely to be demanded from the Defendants or Respondents."*

The Deputy Master further observed: "*When approaching the Executor, the office of the Master of the High Court must be engaged. An appointment should be made with the 'Executor' in question to discuss the 'concerns' of the 'heirs' amicably in order to reach the lasting solution."*

One wonders whether Mr Dlamini was not casting a protective shield over himself as the officer from the Master's Office mainly associated with the

maladministration of this estate. Mr Dlamini's warning to whosoever in the police report begs the question.

In his 44-page report to the Police, Mr Isaac Dlamini commented on various aspects, including the "fees and executors' remuneration" of E208, 972.86 (for QM Mabuza and SC Dlamini) charged under the 1st liquidation and distribution account of September 1999 and the amount of E40, 000.00 'provision for Attorney's fees' under the 4th Account of November 2002. Of the latter amount, Mr Dlamini said it was incumbent upon the Master to call upon the Executor to justify the set aside as 'provision' for costs. And that the amount of E40k did not belong to the Executors since it was not yet earned. In other words, this amount must ultimately be accounted for by the executors. But the accounts do not show when the two amounts ceased to be 'provision' and became earned. It was the duty of SC Dlamini as legal advisor for the family to assist the family in challenging such large amounts for fees. But how could SC Dlamini do that when he was both legal advisor to the beneficiaries and executor in the same estate: a clear case of conflict of interest.

In his report, Mr Isaac Dlamini also observed that to the 6th Account there was no 'Declaration Certificate' by the executors confirming that there were no further assets to be accounted for, meaning that the distribution was the Last and Final Account, to the knowledge of the executors. Absent such certificate, Mr Isaac Dlamini said, the "Executors can still be summoned by the Master" to justify, among other things, 'how the amount of E40, 000.00 has been used.' In the 1st to 6th Accounts, there is no explanation how the E40, 000.00 has been used or what happened to it. Isaac Dlamini's concern in his report to the Police seems to have been the whereabouts of the E40, 000.00. But it may be pointed out that considering that the 1st Account dealt mainly with 'cash found' in the estate, the amount of E208, 972.86 as "Fees and Executors' Remuneration for Attorneys SC

Dlamini and Ms QM Mabuza" was on the extravagant side. On this issue of fees and remuneration, the Master in her report of 4 January 2025 says that:

> *"9.2 The Executors fees were calculated at approximately 20% (...) instead of the statutory 1% of cash found in the estate (....) leading to an overpayment of E198, 318.29"*

The approval by the Deputy Master (Isaaac Dlamini) did not justify the overpayment. On the amount of E40, 000.00 fees, the Master notes that the account had no attachments or supporting documents to justify it. In particular, in many instances hereof beneficiaries have alleged not to have received even what the accounts purportedly distributed to them. The accounts therefore are not reliable, as also the issue of advertisement is disputed.

It is also contended by the executors that the distribution accounts (1st to 6th) were never challenged by any of the interested parties. Isaac Dlamini also wrote in this regard on page 4: **"The 'heirs' never raised any 'objections' to any of the six (6) Accounts. The provisions of the Act listed below were not complied with as required by the Administration of Estates Act No. 28/1902."** [Section 51 bis (6), (7) and (8) are referred]. There may well be an explanation for this apparent lapse. None of the accounts were advertised for the period required by law. The Master's file has no evidence for such advertisements in the form of relevant newspaper or gazette excerpts or cuttings. The executors have provided none either notwithstanding argument in support. Another reason for not challenging may be that throughout the 'distributions', the beneficiaries were represented by legal advisors who were also executors in the same estate. The attorneys could not find fault with an account they had prepared as executors. Isaac Dlamini himself could not realistically be expected to have been of any assistance to the beneficiaries, having regard to the role he played in the appointment of the executors.

On 5 June 2014, long after the distributions had happened, the Deputy Master wrote to the co-executors (Ms Qinisile Mabuza and Mr Siboniso Dlamini): *"1. We are in receipt of a complaint from the beneficiaries of the estate. The complainants, through their Attorney, have raised a number of concerns surrounding the winding up of the estate. 2. Our observation from the file is that (a) There is no final liquidation and distribution account in terms of section 51(4); (b) There are no receipts and acquittances or deed of registration by the registrar of deeds specifying the registration which have been effected by yourselves in terms of section 51 bis (10) of the Administration of Estates Act. 3. We therefore request compliance with these provisions as a matter of urgency because of the length of time taken for these documents to be filed with the Master."* The executors were also urged to respond to concerns raised in a letter of the complainants dated 23 May 2013.

In response to the foregoing, SC Dlamini stated in a letter dated 16 June 2014 as follows: **"The writer has not been able to locate his file in this matter which was closed some thirteen years ago. . . . The accounts were advertised and confirmed by the Master after the period for lodging objections had expired. Distributions were made to the beneficiaries none of whom had objections. Anyone who has the necessary background information on this matter and the circumstances of the tragic death of the late Alvit Dlamini will be aware that it would have been extremely difficult to get a purchaser for this farm. There were persons who were intent on grazing their cattle forcibly on this farm. The agent did a commendable job by pursuading Tibiyo to buy the farm under the circumstances. The cost of transferring the properties to the beneficiaries were paid for by the estate. That was the reason for providing for the transfer costs. Any objector who did not avail himself the opportunity of lodging an objection during the period when the account was lying for inspection cannot now[some thirteen years later] purport to do so."**

One might ask as to how these concerns can be 13 years old when the last Account that SC Dlamini had certified dated September 2007. In 2014, 2007 was not 'thirteen years ago'. What exactly did SC Dlamini mean then? Or was he simply obfuscating the issue? Another thing SC Dlamini said in his response was that 'the accounts were advertised and confirmed by the Master….' But no evidence of such advertisement or confirmation was presented by SC Dlamini. Seemingly, after thoroughly depleting the estate, Dlamini conveniently misplaced the file of an estate that had not been finally wound-up on the basis that the file was thirteen years old. Yet the executors had not acconted for the E300k amount for the 6th Account (28 February 2008) that had not been approved. This amount must still be lying dormant in an Attorneys account !!!

Among the allegations or complaints Duma made when he appeared before the Commission were that in one distribution Assegai Inn and Bar, in the 2nd Account, was given to LaMnisi but ended with SC Dlamini; and a house at Fairview was sold but proceeds and rentals were never known by the children. Helemisi Farm was lost to Manzini Municipality for rates. As for the Helemisi Farm, in a subsequent letter / affidavit to the Commission, QM Mabuza explained that the farm was never lost for rates to the municipality, instead payment that had been made by way of rates to Alvit Z. Dlamini were erroneously paid to Dr Alvit Dlamini. That mistake was corrected according to Ms QM Mabuza. But with respect to the Assegai Inn and Bar, the Deputy Master wrote to SC Dlamini on 7 March 2007 in these terms: **"This Office has been informed by one of the heirs that certain assets of this estate such as farm number 949 situate at Nsingweni Area in the Hhohho District,** farm **implements including 246 head of cattle and a bottle store situate at Hlathikhulu Area were sold by you and that to date you have not accounted for any of the above assets belonging to the estate of the deceased."** The Commission did not get the response to this allegation.

Another concerning aspect of this estate is that no curator was appointed when D. Lukhele was removed (for the period December 1996 to August 1998). QM Mabuza denied manipulating her way into the estate as Duma implied or the wrongful disposal of various estate assets. She also denied that any estate property was sold or repossessed for non-payment of rates (such as Helemisi Farm to Manzini City Council for rates per Duma's account).

It is noted that the 1st Liquidation and Distribution Account does not show the last page usually bearing the Executor's Certificate. Who compiled and filed this Account is not clear. All the Accounts 1st to 6th, save for the 5th, do not show that the estate has been finally wound up or that other assets are still to be accounted for. The 5th Account only states that **"…..Portion 17 (a portion of Portion 15) of consolidated farm Peebles Block (South) No.8 Sidvokodvo, Manzini District is still to be sold."** The impression given is that this is the only property left to conclude the winding up of the estate. Indeed, the 6th Liquidation and Distribution Account distributes the amount received for the said Portion 17, an amount of E300, 000.00. This 6th Account also has no last page signed by the executrix and executor. The copy of the Liquidation and Distribution Account showed to the Commission does not bear the Master's stamp of approval on any of its pages. Question is whether the E300, 000.00 was ever distributed to the beneficiaries, and if so, by what authority. If not, where is it now?

The foregoing account would seem to rebut the allegation by SC Dlamini in his letter dated 24 October 2017 in response to the Master's letter dated 11 October 2017. SC Dlamini wrote, in part: ***"It is not in the interest of justice to re-open this matter after so many years have lapsed as not all the evidence is still available. Moreover, the Master who was in office at the time dealt with all these matters."*** In the letter of 11 October 2017, the Master had among other

things, stated: ***"We are yet again in receipt of a letter of complaint from the Dlamini family of Logoba presented through Duma Dlamini, a son and beneficiary to the above-mentioned deceased's estate. We have enclosed it herewith for ease of reference. You will recall that our office wrote to you on the 5th June 2014 and again on the 11th July 2014 on the same complaint."***

Having regard to the 6th Account referred to above, which was not a final account and even if it was final by executor's reckoning but could not be 'final' since it was not approved and the executors were not discharged nor did they plead for a discharge, how could the executors dispose of the file on this estate? How could Mr SC Dlamini argue that the matter should not be 'reopened' after so many years have lapsed when in fact the matter was never closed? SC Dlamini was still executor in 2014 as he had not been discharged by the Master. In short, SC Dlamini did not answer to the queries raised by the Master and Duma Dlamini on the basis that it was unfair to reopen the matter. But SC Dlamini says nothing of the E300k.

A rouph, general picture of the abysmal administration of the late Alvit Dlamini estate may be adumbrated. In a letter (among many letters) of complaint of 12 September 2013 from Madzinane Attorneys representing "the intestate heirs of the estate", it was asserted that Nkhosingiphile Dlamini (child of deceased) was allocated E150k in **1st Account** but only got E100k. The balance of E50k had remained unpaid. The answer to this allegation, provided by SV Mdladla and Associates (SVM), representing Ms QM Mabuza, in a leter dated 19 May 2014, was that the E50k was paid to Attorney Lindiwe Khumalo-Matse by instruction from LaMagongo, Nkhosingiphile's mother. As is now known, Khumalo-Matse is nowhere around to clear her name. To another complaint that Duma, Sonkhe and Thandukukhanya never got their E53, 592 each from the said 1st Account, the response was: **"Duma Dlamini, Sonkhe Dlamini and Thandukukhanya Dlamini received their shares. Thandukukhanya asked to take his share by**

instalments of mainly E2,000 (. . .) each as and when he needed money because he feared that he would drink it all. The balance that was left when he died LaMaseko took for his children." Who is to be believed?

Regarding the allocation of Portion B of Farm 125 Fairview to Mpande and Phindile under the **2nd Account,** SVM explained that the Portion was divided into three portions for Mpande, Phindile and Nkhosingiphile valued at E70k – E80k each: **"It was also agreed that as Phindile, Mpande and Nkhosingiphile would not afford to build Farm 125 when it was sold, they would first get paid the value of their plots and thereafter share equally with the other members of the family the fourth remainder plot. . . . Client does not know if this was done as she was then acting Judge when the payments were done. . . ."** This was under the 5th Account. The Commission observes that in respect of the Portion B Farm 125, the **2nd Account** bearing the Master's stamp of approval had divided the Portion B into two portions for Phindile and Mpande. No portion for Nkhosingiphile is reflected. In other words the Portion B Farm 125 was entirely allocated to Phindile and Mpande in terms of the 2nd distribution account. The Portion could not be transferred to Mpande and Phindile because on 9 January 2000 the two consented in writing to the Portion being sold since they could not afford the transfer costs. The Portion was then valued at E250k. Apparently the Portion was not sold until 2007 when it had accumulated to E1 275k and made the subject of distribution under the 5th Account. It was then divided into three instead of the earlier two portions, leaving another portion which was distributed among all the qualifying members of the family. In that arrangement, Mpande, Phindile and Nkhosingiphile were each allocate E75k plus the other share with the rest of the family. Why bring Portion B Farm 125 Fairview back to the estate when it had been earlier distributed is hard to understand. There are more questions than answers.

Did the benefits reflected on the **5th Account** reach their lawful destinations; why was Nkhosingiphile forgotten under the 2nd Account; how could Ms Mabuza not know about the payments under the 5th Account that she had signed for and certified? This last question gives the impression that the estate amount of the 5th distribution was left in the hands and trust account of SC Dlamini. It should be pointed out here that the municipal rates of E103, 195.99 appear to have been paid from the estate amount and not from other sources as explained elsewhere in this report. The question is whether the story of payment to a wrong Alvit by the municipal council is to be believed. Otherwise further explantion is called for. Madzinane Attorneys say that Nkhosingiphile never got her E75k as appears on the 5th Account. There are other questions such as the terminal benefits from Usuthu Pulp which was said to have been paid directly to the Income Tax department and not to the estate of deceased. This is not usual. The Swazican payment is another unanswered issue.

In respect of the **3rd Account,** Madzinane alleged that **"Thandukukhanya and Nkosingiphile were never paid their inheritance at all whilst Duma Dlamini was only paid the balance of E1, 338.05"** as E12,000 had been deducted for the tractor he had allocated to himself. The response was that Thandukukhanya received his share while he was still alive. After death, his mother, LaMaseko, took the share for his children. Some of these payments were allegedly made to Lindiwe Khumalo-Matse. Regarding rentals from 1992 to 2001 in respect of Lot 243 Fairview, SVM stated that the house was found in a very bad state where noone wanted to stay. So the house was renovated before it was sold for E300k. But from the accounts there is no explanation where the money for the renovation came from. Was the house then ever renovated? As to the alleged non-advertisement of the accounts, SVM countered: **"Client would like to have proof that the accounts were not advertised."** This seems to reverse the order as it is usually the one asserting the positive who must produce proof. How can

the Master prove what does not exist? The absence of the evidence of advertisement is one fundamental flaw in the allegation that the estate was administered according to the law. The absence of the proof of advertisement goes a long was in support of the persistent allegation that some inheritances were never received by the beneficiaries even as the accounts reflect otherwise.

On the allegation in the **4th Account** that Macmillan never got his E15, 000 'for unveiling the Tomb Stone' which appears as a claim paid under the Account, the response from SVM was that ". . . **Macmillan received a stand which he sold for much more than its value."** The stand referred to seems to be Lot 235 valued at E75k in October 1999. The claim of E15k was never shown as a part of Lot 235 as was later argued. The long and short of it is that the claim of E15k appearing as payable to Macmillan in the 4th Account was in fact not paid to him. So, to whom was it paid, if at all? That Macmillan sold the Lot for more than had been expected can hardly be a justification for not paying the amount otherwise due.

Issues arising from the **5th Account** were referred to SC Dlamini and Littler and Company. If Nkosingiphile did not get her E75k, Ms Mabuza as co-executor, cannot wash her hands and refer the matter to SC Dlamini. Ordinarily, on the **6th Account** not approved by the Master one would not expect any question. In this regard Madzinane writes: **"We are instructed that our clients were only paid a sum of E21k except Ayanda, Dumisa and Girlie who were paid their inheritance in full."** If this is true, how was it done since the account was not approved? Another question arises: Where is the amount of E300k or balance thereof that was for distribution in that **6th Account**? Is it in SC Dlamini's trust account? All in all, the analysis of the six accounts shows accusingly at the poor administration of the estate by the office of the Master from the beginning and not to speak of the executors.

Of the 9 immovable properties set out on the 2nd Account, only 7 were distributed. Portion 17 of Portion 15 of Consolidated Farm Peebles (South) No. 8 and Lot No. 243 Fairview Manzini remained unallocated. It also appears that Nkosingphile got nothing from the 2nd distribution account. Lot No. 243, valued at E325k in October 1999, was authorised for sale at E300k in July 2001 but the Deed of Sale was signed by buyer and seller after the sale in March 2001. That is how the estate was administered. That still left out Portion 17 of Portion 15 Peebles (South) No. 8 valued at E380k in 1999. But the 2nd Account does not state that the two properties still remain to be distributed. So, where are these properties now?

In terms of the 2nd distribution account dated 21 October 1999, signed by QM Mabuza, ERF 65 - 72 Hlathikhulu together with Plot 177 Fairview, Manzini were allocated to Girlie Dlamini (born Mnisi) and her two sons. ERF 65 – 72 is probably where the Assegai Inn was situated. Both Plots in Manzini and Inn in Hlathikhulu were allegedly sold and returns unaccounted to the heirs.

Still, in terms of 2nd Account, Farm 167 Manzini was allocated to Busisiwe (born Maseko) and her son Thandukukhanya. That was in October 1999. In April 2019, Lucas BKS Dlamini Attorneys wrote to the Master, reflecting on how some aspects of this estate had been handled by those assigned to administer it:

> "4. *Having viewed the File, we had occasion to note certain issues in contrast to what we got from the Deeds Office regarding Farm 167.*
>
> 5. *According to the Estate late Alvit Zide Dlamini File (in your office) there is a 2nd Liquidation and Distribution account approved by the Master, which distribution beqeathed the said Farm to Busisiwe Maseko (. . .)*
> 6. *At the Deeds Registry the said Farm 167 is registered in the name of Khalalemphi Joseph Mndzebele, said to have bought same from Estate late Alvit Zide Dlamini. There is a power of Attorney to give Transfer*

to Thulani Masina by the Executrix Qinisile Mythe Mabuza disclosing that the late ALVIT ZIDE DLAMINI was the registered owner of Farm 167, and declared that in terms of section 66 of the Act . . . on the 13th November 2000 sold the said Farm 167 to Joseph Khalalemphi Mndzebele to settle the debts of the Estate for the sum of E352 000.00 . . .

7. *We note further that the office of the Master gave authority to sell Farm 167 under section 66 of the Act . . . on the 19th March 2001 <u>way after it had been sold,</u> and it (Farm 167) was registered in the name of Khalalemphi Joseph Mndzebele on the 23rd March 2001.*
8. *We humbly request the office of the Master of the High Court to confirm whether or not the said purchase price of E352 000.00 indeed was deposited into the Estate File bank Account. Moreover, can the Master of the High Court attest whether or not procedure was followed in selling the Farm 167 under section 66 before the Authority was given by the Master's office."* (Underlining added)

The question that remains is what did Busisiwe and Thandukukhanya get when Farm 167 was sold by the executor? As BKS Dlamini Attorneys wanted to know: where was the E352 000 deposited or distributed or how was it used and where is the evidence of the deposit or distribution or use?

Of the 6th Account, the Master's report of 20 September 2017 states that the Account was submitted by the executors on 28 February 2008 and continues: *"It was not approved by the office of the Master. It dealt with portion 17, a portion of portion 15 of Farm 8 which was sold for E300 000.00 . . . If distribution occurred despite approval, there are no acquittances on file to prove such. . . . It would seem accounting for this property was not carried out properly and to finality by the executors hence their work was incomplete and remains in this deplorable state to this day in the absence of proof otherwise."* Clearly, if the

E300k was distributed to the heirs without the Master's approval that would be a gift to the heirs not a 'distribution' in terms of the the law. When the executors submitted an incomplete and unacceptable account, what did the Office of the Master do? The Master candidly concludes her report thus:

> *"There are obvious discrepancies observed in the handling of this estate which were occasioned by the failure of the executors to properly and completely execute their duties in a due and faithful manner. Unless they can prove otherwise, the observation is that they were not transparent and accountable in their duties. The office of the Master ought to have demanded more from the executors in its supervisory role and such was not done; the whole estate was thrown into disarray and there is no proof that beneficiaries inherited what was due to them. .... To this day and in the absence of all missing pertinent documents, it would be concluded that the executors' duties were not finalised. The estate is still not wound up as per the dictates of the law".*

In another of her reports dated 4 June 2025, the Master writes: *"8. An analysis of the financial report and supporting documents provided by the executrix for the* ***First, Third and Fourth*** *Liquidation and Distribution Accounts revealed discrepancies between the entitlements and the actual payments made to the beneficiaries. (The executrix did not provide any financials for the* ***second, fifth and sixth*** *liquidation and distribution accounts.) . . ."* The details show how Busisiwe Dlamini, Thandukukhanya Dlamini, Girlie Dlamini, Dumisa Dlamini, Ayanda Dlamini, Nkosingphile Dlamini, Mpande Dlamini, Phindile Dlamini, Duma Dlamini, Macmillan Dlamini and Sonke Dlamini were all short paid in one amount or another in the various Accounts submitted by the executors.

Ms. QM Mabuza in her sworn statement dated 21 May 2025 to the Commission says that she was *advised* that attorney D Lukhele sold a short-base Mercedes truck in 1997 for E40 000.00 prior to her becoming executor; that she was also

advised that a Mercedes truck bus was sold to one Khumalo Hezekiah of Moneni for E48 000.00 again prior to her becoming executor. Was further *advised* that a 70 seater Mercedes bus was sold to Malungisa Mamba for E60 000.00 before her becoming executor. The total amount was E148 000.00. Were all the three vehicles sold by Mr Lukhele? Where was the amount deposited? Mr Lukhele returned only E10 000.00 to the estate. What for, is not stated. The estate lost all the E148 000.00 as part of the maladministration to which the estate was subjected. It was the business of the executors to call for and pursue the payments of the sold vehicles once they were made aware of them or hold accountable whoever had conducted the sales.

The story of the unlawful 'administration' of the estate by the co-executors is further told in the Master's report to the Commission dated 4th June 2025. In that report, the Master points out that although 'the' executrix dative has actively submitted a financial report which is accompanied by copies of crossed cheques, cheques stubs, internal and general ledger that demonstrate the distribution of inheritances from1999 to date ...there are still discrepancies and documentation gaps that remain. The Master further states that even with the received documents, **"the challenge lies in the lack of certainty that the funds were actually disbursed"** since the **"cheque stubs in particular, serve only as an indication of issued cheques but do not provide conclusive or best evidence of completed financial transactions. They do not confirm whether the cheques were cashed, deposited or received by the intended beneficiaries. The executrix is requested to provide further proof of cleared cheques. Such document would offer definitive proof of the actual transfer of funds, …"** In the report, the Master goes on to note that the 6th Account has no executor's certificate (like the first Account). The Master points at various shortcomings in all the Accounts purportedly submitted and recommends: **"To effectively resolve the outstanding issue and facilitate the finalisation of the estate, all the**

actions outstanding listed above are strongly recommended." By way of summary, the Master demanded:

> *"15.1 The provisions of section 51 bis (10) (c) of the Act should be complied with. The executrix must provide all the missing acquittances from all accounts and receipts of all liabilities and expenses recorded in the estate accounts. This documentation is essential to validate the financial transactions and ensure accountability …*
>
> *15.2 The executrix should submit evidence that all Liquidation and Distribution Accounts were duly advertised as lying open for inspection.*
>
> *15.3 A reconciliation statement and supporting documentation is required to address discrepancies in beneficiary payments in the third, fifth and sixth accounts.*
>
> *15.4 The executrix must provide substantiating documents justifying the executor's fees charged….*
>
> *15.5 The executrix must provide proof that Master's fees for the five accounts were paid to the Master's Office….."*

Observation

1. It needs only be restated that the administration of this estate was begun and continued or abandoned for <u>practical purposes</u> during the time when Isaac Dlamini was Deputy Master and QM Mabuza was executrix dative (SC Dlamini having since died).

2. The hurdles the estate has grappled with in its winding up show that it had not been properly supervised by the Master's office.

3. The latest Master's report and observations are strongly supported by the Commission.

4. The estate has not been wound up; simply abandoned by the executors

Conclusion

1. If there are still assets remaining, the winding up must continue.

2. If no assets still remain, the Master must find ways and means for a closure.

3. The Master's office is primarily responsible for the disastrous administration of this estate.

40. ESTATE LATE RICHARD SIHLE NXUMALO EH 128/2001

Sihle died testate on 3 April 2001. Deceased left surviving spouse Emily Masego Nxumalo nee Ntuzela by customary law and two children, Maqhawe and Nomvula. The property deceased had **is** shown in his Will that he signed on 25 December 2000, three months before he died. The Will appointed Douglas Tee Masuku as executor. Estate property of over E500, 000 to be shared between Emily, Maqhawe and Nomvula. The Will took care of virtually all that needed to be taken care of by a person exiting this world, including where and how he was to be buried, coffin, flowers and hearse.

The letters of executorship were duly issued to D.T. Masuku by Ms P. Thomo, Acting Master of the High Court on 13 July 2004. Twenty years later the estate has not been wound up and the executor is not prepared to step down and let the sister of the deceased take over the executorship, with hopefully a better result. Instead, in his answering affidavit, Masuku wrote in paragraph 8: **". . . The Applicant has not contributed much (if anything) to the living expenses of the grandchildren and neither has any member of the Nxumalo family. If**

they have, we put to them the proof thereof. This conduct suggests to me a cunning plot by the Applicant to take control of the property, sell it and pocket the proceeds, leaving the grandchildren to their devices". The executor who virtually stays in South Africa has failed to attend several meetings convened by the Master's Office. The executor engaged a firm of attorneys, Howe Masuku Nsibande Attorneys, to cover for him in administering the estate. This arrangement was not to replace Tee as the executor testamentary.

In April 2006, the attorneys had prepared what they described as the **"First and Final Liquidation and Distribution Account . . ."** Unfortunately, it is not shown whether this account was approved to the benefit of the legatees or not. To indicate/highlight the usual absence and inaccessibility of the executor, on 22 May 2017, the attorneys wrote to the Assistant Master as follows: ***"3. We regret having not been able to attend any of the meetings on the previous suggested dates, but it will be important, in our view, that you secure the attendance of the executor Douglas Tee Masuku. He relocated to South Africa and right now we do not have his contact details, but we will try to find his contacts."***

It is really not necessary to detail what has happened or not happened in this estate. Suffices it that some twenty-five years later the estate has not been wound up, and what is more, the final account is not within reasonable sight. Briefly, in his answering affidavit to **Case No. 447/2018** dated 1 June 2018**,** Masuku asserted that he should not be removed from being executor because he has "worked for the benefit of the heirs" (paragraph 11). In paragraph 12, Masuku continued: ***"I am working on winding up the estate as it can be seen from the number of meetings and correspondence that I have had with the beneficiaries of the estate."*** By the Case No. 447/2018, Nomsa Nxumalo Magagula (sister of deceased) sought for an order of the High Court to remove Masuku from being executor in the estate. The case is still pending in court because Nomsa has not the financial means to pursue it.

In his answering affidavit, Masuku denied all the accusations levelled against him as evidence of his failure to wind up the estate. If the Applicant lacks the financial wherewithal to pursue the matter in court, there is no reason why the Master cannot take over and pursue it to the end or begin a fresh application. For instance, in its report dated 11 April 2025, the Master's Office states: **"9. Transparency and accountability are fundamental to proper estate administration. The executor has persistently failed to cooperate with this office, neglected to attend meetings, and failed to provide an account of his administration. As he holds letters of administration, his removal must be effected through the High Court in terms of the Administration of Estates Act 1902. The executor must further be compelled to account for all rental income collected throughout his tenure, as all efforts to obtain compliance have failed."**

It is now end of October 2025, the Master has no evidence, no account, before her showing that the estate has been wound up or for that matter, is in the process of being wound up. The Commission is also not persuaded of an imminent wind up of the estate. The office of executorship is an office of trust and accountability – supervised accountability. In this estate, who is supervising Masuku and to whom does Masuku submit periodic accounts indicating progress. What Masuku accepted to administer was and still is an eSwatini estate, even if the heirs are South African or merely resident in South Africa. That estate is administered in terms of the 1902 Act and Masuku as a lawyer needs no telling in this regard.

No matter how benevolent Masuku may claim to have been in dealing with the deceased's beneficiaries, the law has its own requirements to be observed by executors. The Commission is of the view that Masuku is failing to wind up the estate or present a credible explanation for the delay. The absentee executorship or long-distance administration of the estate by Masuku has not been shown to be effective. The executor is not law unto himself – running the estate on his own

terms. Even assuring that all that Masuku says he has done for the heirs be true, that would not exonerate him of his responsibility in terms of the Act. An executor must speak through the Act and not over or outside it.

For instance, in its report dated 11 April 2024, the Master noted that Masuku was appointed executor testamentary in July 2004 and that in terms of the 1902 Act he was supposed to wind up the estate within six months, if not extension was to be sought by the executor on valid justification. Otherwise, the executor places himself in danger of being removed. The report continues:

> **"4. In this matter, the executor was duly summoned by the Master's Office to explain the delay but failed to attend scheduled meetings. As such the beneficiaries were justified in approaching the High Court for his removal and for a full account of the estate funds, particularly rental income.**
>
> **5. During telephonic meeting . . .**
>
> **6. . . . The removal of the current executor is necessary, and the High Court must order him to account for all actions taken during his tenure, especially in respect of rental income received. This office has moreover engaged the Attorney General's Chambers to explore legal avenues for finalising the matter at the High Court.**
>
> **7. There is a critical need for the executor to account to both the Master and the estate for all rental income received. An inspection conducted in 2018 by Assistant Master T. Shongwe revealed that the estate property was occupied in 2018. Despite repeated requests, no rental income was deposited into the Master's Guardian's Fund or into an estate late account.**

8. At various times funds were reportedly remitted to the executor's attorneys, initially, Howe, Masuku and Nsibande Attorneys . . . This [Master's] office instructed tenants to deposit rentals into the Guardian's Fund but Hlabangana Associates objected citing the executor's payment of municipal rates as justification. Despite this, the office maintained its instruction, yet no funds were received and no accounting was submitted.

9. Transparency and accountability are fundamental to proper estate administration. . . .

11. Ms Nomsa Nxumalo has informed this office that the estate property is currently in a state of disrepair and uninhabitable due to prolonged neglect. . . ."

You ask yourself what the Master's Office has been doing for the past twenty years of Masuku's failed executorship of the estate. Doubtless, the Master's Office is not without blame for all that has happened or not happened to this estate. The Master's Office presents the impression that it is powerless to control maladministration of estates. This is so even with the backing of the most powerful Law Office in the land. This must not be accepted; if needs be, more power should be given to the Master. It is not for nothing that deceased estates must be reported.

It must be stated, not for the first time, that the role of the Master's Office leaves a lot to be desired. As the situation presently prevails, the executor in this estate does as he pleases. There simply is no control to what he does of the estate. This should not be the situation. The Master has the office of the Attorney General at its disposal and for any back-up it might need. In other words, the Master's Office has not acquitted itself well in the dismal management of this estate. The Master cannot blame the executor without sharing in that blame.

It is not enough for the Master to write warning letters to executors without effective follow up action.

Conclusion

In light of the prevailing environment, the Master's Office should put Masuku on strict terms for a final account failing which Masuku be removed (by the Master) and replaced by someone else that can salvage what remains of the estate and put it to rest.

41. EST. LATE JOHN MNCENE SOLOMON NXUMALO EH4469/1985

On 6 June 2024 Yvonne Nokuthula Nxumalo from Mbhuleni, Matsapha, appeared before the Commission. She was alone. Yvonne is the daughter of the late John Mncene Nxumalo who died in 1985 and Roselyn Rosemary Nxumalo nee Kambule. The two were married in 1954 in Pietermaritzburg, South Africa. The marriage certificate describes the marriage simply as "Civil Marriage".

The deceased left a Will and the testamentary executor was the late Sishayi Simon Nxumalo, failing him, the late Albert Mthwalo Nxumalo… and failing him the late Paul Mhlaba Shilubane. The Will is rather very interesting. The Will does not recognize Rosemary as a civil rites spouse. Deceased also married three other wives by customary law. The Will also stipulated that on death of the testator the surviving spouses would not be compelled to mourn deceased in the customary way shown by the black clothes. But there was a catch: whoever declined to so mourn deceased would forfeit any bequest made to her. Rosemary declined the traditional *kuzila*. In the result it would appear Rosemary lost her alleged half-share and all. Because of her stance to the prescribed mourning, Rosemary was not even allowed to attend deceased's funeral at Nkambeni. She abandoned every right she might have had in the marriage.

Yvonne said she was the second-born child of the first wife, that is, Rosemary. She described the file of this estate as having had three lives: from January 1985 to 2004; from 2005 to 2021 and from 2021 to date. She said the Will has been disputed by her mother with the assistance of Shilubane and Dunseith. Yvonne frankly admitted that her mother's marriage certificate did not say whether marriage was in or out of community of property. The file had taken so long to administer because the executor(s) opposed the challenge to the Will. Yvonne told the Commission that the Will was read at Master's Office in a meeting of next of kin. She said her mother never thought the Will would work. Born in 1933, Rosemary was alive at time of this hearing.

Yvonne was married in Botswana. For 19 years the file had been hibernating at the Master's Office – the first life. In 2004 the surviving spouse who occupied the farm in Siteki died and Rosemary got the opportunity to move in on the request of the executors. She was still required to mourn as custom demanded; she still refused to comply.

Rosemary's enduring claim and challenge to the Will is that by virtue of her 'Civil Marriage' to deceased, she was entitled to a half-share plus child share in the deceased estate, and that the Will disposed of her half-share in the joint estate without her consent. In other words, Rosemary understood her marriage as being in terms of the Marriage Act 1964. Yvonne continued relating that the Master's Office required proof that the Civil Marriage in 1954 in the Republic of South Africa was a civil marriage <u>in community of property</u>. For some time that evidence or proof was not available until much later. In a letter to the Master of the High Court dated 7 May 2024, Rosemary wrote: *"We were married under the Civil Marriage Law, in community of property, which means, I am entitled to half of the assets we jointly owned together. (...) I request that the Will my husband wrote and submitted in his file at the Master's Office, be rendered null and void because it has not only ignored the law that safeguards the institution of the*

marriage we were joined under, but also has unclear and illegal submissions that cannot be lawfully executed … It appears as if my husband, in the Will … ignored the provisions of the law by giving away part of the assets that did not belong to him, distributing what was legally mine according to the joint estate provision."[27] As also stated by Yvonne, the evidence obtained later was that the marriage of her parents was in community of property.

The evidence or proof referred to and relied upon by Rosemary and Yvonne was a letter from the Senior Legal Administration Officer at Department of Home Affairs, Pretoria, Republic of South Africa, dated 26 March, 2024. In brief the letter states:

> *"The Department of Home Affairs ('DHA') hereby confirm that your parents' marriage was registered with DHA, as a requirement and was governed by Section 22(6) of the Black Administration Act 38 of 1927, hereby referred to as '**the Act'**. In terms of the Act, black marriages that took place then, were automatically in Community of Property (i.e. with the inclusion of profit and loss). If the couple wished to be married out of community of Property, then they were required to declare this, jointly before a Magistrate, Bantu Affairs Commissioner or Marriage Officer. Such declaration had to be made at least one month prior to the marriage ceremony".*

The letter further advised that section 22(6) was repealed in 1988 *"bringing black marriages in line with civil marriages recognized under the Marriages Act of 1961, i.e. black marriages are now automatically out of community of property*

[27] The Will was indeed an unusual one. Bequests aside, the Will directed burial in a cow's or bull's skin at a certain hill (named) at Nkambeni and the clothes at the foot of that hill, in a coffin, and that priests of various churches such as AME, Nazareth, Methodist, Lutheran, Calvary (Kononia), as well as the "bishops of the Anglican and the Roman Catholic churches" and "all bishops, ministers of the League of Churches in Swaziland. . ." be invited to the funeral. Deceased's death was also to be "reported to Bishop Ramsay of England" (address given).

unless the parties to that (marriage) declared otherwise: . . . DHA, therefore, declare that the Nxumalo marriage was in community of property . . .”

The legal opinion of the Senior Legal Advisor seems to reverse the legal position generally accepted of marriages under section 22(6) of the 1927 Act of South Africa. That position is, the marriages are automatically out of community of property unless that position is preemptively avoided by a joint declaration a month in advance that their marriage shall be in community of property. The opinion of the Legal Advisor is to the effect that the repeal of the section 22(6) of the Act in 1988 changed the Nxumalos' marriage from out of community of property as was the case in 1954 to in community of property in line with the 1961 Act without the parties doing anything in support of that change. In any event, the deceased died in 1985 before the repeal was effected. At the time of the repeal, there was no marriage between the complainant and the deceased.

Rosemary's marriage in terms of section 22 (6) of Act 38 of 1927 of South Africa is not the only one to appear before the Commission. The first about this marriage is the opinion of the Senior Legal Officer of the DHA. The opinion is, however, not binding to the Commission. The Commission has a different understanding of section 22(6). The Commission understands the section to stipulate for black couple's marriage out of community of property unless declaration to the contrary was undertaken by the couple before the marriage was solemnised. There is no evidence that the countervailing declaration was made. The 1988 amendment, in the understanding of the Commission, allowed the couple bound to a marriage out of community under section 22(6) to change that position. There is no evidence that the Nxumalos took advantage of that amendment. Hence their marriage remained out of community of property in 1985 when deceased died.

It may assist the reader of this Report to know what the original section 22(6) of Act 38 of 1927 provided:

"A marriage between Natives contracted after the commencement of this Act, shall not produce the legal consequences of marriage in community of property between the spouses: Provided that in the case of a marriage contracted otherwise than during the subsistence of a customary union between the husband and any woman other than the wife it shall be competent for the intending spouses at any time within one month previous to the celebration of such marriage to declare jointly before any Magistrate, Native Commissioner or Marriage Officer (who is hereby authorized to attest such declaration) that it is their intention and desire that community of property and of profit and loss shall result from their marriage, and thereupon such community shall result from their marriage…"

One would imagine that Africans getting married under the 1927 Act were always advised as to the legal consequences of that marriage, so as to make an informed choice. What we learn from this complaint is that the designation "Civil Marriage" in a marriage certificate does not necessarily mean that the marriage is in community of property. The marriage could be "Civil" but out of community of property. Due care must be observed in understanding the words 'Civil Marriage' appearing on a marriage certificate, particularly of pre-independence times and the law in terms of which the marriage was solemnised.

Rosemary's marriage was a civil marriage out of community of property.

42. ESTATE LATE ALPHEUS MTHETHWA EL 40/2017

On 29 February 2024 Allison, Ndabayakhe, Kathrina and Nqobile Mthethwa appeared before the Commission. The Mthethwas came from Matsetsa in the Lubombo region. Nqobile, surviving spouse by customary rites, had reported the death of Reuben and filed the inventory that reflected 9 cows and E4000 at a bank. Nqobile had no children with the deceased who had two /three children of

his own. Nqobile was appointed executor after nomination at meeting of next of kin. Although not reflected on the inventory, the estate had more than 30 cows.

According to Nqobile the 9 cows belonged to her and not the deceased. In 2017, the children of the deceased went to the Master's office to claim from the estate. The children, however, did not tell Nqobile of their vist to the Master's office.

In 2023, Mr. Sgcibelo Magagula the Assistant Master, Siteki, is alleged to have called Nqobile in connection with the estate. Nqobile says she found in the estate file documents she did not know. **"When I came to Magagula he said '*what would I give him.*'"** Seemingly, Magagula prepared a liquidation and distribution account which Nqobile did not know. The account was approved purporting to be signed by one Jabulile who did not have the necessary letters. Magagula is said to have said that he did not care and did not need the family in disposing of the estate. Jabulile is deceased's daughter and co-executor.

Nqobile further stated, **"I went to the Master (Ms Thomo) to complain. I do not know what Thomo did. I went to my lawyer (Mbhekwa Mthethwa). This last Monday I was informed that estate cows were being removed from my authority, and Mr. Magagula, the two children and in-laws were present as well as armed police officers. They removed about 36 cows from my kraal. Some of the cows left calves behind. I did not see Thomo.**" The cattle were taken or purportedly sold to a farm owner by the name of Mr. Purcell who alleged to have bought the cattle from Jabulile, the co-executor. Seven of the cattle had no earings and were sent back to Matsetsa. Mr. Purcell would not return the cattle without a court order. The veterinary officer at Siteki did not cooperate with Nqobile. The transfer of the cattle to Purcell seems to have been prearranged as Jabu never had possession of the cattle.

On 11 March 2024, Ms. Lindelwa Magagula, the Deputy Master, told the Commission that there was a court order for the return of the cattle to the

executor's control in Matsetsa. On 7 August 2024 Lindelwa Magagula told the Commission that the cattle were never returned as Purcell did not cooperate.

The Assistant Master at Siteki, Mr. Sgcibelo Magagula who seem to have been behind the illegal removal of the cattle from Nqobile's control said that he acted lawfully as he followed a distribution account which he denied to have prepared. It also appears that Nqobile had been removed from being executor by Mr. Magagula.

That Mr. Magagula had wanted to be bribed was confirmed even as Magagula argued that he followed the law and there was no collusion with any member of the Mthethwa family. Nqobile says she was not awawre in time of the liquidation account to properly object to it. The matter is pending in court since the hearing in March 2025. Mr. Sgcibelo Magagula's contract with the office of the Master has since expired.

Conclusion

That the deceased estate was dealt with corruptly by Mr. Sgcibelo Magagula, the Assistant Master at Siteki is without question. The only question is what is to be done. How will the Master compensate the complainant?

43. ESTATE LATE DUMISA MBUSI DLAMINI EMIE/001

On the 18 March 2024 Makhosemvelo Dlamini, son of the late Dumisa Mbusi Dlamini of Siteki, together with Attorney Sipho Madzinane appeared before the Commission. Makhosemvelo told that his father died in March 2014 and that he reported the death at the Master's in 2015. Mary Dlamini is the only surviving spouse. Makhosemvelo presented a number of complaints touching on the failure of the office of the Master to follow the law regulating the winding up of insolvent companies and how some claims against deceased's companies were charged against deceased personally. It was also alleged that immovable properties of the

deceased sold to meet certain claims of the Eswatini Bank were highly undervalued. In this regard an example is given of 8 properties which were sold by trustees for E4.2m despite a valuation of E11.6m, in breach of section 45(2) of the Insolvency Act 1955 (Act 81 of 1955).

Before Sapire CJ, an electricity claim of E1.9m was held against the deceased whereas that was a company debt. In July 2020 Sibusiso Motsa, trustee, could not find the claim against deceased. Also, trustees without security bond were not compelled by the Master to comply in terms of section 53 of the Act read together with section 5 of the Recognition of External Trustees and Liquidators Act No.51 of 1932 (see the judgment of Matsebula J.)

Makhosemvelo has adopted a three-pronged approach in his complaint: against the Master's Office, the Trustee (Sibusiso Motsa) and Eswatini Bank.

From the Judgment in ***Dumisa Mbusi Dlamini and Six Others vs Swaziland Development and Savings Bank,*** Civil Trial No. 1292/95 decided by SW Sapire CJ in March 1999; we read:

> **"The central figure as far as the Plaintiffs' are concerned is the First Plaintiff. He is a well-known businessman in Swaziland. He has operated through the medium of the Third Plaintiff [Dumisa Sugar Corporation (Pty) Ltd] in the local sugar industry, and has a reputation of having become a wealthy man. More recently, he has acquired interest in the hotel business, which include controlling shareholdings in the Second, Fourth, Fifth, Sixth and Seventh Plaintiffs.**
>
> **The First Plaintiff and his companies, as they have been referred to, have been customers of the Defendant for many years, each plaintiff operating one or more accounts. For the most part, these accounts are in debt. The plaintiffs are, it appears, debtors of the bank in amounts**

which at the institution of the action may have been less but in respect of which the Defendant now claims more than E60, 000, 000.00 having regard to accrued interest.

"In June 1995 the Plaintiffs joined in instituting the present action against the Defendants . . .

"After the citation of the parties, the plaintiffs allege that 'at all relevant times hereto' the Plaintiff operated and still operates accounts with the Defendant in terms of <u>oral agreements</u> …

"The identity of the accounts operated by the Plaintiffs including the relative account numbers has been established in the pleadings.

"…This indebtedness, is clearly, substantial, if not of extraordinarily large proportions.

<u>"… The Plaintiffs were to pay whatever amounts were demonstrated to owe on the accounts produced by the Defendant.</u>

"…. There is nothing in the papers to suggest that Plaintiffs or any of them have challenged any one item appearing in the accounts." (Emphases added)

Ultimately, the Court found against the Plaintiffs in seven accounts or claims totalling E64, 438, 917.40 as proved by the Defendant. In essence, the judgments were against Dumisa Mbusi Dlamini, the First Plaintiff in the matter by virtue of his controlling shareholdings in the affected companies. This makes it difficult to separate Dumisa Mbusi Dlamini, that is, Dumisa the individual from Dumisa the shareholder and corporate entrepreneur (the *alter ego*). This intertwining of the flip-top and flip-side is clear in this winding up.

Thus, presented here is the tip of an iceberg of a size and depth hard to fathom. Makhosemvelo's complaint is that his late father, Dumisa, was dealt short thrift

by the courts, the lawyers, conveyancers, liquidators, trustees and banks. In the result, it is Makhosemvelo's view that Eswatini Bank owes his father's estate, that is, the bank has recovered more than it is entitled to. To that end, Makhosemvelo calls for the undoing of all the sales in this estate, in particular the 8 properties. All this centres on the proof/determination of Dumisa's indebtedness to Swazi Bank and the under-valuation of Dumisa's properties securing the loans. The rise and fall of Dumisa is indeed a sordid affair that shall for long remain a thorn in the flesh of his children. The sad reality however, is that undoing what has been done is practically out of the question. Still, there must be closure. Whatever may be the final epsode, Dumisa's fall must be a lesson to other upcoming Swati entrepreneurs: a story to be told from generation to generation. A book might be a fitting legacy.

By court order of the High Court dated 28 July 2004 Matsebula J recognised the sequestration of the estate of Dumisa Mbusi Dlamini by the High Court of the Transvaal Provincial Division, South Africa, on 14 August 2003. The Learned Judge by the same order recognised the appointment of (4) four External Trustees to which was added Paul Mhlaba Shilubane as a co-trustee of the insolvent estate of Dumisa. The recognition of the Trustees was done in terms of the *Recognition of External Trustees and Liquidators Act* No. 51 of 1932 to which sections 5 – 17 of the Act were made applicable. The result was that for all intents and purposes Dumisa's estate in eSwatini was declared insolvent. The primary duty of Trustees of insolvent estates is with the creditors of that estate hence the 1st Meeting of Creditors in Dumisa's insolvent estate took place on 12 May 2005 at Swazi Bank Building.

Makhosemvelo talked and reported at length about several things affecting the deceased as a director directly and indirectly of insolvent companies and the claims against Dumisa as such; about how former trustees failed to execute their duties in terms of section 45 (2) of the *Insolvency Act* 1955, No 81 of 1955. The

subsection enjoins a trustee to an estate under sequestration to **"examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed.**" In other words, complainant alleged that some claims against companies under the directorship of the Dumisa were not sufficiently investigated for verification nor properly proven to sustain a valid claim. Example is the case of the 8 properties sold by the former trustees for E4.2million despite a valuation of E11.6m; that the E1.9m claim against the Electricity Company before Chief Justice Sapire was a company claim not personal to the deceased. Importantly was the failure of the Master's Office to compel trustees lodge a bond of security in breach of section 53 of the *Insolvency Act,* read with section 5 of the *Recognition of External Trustees and Liquidators Act* as observed in Matsebula J judgment. That the Master's Office failed to execute its duties due to negligence to the prejudice of the deceased's estate. For the required security bond, the foreign trustees lodged what they called "UNDERTAKING AND BOND OF SECURITY" in the amount of R3, 495, 000.00. The Undertaking was in terms of the South African Insolvency Act, 1936 "to pay to the Master on demand" the amount undertaken. In the result "The trustees committed themselves to pay 3.5Million should the insolvent estate be maladministered", the Master stated in her Report on this matter dated 27 June 2024. But Mr Shilubane could not raise the needed bond; this ultimately led to his resignation as a trustee. Whether the 'Undertakings' lodged by the external trustees were accepted by the Master is not clear.

On 3 October 2024 Makhosemvelo, Sibusiso Motsa, Sifiso Mdluli, Setsabile Matsebula and Sipho Madzinane returned to the Commission. Makhosemvelo presented a summary of his complaint against the eSwatini Bank (Swazi Bank).

- Swazi Bank claim of E13M 860,905 filed in September 2008 was fraudulent. The claim of E13, 860, 905.00 was reduced to E11M by the Court of Appeal in 1999.
- During the lifetime of deceased in 2007, Swazi Bank sued and got judgment in respect of farms standing as security for Dumisa. It was wrong for Swazi Bank to do that as the Insolvency Act, 1955 provides otherwise – see section 84 (1) – (10). The farms were sold below value. Swazi Bank did not account for the residue. There was a personal share for Dumisa separate from the company … The trustee (S. Motsa) allowed that to happen.
- Swazi Bank applied for the liquidation of BHK (Pty) Ltd. Motsa was the liquidator. SEC judgment claim against Smoky Mountain used to liquidate the BHK company. SEC did not even produce supporting document to reject the claim and close the file in terms of section 14 of The Recognition of External Trustees and Liquidators Act, 1932. Master allowed the claim presented by Motsa. BHK was sold for E18.9M; E1.9 was paid to SEC. Money secured by Motsa was paid to Swazi Bank and not to the insolvent estate. Need to investigate how E1.9 came to be a claim.
- Motsa was appointed in 2016. Motsa is delaying the liquidation of the estate. In a meeting in July 2020, Motsa was required to get the Bank to account. But Motsa has not done so; he has allowed the Bank to keep assets belonging to Dumisa for the sale of the 8 properties for E4.2M, which was never fully accounted for. There was no legitimate claim to justify the sale of the 8 properties. The properties might not have been sold had the proper processes been followed.
- In 2021 the Master wrote to Motsa to file account as the bank had failed to do so.

Setsabile: There is an objection by the Bank to an account by Motsa. Also, court cases on amount owed by bank to Dumisa must be considered.

Motsa: The matter of the settlement of the shares is pending in court since 2019.

But Makhosemvelo disagreed and said that the matter was ruled by the Supreme Court and referred to High Court for determination of shares; but Motsa went to the Master instead. Motsa said he responded by letter dated 12 January 2023 to the Master's letter of 21 December 2022 where it was alleged that Motsa had embezzled funds of the estate. The Master's letter seemed to be a cut and paste of Makhosemvelo's earlier letter. Master did not call Motsa before the letter of January 2023

- Master does not seem to have overseen the processes followed by Swazi Bank in disposing of the 8 properties.
- Master's Office wrote several letters to Swazi Bank and Attorneys demanding that the Bank should account.
- Need for more power to the Master's Office.
- There are no judgments against the companies whose properties were sold.
- In 2020 Z. Lukhele lodged another claim against late Dumisa for E11m. It became clear that there was fraud. The Master sought supporting documents, but (to-date) no such documents.
- Maphalala J's judgment of 2016 is challengeable.
- 19 years, no winding up.
- Matter 99% complete but for the court cases.
- Motsa was liquidator before becoming trustee in 2016; he was familiar with Dumisa's business affairs.

Mdluli: BHK and Broadland, there were two creditors, Swazi Bank and EEC. An amount of E5m was paid to Dumisa's estate through the Master.

According to Mdluli, there are five cases pending before the Courts.

Master: There is need for vouchers in respect of the trustee's account. The shareholding remains in court, making it difficult to determine the amount claimed.

Makhosemvelo: Loss of about E8 billion to Dumisa and Companies. *Undo all the sales done in this estate.*

The file was lost/destroyed and reconstructed by Swazi Bank. Trustee Motsa has embezzled estate money and has tendered a settlement of repayment. The Master (has) directed Motsa to wind-up in 14 days and for Swazi Bank to be compelled to produce supporting documents [in 3 days].

Master: Master has requested intervention of the Court.

There are some unusual elements in the narration concerning Dumisa Mbusi Dlamini and how he operated as a businessman. Some of these things are difficult to accept as true. From the judgment in High Court Case No. 1292/95 we are told that Dumisa operated accounts with the Swazi Bank "***in terms of oral agreements."*** It is also stated that the "***Plaintiffs were to pay whatever amounts were demonstrated to owe on the accounts produced by the Defendant."*** The 'Defendant' is Swazi Bank and Dumisa is one of the 'Plaintiffs' in the case. In such a situation, what could stop an unscrupulous party from taking advantage of an opponent in the situation of Dumisa.

Makhosemvelo presented several complaints before the Commission relating to his father's business affairs with Swazi Bank, beginning as far back as 1987 in Dumisa Ranching Company.

The Report to the Master of the creditors' claims for/at the meeting held on 14 July 2020, **(it)** states in paragraph 3 that in an earlier creditors meeting of 4 September 2008, Swazi Bank had lodged a claim of E13, 860, 905.00 as owing from Dumisa's insolvent estate. At the time of the writing of the Report to the

Master by Sibusiso Motsa, trustee since 2016, the claim of E13, 860, 905.00 still stood unreduced as if nothing had happened between (1999) 2008 and 2020 to affect the claim upwards or downwards. How can that be? This is particularly very concerning when the claim is said to be subject to 9% interest. The properties which it is alleged were sold, where did the money go to? Or is the money for the 8 (eight) properties – even as alleged to have been undervalued, amounting to E4,2M kept in an account at the Swazi Bank or elsewhere and at what rate of interest? The amount of the claim of E13, 860, 905.00 is reflected in the Report presented by Makhosemvelo Dlamini dated 11 October 2024.

It will be noted that the amount of E13 860, 905.00 is said to have been "approved" in a meeting held at the office of the Master, attended by a number of persons, the majority of whom represented Swazi Bank and none represented Dumisa, with the late Paul Shilubane standing in as 'co-liquidator' when he was also a trustee before he disputed and repudiated his trusteeship.

The answer to the above question seems to be contained in paragraph 5 of the Report of 14 July 2020: *"5. In our last meeting held in the offices of the Master on the 10 March 2020 it was resolved that the claim from Swazi Bank should take into account all the moneys which they have received in respect of their claim."* This would seem to mean that up until the said 10th March 2020, the claim was fixed at one amount even if there were monies coming in towards its settlement. This resulted, for the first time since 2008 at the latest, in paragraph 9 of the Report whereby "*letters and emails were sent to Swazi Bank requesting them to revise their claim to take into account the moneys they receive. This was after getting a letter addressed to the Master from Makhosemvelo dated 24 September 2018 indicating all moneys received by Swazi Bank which needs to be deducted from Swazi Bank claim".* The operating rule or practice would then seem to be that after selling bonded property, Swazi Bank would hold and keep for themselves the balance without accounting to Dumisa after deducting their claim.

In the result, Dumisa remained in the dark as to how much was cleared or the balance that remained. It may be fair to infer that Swazi Bank operated as they did in light of a provision which in four recent matters they allege to be contained in a Surety Mortgage Bond agreed between the two parties in 1988.[28] The three matters, in paragraph 4 of *Defendants' Affidavit Resisting Summary Judgment*, cited the same Surety Mortgage Bond provision as follows:

> *"4. The Defendant has a valid and **bona fide** defence to the Plaintiffs claims as set out below-*
>
> *4.1 On or about 1 July 1988, the Plaintiff executed a Surety Mortgage Bond in favour of the Defendant where it bound itself as Surety and Co-Principal Debtor for Dumisa Mbusi Dlamini ('the Principal Debtor')…….*
>
> *4.2 The material terms of the aforesaid Surety Mortgage Bond were **inter alia** that:*
>
> *4.2.1 the Plaintiff bound itself as Surety and Co-Principal Debtor for the Principal Debtors' indebtedness;*
>
> *4.2.2 the mortgagee is irrevocably authorised to apply any amounts received from the mortgagor hereunder against such debts of the Principal Debtor as the mortgagee in its discretion may think fit.* (emphases added)

If indeed the mortgage bond provision be the basis and justification for the manner Swazi Bank has treated and conducted business with Dumisa it may be in order to remind Swazi Bank that they are a 'Development Bank' for emaSwati

[28] The three cases are: **Dumisa Estate (Pty) Ltd vs Eswatini Development and Savings Bank,** Case No. 1172/2024; **Double Diamond (Pty) Ltd vs Eswatini Development and Savings Bank,** Case No, 1173/2024; **Twin Ridge Estate (Pty) Ltd vs Eswatini Development and Savings Bank,** Case No. 1174/2024.

and that is the main purpose for which they were established. Dumisa has not been developed; instead, the opposite has happened.

Of critical importance now, is for the 'dispute' to come to an end. The trustee who is blamed for stalling the conclusion is urged to do all necessary to have the matter ended and for late Dumisa to rest in peace.

Re: Mr. S Motsa (Trustee)

On the alleged embezzlement of estate funds in respect of the 8 properties sold by the former trustees realising only E4, 247, 500 and the money Mr Motsa allegedly paid himself in the amount of E405, 490 and E49, 199.

In a letter dated 21 October 2020 Mr Motsa explained even the amount of E4, 247, 500 as not fully accounted for: "*4. It was found that only a sum of E1, 875, 916 was deposited in the Standard Bank Dumisa Insolvent Account 9110004657031. A sum of E2, 371, 584 was not deposited."* The Court is said to have directed the Master to call upon the trustees responsible to account for the full amount. These were the trustees who handled the insolvent estate before Mr Motsa was appointed. These trustees were based in Bloemfontein, RSA. It would seem that the sum of E2, 371, 584 was never recovered. Motsa blames Master for not calling upon the former trustees to account.

Regarding the two amounts, Mr Motsa is accused by Makhosemvelo to have embezzled, being E405, 490 and E49, 000. According to Makhosemvelo the two amounts total E454, 490. This amount is doubled on repayment in terms of section 72(1) of the *Insolvency Act.* In the result, Makhosemvelo claims E908, 890 from Motsa. But Motsa does not agree. Motsa says that the two amounts (E405, 490 and E49, 199) were approved by the Master following a letter of 15 July 2019 that Motsa wrote to the Master requesting for the approval of his fees. The request was stated as E49 169.00. The Master's response is not provided, but

as is generally stated "silence gives consent". In a letter of 12 January 2023, Motsa says the Master approved the request. The request as stated in the letter of 24 July 2020 reads: *"2. Now that I have received a bank guarantee of E11 635 000*[29] *for creditors claim and a claim for E10M from the only creditor Swazi Bank I am requesting for the approval of my fees."*

In another of Motsa's letters to the Master dated 27 August 2024, Motsa points out that there seems to be "four versions of calculating trustee's fees" and that therefore there is need to first determine the correct method to work out the correct amount of the fees. It must be clear then that requesting approval of any trustee's fees was premature. The most that Motsa could hope for was a negotiated settlement of the fees, which itself was a hazardous approach not to be ventured into short of a meeting of the concerned parties as indicated in the letter of 27 August 2024.

As already indicated, the trustee's fees were in two amounts, E405 490 and E49 199. The two amounts are explained in a letter of 12 January 2023 from Motsa to the Master as follows:

> *"5.2 Note 2 – Payment was made to the current Trustee E49 199 in respect of the first job. The first assignment was to find out how much money was received and spent by the previous trustees. This amount was approved by the Master after a letter of request dated 15 July 2019 was written to her. She approved it by making an extension of the appointment from 4th October 2018 to 4th October 2020. The extension was to enable me to sign in the Trustee Bank Account.*
>
> *5.3 Note 3 – Out of a claim of E483 290 which was approved by Mr Ngcamphalala, a sum of E352 600 being the statutory fee was paid.*

[29] This amount was Dumisa's share of E23 500.000 for sale of two properties: Farm No. 673 (Sherwood) and Farm No. 669 Manzini District.

This was after a request was made to the Master's office as per letter dated 24th July 2020. The approval was made to the Bank as per email dated 30 July 2020. A copy of the email is enclosed. You will note that the email was sent by the Deputy because the Master was on leave."

On her return from leave, the Master questioned the payment made to Mr Motsa per the email. If indeed, the E49, 199.00 was approved by the Master as Motsa says in *Note 2* above, then the issue was only with regard the approval of the E405 490.000 based on E23 500.000 instead of E11 635.000. Mr Ngcamphalala was supposed to forward the account to the Master for final approval: *"I then wrote the Master several letters requesting final approval so as to advertise. I never got any reply,"* says Motsa in his letter to the Master dated 12 January 2023. It then appears that the Master did not in fact approve the payments already made to Mr Motsa for work done. The Master's seeming objection to the payment was that the amount claimed as fees was based on a higher amount of E23 500 000 instead of E11 635 000 the amount actually deposited and reflected on the distribution account. In another undated communication to the Commission attached to some other documents,Mr Motsa has responded in part:

"6.1 Master herself granted permission to the Trustee to withdraw a sum of E49, 199 without the distribution account. That money was in respect of the first job. The first job was to find out how much money was received and spent by the previous trustees."

The above statement makes it difficult to know whether there was a definite response granting Motsa the permission to pay himself the fees. However, Mr Motsa threatened court action in these terms:

"I still maintain that I am entitled to claim my fees on the E23 500 000. It would be unfortunate if I am forced to seek the court's interpretation. Unfortunate in that it would result to future relationship strained with the

Master's office and it may delay finalisation of this matter to the detriment of all parties concerned."

This statement by Mr. Motsa is also unfortunate as it appears to be a threat to stall the winding up of the estate if the Master does not approve the payment.

The finalisation of this estate has been delayed and Makhosemvelo blames Mr Motsa for it. But Motsa points to the court case by Makhosemvelo as the reason for stalling the winding up of this matter. See letter dated 27 August 2024.

It is clear that the two amounts of fees originate from different sources. It is not clear that the email purporting to approve the payment fully appreciated the situation. The Master was legitimately concerned. The letter of 24 July 2020 does not spell out the exact amount or amounts requested for fees. Why indeed was Motsa in a hurry to get his fees based on an amount that had only been partially paid instead of the actual amount already paid? Moreover, calculation of the trustee's fees seems to have been a matter for negotiation.

It would seem then that the E11 635 000 paid in terms of paragraph 2 of this letter of 24 July 2020 (stated above) was a part payment of the E23 500 000 due from Lofler's companies for the purchase of two of Dumisa's farms, being Farm 669 and 673 Dvokolwako. The Master was unhappy that Motsa calculated his fees on E23 500 000 which had not been paid instead of E11 635 000 which had been paid. Even the latter amount was conditional on the farms being transferred to Lofter's companies. The Master questioned the procedure followed and declined final approval of Motsa's fees even as purportedly passed by Ngcamphalala, the Examiner. The Master was of the view that the fees claimed were not properly accounted for. Motsa says he explained it all in the letter dated 13 August 2020.

In his letter to the Master dated 28 April 2023, Motsa wrote: *"2. The trustee had calculated the fees on E23.5M which is the proceeds received in the sale of the*

farms. 3. Master is of the view that the fees should be calculated on E11635 000, the amount received as reflected in the bank statement not on the E23.5M being the sale of the farms."

As a result of the court application by Makhosemvelo, the matter remains pending in court. There are other pending court applications on this matter.

As to what is exactly owed to Swazi Bank, Mr Motsa has fixed the figure at E996 709.00 as shown in the distribution account dated 31 March 2023. Swazi Bank does not agree.

Re: The Master

Makhosemvelo has not spared the Master from the problems the insolvent estate of late Dumisa continues to have with the Swazi Bank. The Master is blamed essentially for failure to properly administer the (insolvent) estate in compliance with the Insolvency Act: See *"Complaint by the Executors of the Estate of Mr Dumisa Dlamini"* dated 8 February 2024 to the Commission, signed by Makhosemvelo. The complaint by the executors is "*About: The Maladministration, Fraud, Negligence, Prejudicial Delays, Embezzlement of Estate Monies and Unlawful Conduct of the Trustee, together with officials in the office of the Master of the High Court and Eswatini Electricity Company."*

Some of the complaints against the Master are as follows:

1. The Swaziland Electricity Company (SEC) had lodged a claim of E1.4M. Dumisa did not have an SEC account in his personal capacity. The SEC claim was later uplifted and transferred to estate file BHK (Pty) Ltd. This was done without the Master following the lawful requirement as stipulated in terms of section 51 of the Insolvency Act. In a meeting of creditors on 14 July Motsa wrote: *"2. We were unable to find Swaziland Electricity Company claim even at SEC."*

2. The alleged SEC claim was purportedly lodged at the first meeting of creditors on 12 May 2005 and approved at the creditors meeting on 16 November 2005. The claim was estimated at E1.4M. Makhosemvelo writes: *"…. remarkable the Master of the High Court approved properties valued in the amount of E11, 629, 000.00 to be sold for a mere E1.4M. This evidenced beyond any reasonable doubt that the sale agenda was to land grab Mr Dumisa Dlamini's properties under the guise of an insolvency process."*

3. The eight properties sold valued at E11, 629, 000 for E4, 247, 500 to pay for the E1.4M SEC claim are set out in a letter of 21 October 2020. Even the amount of E4, 247, 500 was not wholly accounted for. Makhosemvelo blames the Master for approving the claim and allowing the sale of the 8 properties to go on: *"The office of the Master of the High Court transgressed the provision of the Insolvency Act from the onset by failing to call upon Swaziland Electricity Company to lodge their claim as the supporting documents. Had the Master at the meeting held on the 12 May 2005, or the second and final meeting of creditors held on the 16 November 2005, the Master would have come to a different conclusion, …."*

4. Makhosemvelo further complains that the Master allowed the previous trustees, that is, the initial four trustees who included the late Paul Mhlaba Shilubane, to operate without lodging a bond of security in breach of section 56 of the Insolvency Act and section 5 of the Recognition of External Liquidators and Trustees Act, 1932. This negligence on the part of the Master's officers seriously prejudiced the estate of Mr Dumisa Dlamini. According to Master, Ms P. Thomo, *"The trustees were further*

directed to pay a bond of security to the Master for purposes of executing their duties." **(see paragraph 5 P.2 of Master's Report 27/6/2024)**

> *"8. The complainant alleged before the Commission of Inquiry that the Master failed to compel Trustees to pay a bond of security. Our records indicate that the trustees did not pay a bond of security in terms of section 5 of the Recognition Act for the due administration of the Insolvent Estate of the assets in Eswatini, but filed a document written 'UNDERTAKING AND BOND OF SECURITY'. The undertaking was made in terms of the South African Insolvency Act 1936 "to pay to the Master on demand an amount of up to E3, 495, 000.00 as the Master may claim" from the trustees" in respect of any loss or damages as may be suffered by the said estate or by any person by reason of the fact that (the trustees) failed to perform properly (their) functions in the above capacities or because of any maladministration on (their) part …."*

In other words, the trustees committed themselves to pay E3.5M should the insolvent estate be maladministered. Paul Shilubane's efforts to secure a security bond proved futile resulting in his purported resignation in March 2011 at the same time denying that he was ever formally appointed by the Master.

5. Makhosemvelo complains that the SEC claim of E1.4M lodged on 12 May 2005 and approved on 16 November 2005 at creditors meeting should not have been allowed without supporting documents. That the Master was negligent in this regard. Had due diligence been exercised the Master would have realised that the claim was in fact directed to a company which would be place under liquidation at the instance of SEC. Even then after being aware of the error, the Master failed to reverse the sale of the "8

properties to Dumisa Dlamini's personal estate for the beneficiaries to receive what is due to them." In the result, Makhosemvelo argues:

> *"The liability for the loss and damages sustained by the failure of the officials within the office of the Master of the High Court to properly administer the estate as regulated in the Insolvency Act now rests squarely at the office of the Master of the High Court to ensure that Mr Dumisa Dlamini is placed in the position he was with lawful title of his property before the unlawful conduct of the appointed trustees and malfeasance and reckless conduct committed by the official within the office of the Master of the High Court."*

It is worth noting that on 8 June 2010 the Master's office (per Ms Lucia Lukhele) wrote to Paul Shilubane as follows:

> *"1. On perusal of the estate file we have noted that three separate bonds have been filed, we advise that you revisit the issue of the bond to cover the entire estate and that all five trustees should sign including Marthinus Jacobus Dewald Breytenbach and Paul Shilubane. Kindly file same within the next fourteen (14) days.*
>
> *2. We have also observed that you have not yet submitted to the Master a plan for distribution for any funds you might have received ….."*
>
> *"Further, preliminary investigations by the trustees revealed that the affairs of the various legal personae of which Dumisa was a shareholder and director were for all practical purposes impossible to separate. It appeared that all such legal personae amounted to nothing more than alternative identities for Dumisa."* ***P14 of Master's Report of 27/6/24***

As to the proceeds of the sale of the 8 properties in one respect it is said *"all deposits and monies received in respect of the auction remain in the trust account of Currie and Sibandze Attorneys until finalisation of the matter",* in another account Currie and Sibandze Associates, the attorneys who represented the South African Trustees alleged that monies for the sale of the properties were never deposited at late Shilubane Trust Account. Yet in his letter dated 8 June 2011 late Shilubane as local trustee explained as follows: *"The bulk of the money in the estate was paid to counsel who acted for the trustees in the estate ...."* If the different accusals are anything to go by, the proceeds in question were embezzled by the former trustees represented by the late Paul Mhlaba Shilubane. The Master denies having consented to the sale of the 8 properties.

In her Report of 27 June 2024, the Master concluded:

> *"Further, Swazi Bank refused to account for all the monies received by her from the properties realised. The former trustees mismanaged monies belonging to the estate and they failed to account for the money. Moreover, the current trustee fails to wind up the insolvent estate because of technical issues which need to be addressed by the former trustees and creditors particularly Swazi Bank."*

On her part, the Master explains that she only depends on the office of the Attorney General to compel defaulters to comply with directives of the Master. As far as the former trustees, the Master says she wrote them several letters to account for the proceeds received from sale of properties belonging to the insolvent estate.

44.ESTATE LATE SINDA ABEDNIGO MABUZA EH129/2021

This matter came before the Commission on 20 June 2024. The deceased died intestate in 2019. He was married by Civil rites to Doris Mabuza. The estate was reported by Doris Mabuza. She was also appointed the executor. The deceased had earlier *ngenaed* (right of leverage) Theresa Methula. Lusanda Mabuza and Ntsika Mabuza were born of this union.

The inventory showed that the deceased had three motor vehicles; one plot at Extension 9, Mbabane; ten cattle and a farm at Moyeni, Siteki. The estate property was divided among the children of *Make* Doris and those of *Make* Methula. What remains to be distributed is the Farm at Siteki. The complainants Lusanda and Ntsika were of the view that a neutral executor be appointed. As far as the motor vehicles were concerned, the executor undervalued the Toyota bakkie and the Isuzu double cab. She then bought these two vehicles at a very low price. The winding up of the estate should therefore be speedily finalised.

The executor explained that when she got married to the deceased, there were children the deceased had from other women. The executor took care of them until the death of the deceased. She explained that the deceased did not *ngena* Methula but only had a relationship. Three children were born of this relationship. The executor explained that she bought the Farm whilst she was working for the Government. She then successfully applied for early retirement and her child continued paying for the Farm. The Farm should have been registered in the executor's name; instead, she opted that it be registered in the name of the deceased. The complaint by the children born of the deceased and Methula is that the money they received from the estate was too small. The executor said that she is willing to sell the Farm and distribute the proceeds accordingly.

Conclusion

This matter has not been finalised.

45.ESTATE LATE CHRISTOPHER MAVAVA VILANE EN100/2021

This matter came before the Commission on the 20th June, 2024. It also appeared on the 25th June, 2024 and finally on 23rd July 2024. The deceased died testate in 2021. His estate was reported by Eunice Vilane. The deceased was married by customary law, to Eunice Vilane (first wife) and Ntombiyenkhosi Vilane (second wife). They were both appointed as executors. The inventory shows that the deceased had a farm at Mhlosheni; a shopping complex at Nhlangano; a blockyard business at Nhlangano and flats; a homestead at Ngwenyameni which was occupied by Ntombiyenkhosi; another homestead at Thunzini which was occupied by Eunice; two trucks; two tractors; five motor vehicles; and one T.L.B.

The deceased had eleven children, six from his marriage and five from outside. Since the deceased died, the second wife has received nothing from the estate, including maintenance. The rentals are collected by Eunice's children. Because some of the misunderstanding between the family members, the Master removed the executors and replaced them with attorney Melusi Simelane from Piliso Simelane. Attorney Simelane was appointed in August 2023. He had not yet finished his assignment citing interference and lack of co-operation from the first wife.

On the 25th June, 2024, the Commission invited Attorney Simelane, Eunice and her son Mthokozisi. Attorney Simelane stated that Make Ntombiyenkhosi was getting nothing since the deceased died. Ever since he assumed his role of executorship, he discovered that there was no money in the estate. There had been previous attorneys who handled the matter in the person of Attorneys Setsabile Matsebula and Sabelo Bhembe. They were representing the two wives in various court cases. They had been appointed as executors although they had not been given letters of administration. The faction within the family has resulted in various court litigation and some cases are still pending in Court.

When Attorney Simelane was appointed, he informed the two wives that he was now the executor. There was hostility on their part. The older wife said that since they were in mourning the administration of the estate must wait. Ntombiyenkhosi approached the executor and the first wife failed to turn up alleging that she had been advised not to attend any meeting called by the executor.

The executor stated that the deceased had five immovable properties in Nhlangano. Eunice and her children told the executor that they do not recognise his appointment. They were concerned about the criteria used by the Assistant Master, Mahlindza, in appointing him. At some point in time, the executor had to inspect the business plot where the blocks were made. Mthokozisi, one of the children of Eunice, told the executor that he must not set his foot on the business. Eunice told the executor that he had no role to play in the administration of the estate because all the assets of the deceased belong to a trust. The executor filed an application to the High Court for the preservation of the assets. This included the cattle on the deceased's Farm, the cars and the rent that was collected from the rented properties. The Court granted the executor the Order on an interim basis. Eunice refused taking the Order and contempt proceedings were instituted.

The executor raises issued about the Trust instrument Eunice and her children made reference to. It was not signed and was only donating two properties to the deceased and Eunice. Eunice was alleging that the deceased and Eunice were married by civil rites. The executor insisted that there was none such. If Eunice was convinced that a Trust was formed, she should approach the Court for a declaratory Order. The executor said that the estate generates One Hundred Thousand Emalangeni per month from rentals. The tenants were told that they should pay the rent to the Guardian Fund. The lawyers representing Eunice,

Attorney Setsabile Matsebula, advised the tenants otherwise. There is a Court Case pending in Court regarding the status of the Trust.

Eunice explained that the properties belong to a Trust and this matter is pending in Court. Mxolisi explained that it was not true that the second wife was getting nothing from the estate. She was given a truck to use for meeting her needs. The second wife never disclosed this to the Commission. The families agreed that they will sort out the differences and come up with a proposal for the executor's consideration.

Observation

On the 23rd July, 2024 the Assistant Master, Mr Mahlindza, reported that the family had met. It agreed that for a start all the cattle will be sold and proceeds will be distributed among all the beneficiaries.

Conclusion

The winding up of this estate is in progress.

46. ESTATE LATE BERTINAH DUDUZILE MTSHALI – DLUDLU EM250/15

This matter came before the Commission on the 20th June, 2024. It again came back on the 23rd September, 2024 and 8th October, 2024. The deceased died testate in November, 2015 and was reported by the deceased's husband, Edward Sipho Dludlu. The deceased and her husband were married by civil rites. They gave birth to two children, Mthobisi Dludlu and Cynthia Zandela Mnisi (nee Dludlu). In the next of kin meeting, Zandile Cynthia Mnisi (nee Dludlu) was appointed the executor. Edward Sipho Dludlu had other children outside the marriage.

The inventory showed that the deceased had a house at Luyengo; goats; cattle; four plots, three at Nhlangano and one at Mbabane; a motor vehicle and money

at the Central Bank and Swazi Bank. The complaint is that the executor failed to finalise the estate within six months following the death of the deceased. She only collected the money from the Central bank and Swazi Bank. She included the plots and the goats in the inventory and then disappeared. The Master informed her that she should wind up the estate within the prescribed period. There was no application for extension of time. She was then removed and Nompendulo Dlamini was appointed, a lecturer from Limkokwing. Attorney Nompendulo then distributed equally the money that was in the estate account to all the beneficiaries.

One of the plots at Nhlangano was sold by Edward Sipho Dludlu whilst both the deceased and her husband were still alive.

Edward Sipho Dludlu received his half share plus a child's share. The Master later appointed attorney Mongi Nsibande to replace Nompendulo, following her resignation.

He did nothing towards finalising the estate. When Edward Sipho Dludlu died, he was living with a live-in lover, a Simelane lady. Mr George Langa, acting Assistant Master indicated that he did not have the file for the estate. He promised to bring it later. The matter returned on 8 October, 2024.

Observation

Mr George Langa reported that the family met on 4 October, 2024 and Mthobisi was appointed as executor.

Conclusion

The winding up of this estate has not been finalised.

47.ESTATE ROBERT LOBI ZWANE EL 89/2020

This matter first appeared before the Commission on the 30th April 2024. It then appeared again on the 1st August, 2024, 8th August 2024, 30th August 2024, 30th September, 2024 and 3rd October 2024. It has not been concluded yet because of factionalism within the family.

The deceased died intestate on the 14th September, 2020 and the estate was reported to the Master's Office by Sicelo Zwane, one of the deceased's children. When the next of kin meeting was called, the Master advised that the family should appoint an executor who is a lawyer because the estate is complex. An agreement was reached that Nkosingivile Dlamini from Robinson and Bertram (then) be appointed.

The deceased was married to four wives and a number of children were born of them and of other relationships. All in all he had thirty three children. One wife left the deceased although they had not divorced. He married all the wives through Swazi Law and Custom.

The inventory showed that the deceased had one Mercedes, one Prado, three trucks, a bus, three land cruisers, ten tractors, six farms, flats at Grand Valley Manzini, Manzini Tourist flats, houses for rental at Zakhele, four vacant plots at Manzini, Mshayazafe complex, Siyabonga Complex, Ekhaya butchery, Leon building next to Eswatini Bank, Manzini car wash and a homestead at Mbadlane.

Most of the immovable properties were owned and run by three companies and Trusts. Some of the companies were donated by the deceased whilst he was still alive to his children and some to his grandchildren. The gravamen of the beneficiaries' complaint is that one of the wives together with her six children are helping themselves to the estate by collecting rentals from the office where same were paid during the life of the deceased. They opened the safe and accessed the properties, including company documents, which were used in running the

businesses. Following the death of the deceased, the six continue to run the businesses to the exclusion of the other family members. They started doing this immediately after the funeral of the deceased. The six also took the donations from Parliament.

After the cleansing ceremony, the family members went to the Master's Office. Before going there, the Zwane elders tried to unite them but to no avail. At the Master's Office, the beneficiaries informed Xolile, Assistant Master that some members of the family were abusing the estate. Her response was that the executor will address the concerns. The grony was that Xolile (Assistant Master) came in the same car with Nkosingivile, the executor.

The executor continued with his assignment. He promised that he would deal with the members that were abusing the estate. He further promised to call monthly meetings. He did not honour these promises. The beneficiaries again approached the Master's Office and were not helped. They ended up securing the services of M.L.K Ndlangamandla Attorneys. Mr Ndlangamandla wrote to the executor informing him about the beneficiaries' grievances. The executor did not respond. Nkosingivile then filed a claim of sixty-seven thousand Emalangeni for legal fees notwithstanding that he was supposed to get one percent as per his undertaking. He said if the beneficiaries cannot afford the sixty-seven thousand Emalangeni, he must be paid eight thousand five hundred Emalangeni before he resigns. The Master was informed about this and the Master did not take action.

Nkosingivile continued as the executor notwithstanding that the beneficiaries paid him the eight thousand five hundred Emalangeni. The deceased had sold a portion of Mankayane Farm so as to settle a loan with Standard Bank. This transaction had not been finalised by the deceased at the time of his death. Before his demise the deceased said that the executor should continue with the transaction to finality. He was deceased's attorney at that time. The beneficiaries later heard that the Farm had been sold by the executor to Montingy (Pty) Ltd for

Sixteen Million Emalangeni. The purchase price was discovered when the beneficiaries searched at the Deeds Registry. The amount the deceased owed Standard Bank was Twenty-four Million Emalangeni. The beneficiaries informed attorney Ndlangamandla about the miscarriage of the deceased instructions regarding the Farm. The executor responded by saying that he paid the Bank Ten Million Emalangeni and he does not know what happened to the Six Million Emalangeni.

The rentals that were collected for and on behalf of the estate were deposited into a company account belonging to Leon Investments. The account was only accessed by Thabsile and some of the money from the account was deposited in her personal account. The Master was informed about this and no action was taken by the Master. Mr Ndlangamandla suggested that this matter be reported to the Police. After the resignation of the executor, he prepared an account which was not satisfactory. He informed the beneficiaries that he had used Two Million Emalangeni from a Life Policy to settle a loan at Building Society.

After the resignation of the executor, each household was assigned to choose one representative to help facilitate the hiring of a family lawyer. Thabsile also opened another office at Liqhaga building. It was also responsible for rentals collection. Sicelo Zwane diverted some of the rentals for personal use. The five children from Sicelo's mother also benefited from these rentals. The report prepared by the executor reflected that the deceased had minor shares in some of the companies. Moses Masilela was then appointed the executor. Xolile persuaded the beneficiaries to acknowledge that the estate owed Robinson Bertram sixty-seven thousand Emalangeni referred to earlier.

The beneficiaries, Mr Xulu and Xolile met at the Master's Office. Attorney Derrick Jele also attended and he told the beneficiaries that if the sixty-seven thousand Emalangeni is not paid, the beneficiaries will not get the file. The beneficiaries failed to pay; consequently, the file is still at Robinson

Bertram. During his executorship Nkosingivile changed the directors of some of the companies. Currently, Mr Chandai Chimwaza and Osborne Nzima are the executors of the deceased estate. On the 9th May, 2023 the executors called upon Sicelo and the other five children to account for the mismanagement of the estate but nothing positive is coming out of this. Sicelo and company are also failing to maintain the other wives of the deceased. Only their mother is benefitting. The beneficiaries have not been informed about the estate properties that are in South Africa. The beneficiaries did not get anything from a payment that was received from Provident Fund because Sicelo and company took the deceased's Identity documents and others personal documents.

The Master confirmed the contents of the inventory. Sicelo and company changed the shareholding and Directorship of Leon Investments Company. The company was under the Management of Thabsile. She was using a power of attorney that was issued in 2020. The power of attorney expired, but Thabsile is still using it. It is not clear how the Bank where the rentals are paid is allowing Thabsile to use it. Mr Chimwaza explained that they were introduced as executors in 2023. What led to that appointment was the fact that the deceased had shares in various companies. He used one company to buy shares from various companies. He later formed three trusts and the assets of the company were given to the trust.

When the matter appeared again on the 1st August, 2024, it had to be postponed because not all the beneficiaries were present. It was postponed to the 8th August, 2024. On the 8th August, it was again postponed. The same thing happened on the 30th August 2024. It finally appeared on the 3rd October. Nkosingivile appeared before the Commission. He said that the allegation by the beneficiaries were void of substance in as far as the execution of his duties were concerned. He was appointed the executor in the presence of the family members and the appointment was effected by the Master. The appointment was done on the 9th

December, 2020. He denied that he was involved in the change of the deceased's Companies directorship. Whilst he was the executor, he requested the office of Registrar of Companies to furnish him with the Company documents. A comprehensive report was prepared by the executor and same was forwarded to the Master's Office.

Nkosingivile further clarified that he never claimed any policies on behalf of the estate. The deceased had money at the Building Society. Nkosingivile is of the view that it is in the Guardian Fund. As far as the sixty-seven thousand Emalangeni was concerned there were twenty-seven Companies under the directorship of the deceased. The sixty-seven thousand Emalangeni were fees due to Robinson Bertram for the services rendered in administering the estate. The deceased family only paid eight thousand give hundred Emalangeni and the remainder has not been settled. Upon resignation in 2021 the executor filed a comprehensive report with the office of the Master. The estate file is with Robinson Bertram.

Attorney N.D. Jele who was acting on behalf of Sicelo explained that vehicles HSD 529 BM and LSD 377 CM did not belong to the deceased but to Angelina Zwane one of the surviving spouses. There are blue books to support this allegation. On the issue of the companies' directorship Mr Jele stated that Thabsile Zwane was working closely with the deceased. She was responsible for the companies' accounts. She continued with this assignment even after the death of the deceased. Thabsile gets nothing for rendering her services. The tenants pay at the bank and forward the proof of payment to Thabsile. The company where the proof is submitted is situated at Liqhaga building and the Company responsible for that is called Grand Valley (Pty) Ltd.

On the issue of the guns, Mr Jele explained that they were kept in a safe at Leon's Investments Company. Thabsile kept the key to the safe. The Police took the guns and they are currently kept at the Manzini Police Station. On the issue of

collection of rent, some are collected by the deceased's employees at Grand Valley and Leon's Investment Offices. They are then deposited into the Bank. On the issue of maintaining the deceased's wives, Jele explained that the moneys kept in Grand Valley Company account, were used by the deceased to take care of Make Angelina because she was the only remaining wife since the others had left the Zwane homestead whilst the deceased was still alive.

In 2022, Thabsile stopped paying for the maintenance of Make Angelina. The other wives only came back after the deceased's death. The statement produced by the complainants only show the amount of maintenance that was paid by Thabsile up to 2021. There is nothing that shows that Make Angelina received any maintenance after that year. As far as the rentals that are collected are concerned, they are used to pay the loan for Leon Investment. On the issue of Companies, the deceased had twenty-seven companies under his directorship. Only two generated income in the form of rentals. The other twenty-five were property holding Companies.

Chimwanza, the co-executor stated that he was assigned by the Master to sort out the issue of the shares in the various Companies owned by the deceased. He pointed out that he is still working on this issue and a report will be submitted later. Lindelwa Magagula, Deputy Master explained that the executors are frustrated in carrying out their responsibility because information is not forthcoming from the beneficiaries.

The concerned parties were called and it transpired that discussions and deliberations at home and before the Commission around the estate are far from over. One of the pending issues relates to the companies owned by the deceased wherein the issue of shareholding by same was not clarified by the Registrar of Companies notwithstanding that he had been asked to do so.

Conclusion

The issues around this estate have not been finalised.

48. ESTATE LATE LAWRENCE CLEMENT BAARTJIES EH116/2019

The matter came before the Commission on the 18th April, 2024. The deceased died testate in 2019. His wife predeceased him. The deceased's estate was reported by Sandile Baartjees. In terms of the Will, Sandile and Constance were appointed as executors. The inventory showed that the deceased had four immovable properties – plot 434 which was subdivided into three portions and are undeveloped; plot 1105 and remainder of plot 434. Plot 1104 was bequeathed to the complainants' cousin by the deceased whilst the deceased was still alive. There is yet another plot where the deceased's homestead is. There was also money in the bank amounting to thirty-six thousand Emalangeni which was used by the executor to pay for the City Council rates. It was also used to pay for water and other amenities.

The beneficiaries' complaint was that Constance and Zweli Jele did something wrong by selling one of the deceased's plots and used the proceeds to borrow the beneficiaries' money on condition that the beneficiaries would pay it back with interest.

Later, Constance sidelined Sandile as one of the executors of the estate. Constance had borrowed the beneficiaries eighty-seven thousand Emalangeni (E87, 000.00). The beneficiaries were made to pay interest amounting to sixty thousand Emalangeni. Plot 1105 was sold to recover the said amount. Constance told the beneficiaries that she also paid for the rates; truly speaking she never paid for the rates. Constance also informed Sandile that he was no longer an executor.

The Master's response was that the deceased had eleven children. Constance, Ntombifuthi and Sandile were appointed executors. The Master confirmed the inventory. There was thirty-six thousand Emalangeni in the Guardian Fund which later became part of the liquidation and distribution account. The total liability of the Estate was thirty-eight thousand Emalangeni. Another liquidation and distribution account was done wherein portion 1105 had to be sold and the proceeds thereof were put in the Trust account as per the Will of the deceased. The Trust is called L.C.M Trust. The amount that was deposited into it was three hundred and fifty thousand Emalangeni. Plot 965 was transferred to A.P. Baartjies Trust. The Trustees of A.P. Baartjies Trust are Sandile, Eugene and Constance. As far as the executorship is concerned, the Master submitted that Constance and Sandile were still executors.

The conveyancer who transferred the properties from the deceased to the beneficiaries, L.C.M. Trust and A.P. Baartjies Trust made an error in the description of the properties. There were other outstanding issues relating to the sale of the estate land alleged by Constance. She did not remit the proceeds to the estate account. It is recommended that the Master should ensure that the estate is wound up as a matter of urgency.

Conclusion

The conveyancer has not corrected the error in the Trust documents. This estate has not been finalised.

49. ESTATE LATE KHABONINA JOSEPHINE DLAMINI (NEE KHOZA) EH 177/2017

This matter came before the Commission on the 25th June, 2024. She died intestate. Her death was reported to the Master's Office by Thembi Khoza who was a sister to the deceased. She was married to Sandile Dlamini and she later

divorced him. There were no children born of the marriage. The inventory showed that she had a homestead at Ezulwini; flats at Mahwalala, Mbabane; three motor vehicles, household furniture and money at the bank.

Thembi was at first appointed the executor, but was later removed by an Order of Court. The deceased had "adopted" Fransisca Shayo, who was of Tanzanian origin whilst the deceased was studying in Tanzania. The application for the removal of Thembi was moved by Fransisca. Attorney Mzwandile Ntjangase was appointed by the Master as the executor. At first Shayo was included as a beneficiary and she then later removed her. The case of her removal was endorsed by the High Court under case 2035/2020. The reason for her removal was that there was no evidence that she was adopted by the deceased. This matter is still pending at the Supreme Court. Attorney Ntjangase confirmed that he is awaiting the decision of the Supreme Court. Thereafter he will finalise the winding up of the estate.

Conclusion

This estate has not been finalised.

50.ESTATE LATE JOSEPH MAHLANGU

This matter appeared before the Commission on the 25th June, 2024. The complainant was Phumzile Mahlangu, the granddaughter of the deceased. She is a child of Capriel Mahlangu who is also late. There were two children of Capriel, the complainant and one Winile who was adopted by Capriel. Her name is Winile. Phumzile's complainant is that Winile is not grandchild of the deceased but she is busy collecting rent from the house at Plot 420. Lately, the tenants are paying the rent to the office of the Master. The complainant has not heard what is happening to the estate for the last two years. No action on the part of the Master.

The Master's Office responded by saying that they found the file of Media Mahlangu the grandmother of the complainant who died in 2004. Winile reported the death. The office of the Master is still trying to locate Joseph Mahlangu's file.

Conclusion

This estate has not been finalised.

51.ESTATE LATE LOGWAZELA TFWALA EP63/2000

This matter came before the Commission on the 26th June, 2024. The deceased died intestate in 2000. He was married to Agnes Lomvula Tfwala. There are no children of the marriage. The inventory showed that the deceased had cattle; sheep; goats, 3 cars; a tractor; farming implements and money at the bank. A liquidation and distribution account was prepared. There were creditors appearing in the liquidation and distributed account that were questionable. The Master was Churchill Dlamini. The deceased also had a business called Tentele Ngwane and it was at SEDCO building. When the deceased died, SEDCO took the business.

The executor wanted to secure a disc for the deceased's tractor. The Police told the executor to go to the Master's Office at Mbabane. The office told her to go to the Pigg's Peak Office notwithstanding that the executor had always been using the Mbabane Office. The Master responded that all the estate properties have been liquidated. The complainant is the only beneficiary. The office will assist in ensuring the disc is secured.

Conclusion

The office of the Master did secure the disc and the file has been closed.

52.ESTATE LATE MANDLA ISRAEL MAMBA EH158/93

This matter came before the Commission on the 26 June, 2024. The deceased died intestate in 1992. He was married by Customary Law to Thoko Ruth Gamedze. Three children were born of the marriage; four were born from other relationships. This included the two complainants, Thulani Mamba and Joseph Mamba. The inventory showed that the deceased had a beer hall; a grocery shop; and twenty-five flats for rent at Sicelwini; two cars and goats. Thulani and Joseph were not included in the distribution of assets. They were never supported and maintained by the estate since the death of the deceased.

The immovable properties are on Swazi Nation Land. The Chief never included the complainants in the distribution of the estate, notwithstanding that he knew that they were the children of the deceased. The Master told the complainants that they were not entitled to anything because they are not the children of the marriage and they are majors. We agree.

Conclusion

The file is closed.

53.ESTATE LATE GIRLIE MANTFOMBI DLAMINI SHE82/2019

This matter came before the Commission on the 26th June, 2024. The deceased died intestate in 2019. The complainant, Maverick Hlanze, reported the death to the Master's Office. Maverick and the deceased were married in community of property. The next of kin meeting was held. Maverick was represented by a Nhlabatsi attorney in that meeting. There were no children of the marriage. The deceased had household goods and money amounting to five hundred and thirty Emalangeni (E530.00) at Swaziland Building Society.

Observation

The two were no longer staying together although they had not divorced. The family of the deceased did not allow Maverick to attend the funeral of his wife. He was also not allowed to take the assets of the deceased hence his appearance before the Commission.

Conclusion

The Commission did not find any substance in the complainant's case. The complainant must consider taking the matter to court. The file is closed.

54.ESTATE LATE AGNES FAKUBI MHLANGA EH156/2022

The matter came before the Commission on the 19th June, 2024. The deceased died intestate in 2003. She had no children and was not married. Mefika reported the estate and was later appointed the executor in the next of kin meeting. Mefika is also the complainant in this matter. The inventory showed that the deceased had a plot at Nkwalini and cash at the bank amounting to Two Thousand Six Hundred Emalangeni.

The file was opened in 2008. Thereafter the Master's Office informed the complainant that the file had been misplaced. In 2022 a new file was opened. The complainant later advertised as per the advice of the Master's office; he was also introduced to the Zone leader of Nkwalini. The Zone leader introduced the complainant to the City Council of Mbabane. The City Council advised the complainant that he must take over the property. Whilst that was happening, the Master advised that the complainant fetch the deceased's children whilst at the same time the City Council was calling upon the complainant to pay for the rates. This is causing confusion.

The Master confirmed the allegations by the complainant. The amount of two thousand six hundred Emalangeni (E2600.00) was paid to the complainant. He

was indeed asked to bring the deceased's sister's children. The narration of the events is that the deceased died without children. She had a sister who had children. The Deputy Master, Lindelwa Magagula advised the complainant to fetch the deceased sister's children. The complainant failed to comply. It transpired that the complainant is a distant relative.

Conclusion

The matter is still pending.

55.ESTATE LATE DANIEL VUSI MATSEBULA EH135/20

This matter came before the Commission on the 24th April 2024. It appeared again on the 12th November, 2024. The deceased died intestate on 12th May, 2019. The inventory showed that the deceased had three (3) flats at Manzana, an Isuzu bakkie, money amounting to E12, 000.00 which was kept at the bank, for hire permits, goats and taxis. During the next of kin meeting at the Master's Office, Sipho was appointed the executor. The deceased had nine (9) children from different mothers. The deceased had earlier married Make Nsibandze by Swazi Law and Custom. The deceased and Make Nsibande divorced.

The deceased then married Sibongile Magongo. They both stayed together at the Manzana homestead. One child was born of the marriage. The homestead was relocated when the Ngwenya Mbabane highway was constructed. Make Nsibandze pre-deceased the deceased. Before she died, she told the beneficiaries that the Manzana homestead belongs to her and therefore all the children of Vusi Matsebula would benefit from it.

Make Magongo's child is not co-operating with the beneficiaries. He is refusing to handover the car and does not deposit the rentals into the estate account. Before Make Magongo died, she told the beneficiaries that the child was not a Matsebula but a Khumalo.

The Master's Office did not allow the executor of the estate to examine the file. It was further alleged that Magongo's child was collecting the rentals from the permits.

Mr George Langa, the Master's representative responded by denying that the executor had been denied the right to examine the estate file. He further stated that the Master's Office never called the executor and told him that the homestead belonged to Make Magongo.

Make Magongo's child Fakazi appeared before the Commission. He said that he was the child of the marriage. Her mother left the homestead to him. He admitted that he is collecting the rent from the tenants. He disputed that the deceased *khontaed* at Waterford for Fakazi's mother. He further denied that Fakazi's mother sold the land at Waterford.

Conclusion

The matter has not been concluded because there is no title deed for the land. Transfer cannot be effected.

56.ESTATE WALTER AND ELIZABETH NXUMALO EM69/2022

The matter first came before the Commission on the 4th May, 2024. The complainant is Sindisiwe Nxumalo, a grandchild of both deceased. Elizabeth Nxumalo was the first one to die. She died before the complainant was born. Later Walter died and this was in 1987. In 2022 the complainant was appointed the executrix for both estates. The only property belonging to the estate is a homestead at kaKhoza. The deceased had four children; two of them are still alive. There is a dispute regarding the sub-division of their grandparent's property. The sub-division was carried out by the Ministry of Housing. The Masundvwini Royal Inner Council ruled that the entire property belongs to both the deceased since they are the ones who *khontaed*. One of the children

(Nhlanhla) of the deceased claims that there were improvements he effected on the property and the portion belongs to him. He further gave part of the property to his wife.

The matter appeared again before the Commission. In attendance was Ncamsile (Aunt), Lucky, Sandile and Nhlanhla. Ncamsile explained that the property was subdivided into three plots. Aunt received a portion and Nhlanhla another portion; the remaining one was allocated to the children of the deceased's children.

Conclusion

An agreement was reached that all the parties will work around settling the matter and report to the Master. The agreement is underway.

57.ESTATE LATE MDUDUZI CYPRIAN MAZIYA EM244/2020

The matter first appeared before the Commission on the 27th February 2024. It appeared again on the 24th October, 2024. The final appearance was 30th October 2024. The deceased died intestate in August 2020. The inventory showed that he had 4 cars, 1 tractor; and some other businesses that were non-operational at the time of his death. He was married to Gladys Maseko by civil rites. Gladys is now deceased; she passed away in 2006 and predeceased her husband. At the time of Mduduzi's death Gladys and her husband were no longer staying together. They had not divorced. In 1991, Mduduzi married Lindiwe Mbhele by customary law. In 1992, he again married Nonjabuliso Mdziniso by customary law. He also married Monic Tetu by customary law. Lindiwe Mbhele is still alive and lives in South Africa. Nonjabuliso was appointed executor. She was appointed by Makhosazana Mdluli. When the deceased died, Nonjabuliso upgraded the birth certificates of all the wives. She informed the Birth, Marriages and Death Office

that she is the only wife and she is the only surviving spouse. What is at stake in the deceased's estate is the house the deceased built at Farview Makholweni.

The executor has filed an application in Court regarding the estate. The matter is still pending in Court. The Master's Office responded by stating that Nonjabuliso reported the deceased. The inventory showed that the deceased had 4 cars, one house at Fairview/Makholweni, and another house in Maputo. In the death notice, it was stated that Nonjabulo is the deceased's wife. Later Miss Mbhele showed up at the Master's Office and stated that she was also the deceased's wife. The marriage between Miss Mbhele and the deceased was subsisting when the deceased died.

There are ten children of the deceased; two are born of the deceased and Nonjabuliso. The rest are from different mothers. The first next of kin meeting was called by the Master and the family members alleged that Miss Mbhele was also the wife of the deceased. There was no certificate produced to authenticate the allegation. The meeting was postponed. When the second meeting was convened, the family members did not turn up. The cars belonging to the estate also disappeared at Fairview/Makholweni. The Police were never informed about the disappearance. A third meeting was held and only Nonjabuliso appeared. When the matter appeared before the Commission on the 27th February 2024. An attorney from Sibusiso Shongwe showed up in that meeting representing the family members. He applied that the meeting be postponed to the 14th July, 2024.

When the matter appeared again on the 24th October 2024, the family members were in attendance and the matter could not proceed because Nonjabuliso was absent. It finally appeared on the 30th October, 2024. The family members were present and Nonjabuliso was represented by attorney Mlungisi Khumalo. Mr Shabangu from Sibusiso Shongwe attorneys represented the family members. Attorney Khumalo informed the Commission that Nonjabuliso had

received an invitation from Swazi Bank wherein she was told that the deceased was owing the Bank E900, 000 in the form of a loan, and had used the Fairview/Makholweni house as a collateral. The deceased had not settled the loan at the time of his death. The loan was made by a company called Africraft (Pty) Ltd whose shareholder was the deceased. The deceased therefore remains a principal debtor. A recent valuation established that the house was worth 2.9 million Emalangeni. The winding up of the estate is awaiting the outcome of the talks between Nonjabuliso and Swazi Bank.

Conclusion

Swazi Bank is insisting that it wants to sell the property.

58.ESTATE PHILEMON NSIMBINI MKHALIPHI EM285/2010

The matter appeared before the Commission on the 15th April, 2024, 24th June, 2024 and 3rd July, 2024. The deceased died intestate in 2010 and the estate was reported to the Master's Office by Sibongile Christina Mkhaliphi. Sibongile and the deceased were married by customary law and there was no child of the marriage. The inventory showed that the deceased had 3 plots at Fairview, a sawmill, a general dealer, 6 cattle, 5goats and 2 trucks. He had shares in a company called Dumezweni (Pty) Ltd and the other shareholder is Petros Maziya. Dumezweni (Pty) Ltd had bought the two trucks having sourced finance through FINCORP. The deceased had also had a Haulage business and a member of 2 co-operatives.

In one of the plots, the deceased had built flats and the rent was collected by the deceased and his wife Sibongile. After the death of the deceased, the wife continued collecting rent and did not deposit it into the estate account. When the next of kin meeting was held, in 2011, there was disagreement on who to be appointed executor. The Master ended up appointing attorney Joshua Mzizi as

executor. Mr Mzizi informed the tenants that rent must be paid to him for onward deposit into the estate account. The tenants defied Mr Mzizi alleging that Sibongile had said rent must be paid to her. A dispute over rent arose between Mr. Mzizi and Sibongile. The matter was reported to the Master's Office and Mr Mzizi suggested that rent be collected by an estate agent. Sibongile was against this idea. She later agreed that an estate agent be appointed; Swaziland Property Market was then appointed. Later the estate agent withdrew its service because there was interference by Sibongile. Another family meeting was called by the Master wherein children of the deceased complained that they were not getting any support from Sibongile. Mr Mzizi then prepared a Liquidation and Distribution account and each beneficiary received E103 000. The rental money that was collected by Sibongile after the estate agent had withdrawn its services was never remitted to the Guardian Fund. An amount of E254, 000 belonging to the estate could not be accounted for. Lindelwa Magagula wrote to Sibongile telling her not to interfere with the duties of the executor.

Another challenge around the estate relates to the trucks that were bought through FINCORP. FINCORP repossessed them and sold them. Two of the properties at Fairview, including the one in which plots had been built flats on, had been used as security by the deceased. At some point in time, the file disappeared in the Master's Office making the work of the executor impossible. One of the children of the deceased is Nonhlanhla. She is running a shop at Mahlangatsha and the saw mill business. The saw mill is no longer operating. Nonhlanhla alleged that the deceased had said she must use the profit from the shop and the sawmill for her maintenance.

Sibongile was called to appear before the Commission on the 24th June, 2024. She confirmed that she was married to the deceased by customary law. The deceased had 2 children, Nonhlanhla and Ndumiso, whom the deceased had before they got married. Sibongile reported the estate and registered both children in the

death notice. However Ndumiso died before the estate was wound up. A next of kin meeting was held. My mother-in-law, Ndumiso, Nonhlanhla and Mathabela Mkhaliphi appeared.

She confirmed the inventory. There was no money in the estate. Another meeting was held where the Master suggested that attorney Mzizi be appointed executor. A meeting of the Mkhaliphi family and the wife's family was called at the Master's Office. The Master only met the Mkhaliphi family. The Master refused to meet the wife's family and the Mkhaliphi family denounced Sibongile as the lawful wife of the deceased. It said that her being smeared with red ochre was insignificant.

Sibongile finally submitted that Nonhlanhla is not employed. She is running the shop and sawmill business but has never been asked to account for the proceeds from these businesses. She must therefore accordingly account and Sibongile will also account. On the 3 July 2024, the matter appeared again before the Commission, Nonhlanhla responded by saying that the saw-mill ceased operating when the deceased died in 2010. The saw-mill only generated E2700 and the money was used to pay for electricity and other business necessities. The shop has only generated E39, 000 since the deceased died. The executor confirmed that the saw mill and shop business have both collapsed. They are no longer generating any income. The estate has not been finalised.

Observation

The last time the matter appeared before the Commission the surviving spouse had been called upon by the executor to account for the assets of the deceased including rent collected by her. The surviving spouse informed the Commission that Nonhlanhla, one of the beneficiaries should account for the proceeds from the shop and sawmill. Nonhlanhla indicated that the shop and sawmill businesses have collapsed. The executor is yet to make an application to the court to compel

the surviving spouse to allow evaluation and collection of rentals on the properties of the deceased.

Conclusion

This estate has not been finalised.

59.ESTATE DANIEL MATHOLE ZWANE EP30/2017

This matter appeared before the Commission on 15 April 2024. The deceased died in 1996 and his estate was reported to the Master's Office in 2017. He died intestate and was married to Mantfombi Dlamini by civil rites. One child was born of the marriage and her name is Funekile Zwane. The complainant, Thembinkosi Zwane, was born out of wedlock. The only asset in the name of the estate is a piece of land at Mangwaneni. The bone of contention is that as far as Thembinkosi is concerned the property belongs to the deceased. Funekile is disputing the allegation that the property belongs to the deceased. She says that it belongs to Mantfombi and does not form part of the joint estate. The property is valued at E120, 000.

Observation

The Master's report was that there has never been a next of kin meeting because the family does not want to meet at the Master's Office.

Conclusion

The winding up of the estate is therefore pending.

60.ESTATE CONSTANCE SIMELANE EH282/2006

This matter came before the Commission on 18 April, 2024. It came again on 22 April, 2024 and on the 29 May, 2025. The complainant is Wandile Matsebula one of the children of the deceased. The deceased was married to their father by customary law. The father is also dead. Wandile does not know who reported

the deceased. The deceased died in 2006 and the inventory shows that she had 12 rental flats, a tuck shop, 2 cars and money at the bank. The deceased was self-employed.

Wandile's complaint was that since 2006, he is not benefiting from the estate. His brother Sicelo Matsebula is the executor. Sicelo collects E500 per month from each flat, E1500 per month from renting out the tuckshop and the family house (underground portion). Sicelo also sold one of the cars and the remaining one is registered in his name. The Executor, Sicelo was replaced by Sifiso Maseko as an executor and Sifiso was replaced by attorney Sakhile Mdluli. Wandile said that the reason why Sicelo is not treating him as a beneficiary is because he is disputing Wandile's paternity. He wants Wandile to do a paternity test.

The Master's response was that Sandile was appointed as the executor in 2006. The birth certificates of Wandile and Sicelo show that they have the same father and same mother. Sicelo's lawyer is Sanele G. Dlamini. The tenants in the deceased property were told by Sicelo that rent must be paid to him. He used to give Wandile E500.00 a month as maintenance but has since stopped. Sicelo was removed as the executor and was replaced by attorney Sakhile Mdluli. Wandile was advised by Sicelo to acquire the services of a lawyer.

On 22 April, 2024, Sicelo and attorney Sakhile appeared before the Commission. Mdluli stated that he was appointed the executor in November 2023. He said that the executors had changed from time to time. Wandile called him and explained what was happening to the estate. Sakhile contacted a certain Community Police Officer, Babe Tfwala to find out if it was safe for him to go to the deceased's home. Babe Tfwala advised Sakhile that he must be accompanied by Police Officers. The aim of the visit was to deliver letters informing the tenants that rent be paid to the Guardian Fund. Babe Tfwala said that as Community Police Officers, they are afraid of Sicelo. The Police accompanied Sakhile. He delivered the letters and later received a call from a Mr Masina who

asked Sakhile about his visit to Masina's homestead. He further said he must not entertain the case of a child who was born out of wedlock. Sandile got scared because of these threats. Sakhile cannot finalise the estate because the issues relating to the estate are being dealt with at family level because the property is on Swazi Nation land.

Sicelo's response was that Sakhile delivered letters to the tenants informing them that rent should be paid into the Guardian Fund. The family council held a meeting with the tenants and it later appointed Sicelo as the overseer. At one point in time and whilst he was still the executor, the Master called the family and introduced a certain Mr Maseko as the new executor. The head of the family Council is Mr Simon Maseko. The issue of Wandile's illegitimacy arose after the death of their parents. As far as Sicelo knows, him and Wandile share the same mother. The father of Wandile once stayed with their mother after the death of Sicelo's father and Wandile was a product of that relationship.

He further said that there was no rental collected from the tuckshop. He only received E1500.00 per month for rent. Each flat was rented out for E250.00 per month.

On 27 May 2024, the matter appeared again before the Commission.

Observation

The Commission was informed that the matter had been reported to the Royal Kraal and the Royal Kraal had ruled that the estate be divided equally between Wandile and Sicelo.

Conclusion

The ruling of the Royal Kraal has been implemented and the estate has been finalised.

61. ESTATE REGINAH NIKWANI SIMELANE EL54/2006

The complainant in this matter was Khumbuzile Simelane, one of the beneficiaries. This matter first came before the Commission on the 22nd April, 2024. It came again on the 23rd May 2024. The deceased died intestate in 2006. Eight children were born of the marriage between the deceased and our father. Our father predeceased our mother Regina. When our father died our mother was appointed the executor. The inventory showed that he had a farm at Vuvulane and money at the bank. After the death of Regina one of our sisters appointed our brother Stanford Simelane as the executor. Stanford was then responsible for receiving the quota from Swaziland Sugar Association.

Stanford worked at the farm for four years. He collected the quota during that period. We did not benefit from the collection notwithstanding that as a family, we had agreed that at the end of each year, we would gather together to determine how the quota was to be distributed. In 2019 an amount of one hundred thousand Emalangeni (E100, 000.00) could not be accounted for. It was part of the proceeds. All the children of Regina except for Stanford became suspects. We approached the Master's Office in Siteki about this matter and Cebile Ngwenya, Assistant Master, informed us that the farm had been divided among the beneficiaries. She advised us to engage the service of a lawyer if there is a need for the reversal of this division.

Mr Xulu, the Assistant Master Siteki, confirmed the death of Reginah. Nester, one of the beneficiaries, was appointed as the executor after a family meeting. In May 2007 the proceeds from Vuvulane were distributed and each beneficiary received one thousand two hundred and nine Emalangeni (E1209.00). In 2008 each received six hundred and three Emalangeni (E603.00). Nester asked to be relieved of her responsibility of being the executor and that Stanford be appointed.

In 2013, the beneficiaries went to the Master's Office where an affidavit was signed by Nester, appointing him as the executor and quota holder. There was no family meeting to authorise this change because the complainant and the other beneficiaries were not in favour of this idea. Stanford confirmed that an amount of One Hundred and Thirty Thousand Emalangeni (E130, 000.00) which was part of the proceeds was stolen from his car.

Observation

When the matter appeared again before the Commission on the 23rd May, 2024, Stanford was given an opportunity to present his case. He stated that after the death of Reginah, the complainant wanted to be the executor and quota holder notwithstanding that during the lifetime of Reginah, she had appointed him as the next quota holder.

The last time the matter appeared before the Commission, the Commission was informed that there was a family meeting at the Office of Regional Administrator, Lubombo Region, where the family appointed Khumbuzile Simelane as the quota holder.

Conclusion

The matter has now been settled.

62.ESTATE BUSISIWE ABELIA MAGONGO EM198/2023

This matter appeared before the Commission on the 23rd April, 2024. Boyce was the complainant. The deceased passed away in 2023. Bongiwe Habede (nee Magongo) reported the estate to the Office of the Master. The inventory showed that there was money at the bank, a motor vehicle and a house at Moneni. The house was on Swazi Nation Land. Boyce Magongo was preferred by the Master as the executor although Bongiwe and Lindiwe, who are also beneficiaries,

objected to the Master's preference. Lindiwe and Bongiwe preferred Bongiwe. The Master appointed her.

Boyce complained that Bongiwe used to borrow money from the deceased. She is prone to abusing money. After Bongiwe's appointment, Boyce objected and proposed that an attorney be appointed. It should not be Gigi Nkosi Attorneys because Gigi is a friend of Bongiwe. On the 20th June 2023, Boyce requested that he be furnished with the deceased's death certificate by the executor. After it was released to him, he used it to pawn the deceased's vehicle because she had registered the motor vehicle in his name whilst the deceased was still alive. This was after the deceased had sold it to him.

Following the appointment of Bongiwe as the executor, there was a time when she claimed that she was entitled to Thirty Thousand Emalangeni (E30, 000.00) which she had expended towards the funeral of the deceased.

Bongiwe responded by saying that she confirms that she was appointed the executor. As far as the deceased's motor vehicle was concerned she denied that the deceased ever sold the motor vehicle. It was stolen from the deceased. The deceased reported the theft to the police before she died. The Police recorded a statement which showed that Boyce had stolen it under the guise that he was going to change C.V. joints and shock absorbers. The motor vehicle was valued at fifty-two thousand Emalangeni (E52, 000.00).

Observation

The Master informed the Commission that the office was not ready to inform the Commission on the status of the estate. The office promised to furnish the report later.

Conclusion

The matter is being finalised.

63.ESTATE LATE ROY MASINA EH15/2021

The deceased died intestate in 2003. He had no wife but had a fiancé who had a child with him. The estate was reported to the Master's Office. The inventory showed that the deceased had a property valuation business together with a certain Mr Mabuza. It was called Masina, Mabuza and Associates. He also had a house/homestead at Ezulwini and flats at Ebuka.

Fundiswa Masina was appointed the executor but was later removed because she squandered E200, 000 from the flat rentals. Fundiswa had not been granted the letters of administration because she did not secure a bond for the due execution of her duties. She also did not do a valuation of the deceased's properties. The issue of the shareholding at Masina, Mabuza and Association is still under consideration.

The deceased had 5 children; five girls and one boy. The children were born from different mothers. At the time of his death, the deceased was staying together with Thulisile Ngcamphalala. He had one child with the deceased. They were staying at the Ezulwini property. When the deceased died, she was forced to vacate the house because the deceased's former wife claimed that the house was owned by her. The former wife's name is Zanele Shongwe. Thabsile had to occupy one of the flats at Ebuka.

Fundiswa was replaced by Nolwethu Masina who is now the executor Fundiswa and Thabsile complained that Nolwethu, does not settle for the water bill with Eswatini Water Services Corporation for the Ebuka property. The tenants have been without water for a long time. Fundiswa and Thabsile alleged that this was the portion notwithstanding that Nolwethu collects E23, 400.00 as rentals every month. They further complained that Nolwethu is delaying the winding up of the estate.

The Master told the Commission that Fundiswa was called upon by the Office of the Master to account for E200, 000.00 which she had collected as rentals. She admitted that she used the rentals for personal use. She was then removed as the executor because of this misappropriation. She had also not secured a bond for executorship. The Master further stated that there was so much infighting amongst the beneficiaries such that in one meeting she proposed that an outsider be appointed executor ultimately, the beneficiaries agreed that Nolwethu be appointed.

On the 9th September, 2024, Nolwethu and Zanele Shongwe appeared before the Commission. Nolwethu explained that all the moneys that were in the estate, when she took over, were distributed amongst the beneficiaries. What is left as estate property are the flats at Ebuka. They are 14 in all, 11 are rented out, one is occupied by Fundiswa, another by Thabsile the last one by a family member.

The rentals that are collected from the Ebuka flats go to the Estate account. The bone of contention relates to the property at Ezulwini. There are flats at that property as well. The beneficiaries argue that since the property belongs to the deceased, the rentals should also be deposited into the Estate account. Nolwethu explained that the Ezulwini property was jointly owned by her mother, Zanele Shongwe and the deceased. They both contributed towards it construction. She further showed the Commission a Ruling from Ezulwini.

Umphakatsi confirmed that the property belonged to laShongwe. The rentals from the Ezulwini property rightfully belong to her.

On the issue of non-settlement of the water bill, Nolwethu explained that the meters are registered in her name. Because of the ongoing family dispute, Fundiswa, Thabsile and the other family member refused to furnish her with the Know Your Client (KYC) documents. The other tenants were not paying for the water because they were caught up in this family dispute. Currently, Eswatini

Water Services Corporation is being owed E15, 000.00. She admitted that the winding up the estate has not been finalised.

Zanele explained that she was the ex-wife of the deceased. Two children were born of the marriage, namely, Mandisa and Nolwethu. They were married according to customary law. She explained that the majority beneficiaries were of the idea that the rentals collected from the Ebuka flats be deposited with the Master. Fundiswa refused and same were deposited. Fundiswa then helped herself to these rental money. Zanele confirmed that the Ezulwini property was allocated by *Umphakatsi* to her because the deceased *khontaed* in her name. They then constructed the main house together and the flats therein. The property is not part of the deceased's estate. The only remaining estate property relates to the Ebuka flats. The family dispute has delayed finalising the winding up of the estate.

A meeting of all concerned parties was called in which it transpired that the disputed flats were on land given to LaShongwe the mother of the executor. The deceased *khontaed* for LaShongwe and LaShongwe showed the Commission the letter from *Umphakatsi* confirming this position.

Conclusion

The matter has been concluded and the file is closed.

64.ESTATE LATE SAMUEL MYENI SEM283/2003

The deceased died in 2003. The estate was reported to the Office of the Master that same year. He was married to Norah Tsembeni Myeni (nee Shongwe) by civil rites. Three children were born of this marriage. Five children were born out of wedlock. The mother of Catherine Gwebu and Vusi Gwebu is Ednah Shongwe the sister to the deceased's wife Norah. We grew up at Samuel's place and we were considered as children of the family. Sifiso Myeni was born out of

wedlock and her mother was a worker at the Myeni family. His father was the deceased. The other two children born out of wedlock are unknown to us.

The inventory at the Master's office showed that the deceased had a plot at Fairview whose number is unknown to the complainants; another plot at Fairview, plot number 20; a Farm at Vuvulane which was used for cattle rearing and farming; and one Farm at Nhloya. The complainants went to the Master's Office to look for the deceased's file because they were of the view that they were entitled to something from the estate. The file was nowhere to be found. The complainants engaged the services of D.M. Hleta Attorneys to assist them to locate the file and also help in ensuring that their right to inheritance is realised. The file was found after 5 years. When the complainant enquired about the status of the estate, they were told that the estate was finalised and they were entitled to nothing. This is what has brought them to the Commission.

Observation

The Master explained that the deceased's estate was reported in 2003 by the deceased's wife Norah Tsembane Shongwe. The deceased had seven children and the complainants were not part of the list. The Master's Office first saw the complainants in August, 2003. The Liquidation and Distribution Account was prepared and approved by the beneficiaries. Norah received one half share of the estate plus a child's share by virtue of her marriage to the deceased. Each child received a child's share.

Conclusion

The file is closed.

65. ESTATE LATE JOSEPH MALUNGISA NKHAMBULE EL119/2010

The deceased died intestate in 1999. The estate was reported to the Master's Office in 2021. The deceased was married to Lomfula Nkhambule. He had earlier married other two wives by Customary Law and these wives predeceased him. The only asset in the estate was the leased Farm at Vuvulane. When the deceased died, Lomfula had been nominated as the next quota holder. Lomfula also died without nominating anyone. There are 5 children of the marriage.

The complaint is that the son to the complainants' brother, Ntokozo, is troubling them in that he wants to take over Joseph Nkhambule's Farm at Vuvulane. The name of our brother is Mduduzi Nkhambule. When our mother died, our brother, Mduduzi was appointed as the Executor. He died before winding up the estate and then Thembi was appointed by the Master to take over from Mduduzi. Mduduzi withdrew money that was in the account of Lomfula whilst he was still alive. The complainants approached the Court to compel Mduduzi to return the money and the Court ruled in their favour.

In 2022, the complainants went to Mhlume Company to check on the status of the quota. The beneficiaries discovered that Ntokozo had been appointed as the quota holder following an Order of Court that authorised him to do so. The beneficiaries went to the Master's Office where Lindelwa Magagaula, Deputy Master, showed them a letter written to Mhlume Company authorising Ntokozo to take over.

During their appearance before the Commission, the complainants were not clear as to as how Ntokozo ended up taking over the quota.

The Master explained to the Commission that Ntokozo had been appointed by the complainants of the estate at a meeting held at the Office of Regional

Administrator, Lubombo Region. Based on that appointment, the Court endorsed his appointment.

When Ntokozo died, Thembi was then appointed as the quota holder. A correspondence to that effect has been sent to the Sugar Association. When Thembi took over, she appropriated E30, 000.00 of Lomfula's money towards paying debts for Lomfula's funeral. The complainants through Thembi also requested E10, 000.00 for their personal use. The remaining E15, 000.00 was also withdrawn by the complainants. Currently there is no money in Lomfula's account. Thembi is now managing the Farm at Vuvulane.

Observation

The Commission was later informed that before Ntokozo died, bakaNgwane, through Dr. A.T. Dlamini, resolved the matter by Ruling that Ntokozo was the authorised quota holder.

Conclusion

Currently there is nothing pending about this estate since Thembi is now managing the quota on behalf of the other beneficiaries. The matter was finalised.

66.ESTATE LEORNARD BOY SIMELANE EH28/2021

The deceased died testate on 9th September 2021. His wife Grace Simelane died the following day, the 10th September, 2021. The deceased persons were married in Community of Property. Only one child, Sibongile Simelane, was born of the marriage. Before marrying the deceased husband, Grace had a child from a previous relationship. Her name is Joyce Nyoni. She was brought into the marriage by Grace.

The death of Leonard was reported to the Master's Office by Sibongile and the death of Grace by Joyce. Sibongile was appointed executor to Leornad's estate and Joyce to that of Grace.

The inventory showed that the deceased's persons had a Farm at Nkoyoyo. They had bequeathed same to Sibongile and Joyce. Sibongile's complaint was the authenticity of the signature of her father which appears in the will. Currently the matter is pending at the High Court of Eswatini. Sibongile had also complained that a certain Bongumusa Dlamini is now staying at the Farm, yet he is not one of the beneficiaries.

Conclusion

Matter is pending in court and has not been finalised.

67.ESTATE LATE SDUMO MAXWELL DLAMINI EH17/2002

The matter came before the Commission on the 27th February 2024. The deceased died intestate in December 2001. He was married to Dudu Dorcas Magongo; at the time of the deceased's death, the two had divorced. The deceased never married again. The deceased had 3 children from another woman. He had no child with the divorced wife.

The estate was reported to the Master's Office by Hlobsile Dlamini. In the next of kin meeting Hlobsile was appointed the executor. The mother of the three children, Thuli Sifundza, objected to the appointment of Hlobsile alleging that Hlobsile is a friend to Dudu Magongo, the former wife to the deceased. Her objection was sustained by the Master's Office and she was replaced by attorney Mzamo Nxumalo; this was in 2002.

The inventory showed that the deceased had 2 tractors; a homestead at Dvokolwako; 1 plot at Ngwane Park; and gratuity from the University of Eswatini. The beneficiary's complaint before the Commission is that the estate has not been finalised since he never saw the liquidation account. He further said that Mr Mzamo Nxumalo never met the family members. The delay in finalising the estate was reported to the Master's Office.

The Pigg's Peak Master's Office responded to the allegations by the beneficiary. Mr Phinda Dlamini informed the Commission that the estate was reported in Pigg's Peak. The death notice showed that the deceased had 4 children. He was a divorcee. The divorce order was produced by Mr Dlamini. The next of kin meeting was held in April, 2002 for the appointment of an executor. There was disagreement on the appointment resulting in the Master, Isaac Dlamini, appointing attorney Mzamo Nxumalo who is now late. The inventory was confirmed by Mr Dlamini. He further alleged that Mzamo was not executing his duties accordingly. He applied for an extension of his mandate and was granted. Receipts were produced to the Master to prove that Mzamo was paying school fees for the children of the deceased and rentals.

The plot at Ngwane Park was sold by the executor for E60, 000.00 and the proceeds were never remitted to the estate. The payment towards the plot was in a form of a cheque and was in the name of the executor. The Master then called a family meeting wherein he announced the removal of Mzamo and his replacement by attorney Mbuso Simelane. The Ngwane Park property was transferred to the new owner following the issuance of a Court Order ordering such transfer. The tractors were taken by Thuli Sifundza alleging that the tractors belonged to her. Hlobsile took the Master's Office to Court for the disappearance of the estate moneys.

Conclusion

The finding of the Commission is that the matter is not pending in court and the file is closed.

68.ESTATE LATE AARON MASWAZI MAMBA EM236/2019

The matter first appeared before the Commission on the 27 February 2024. It appeared again on the 9 March 2024. The deceased died in 2019. He was married

by civil rites to Vuyisile Mamba (Nzima). The estate was reported to the Master's Office by the deceased's mother. The complainants, Thobile and Sithando Mamba, are children of the deceased born out of wedlock.

Vuyisile was appointed the executor. An inventory was made and it reflected that the deceased had 2 buses, a motor vehicle, one tonne mini truck, a Toyota hilux, a kombi, 100 flats at Logoba, permits for the buses and money at the Bank amounting to about E40, 000.00. Vuyisile has not finalised the winding up of the estate. The complainants went to the Master's Office to find out what was happening to the estate. They were informed that Attorney Mzwandile Sobandla Dlamini had been appointed the executor because Vuyisile had a mental disability.

The complainants alleged that the deceased had 5 children from different mothers; he had no child with Vuyisile. The last born's paternity was questioned by Vuyisile on the basis that she was born after the death of the deceased. A paternity test was done and it identified the child with the deceased. The Commission invited Vuyisile to hear her side of her story. This was on the 9 March, 2024. Before Vuyisile narrated her version, attorney Wandile Maseko stood up and informed the Commission that he was representing a minor called Tsatsakahle Mamba. She is the child of the deceased.

This minor is no longer receiving maintenance from the executor. The executor used to give her E1000.00 a month towards maintenance. Mr Maseko had written to the Manzini Master about this and there was no response from the Master. This is a cause for concern; the Master's office should be quick to respond to correspondences especially where the maintenance of a minor is in issue.

Attorney M.S. Dlamini appeared on behalf of Vuyisile. He confirmed the inventory and that Vuyisile was appointed the executor by the family. Mr M.S. Dlamini was given the power of attorney by Vuyisile. This was on 3 March,

2020. Earlier, Mr Dlamini had challenged the paternity of Tsetsakahle to no success. Mr Dlamini prepared the liquidation and distribution account. Vuyisile lodged a claim of E600, 000.00 against the estate for moneys lent and advanced to the deceased towards purchasing one of the buses. Mr Dlamini explained that there was objection from the beneficiaries that Vuyisile cannot claim the E600, 000.00 because she was married by civil rites and in community of property with the deceased. It is therefore a community of assets and liabilities. A second liquidation account was drawn up Mr Dlamini and the beneficiaries complained that the monthly maintenance paid to Tsatsakahle was small. Mr Dlamini advised that there are matters pending in court and the applicants therein are Thobile and Sithando Mamba.

Conclusion

The estate has been finalised and there has been distribution by virtue of the Liquidation and Distribution Account dated 16 October 2024 and approved by the Master.

69. ESTATE LATE MPHIKWA DLAMINI EM40/2022

AND

ESTATE MOLLY BONGIWE DLAMINI

Mphikwa died in January 2013 and Molly died on 6 May 2021. The deceased were married by civil rites and customary rites. Mphikwa's estate was not reported to the Master's Office. The inventory shows that the deceased had 3 Farms at Oshoek. They were registered under Mchalageni (Pty) Ltd. The next of kin meeting was held on 4 June, 2022 whereto the Will was read. As far as our mother's estate is concerned our brother, Mefika Dlamini told us that he had reported our mother's estate and a file was opened. He administered the estate and the file is now closed.

Mphikwa's Will appointed Mefika as the executor. The estate property was distributed to the four children of the deceased in equal shares. Mefika was avoiding us when asked about the status of the winding up of the estate of our father. We hired a lawyer to help us to the winding up of the estate. He was not of much assistance. We then went to the Master's Office in January 2022 to report our father's estate.

The matter appeared again before Commission on the 10 October, 2024. Mefika Dlamini, executor told the Commission the side of his story. He asked that all that has done at Mchalageni was in the open. In the 1980's their mother was working for the Correctional Services Department. The Mchalageni Farm was owned by a certain Mr Droxford. He offered the Farm to women who were selling fruits at Oshoek. Our mother was also invited to take part in this deal. Mchalageni Company was then formed and it bought the Farm. There were 42 members; our Mother fell sick and our father took her part in the membership. Government later declared that Mchalageni is a Township under Ngwenya Municipality. Mchalageni embarked on a project of constructing a filling station at the Farm. Since the members had only E7, 000.00 in the bank they made an arrangement with Shell to construct it. The proceeds from the sale of the fuel would be used to repay Shell until the debt is liquidated.

Conclusion

Mchalageni finished paying for the filling station and Galp took over and Sibonelo Investments (Pty) Ltd was then formed. It embarked on a shopping complex project and borrowed E48 million from Swazi Bank. The plots at Mchalageni were leased as security. The Swazi Bank loan has not been liquidated. The estate has not been finalised.

70. ESTATE LATE RICHARD THEMBA DLAMINI EM54/2014

AND

ESTATE SARAH B. DLAMINI

The first time the complaint was brought before the Commission was on 21 February, 2024. Richard Themba Dlamini died in December 2014 and Sarah died in December 2016. Richard died testate and was married to Sarah by Civil rites. He later married three other wives by customary rites. Sarah reported the estate of Richard in 2014. An executor was appointed in terms of the will. Six children were born of the marriage between Richard and Sarah. The other sixteen children were born of the marriage between Richard and the other three wives.

Following the reporting of the estate to the Office of the Master, a next of kin meeting was called and this was on 16 April 2019. Richard allegedly started a bus business called Phakama Bus Service (Pty) Ltd together Sarah. The next of kin meeting was for the reading of the Will. A lawyer for the other three wives was in attendance. He questioned the fact that Richard was only married by civil rites when in actual fact he had married the other three wives by customary rites.

The children of Sarah questioned the authenticity of the Will which reflected that the deceased, initial are those of R.T.P. Dlamini whereas he is commonly known as R.T. Dlamini. Initial "P" is associated with his business and is not his name. There were also issues around the fact that a certain company, Phakama Investment (Pty) Ltd Muzi Dlamini had been formed. Later Muzi formed Mgenu Investments (Pty) Ltd. It used the assets of Phakama Investments (Pty) Ltd to build the capital base for both Phakama Investments (Pty). This must also be investigated by the Commission. The Ltd and Complaint finally alleged that it is not Mgenu clear how Farm 36 based at Malkerns had been transferred to the Company owned by Muzi when by means of a will, 50% of the value of the assets of the deceased had been liquidated to Phakama Bus Service (Pty) Ltd, 5% to each and the residue to be put into a Trust whose Trustee is to be Muzi. The

Master explained that the estate has not been finalised. The estate of Richard was reported in 2014. The inventory showed that there were immovable properties, one in Matsapha and the other in Manzini. The remaining properties were xxx to Phakama Bus Service (Pty) Ltd. There are ongoing court process challenging the validity of the will. The issue of the marriage between Richard and his wives had been finalised by the Supreme Court. Having listened to the complaint, the Commission summoned the beneficiaries including Siphephiso and Ntombi the Executors and Muzi Dlamini. This was on the 9 September, 2024.

It was explained to the Commission that the deceased Richard had appointed Jiva Dlamini as the executor. The Master removed him and was replaced by Siphephiso and Ntombi. The founder of the Phakama Bus Service (Pty) Ltd is Richard. He never established a company called Phakama Investments (Pty) Ltd. The assets of Phakama Bus Service (Pty) Ltd are now in the hands of Phakama Investments (Pty) Ltd.

Ntombi explained that Richard had 50 percent in a company called Sigwaca Holding and Phakama Investments (Pty) Ltd should form part of his estate. The Master also paid E50, 000.00 to each of the deceased's three wives as part of their inheritance.

As far as Sarah is concerned, a codicil had been prepared by Richard before his death. The estate was distributed in terms of the codicil. The beneficiaries questioned its authenticity because it had no Master's stamp. Nevertheless, it was followed. When Sarah died, Siphephiso was appointed executor of her estate. There were allegations that there were unclear transactions carried out by Muzi in the name of Phakama Investments (Pty) Ltd.

Muzi Dlamini told the Commission that Phakama Investments (Pty) Ltd was registered in 1994. Its directors are Muzi who holds 30% shares; Richard who holds 50% and Sarah who holds 20%. Initially, the company was 100% owned

by Richard. When it was formed assets belonging to Richard were taken from Phakama Bus Service (Pty) Ltd and were valued at E420, 000.00. In 2006, Muzi bought the shares belonging to Richard and Sarah. In 2009 a dispute arose regarding the purchase of the shares leading to Muzi reversing the purchase.

Muzi further explained that the deceased 50% in the Will was bequeathed as follows: 20% would go to all his wives and 30% would be put into a Trust whose Trustee is Muzi. Muzi said that the deceased made sure that Muzi does not come out of Phakama Investments (Pty) Ltd. He denied that he used the resources of Phakama Investments (Pty) Ltd and Phakama Bus Service (Pty) Ltd to start Mgenu Transport.

Siphephiso Dlamini stated that he was appointed together with Ntombi and they were both to work towards finalising Richard estate.

There were moves towards removing Siphephiso on the allegation that he was busy at work. The move was not successful. The Liquidation and Distribution that Ntombi and I prepared were irreconcilable. I took the portion that Sarah was entitled to 50% share of Richard estate plus the maintenance. The Master disagreed with this formula. The Trust mentioned in the Will was created whilst I was still the executor. Muzi took over the Trusteeship and thereafter I was removed as an executor. The Estates of both Richard and Sarah have not been finalised at the Master's office.

Ntombi's intervention was that the deceased Richard had 50% in Phakama Investments (Pty) Ltd. All the deceased's wives were 20% holders. The directors of the company never held any meetings and were there dividends ever declared. Ntombi submitted the 30% shareholding by Richard should be deposited into the Trust. The Trust instrument was in a draft form and same should be finalised.

Dr Futhi Dlamini informed the Commission that he was appointed the executor of Sarah's estate after Siphephiso. He had never been a director at Phakama

Investments (Pty) Ltd as alleged by some of the beneficiaries. When the Liquidation account was placed before him, he objected to the none-allocation of 50% of Richard's estate to Sarah. This was Sarah's share entitled by virtue of the civil rites marriage between her and Richard. He also queried the issue of legal fees that had been taxed and that only one lawyer was paid legal fees whereas three other lawyers had also been engaged.

Conclusion

What is worth noting is that the estate has not been finalised. The Commission recommends that the beneficiaries should meet with a view to finalising the winding up of the two. The beneficiaries referred the matter to traditional authorities. It is pending there.

71. ESTATE LATE MUSA MANYATSI EM83/2021

This matter first appeared before the Commission on 1 July 2024. It appeared again on 21 November, 2024. The deceased died intestate in February 2022. The estate was reported. A next of kin meeting was held where Bongani Manyatsi and Xolile Dlamini were appointed as executors. The deceased was married to Xolile Dlamini, by customary law. The complainants are Sabelo Manyatsi, Sibusiso Manyatsi and Philiso Manyatsi, children of the deceased. They were born of different relationships the deceased had prior to his death.

The inventory shows that the deceased had buses; cattle; plots; money at the bank and shares in various companies. The complainants do not know that the estate was distributed. They each received E50, 000.00 from the estate which was deposited into their bank accounts. The complainants do not know what is happening to the estate. There are eight children of the deceased born from different mothers. Xolile is childless. The executors Xolani and Bongani responded by saying that they administered the business as per what the deceased

had taught them. Xolile and the deceased were the signatories to the bank account. Whilst Xolile was in mourning, month end came and there were employees to be paid their salaries. The bank told the executors that authority from the Master must be secured. The Master advised that the executors must secure the services of a lawyer. All the bank statements were submitted to the Master's office.

The beneficiaries were given a certain date to appear in the Master's Office. However, an earlier date had to be secured because the beneficiaries were seeking earlier finalisation of the estate. They had informed the Master that arrangements had been made by the family to wind up the estate at family level.

When Bongani and Xolile were asked to be the executors, Bongani refused the offer reason being that he has his own businesses; the family insisted that he be so appointed. He then accepted the appointment. All the beneficiaries were present when the appointments were effected. Whilst the executors were executing their duties, the Master told the family that Xolile would receive a child's share as her inheritance. This was so notwithstanding that she had largely contributed towards the estate businesses.

The deceased died in February 2022 and there was no money in his personal account. There was E50, 000.00 in the kombi business account and E2000.00 from pension fund. The construction business did not have money because it was operating as and when there was a job to be done. Once that job was completed the employees were paid their salaries and other expenses related to the job. The construction business was therefore not active. The cars that were bought by the deceased were registered in the name Bongani. The family insisted that the cars be included as part of the deceased's estate. The family agreed that all the cars be sold except for the quantum kombi which would be used to generate income for the family.

The executors are still working towards finalising the estate. There are too many family disputes around the estate which are causing a delay in the finalisation of the estate.

When the matter appeared again on 21 November, 2024, the beneficiaries stated that a neutral executor be appointed because Bongani and Xolile are conflicted. It is not clear what happened to this proposal. All the cars and the cattle have been sold. The Master promised to furnish the Commission with the report.

Conclusion

The parties were called and the executor explained that he was still raising funds to pay for the vehicle he bought from the estate. He also explained that the cattle that belong to the estate are not well taken care of. He suggested that one of the beneficiaries should buy them because they are a burden to him. The estate has not been finalised.

72.ESTATE LATE CHRISTIAN GUNKA MASUKU EM 188/2002

The matter came before the Commission on 14 February 2024 when Mss' Zee and Lobusuku (Grace) Masuku appeared with a complaint regarding their father's estate, the late Christian Gunka Masuku who passed away intestate on 23rd August 2001. Ms Zee Masuku indicated that she spoke for herself, Lobsuku, Gcebile and Zanele and that she excluded her brother Tee and her sister Busi Masuku. These were all children of the deceased that had survived him. Another son, Macimeza Masuku who also survived the deceased had since passed away. The deceased's widow also passed away in 2022 without the estate being wound up to finality.

According to Ms Zee Masuku, the estate was landed with the following properties – Portion 12 of Farm Pebbles Block Manzini, Portion 6 Ehrick (a portion of

portion A) of Farm Kopoyi No. 392 Hhohho District and Portion 95 of farm Trelawney Park. The Kopoyi farm is held by a company directed by the deceased and his wife, Mlondo Holdings and is located at Croydon. The shareholding in the company was said to be equal with the deceased and his wife each holding 25% of the shares. There were said to have been over 150 cattle at the farm in Croydon when the deceased passed away. The inventory however records that there were 30 herd of cattle at Croydon when the deceased passed. There was also a motor vehicle (a Honda), and three bank accounts at Eswatini Building Society (E17856), Nedbank (E6413), and Union Bank (E1756). There were also shares in Swazi Spa Holdings Limited.

The deceased was married to Lulu Lizzie Masuku in terms of civil rites and in community of property. They had seven children namely, Gcebile Busiswe, Lobsuku, Tfontfwane (Tee), Catherine, Zanele and Macimeza. Tfontfwane (Tee) was the initial executor but was later replaced by Mrs Masuku who instructed attorney, Sabelo Masuku to assist her wind up the estate. A distribution account was issued and approved in July 2006.

The complaint was about the length of time it took for the estate to be wound up, about loss of cattle that were at Croydon according to Ms. Lobusuku there had been an inordinate number of home slaughters from the farm at Croydon and it was suspected that Tfontfwane Masuku was responsible for those; and about the treatment the family received from the Master's office – they were apparently ignored and made to wait and the Master did not help the deceased Mrs Masuku get access to maintenance in her lifetime. It was also alleged that Tee had taken over the family home at Moneni and the late Mrs Masuku had died away from her home while Tfontfwane's mother-in-law had died in their mother's house.

Assistant Master, Makhosazana Mdluli reported that the estate would be difficult to wind up because the beneficiaries did not see eye to eye and were divided into two camps, with each camp accusing the Master's office of siding with the other. They were also refusing to meet to discuss anything regarding the estate. From 2018 there had been a litany of litigation between the siblings. One such litigation involved the sale of the Trelawney Park property. Lobusuku motivated the sale of the property ostensibly to pay for the huge medical bills incurred during the deceased's long stay in hospital. Bills were in excess of E500 000. Although the Master's office had approved the subdivision and sale of a portion of the Kopoyi farm in Croydon, as sought by the executor at the time, Mrs Masuku, the subdivision and sale did not happen. When Ms. Lobusuku asked to sell the Trelawney Park property to settle these bills the Master approved the sale and the property was sold for E700 000. She was asked to bring receipts for payment of the bills but she did not do so. She then submitted a distribution account (on behalf of her mother who was indisposed) that reflected that the proceeds from the sale of the property had gone towards the maintenance of the surviving spouse. Tee objected to this account and approached the courts under High Court case numbers 696/2014 and 786/17.

There was also an issue of the shareholding in Mlondo Housing Corporation (Pty) LTD. When the deceased passed, he and his spouse both held 50% share in the company. However, in July 2006 Ms Lobusuku became a 25% shareholder and in July 2009 Ms Zanele Masuku became a director of the company. The company then entered into a deed of sale with Ms. Lobusuku in August 2010 purporting to sell her portion 110 for E250 000. On the same date the company purported to enter into deed of sale with Zanele Masuku in terms of which it sold a certain Portion 108 for E250 000. Tfontfwane Masuku challenged the change in shareholdership and the Registrar of Companies indicated that the changes in the

company could not be effected because they were not filed in terms of company law.

Observation

It appears that the matter is far from being finalised because of the strife among the family members/beneficiaries. There are a number of matters that are still pending before the Supreme Court relating to the eviction of Tfontfwane from the Moneni property, to the removal of Lobusuku as executor etc. There are seven matters pending in the Supreme Court being cases 10/22, 26/22, 42/22, 54/22, 57/22, 59/22 and 63/22.

Recommendation

Master to consider appointing a neutral executor who will be paid based on the tariff of executors stipulated by law. Master to improve on her supervisory function – the executor must be held to the legal time frames for the finalisation of the estate which the Master failed to do with the previous executors of this estate.

73.ESTATE LATE CHRISTIAN MALIBALA DLAMINI EM132/2016

The complainants, Sikelela and Hloniphile Dlamini appeared before the Commission on 9 April 2024. They indicated that they were the children of the late Christian Malibala Dlamini who passed away intestate on 23 March 2016. Two wives laFakudze and la Shiba and seven children survived the deceased. The complainants were children of the first wife, laFakudze.

The complaint was that the 2nd wife had kept 31 cattle at her Nhlambeni homestead to herself together with 11 goats. The complaint was that the Assistant Master in Manzini had mistreated the complainants and had refused to attend to their questions regarding the estate. In particular they had questioned the movement of 30 cattle from the Nhlambeni kraal on the authority of the Assistant

Master. They did not receive an explanation for these movements. The deceased also had a home at Malindza. The complainants state that they had asked for 3 cattle but the Master allowed them to take one. However, when they got to Malindza the cow was not found and they came back empty handed. They received no help from the Master's office.

They complained further that their aunty Sylvia Lomadlozi Dlamini took the goats. The complainants had not been given an opportunity to verify all the claims against the estate in particular those regarding the livestock.

LaShiba explained to the commission that the cattle in the Nhlambeni kraal mostly belonged to other people who had asked her husband to keep the cattle for them (tatisisiwe). After the death of her husband, she was unable to look after the cattle and asked the owners to take them, which they did after getting consent from the Master's office. Consequently, an Elphas Zwane took 16 cattle, Phineas Mandla Dlamini took 2, Nkosinathi Senzo Dlamini took 3 and Lomadlozi took 9 cows that belonged to their mother. One cow was left in her kraal following that 2 had been used at the funeral. It was LaShiba's contention that in his lifetime the deceased had moved 9 cattle to Malindza for the benefit of the first wife. The Master told her that she would not get these cattle as they were in the 1st wife's kraal. When she asked about the deceased's property in Mbabane she got the same answer.

Observation

The issue of the Mbabane property was discussed and the parties agreed that the property and all other property there be left to the children of the deceased in the same way that the Nhlambeni property and all other property there was to be left to the 2nd wife. The issue that seems to arise from this complaint is the lax manner in which the Master appears to supervise executors.

Conclusion

The parties agreed that the estate was finalised.

74. ESTATE LATE LOMSOMBULUKO FRANCINAH MAMBA EM180/2022 & ESTATE LATE JOHN TITUS MAMBA EL27/2021

The complainant, Iris Mamba, first appeared before the Commission on 10 April 2024. She spoke on three estates, the first being that of her brother the Late Kenneth Mamba being EM 202/2008. Kenneth had three children, Qiniso, Bongani and Ncamisile. Her complaint herein was two-fold – (i) there was a plot in Manzini, at Fairview North which belonged to their mother that was in Kenneth's name: (ii) that there was a bank account in the name of the complainant's mother, Lomsombuluko Francinah Mamba, which was benefiting Bongani only.

The Master reported that the estate of the late Kenneth Mamba was finalised in 2010; that the only outstanding issue was the transfer of the Fairview North property to the beneficiaries of the estate. The property had been transferred from the City Council to Kenneth Mamba and had never been in the name of the mother of the complainant. In the circumstances the property had formed part of the deceased's estate and had accordingly been shared by the beneficiaries of that estate. The Estate Late Lomsombuluko Francinah Mamba account was unknown to the Master's office and details thereof were sought from the complainant.

The complainant further spoke of the estate of the late John Titus Mamba, her late father. The deceased had died intestate in 2009 living behind an estate consisting of two plots in Siteki and another one at Makholokholo. The one property in Siteki was a rental collecting property and the complainant was

concerned about the lack of accountability in the collection of rentals by the executors. Her late brother Bhadala Mamba had been the initial executor of the estate until he resigned citing the reason that he had a claim against the estate. He failed to account for collections (collected from 2009 until 2020) that he had collected and when pressed to account, claimed that he had used the rent collected to renovate the house. He could not support this claim with relevant invoices indicating the costs of the renovations. Upon his resignation an independent executor, attorney Ernest Mavuso was appointed. The complainant complained that Mr. Mavuso himself had not accounted for the rentals he had collected. She alleged that there had been tenants in the house when Mr. Mavuso took over as the independent executor and he had failed to account for the rentals he had collected.

The final complaint was that there was a house that belonged to her deceased father at Makholokholo, in Mbabane that was not included in the inventory because it was said to belong to a daughter of the deceased, Nomsa Mamba. Nomsa was one of the deceased's children born outside his marriage with the complainant's mother. The complaint was that the Master was refusing to include this property whereas the deceased had been married to the complainant's mother in terms of civil rites and in community of property and could not give away the property and disregard her mother's rights to half of the joint estate.

The assistant Master Mr. Xulu informed the Commission that the initial executor, Bhadala Mamba, had been responsible for collection of rent at the Siteki property. When he was asked to account for the rent he collected, he opted to resign as executor claiming that he had a claim against the estate because he had used his money, in addition to the rental money to renovate the house. He stated that another property belonging to the deceased was sold and all the beneficiaries

but Bhadala were paid an amount of E96 000 each. The complainant confirmed this.

On the Makholokholo property, the assistant Master reported that the property was registered in the name of Nomsa and could therefore not be included in the estate of John Mamba in those circumstances unless declared by the courts as his property. His liquidation and Distribution account excluded two properties claimed by the complainant top have been her father's property. These were the Makholokholo property that was registered in Nomsa Mamba's name and a property with flats in Siteki, which was registered in the name of Simphiwe Mamba a child of the deceased.

Nomsa confirmed before the Commission that the Makholokholo property had been given to her by her father during his lifetime; that the leadership at Sidvwashini had confirmed in writing that the deceased had given her the land.

Mr. Ernest Mavuso, who took over as executor from Bhadala Mamba, explained that by the time he was appointed the rental property had no tenant. He was awaiting confirmation of this from the Swazi Bank that he had asked to provide information relating to the last lease they had in respect of that property. Mr. Mavuso indicated that he was no longer the executor of the estate of John Titus Mamba.

While the complainant complained of a lack of funds to take the matter further, it became clear that it could only be resolved through legal action.

Observations

1. The estate is almost finalised because the issue of the property at Makholokholo was resolved when Nomsa Mamba showed that the property was in her name and this was confirmed by the Sidvwashini leadership.

2. The Eswatini Bank confirmed in writing that it had vacated the Estate property by the time Mr. Mavuso was appointed as executor thus putting to bed the speculation that there were rental amounts still in his hands.

Recommendation

The office of the Master needs to improve on the supervision of executors when winding up estates. The initial executor had too much of a free hand in respect of handling rentals from the estate property without accounting to the Master regarding his work.

Conclusion

This matter has been finalised.

75. ESTATE LATE GUGU WINILE MASINGA EM 2/2019

The complainant, Thulani Shongwe appeared before the Commission on 13th February 2024. He was appearing in respect of the Estate late Gugu Winile Masinga, who died intestate in December 2018 and had been his wife whom he had married by Swazi law and custom. There were two children borne of the marriage – Mlamuli, Avuyile and Mukelwe, Temasiko. The mother of the deceased, Busisiwe Nyatsikati, was appointed executor. Part of his complaint was that his in laws denied that he had been married to the deceased because they had no marriage certificate. They had married on 13th January 2007, according to Mr. Shongwe. He alleged that the in-laws had asked them to annul the marriage following marital problems they experienced from 2012. He stated that when the deceased passed on, he had been at school for 3 years and was not living with her. The issue of the marriage between the parties is immaterial in view of the fact that the complainant signed an affidavit in terms of which he gave up his share of the estate in favour of the two children he had with the deceased. His interest was

to see that his children received their inheritance. His complaint was that the executor had not included a number things in the inventory:

1. Ford Euro Sport motor vehicle that he said the deceased's brother was using.
2. A plot at Mpolonjeni with three flats being rented out- he wasn't sure of the amount of rent being collected.
3. Cash from a policy at Old Mutual.

He also complained that the executor had misused money from an education policy and that despite his complaints to the Master nothing had been done to hold her accountable for that. He later complained that the executor had taken over the deceased's home at eNgculwini, which he had helped her build. He however had no evidence that the home was actually the deceased's home.

The Master confirmed that Busisiwe Nyatsikati had been appointed executor. She stated that a first liquidation and distribution account had issued disbursing E41295.40. There was a provision for maintenance of E21000 in respect of Mlamuli Shongwe and E 12000 in respect of Mukelwe Shongwe. A second and final liquidation and distribution account had issue disbursing an amount of E133941.49 received from an Old Mutual policy. E30 000 was provided for the maintenance of Mlamuli and E15000 for Mukelwe. They were both to inherit an equal sum of E42529, which is held in the Guardian Fund. There was also an admission from the Master that they became aware that Busiswe was collecting school fees money from the office of the Master while at the same time there was an insurance policy that was paying school fees. Nothing has been done to Busisiwe who remains executor of the estate and legal guardian of the children save that they have both since reached the age of majority.

The children's father is worried that Mlamuli is a special child who is slow and has the mind of a minor. He feels the child needs protection from Busisiwe who has already shown a propensity to be dishonest. He further brought up the issue of a house at eNgculwini that he said belonged to the deceased. The deceased's mother denied that the house belonged to the deceased and claimed that the deceased was assisting her in building the house.

Observation

According to the Master both children have now reached the age of majority and the matter was now closed as far as that office was concerned. On the issue of the child who was thought to be slow, the father was directed to Social Welfare and or the Deputy Prime Minister's offices or the Courts if he sought to take over the guardianship of the child. Otherwise, the Master's office was ready to disburse to the children what was due to them in terms of the second and final Liquidation and Distribution Account.

Conclusion

The matter is finalised.

76.ESTATE LATE ELDIS ARMSTRONG HENWOOD EL 155/2008

The complainant Lloyd Henwood was the adopted son of the deceased who died testate in 2008. The deceased had two wills, one attested to in Eswatini and the other in South Africa. Garth Gregory Henwood and Gin Alistair Henwood were appointed as executors. There had been 1000 cattle, an amount of E161 000 at Nedbank, Farm No. 645 Shiselweni, Farms 425, and 426 and 725 and shares in the company, Grinate Farms (PTY) Ltd recorded in the inventory. There were also other assets in South Africa reportedly worth up to E2.5 million but there had been no attempt to wind up the South African estate.

One of the executors, Gin Alistair Henwood passed in 2023 and has never been replaced as co-executor.

The complaint was that there had been no action taken in the file from 2008 until 2010 until he made an application to the High Court to remove the executors. The Court did not remove the executors but directed that they be directed to wind up the estate as soon as possible.

The complainant indicated that in 2015 cattle in the estate were sold and a liquidation and distribution was filed, however the other things bequeathed to the deceased were not given to him. In particular there are share certificates in the company and a title deed that ought to have been given to the complainant. He complained that the executors had not accounted for the more than 450 cattle that they had either sold or slaughtered.

The issues that concerned the complainant most were two; the first matter had to do with the transfer of title of the farm bequeathed to him in terms of the will. Since 2008 the farm had not been transferred because the executors had indicated that they had lost the title deed of the property to be transferred. The Master was unable to force them to make the transfer and the matter had been delayed because of that. It turned out that there had been an attempt to apply for a copy of the title deed that the executors appear to have abandoned before the process was finalised. It appeared that an amount of E22000 or so was required for the process to be completed and the process was stuck because there was no money for the process.

The Office of the Master reported that the matter had been delayed firstly by litigation wherein the will was contested and then further litigation wherein there was an application to remove the executors. Thereafter there was the liquidation

and distribution account in terms of which cattle and cash was distributed. The property bequeathed to the complainant could not be transferred because the title deed was lost and the executors were could not afford to pay the transfer costs. There was also an unwillingness to transfer the company shares that had been bequeathed to the complainant. According to the complainant he was responsible for updating the company licence during the lifetime of his father and that he had continued to do so until 2011 at which point the executors were to take over the duty. They however did not do so and the company had not had its licence updated since then. The Company owes fees to the government. The amount owed to government is unknown.

The Deputy Master appeared before the Commission and pointed out that there had been money allocated for the replacement of the lost title deed and that that process could go ahead once it was confirmed that the money remained in the Guardian Fund. The Complainant's conveyancer, Mr. Ntshangase, also appeared before the commission and indicated that he needed the executor to sign certain documents and that it seemed he was reluctant to do so. After the executor appeared before the commission, he signed the necessary papers and the matter was subsequently resolved.

The only issue that remained unresolved was the issue of shares and the required share transfers. In this respect it will be necessary to hear from the Master, the complainant and the executor. It may be necessary to call these parties in order to finalise the estate.

Observation

While the complaint on the transfer was resolved, the matter of the cattle that were allowed to die and be sold and farm implements that were allowed to rot was unattended. Will the remaining executor be held accountable for the loss suffered by the beneficiaries for the failure to properly look after the assets of the

estate? The office of the Master must take it upon itself to probe the issue of the cattle and farm implements.

Conclusion

The Master reported that the share transfer had not been finalised as the remaining executor had not signed the relevant share transfer documents. Conveyancer Ntshangase reported that the transfer of the property had not been finalised.

77.ESTATE LATE GENARO SIMELANE EH535/1995

The complainant, Mduduzi Simelane appeared before the Commission on 13th November 2024. He stated that he was a child of the deceased (who passed away intestate in 1995) and that he had two brothers who survived his father, Sibusiso and Delisa Simelane. Sibusiso had since passed away and was survived by his wife and son. Mduduzi complained that after being called to the Master's office in 1995 or so they did not hear from that office on the estate until the year 2020. He said that he had returned to the office to ascertain what the position was with the estate and he had been told that the estate file had been misplaced. He eventually stopped going there after being told that the file could not be found. He stated that in 2020 he had heard that the estate had been wound up and that only his brother Delisa was to be the heir to the estate. Mduduzi said that apart from a farm at Hawane, he was not sure what else was in his father's estate. He wanted to know if that was the correct position of the law. He acknowledges that he and his late brother Sibusiso were born out of wedlock and that Delisa was a product of the marriage between his father and the late Catherine Simelane.

The executor, Delisa Simelane appeared on the 13th November 2024 and confirmed that he was a son of the deceased and the late Catherine Simelane. He stated that he had been appointed executor at the meeting of the next of kin and that soon thereafter the file had been lost at the Master's office. According to

him there was nothing in his father's estate except for E2000 at a bank and the farm at Hawane. He said he was advised that his two brothers, Mduduzi and Sibusiso were excluded from the estate because they weren't born of the marriage between his father and Catherine. He had prepared a Liquidation and Distribution Account in terms of which he was the sole beneficiary. Despite this he indicated that he was willing to give his brothers a share of the estate because his mother had previously expressed a wish to give them something from the estate. He is currently attempting to sell the farm so as to fulfil the mother's wishes.

The complaint against the Master was about the loss of the file for a number of years and the failure to call a meeting when it was decided the two brothers were not entitled to benefit from the estate.

Conclusion

Matter is finalised.

78.ESTATE LATE HESHANE ALBERT SHABANGU ES258/2006

On 12th February 2024, Sihle Mhlanga appeared before the Commission with a complaint regarding the above estate. She stated that she was acting on behalf of her son, Mphumelelo Vela Shabangu, who is a minor, born of herself and the late Mduduzi Shabangu, a son of the late Heshane Shabangu.

Ms. Mhlanga's complaint was that the estate was taking too long to be wound up and that to date there had been no distribution of the account. This affected the Estate of the late Mduduzi Shabangu in so far as that estate was a beneficiary in the Heshane estate and in so far as the benefits flowing from Heshane to Mduduzi would flow to her son Mphumelelo. The delay in finalising the Heshane estate

prejudices the interests of her son Mphumelelo who currently is not receiving any maintenance from his father's estate.

There was a second complaint regarding this estate from one Thobile Shabangu. Thobile is the daughter of the late Heshane Shabangu born out of wedlock. Her complaint was that after the death of her father and at the meeting of the next of kin, she was asked to sign an affidavit relinquishing all her rights to inherit from her father's estate to her stepmother, Minah Shabangu. It appeared that all the children of the late Heshane and the late Minah had prepared the affidavits and had all agreed to relinquish their rights to inherit in favour of their mother. For the sake of brevity, the beneficiaries of the estate of the late Heshane Shabangu voluntarily gave up their right to inherit from the estate in favour of the widow of the deceased resulting in that his widow Minah would inherit the entire estate of the late Heshane.

Thobile reported that the Master's representative did explain the meaning and effect of the affidavit once signed and questioned the fairness of Thobile giving up her share of the estate in favour of the widow who is not her mother. Nevertheless, Thobile signed the affidavit and thus relinquished her rights in favour of Minah Shabangu. She told the commission that she felt intimidated and not able to refuse to sign in view of the fact that all the children of the deceased were present and ready to sign. Thobile advised the Commission that she was once given a cheque of E22000 as her inheritance and that she has received nothing further since. Mrs Minah Shabangu passed on in 2023 and Thobile is excluded from inheriting from her estate, as she is not a child of the deceased. Thobile asserts that the estate has not been fully wound up as there are some properties that remain in the name of her late father and that it would be just and equitable for this estate to be wound up and the beneficiaries to receive what is due to each one of them. She advised that she wrote to the Master asking for her

share of her father's estate but has not received a response. The other beneficiaries have consistently refused to appear before the Master. When they eventually did they appeared through their attorneys who objected to the presence of the complainant's representative, Sikhatsi Dlamini as it was alleged that he was not entitled to represent people at the Master's office since he was not an attorney. The meeting did not discuss Thobile's complaint and was adjourned when the representative of the other beneficiaries indicated he would challenge Mr. Dlamini's right to represent Thobile in Court.

The Master reported that the estate was reported and that in April 2007 Minah Shabangu was appointed executor. She confirmed that al the beneficiaries had waived their right to inherit in favour of the surviving spouse, Minah Shabangu. A 1st Liquidation and Distribution Account was issued and passed in August 2008. In terms of that L & D account the assets included
Immovable property: Portion 126 (a portion of portion 24 called Flame Park of Farm No. 180) Lubombo District and Portion 1 of Farm no. 24 Shiselweni.
Movable property; 40 herd of cattle, Land Rover, John Deere tractor, trailer, 3x Mercedes Benz
Cash found at bank; and Gratuity from employer.

After total liabilities were settled the 5 beneficiaries (Minah Nomsa Shabangu (surviving wife), Shaka Velaphi Shabangu, Hlobsile Gcebile Shabangu, Mduduzi Stanley Benjamin Shabangu (children of the deceased and the surviving spouse) and Thobile Philisiwe Shabangu (child of the deceased born out of wedlock) received a total of E221 289.42. This is the L and D account through which Thobile received E22 128.94 (the E22000 she spoke of).

The movable property was to be transferred to Minah Shabangu in terms of the waiver affidavits signed by all the beneficiaries. Despite that the beneficiaries had

agreed that the immovable property be registered in the name of the surviving spouse they were all apportioned ownership of a fifth of both the Flame Tree Park property and the Shiselweni District farm in the Liquidation and Distribution Account.

The Master approved this 1st Liquidation and Distribution account and there were no objections to it.

The executor lodged a 2nd Liquidation and Distribution Account on 18th August 2010. According to the Master, the beneficiaries again waived their rights to inherit in favour of the surviving spouse. There were three assets listed in the account, being cash found at Swazi Bank ion the sum of E146 258.83, 19 herd of cattle and 17 goats. The account indicates that after payment of liabilities an amount of E138 214.60 was to be paid to the surviving spouse. It is unclear what happened to the herd of cattle and goats that are listed in the account since the affidavits signed by the beneficiaries when relinquishing their rights to inherit referred to money at the Swazi Bank only. The Master approved this account and again there were no objections to it.

The executor lodged a 3rd and Final Liquidation and Distribution Account on 29th April 2024. The only asset listed in the account was cash in the sum of E30 070.46 paid by the deceased's last employer. After deducting liabilities an amount of E28 216.59 remained for distribution. The surviving spouse was apportioned a total of E14 108.29 being her half share plus a child's share and the rest of the beneficiaries were apportioned E2 821.65 each.

In October 2022 the Master received a letter from the complainant, Thobile seeking certain information from the estate file. On 19th October 2022 Thobile filed an affidavit with the office of the Master in which she denounced her earlier

affidavits in which she was relinquishing her right to inherit from her father's estate. She claimed to have signed those affidavits under duress. She further alleged that the executor had failed to disclose all the assets held by the deceased. She stated that the deceased was a shareholder in a property-owning company, Zanrod (Pty) Ltd and that this was never disclosed as part of his assets.

The Master reported further that in December 2022 the complainant and Sihle Mhlanga (who has a child with one of the beneficiaries – the late Mduduzi Shabangu) filed a power of attorney appointing Mr. Sikhatsi Dlamini to be their lawful agent in dealing with the estate matter.

Following the demise of Minah Shabangu there is no executor in the estate and the Master's efforts to call a next of kin meeting for purposes of appointing one have been rebuffed by the beneficiaries. A meeting was finally held in April 2023 wherein the children born in wedlock appeared through their attorney who objected to the appearance of Sikhatsi Dlamini at the meeting.

When Mr. Zweli Shabangu appeared before the Commission, on behalf of the other beneficiaries, he indicated that the matter of representation was before the courts wherein the beneficiaries of the estate of the late Heshane Shabangu being Shaka and Nomsa Shabangu sought to declare that Dlamini's appearance before the Master, representing various people' offends the provisions of section 26 of the Legal Practitioner's Act of 1964. He objected to addressing the Commission with Mr. Dlamini sitting as a representative of the two complainants.

The issues raised by Thuli have not been addressed nor has an executor been appointed for this estate after the demise of the surviving spouse. It may also be worth noting that it was alleged that the immovable property remains in the name

of the late Heshane Shabangu and were never transferred to anyone else despite the apportionment in the L and D Accounts.

Conclusion

The matter cannot be finalised since there are matters remaining in Court.

79.ESTATE LATE MDUDUZI STANLEY SHABANGU EH 320/2021

This Estate is linked to the estate of the late Heshane Albert Shabangu ES258/2006 and Estate of the late Minah Nomsa Shabangu. Mduduzi Shabangu is the son of the late Heshane and Minah Shabangu.

The complaint came before the Commission through Sihle Mhlanga who was representing her son Mphumeleli Shabangu whom she sired with the late Mduduzi. She had lived with Mduduzi up until his death in 2021. In November 2021 a joint will and testament appointing the complainant as executrix was lodged with the Master in November 2021.

Ms. Mhlanga's complaint was two-fold:

The first was that the estate of the late Heshane Shabangu in which the late Mduduzi was a beneficiary was not being finalised to the prejudice of her son Mphumeleli who stood to benefit through his father's estate. She reported that a property-owning company in which the late Heshane held shares had its property being advertised for auction and she was not sure what the Master and the executor of the estate late Heshane Shabangu had done to salvage same. She complained of the treatment she received from the Master's office in Hlathikhulu when she sought to follow upon the progress in the estate of the late Heshane.

The second complaint pertained to the shareholding in Elevator Solutions (Pty) Ltd t/a Swazi Lifts. In his lifetime, Mduduzi was a shareholder in this company,

holding 50% shares while one Mabandla Nxumalo held the other 50%. Her complaint was that the company was being looted and that her son was not receiving anything by way of dividends and/or maintenance while Mr. Nxumalo continued to access company funds without accounting to anyone. She complained that she had received very little help from the Master's office when she sought to arrest the situation at the company even though she was eventually appointed curator *bonis* of the estate.

The Masters office confirmed that it had received a joint will in respect of this estate and that in terms of the will Sihle Mhlanga was appointed executrix. At the meeting of the next of kin held on 2nd November 2021 Ms Mhlanga was appointed executrix in keeping with the will, which was accepted as authentic by the office. The deceased's mother and siblings indicated that they would be challenging the will in the High Court. Indeed, an application for the restraining of the Master from issuing letters of administration to the testamentary executrix pending the Court's decision on the challenge of the will was served on the Master. In the meantime, the Master appointed ND Jele as curator in the estate. Mr. Jele indicated that he had not received any cooperation from the other co-director of Elevator Solutions on issues of maintenance for Ms Mhlanga's child and on issue of accounting for the running of the company from the time of the death of the deceased up to date as well as dividends that may be due to the estate late Mduduzi Shabangu. Mr Jele eventually resigned as the curator He was replaced by Nkosingivile Dlamini and he was also unable to resolve the maintenance issue. The Company's bankers, Standard Bank were not cooperative as there was a dispute on who the correct/legal directors and shareholders of the company were following the death of Mduduzi. Mr. Dlamini also resigned his position following the lack of cooperation from the Mr. Nxumalo.

The Master also indicated that one of the deceased's siblings is keeping a vehicle that is registered in the name of the deceased and should rightly be preserved for the benefit of his estate.

Mr. Nxumalo appeared before the Commission and his position was that there were matters that were before the court regarding the proper directorship and shareholding of the Company including a matter in which Ms. Mhlanga was accused of fraudulently attempting to change the company records at the Registrar of Companies office. While those matters were pending, he was not willing to cooperate with Ms Mhlanga with maintenance. He claimed that the company was not making any money and that Ms Mhlanga's conduct had an adverse effect on the company operations. He indicated that he would be challenging the appointment of Ms. Mhlanga as Curator in the estate because he feels she is conflicted.

Mr. Zweli Shabangu who appeared on behalf of Shaka Shabangu informed the Commission that the report of the handwriting expert had been received and that the matter of the challenge on the will of the deceased should be finalised before the courts soon. He was reluctant to engage on the issues for the reason that there were matters in court and further he objected to Sikhatsi Dlamini representing the complainant.

Observation

There must be clarity on the issue of shares held by a deceased person in a company – especially a company that continues to trade after the death of the shareholder. There must also be clarity on who looks after the interests of the beneficiaries of the deceased shareholders and how the Master enforces accountability in circumstances where there is no cooperation from shareholder/s. It appears that there is not much the Master can do but await the decisions of the Courts regarding all the issues raised in these estates.

Recommendation

The office of the Master and the office of the Registrar of Companies must find a way to work together in dealing with the shares of a deceased shareholder.

80.ESTATE LATE JABULANI JACOB SHONGWE – EH111/2013

Jacob Jabulani Shongwe died intestate in March 2013. According to the complainant before the Commission, Elkan Shongwe, his wife, Lomthandazo Maseko and his only child, Elkan who was not born of Lomthandazo, survived the deceased. There were no children born of the marriage but Lomthandazo brought four of her own children into the marital home. Elkan is the current executor of the estate. The inventory filed with the Master includes a motor vehicle, a herd of 5 cattle, immovable property across the border at Biskop, in South Africa and immovable property at Mchalageni Development in Ngwenya. The Ngwenya properties – Portion 1 of Lot 186, Sibonelo Township, Ngwenya and remainder of Lot 186, Sibonelo Township Ngwenya - contains a home and some rental structures. The vehicle and the cattle were kept at the Biskop home. Lomthandazo sold them without the knowledge and approval of the Master and the executor. She passed away in 2016. Lomthandazo's children are Elizabeth, Dora, Studio and Ida. Elkan alleged that they live in his father's house and that they had previously admitted that the deceased was not their biological father.

The complaint raised by Elkan was that the children of Lomthandazo now had birth certificates indicating that the deceased was their biological father when in actual fact he was not. It appears that these birth certificates were obtained in the lifetime of the deceased. Further, the children born of the children of Lomthandazo had taken over the Mchalageni property and were also collecting rent from the tenants in the rental property.

On 5 August 2024, Studio appeared before the Commission with some of the grand children of the deceased. She confessed to having taken some rentals from the property but also said that she and her three siblings were always Shongwe's until the death of their father. They said it was now the executor who was collecting rentals.

The matter was referred to the Master's office to hold a next of kin meeting and to discuss and decide on the issue of the certificates held by the alleged stepchildren of the deceased for purposes of finalizing the estate. The issue of the grand children living in the property was also an issue and the executor was directed to evict the grandchildren.

Observation

In her report to the Commission the Master reports that the executor has engaged property consultants to evaluate the property and will thereafter prepare a liquidation and distribution account that will lead to the finalization of the estate. As usual those who object will await the Master's decision and the matter will proceed from there. The office further states that the executor has engaged a law firm to assist him evict the grandchildren from the property they occupy.

Conclusion

It is unfortunate that since 2013 the estate has remained stagnant. The executor could have been given the advice he has received now in 2024 back then in 2013. The Master must be more circumspect in dealing with issues wherein deadlocks arise and point the parties to the right direction.

81.ESTATE LATE MALCOLM FRANK PALMER EH 227/2022

The complainant, Fezile Fakudze appeared before the Commission on 27th June 2024. She spoke on the estate of the late Malcolm Frank Palmer, who passed away on the 31st October 2022 having executed a will. He had been her boyfriend with whom they had lived together for thirteen years. There was no child born of the relationship. The deceased had a daughter, Keely Suzanne Palmer who lived in the United Kingdom. He had no relative living in Eswatini. The deceased held 99 shares in a property-owning company, Panda Investments (Pty) Limited. Panda owned a house on Lot 435, Murray Street Mbabane and a motor vehicle being a white Toyota Corolla registration number LSD 819 CM. According to the complainant the deceased caused the vehicle ownership to be changed into her name in his lifetime. He also caused to be changed into her name the 99 shares in Panda Company. He attended to the updating of Forms J and C. He also had cash in a FNB account and a policy with Old Mutual. According to the will the FNB account was to go to the complainant and the Old Mutual policy was to go to the daughter of the deceased. Although the will appointed the deceased as executor through the will the Master did not appoint her instead said they would await documentation from the daughter before making such appointment. A certain Nonhlanhla Ndzinisa appeared at the meeting of the next of kin claiming to be the ex-wife of the deceased. She took issue with the will of 2022 and on 30 November 2022, approached the High Court under case number 2289/2022 seeking, among other orders, an order declaring that the 2022 will (No. 128/2022) invalid and of no force or effect; and that the Master be interdicted from giving effect to the will pending finalisation of the matter. According to the Master that places legal impediments in finalising the estate, as the office must await the outcome of the Court challenge.

The complainant has not made a complaint against the Master save for the delay in finalising the estate. As far as the complainant is concerned there are 2 issues

that must be distributed in the estate – the cash at FNB, which was bequeathed to me and the Old Mutual Policy which was to go to the deceased's daughter. These are the matters that are being delayed by the matter in court.

Recommendation

The Master must make a follow up on the matter before court to ensure that it remains alive. The Master should keep a record of all matters that have been taken to court and should be regularly informed on the status of each matter so as to avoid delays in finalising the matters. The estate has not been finalised.

82.ESTATE LATE MNCENE NKAMBULE EM 267/2018

The matter appeared before the Commission on 15th February 2024.

Mncene Nkambule died intestate in 2018. Mfomfo Nkambule, a son of the deceased and the complainant before the Commission, reported his estate to the Master's office. He was single when he passed, having been predeceased by four (4) wives who had all been married to him in terms of Swazi law and custom. He was survived by sixteen (16) children.

The deceased had cattle, cars and rental properties at Kwaluseni. With regard to the cars and cattle the complainant stated that the deceased had the habit of registering his property in the name of his children so he could not say exactly how many cattle belonged to the deceased.

His main complaint was with regard to the rental property. He complained that they, as executors had been unable to collect rent and his eldest brother, Kenny, and the two co- executors (Winsile and Samkeliso) were collecting about E55000 each month. The complaint was that the Master had failed to assist with the collection of rentals of these properties. Further that Bongani Nkambule who had

no connection to LaMkhaliphi was collecting the rentals at the home of the late LaMkhaliphi.

Kenny Nkambule, the eldest son of the deceased claimed to have been left in charge of the homestead and that he was running the homestead in line with his father's wishes not to have the homestead collapse. He indicated that they did not think that the Master had any jurisdiction to supervise his father's estate because the property spoken of was on Swazi Nation Land. He stated that he collected rentals at the main homestead and uses 6 month's rentals to defray expenses of running the household and maintaining the buildings. Of the balance he alleged he shared with his siblings from the different households. He further stated that the rentals from LaMkhaliphi's home were used for the upkeep of the grandchildren born of her household. The issue of cattle and other assets not in their father's name were said to be unknown and difficult to follow since they were in the name of living beings who had not indicated they were holding assets belonging to the deceased.

The family then undertook to meet at the Master's office to discuss all these issues and plot a way forward.

The Master has reported that the family did meet and returned to her office to report that the Masundvwini traditional authorities were dealing with the matter of the home.

Observation

This is one of the matters that involve the collection of rentals on Swazi Nation Land.

Recommendation

A policy on these issues has to be adopted by the government on how to deal with such estates. This estate has not been finalised.

83.ESTATE LATE SAMUEL SHELELE NSIBANDE ES229/1999

The complainants, Ronny and Thulani Nsibande appeared before the Commission on 17th June 2024 with Vuyo Hlatshwayo. The deceased Samuel Shelele Nsibande passed away in October 1999 and his estate was reported to the Master's office by Princess Ncengane Nester Dlamini, his wife. The complainants were the children of the deceased born of his union with their mother Princess Ncengane to whom he was married by civil rites and in community of property in 1955. Eight children were born of the union between the deceased and Princess Ncengane but at the time of their appearance before the Commission only 4 of them were still alive. The deceased had later on married Ellie Sitakele Mndzebele by Swazi law and custom in 1978. He had three children with la Mndzebele. The deceased died testate and the testamentary executor was attorney Mbutfo D. Mamba (Now judge of the Supreme Court of Eswatini). The deceased was said to have been a cotton farmer. The inventory contained 6 tittle deed farms, 1700 cattle, 4 motor vehicles, 5 tractors, farm implements and E493000 at the bank.

The complaint was that there had been no progress in the winding up of the estate after their mother had caused a letter to be written to the executor by her attorneys, Masina Mazibuko, in 2002. They further complained that their mother had a plot on farm 101 Hluthi (being a land concession) where she had run butchery, which was now being rented out. There was also concession farm 84(A) that they say also belonged to their mother. The complainants stated that they simply wanted what had belonged to their mother and that the rentals from the butchery ought to be received by the princess' children. They say that there had been liquidation

and distribution account that had disregarded the contents of the will but instead of dealing with that the Master's office had advised them to challenge the account.

Mrs Elsie Nsibande also appeared before the Commission with her son Melusi and daughter Sihle. She stated that she lived on Farm 84 (A) where her husband placed her upon their marriage, and that she had made certain improvements on the farm. She acknowledged being the second wife and said she hadn't known under what regime her husband had married the first wife. She indicated that she had also not received anything since the death of her husband. She had never known the cattle owned by her husband to be in excess of 1700. Those in her possession had died during the lifetime of her husband when there was a severe drought.

Make LaMndzebele stated that on Farm 101 stood a shop, a supermarket, a restaurant, an Indian shop and a butchery from which rentals of E15000 (for the supermarket), E5500 (for the restaurant) and E2000 (for the Indian shop) are collected monthly. The butchery was said to be occupied by one of the deceased's children and the rent being paid there, if any, was unknown. The first wife's children also built a salon on the same farm.

She further explained that the 3 tanks for diesel and petrol did not belong to the deceased but to a petrol company that had supplied him with fuel at the time that he was an active farmer.
LaMndzebele also complained that the estate was not being finalised.

The Master through Assistant Master Thobile Maziya reported that the testamentary executor had prepared a first liquidation and distribution account in 2002 but there was an objection thereto by the first wife who raised the following issues – that the farms were concession land and had no tittle deed and could

therefore not be a part of the estate. That the account did not reflect houses bequeathed to Ntokozo nor reflects the correct rental amount in respect if the supermarket and finally that by virtue of her marriage she was entitled to half of the entire estate. Although there was response to the objection, 4 years later, in 2006, this appears to have done nothing to resolve the impasse.

The testamentary executor was asked to step down in 2014 and he did so after telling the Master that his duties had effectively come to an end in 2006 after the parties (the two wives and their children) had resolved that there was nothing to distribute since the property concerned was on Swazi Nation Land and the other on concession land. He then formally relinquished his position as executor and accounted for rentals he had collected during his time as executor. A Court Order was served on the Master in September 2014 in terms of which Vuyo Hlatshwayo was appointed executor of the estate. He collected rentals that were due to the estate and deposited these collections in the guardian fund. In 2016 the executor filed a second liquidation and distribution account, which was not approved by the Master because it was not drafted in terms of the will. The executor excluded the 2nd wife and her children from the account because the children were illegitimate and the 2nd wife was not a legal wife. He explained this at a meeting of the next of kin held in 2024. Further he said he had ignored the will because he took it to be invalid because it had been signed at a time when the deceased had gone blind. The Master advised the family that they needed to approach the courts if they had issues with her refusal to approve the account. The executor had not approached the courts nor was he accounting for the rentals he was collecting. The office of the Master has resolved top have the executor removed from his position and to have him compelled to account for all rentals collected by him since 2016 when he was appointed.

The executor reported that he had deposited E493 000 into the Guardian Fund, which he had collected from the testamentary executor. His attitude was that the will was invalid because the deceased was blind at the time that the will was signed. Secondly that the children of the second wife have no claim to the estate since they were illegitimate, having been born of a marriage purportedly entered into while the civil rites marriage still subsisted. He complained of the deceased's farms being sold in the lifetime of the deceased and questions the sales on that basis. He complained that the Master had not approved his Liquidation and Distribution account.

Note: The matter appears to be far from finalisation and it is difficult to see how it can be resolved without recourse to the courts. It may be necessary for the Master to appoint a neutral executor in view of the fact that Mr. Hlatjwayo has failed to account to her for monies collected from 2016 to date. Master's update report on the appointment of a neutral executor is that the Attorney General has been instructed to move this application and they await his report.

Observation

This matter is similar to the Phakama matter in that there appears to be two factions one of which believes the other is not entitled to anything in the estate because they were in a bigamous marriage or were born of such a marriage. It is not a complaint about the Master's office but a dissatisfaction with the distribution of the estate. It is unlikely that this matter can be resolved without litigation.

Recommendation

The Master must have a system of revolving files periodically so as to keep updated with the status of each matter. This matter is 26 years old. With a proper supervision of the executors in this matter it could have been finalised much earlier.

84.ESTATE LATE PRINCE MNIKWA EP 15/2022

Prince Mnikwa died intestate in 2018. His widow Nomsa Dlamini born Magagula appeared before the Commission on 13 February 2024. She had been the deceased's 4th wife. She indicated that she had been chased from her marital home in 2010 because the some of the children of the deceased threatened her life and the indvuna was directed to take her to her parental home for her own protection. Because of the acrimony within the homestead, she was not allowed to attend her husband's funeral. Her complaint was that there was no progress in the winding up of the estate and that the Master's office had, since 2022 advised that she would be called and updated on the progress in the estate. That call had never come and she remained in the dark about the estate. Further there was livestock in the prince's name that was not disclosed to the Master.

Mr. Phinda Dlamini, the Assistant Master in Piggs Peak stated that the children of the deceased reported the estate on 21 July 2022. The deceased's son Melusi Dlamini had been appointed Executor Dative summarily when he reported the estate. It had been reported that two wives survived the deceased and La Magagula had not been mentioned. The inventory indicated that there was E8000 (eight thousand Emalangeni) only in the estate and nothing else. The estate was then declared a small estate and the family was advised to discuss what would happen with the money in the estate. The children decided they would relinquish their rights to inherit and that the two wives would share the money. The 4th wife then appeared at the Master's office and gave a different version of the estate. The office of the Master then attempted to hold another meeting of the next of kin without success as the family refused to appear and eventually informed the office that the matter would be discussed at home.

Melusi Dlamini and some of his siblings did appear before the Commission. He indicated that there was no livestock in his father's name at the homestead and

that there had been an amount of slightly less than E8000 in their father's bank accounts and that that amount had been distributed amongst the deceased' wives excluding LaMagagula who had returned to her parental home. As far as the family was concerned there was no longer any estate to speak of.

In her report, the Master suggests that her office will write to the Director of Veterinary and Livestock Services to give a list and history of any livestock that may have been in the name of the deceased. The executor would also be called to prepare liquidation and distribution account distributing the cash found at the bank so that the estate is wound up.

Conclusion

This estate is not finalised.

85. ESTATE LATE SAMUEL DVUMAKUDZE MNDZEBELE E228/2018

Vusi Comfort Mndzebele appeared before the Commission on the estate of his father who passed away testate in 2018. He stated that his father had owned a farm in Malkerns, had two vehicles and money at the bank. Comfort Mndzebele had been appointed executor by the will.

The complainant indicated that he had been kept out of the estate. He had not been informed on the progress in the estate to the extent that he learnt after the event that a motor vehicle of the deceased had been sold. He complained that the executor was not following the will because although he had been given the car bequeathed to him, he had not received the land.

The Master through, Assistant Master, Makhosazane Mdluli told the Commission that the complainant was one of six children who had survived the deceased. There were initially seven children born of the deceased but one pre-

deceased him. There was now the complainant and six others. The complainant was the only boy born of the deceased. According to the assistant Master the estate had been finalised. A final Liquidation and Distribution Account had issued and the only outstanding issue was the transfer of the immovable property into the "beneficiaries'' names as per the will. The sale of the vehicle complained of was done in terms of the will and that the complainant had been handed over all that was bequeathed to him by his father. The problem, according to the Master, arose because the will bequeathed the main house on the farm to the deceased's grandchildren. This appeared to have adversely affected the complainant to the extent that he interfered with the grandchildren's right to access the deceased's house. This had led to a number of disagreements between the grand children and their uncle that ended up involving the police. In the mean-time the one of the grand children who inherited the deceased's house, Vukile Mndzebele told the Commission that the complainant had sought to frustrate the subdivision of the property but that this had eventually been done and they were awaiting transfer of the property into their names.

According to the Master the matter had been finalised and the Master's office was now ***functus officio*** in the matter.

While the complaint seemed to be against the Master, the real issue was a dissatisfaction with the will that distributed the estate. The complainant appeared to have been the only one with issues.

Conclusion

Matter is finalised.

86.ESTATE LATE NAPHTAL MLUNGELI MAHLALELA EL22/2020

The complainant, Sibangani Zodwa Thulisile Mahlalela, is one of the two widows that survived the deceased. She first appeared before the Commission on her own on the 11th April 2025. She complained that the Office of the Master had not provided her with maintenance from her husband's estate since his death in December 2020. The deceased had 16 children – 6 with the first wife (Sarianah Thangthini) and 9 with the complainant. He had one child from the wife who left prior to the complainant's arrival at the homestead. The complainant stated that the inventory contained money at the bank, cattle, a house at Siteki plus a plot, 2 shops at Sbonelo1 and 2, a house at Tubungu and another at Piggs Peak. There were also three cars.

Her complaint was in respect of the cattle and maintenance. When the estate file was opened the Master was told that there were cattle in the homesteads of both Sarianah (which were moved before the deceased passed) and the complainant. The complainant had 23 cattle in her kraal. Her complaint was that these cattle were then put under her name but a yes later this was reversed. The complaint is that she is now unable to sell cattle in order to support herself following that she is no longer receiving any maintenance.

On the maintenance issue her complaint was that they had been made to open individual bank accounts in order to receive maintenance but that they only had been paid E3000 per month for a limited period before it had stopped. After complaining the monthly payments started again but they soon stopped for her while the other wife continues to receive maintenance.

Lastly, she had been told that the house at Tubungu had been removed from the inventory because one Sihle Mahlalela, a son of the deceased, claimed he had

given his father E500 000 to complete the house. Eventually the said Sihle claimed to have been sold the house by the father.

The Master's office reported that from the time the estate was reported it was clear that the family was divided along birth lines into two hostile factions. During the first meeting of the next of kin it became clear that there would be little if any cooperation between the factions. It became necessary that an independent executor be appointed and it was on that basis that the Master appointed attorney Ernest Mavuso executor of the estate. The Master's office further stated that the widows were both paid a total of about E50 000 as maintenance but that it was then agreed that at a further meeting of the next of kin it was decided that it was necessary to use the money to pay rates for the properties in Siteki and Piggs Peak which were in danger of being repossessed by the Town Councils.

Zandile Mahlalela a daughter of first wife told the Commission that the Assistant Master Xolile had a bad attitude towards them and that their claims for funeral expenses for example were never paid despite that the 2nd wife Thulisile and her children had taken the death certificates, claimed death benefits from insurance and then failed to contribute to the funeral costs. When Ernest Mavuso resigned as executor, Zandile was appointed and directed to open an estate account. She claimed that despite a claim for the butchery from the 2nd wife and her children the Courts ruled that it belonged to the deceased. She also stated that there were other properties at Sibonelo 2 that are in dispute with Mangaliso claiming they belong to him. She stated that rentals from these properties are not accounted for, that Mangaliso does not deposit anything into the estate account. She stated that Ernest Mavuso did not hand over nor account for collections he had made. She further stated that the house at Tubungu had been sold to Sihle, a son of the deceased, during the lifetime of the deceased. The reason had been that the bank

was repossessing the house, as the deceased was unable to service his loan. She told the Commission that three cars had been sold for approximately E110 Thousand and that there was approximately E 200 thousand at Standard Bank.

Ernest Mavuso, the appointed executor reported that he had resigned because he had received little, if any cooperation from the family. He indicated that he had collected rental from the Piggs Peak property that he had deposited in a Standard Bank Simunye account. He admitted that there was some money not accounted for from those rentals.

The Executor stated that the rent due at the Piggs Peak property was about E6000 per month and that Mavuso must account for rentals collected over a four-year period.

On the issue of cattle, she reported that initially there had been a report that there were 84 herd of cattle. However, when Mavuso accounted he stated that there had been 36 cows 23 of which had been given to the 2nd wife, 10 to umphakatsi and 3 were unaccounted for. According to her the 23 cattle with the second wife were queried because they knew her to have 8 not 23 cattle and she had initially claimed 8 cattle. It was apparently on that basis that it was decided that all cattle would be returned to the estate and that an investigation would ensue regarding all the missing cattle. It was suspected that Michael and Sitselo, children of the second wife had taken some cattle away. They are also suspected of taking away some cattle from kaMalambe where the deceased had kept some cattle.

The Master needs to report on the matter and advise how the issue of the outstanding money from the former executor Mr. Mavuso, would be collected, how the issues regarding rentals from Sibonelo 1 and 2 will be accounted for and what the position is with the Tubungu property. There is also an issue that is said

to be in court wherein Mangaliso is claiming ownership of some of the Sibonelo 2 properties under High Court case 544/2014. The matter appears to be far from resolution.

Attorney Ernest Mavuso proposed that he set off the amount he owes against his executor fees. The amount owed is apparently in dispute with the beneficiaries claiming more than what Mr. Mavuso is admitting**.**

Recommendation

The Master must appoint an independent executor who must attend to the issue of the outstanding rentals. Further the Master must attend to the issue of Mr. Mavuso's outstanding rentals and deal with him in terms of the Act. This estate has not been finalised.

87.ESTATE LATE JAPHTER SIVIKELWE MHLONGO ES32/2004

The deceased passed away, intestate, in 2004. The complainant, Shadrach Dumsani Mhlongo was a sibling of the deceased and was appointed executor at the meeting of the next of kin.

His complaint was that there had been no winding up of the estate because there was no money that went into the estate account. He wanted to know why the Master had not compelled the widow and other entities to pay money due to the estate into the estate account. His brother's widow (Bonita Sisana Masuku) and three children, one of whom had been born out of wedlock before the marriage, survived the deceased. He had a new car that had some damage from the incident of his death, a home on Swazi Nation Land, a policy with Metropolitan Life and some gratuity from Metro where the deceased worked. There was also money from the claim filed by the surviving spouse against the army for the wrongful death of the deceased. Shadrach told the Commission that the surviving spouse

beat him to every place that he went to collect money due to the estate and took all the money. He says that he learnt in 2006 that the Master had sold the motor vehicle to the surviving spouse.

His other complaint is that the child born out of wedlock (Dolly) has not received anything from the estate.

The Master informed the Commission that his wife and four children, one of whom had been born before the marriage and three of whom were born of the marriage, survived the deceased. She reported that there had been an amount of E12000 in the bank and this amount was distributed in terms of the 1st liquidation and distribution account. Dolly Mhlongo was apportioned an amount of E1000 from this distribution. She was not clear whether the child had actually received the amount so apportioned. She stated further that the widow was sold the motor vehicle and that the widow therein bought out the children's interests. She further stated that on the issue of terminal benefits the Master's office had engaged Metro, the deceased's employer when he passed on, but were told that the issue of terminal benefits was dealt with internally by the company in terms of their own rules and in terms of their rules the office of the Master had no role. They were told that the deceased had nominated beneficiaries and they would be distributing the benefits in terms of the nomination. It was not clear if the Dolly had been included as a beneficiary by her father.

On the claim against the Umbutfo Swaziland Defence Force, the Master's report was that that matter was handled by the widow's attorneys who ultimately received an amount of E214 000 or so from the army and disbursed same without involving the Master.

The widow Bonita Mhlongo appeared before the Commission with her daughter Nqobile on the 5th September 2024. Bonita explained that there had been a no life insurance on the deceased so any money in that regard was received. There had been two funeral policies that paid out and all the money received was used for the deceased's funeral. There had been an Old Mutual policy that paid out E19000 and a Metropolitan policy that paid out E5000. With regard to the Metro payout, she had communicated with Metro after the executor had made initial contact with them. Metro had paid over to her what was due to her and her children born of the deceased. She was not sure if Dolly had received anything save for that she had filed an affidavit with Metro acknowledging her existence as a child of the deceased. With regard to the claim for loss of support against the army, she stated that the lawyers had advised that the army had made a settlement offer in the region of E200000 in 2014 or so and she had accepted the offer. The attorneys paid out the money. She was not sure if Dolly had received anything from the attorneys. The Master had not been involved in the claim for loss of support. The Master would not be involved in such claims, as they do not ordinarily form a part of a deceased estate.

It appears that the widow and her biological children received their benefits from the deceased's estate and from the loss of support claim. It is unclear what the child born out of wedlock, Dolly, received from the estate of her father.

We did not call the attorneys to speak to the loss of support claim and to advise whether Dolly had been paid. The Master should also make a final report with particular attention being had regarding what the child Dolly ought to have received and what she actually received from the estate.

Recommendation

Although private pension schemes and such like arrangements exclude the office of the Master from the distribution of funds from such schemes it would be recommended that no distribution should take place without the office being informed of the distribution plan so that if there are minor children of the deceased excluded from the distribution this can be corrected to align with the provisions of the Constitution as well as the duty to maintain one's children. This may require some legislative intervention. Section 17 of the CHILDREN'S WELFARE AND PROTECTION ACT 2012 provides that children, born in or out of wedlock are entitled to a reasonable provision of the estate, life insurance or pension of a deceased parent. This estate is finalised.

88.ESTATE LATE VICTOR KULA DLAMINI EP15/2003

The matter came before the Commission on 8 April 2024. Busi Dlamini (La Sangweni) was the complainant. The deceased passed on intestate on 7 November 2022. Two wives (married in terms of Swazi law and custom) and twelve (12) children survived him. The complainant was the second wife while Elizabeth Dlamini (LaMnisi) was the first wife. La Mnisi had 6 children with the deceased and the LaSangweni had none. The eight other children were born out of wedlock.

The inventory contained two shops and fourteen rooms at Horo next to Nsingizini, a tractor and farm implements, plus a motor vehicle.

The complainant reported the estate to the Master and was directed to bring the deceased's death certificate. The 1st wife refused with the certificate and the family was unable and/or unwilling to assist. The certificate only came out after the complainant had asked for assistance from the Human Rights Commission. The family refused to attend the meeting of the next of kin until the Master

authorised the removal of certain goods from the 1st wife's shop. It was only then that the family attended the meeting of the next of kin. After the refusal of the 1st wife to be appointed joint executrix with the complainant, one Makhosikhosi was appointed joint executor with the 2nd wife. The complainant alleges that there had been no cooperation between her and Makhosikhosi and that there had been no progress at all in the winding up of the estate. On 17th December next of kin meeting was held, at the instance of the family. At that meeting the 1st wife claimed that the shops where there is a butchery and shop were hers as well as the rooms. She claimed that she built the shops and the rooms after the husband had stopped working. Members of the family agreed with these assertions.

Observation

The Master's Office confirmed the chain of events and advised that this was a matter that was to be decided in terms of Swazi Law and Custom. The Master advised that the office had communicated with the chieftaincy and were assured that the family would be called and the issues would be addressed. The Master's office would then be advised on how the traditional structure had dealt with the matter. This had happened in February/March 2024. The Master could be asked to file a final report herein having undertaken to follow up with the traditional authorities.

Conclusion

The matter is pending before traditional structures (Umphakatsi).

89. ESTATE LATE PAUL ZONDEKHAYA SHABANGU EM214/2004 and EM 166/2005

Njabulo Shabangu appeared before the Commission on 8 April 2024. The deceased, who passed away testate in May 2004 was his grandfather. His uncle Thabo Shabangu had reported the estate to the Master. Although his father predeceased his grandfather, Njabulo alleged that in terms of the will he was a

beneficiary in his grandfather's estate. The gravamen of his complaint was the delay in the distribution of the estate without any proper account.

Twenty years had passed since the death of his grandfather and the estate remained undistributed. He alleged he had been told that his grandfather's 2nd wife, Zanele Ginindza had challenged the will. Thabo Shabangu was appointed the executor and remains so.

Thabo Shabangu told the Commission that the deceased had been married to his mother, Grace, whom he had married in terms of Swazi Law and Custom as his first wife. He then married one Ms Kirk followed by Zanele Ginindza.

The inventory reflected that the deceased had butchery, restaurant, supermarket and a tyre service business. He also had one motor vehicle, herd of cattle two bank accounts and a property at Moyeni (farm 42).

Thabo Shabangu told the Commission that the deceased also had E30 000. (Thirty thousand Emalangeni) in a Building Society account and that this was apportioned to the three grandchildren. He was unsure how much was held in the other two accounts that the deceased had ant Standard Bank and FNB. He alleges that those accounts were taken by Zanele Ginindza who had since disappeared without a trace.

The Master advised that Thabo was not the executor of the deceased's estate but was the executor of his mother's estate. Further that according to the will Zanele Ginindza was bequeathed the shopping complex at Ka Khoza but his had been controversial because there was a claim that that complex belonged to Grace, the first wife whose estate had not been reported thus not wound up. It had been said that the Logoba Council had ruled that the complex belonged to Grace but the Council that had made that decision had since been dissolved.

The Shabangu family challenged the will but there is no indication as to what transpired to that matter. It was said that Zanele Shabangu had also filed two applications to the High Court under case No. 1185/2006 and case No. 309/2010. There was however no indication what these applications were about and as far as the Master was concerned these cases were still pending before the High Court and the office was therefore unable to take the matter any further until there were decisions from the court or the litigants withdrew the matters from court.

Recommendation

The cases before Court are 20 and 15 years old. The Master must revive the matter by calling a next of kin meeting and ascertaining what the position is. This estate is not finalised.

90. ESTATE LATE MARTHA KHABONINA VILAKATI – EM 178/2024

Martha Khabonina Vilakati (born Ndlandla) died intestate in 2014. Her husband Reuben Vilakati, who was also the complainant in the matter before the Commission, reported her estate to the Master.

In her estate was an amount of E77000, which was held at 1.the Eswatini Bank. Mr. Vilakati is the co- executor of the estate with one Sibusiso Vilakati. He told the Commission that the Master allowed him to withdraw E10000 from the estate account (the Eswatini Bank account) for purposes of finishing off the construction of the family house. There was also a motor vehicle, which Mr. Vilakati stated he had sold for E36000 but that amount was not fully paid by the purchaser. He intended to take the purchase price to the Master once it was fully paid. His complaint was that the sum of E67000 (sixty-seven thousand Emalangeni) remaining in the Eswatini Bank Account was stolen. He was told that the person who withdrew the money from the bank account did so on the authority of the deputy Master of the High Court Ms Lindelwa Magagula who had signed a letter

authorising the withdrawal. He told the Commission that the Deputy Master had apparently told the Police that she had signed the letter authorising the withdrawal by mistake. The person who withdrew the money had been arrested and charged for the theft.

The office of the Master through Ziphozonke Fakudze, Assistant Master, confirmed the theft of E67000. At the time of her appearance, on 15th February 2024, she told the Commission that a certain Mangaliso Dlamini had been arrested for the theft of the money and that his criminal case was pending at the Manzini Magistrate's Court. The Police reported that the handwriting expert's report had been inconclusive. According to the report it was probable that then signature in the letter authorising the withdrawal of the money from Eswatini Bank was that of the Deputy Master but it could not be conclusively be stated that it was. It was also said that the perpetrator did not link the Deputy Master to the letter. The Deputy Master denied having signed the said letter. Finally, the Assistant Master reported that a request was made for the government through the Treasury to replace the stolen money in 2022.

The Assistant Master undertook to report on the progress regarding the process of refunding the estate and the attitude of the Government to that.

The report was filed on 10 October 2024 wherein the Master's office reported that the money stolen from the Estate had been refunded and made available in the Guardian Fund. A first and liquidation and distribution account dated 12 September 2024 was filed by the executor and approved on 13 September 2024 by the Master. The amount of E 65000 was the only asset distributed among the seven (7) beneficiaries. Nothing was said regarding the motor vehicle sold by the surviving spouse who had undertaken to pay the purchase price to the Guardian Fund.

Conclusion

The Commission is of the view that the unlawful withdrawal of E67 000.00 from the estate account could not have happened without the collusion from the office of the Master. However, the estate was reimbursed thus this estate was finalised.

91.ESTATE LATE PHILIP NGIGIDLA NDWANDWE – EM86/21

Nonhlanhla and Matilda Ndwandwe appeared before the Commission on 27 June 2024 to speak on the estate of the late Phillip Ngigidla Ndwandwe who passed on intestate in 2021. Matilda is the surviving spouse who had been married to the deceased in terms of civil rites. She was his only wife. The deceased had four children three of who were born within the marriage. Nonhlanhla was his daughter and had initially been the executor. She was removed as executer and replaced with Matilda. According to the two complainants the deceased left behind a property in Ngwane Park, a herd of 20 cattle, a motor vehicle, a tractor and some money in the bank. The complaint was that the child born out of wedlock, Lindelwa, had been asked to fix her birth certificate but had not done so for a long time. Also, that the delay in finalising the estate was costly on the executor since the cattle needed medication and incurred other expenses. The Master had suggested that Lindelwa be bought out but this had not happened. It appeared that the family, including the said Lindelwa had agreed on the distribution of most of the estate but for the home at Ngwane Park in terms of which the Master had suggested that Lindelwa be bought out as she was pushing that it be sold and was interfering with tenants. Matilda and the three children born of the marriage wanted to keep the Ngwane Park home. At their appearance before the Commission, the surviving spouse and her children undertook to buy out Lindelwa and then close the estate.

Conclusion

The executor should consider selling the property or the other parties buy out the complainant (Lindelwa). This estate has not been finalised.

92.ESTATE LATE MAXWELL MASINA EM 360/ 2021

Maidy Dlamini appeared before the Commission on 27 June 2024 and spoke on the estate of the Late Maxwell Masina, her brother's son. Maxwell passed away in June 2021 without a will. She indicated that herself and her brother Vusumuzi were the surviving children of their parents. Their complaint was that their parental home, on Swazi National at Esicelwini had been included in the estate of Maxwell and the Master had failed to remove the property from the estate. On that property there was a big house and some flats that Maxwell had been allowed to renovate. The flats were rented out and it was Maxwell that collected the rent and controlled its distribution. This was despite the fact that the homestead was not his but belonged to the Masina family. Maxwell had added his own flats to those that belonged to the family hence he was allowed to collect all rentals. Maxwell did not have a wife but had a child who was still a minor. Ali Ferreira is the executor of the estate of the late Maxwell Masina.

After meeting before the Commission, the family of the deceased together with the mother of the child and the executor undertook to meet to find a solution to the collection of rentals. It was also revealed that there was a water bill that remained unpaid because of the issue of the collection of rentals.

It was reported that the parties had met and had agreed that an estate agent be appointed to collect the rentals. The estate agent was instructed to pay the water bill (about E48 000) and also school fees and maintenance for the minor child. It was further decided that once the water bill was settled then the family would

meet again to decide what would become of the rentals. A final liquidation and distribution account would have to be filed in this respect.

Observation

The main source of complaint is the commercialisation of plots on Swazi nation land i.e. rental property built thereon, which belongs to a family, similar to the Estate Late Mncene Nkambule matter. The problem being that one person then claims that the rental property is hers because she is the wife with whom the deceased *khontaed*.

Conclusion

The matter currently stands settled by the family and the minor child receives maintenance from the proceeds of the rental properties.

93.ESTATE ELIZABETH MTATI FAKUDZE

Thabisile Patricia Fakudze – Ngwenya and Nonhlanhla Fakudze appeared before the Commission on 23rd July 2024 on the estates of their parents, the estate of the late Elizabeth Mtati Fakudze who passed away in 2013 and the estate of the late Nkosinathi Fakudze who passed away in 2022. They both passed on intestate. Nonhlanhla was appointed executor with her brother Mpendulo Lawrence Fakudze, her brother. The main bone of contention involved a property that belonged to their mother's estate that had been sold to one of the siblings, Phep'sile Fakudze-Dlamini. The purchase price was E500 000 and the purchaser had paid E400 000 to the Master's office in 2020 through her attorney Sabelo Bhembe. There was then a question about the balance of the purchase price (E100 000) with Phep'sile insisting that she had paid the full purchase price to the attorney.

A further complaint was that one of the siblings, Nkosinathi (who had passed on before the distribution of their mother's estate) had been allocated less money than was received by all the other siblings. His estate therefore received less money than the other siblings. The complaint was that when the Master's office was asked for an explanation of the difference there was no satisfactory answer. This was part of the issues that this family had with the office of the Master. A further issue was that there had been a number of files for this estate and the receptionist would refuse to allow the family to see the assistant master.

Attorney Sabelo Bhembe explained to the Commission that his client had paid E402 000 into the Central Bank from Germany where she resides. The reason she did not pay the full purchase price was that she had set off what the Estate owed her rather than pay the full price only to be reimbursed later. She had a claim against the estate of E35000 regarding rates that she had paid on behalf of the estate and this was captured in the 2nd and final Liquidation and Distribution Account. She also had a share in the proceeds of the property sold which were in the region of E54000. He reported that the property had been transferred into his client's name with the approval of the Master. He pointed out that he could not have been able to transfer the property without the original tittle deed (which he had fetched from the Master's office) nor without her written approval of the sale.

It appeared that a misunderstanding had arisen because of the amount paid into the Central Bank account wherein the beneficiaries concluded they had been short-changed by their sister when in actual fact they had not. At the last hearing the beneficiaries confirmed that the matter had been settled and they were satisfied with the Liquidation and Distribution Account.

Observation

The primary complaint here was in respect of the transfer of the property from the estate to the beneficiary who had not paid the full purchase price. There was

also a complaint about the manner in which the Master treated the family when they sought to look at the file. Again, a proper supervision of the executor would have prevented such complaint.

Conclusion

The matter is finalised. A final Liquidation and Distribution Account was filed.

94. ADDRESS BY MR. WALTER BENNETT

Mr. Walter Bennett appeared before the Commission on 19th February 2024. He identified himself as a resident of Nkoyoyo who was from ka Dvokolwako.

He indicated that he had a number of estates he wanted to speak on but that he was not going to be specific about each estate for today, he would seek another day to speak on specific estates on which he was mandated to speak.

1. *Commission's legal status.*

While lamenting the ineffectiveness of previous commissions because of what he called a manipulation by a cabal, Mr. Bennett pointed out that it was important that the commission be set up to answer the cries of the nation, despite opposition from the Law Society and the ambiguous position of the Minister of Justice. He called upon the Commission or the office of the Judicial Services Commission to assure society that the Commission was appointed in terms of the law.

2. *Estate Late Dumisa Dlamini* - Mentioned this estate and the liquidation of Dumisa; that the sale of his farms was based on fraudulent documents and that the Swazi Bank had to write off a sum of E52million of illegal interest.

3. *Behaviour of attorneys in general* – Mr. Bennett spoke generally about the behaviour of attorneys in dealing with estates as well as in general. He spoke of attorneys who owed him money and who passed on leaving nothing in their trust

accounts to cover liability to clients, including the late attorneys Siboniso Clement Dlamini, Collin Ntiwane, Lindifa Mamba.

4. *Estates of the Late Bantfwabenkhosi Sulumlomo and Fanyana & the Estate of the Late Mansoor Baboo (Macondza)* – Mr. Bennett spoke of having a mandate to speak on all these estates. He did not say exactly what he wanted to say on each except to say that there were issues he would raise on behalf of those who had given him a mandate.

5. *Estate Late Ntonto Vilane* – Mr. Bennett spoke of being sold 2 farms and a smallholding outside Siteki by the executor of the estate, Siboniso Dlamini between 1999 and 2003/4. He had problems getting the transfer document and had to approach the courts. He was successful in getting an order for the transfer of the smallholding and was awarded costs. He spoke of a protracted transaction that included an order of Hull CJ of June 1992 directing that the properties revert to Henry Ntonto Vilane and that a judgement of June 1993 was used in an attempt to take away the property from him to be transferred to a company controlled by a Mr. Loffler. He was able to stop this attempt but laments at the time it took for these matters to be finalised in the courts; the behaviour of the Master in approving the sales and in accepting evaluations of properties without verifying same properly.

6. *Estate Late Crabtree* – Mr. Bennett spoke of the "corruption" that surrounded the sale of the land held by this estate – again the issue of the Master allegedly accepting land valuations without verifying same was raised. The property was sold with the approval of the Master for E28 million but the buyer sold it to the Public Service Pension Fund for E73 million almost immediately upon acquiring the land from the executor of the estate. Another anomaly was that the transfer costs of E800 000 or so, were to be paid by the estate and not the purchaser as per norm. The matter was said to be with the courts currently.

Mr. Bennett's initial presentation ended here and he was to return to speak on the Vilane estate at a later date.

On his return, some of the Vilanes were present but the matter did not proceed except for a report from the Master. The Deputy Master reported that there had been some fraud in the transfer of properties from the original owner, the late Ben Jacob Vilane and that the courts had ruled that all the farms be returned the estate of Ben Jacob Vilane (in terms of a court order of 2nd June 1992). In the meantime, properties had been sold to Walter Bennett controlled companies. Some of the complainants wanted to know how Bennett had ended up being the owner of the properties, whether there was a deed of sale and how payment was made. They say that as far as they knew, Bennett's real estate company had been asked to sell the properties as an agent but that he had inexplicably ended up owning the properties. There had also been an attempt to sell the properties to a company for E1.9 million whereas there had been an offer for the same property of E8 million given to Mr. Bennett some 5 years earlier. This attempt to sell although allegedly approved by the Master was stopped by the Courts on application by Mr. Bennett, according to Mr. Bennett.

It is not clear how these estates will be finalised in view of the fact while there is an order that the properties be returned to the original owner, there has been a sale to Mr. Bennett which he says has been legitimised by the Courts. There is also a criminal investigation into the transfer of the initial properties.

95.ESTATE LATE ALFRED SIKHAKHANE DLAMINI EM 252/2019

When the matter first appeared before the Commission on 24 January 2024[30], the complainant was Mrs Thembi Dlamini-Cebe. Mrs Florah Dlamini (LaMndzebele) also lodged a complaint, she's deceased's first wife and the mother of the complainant, (Mrs Cebe).

Brief background

The deceased Alfred Sikhakhane Dlamini died testate on 18 August 2019. He was a businessman. On 29 August 2019, Ncamiso Cyprian Dlamini-one of deceased's children- reported the death and filled the death notice form and compiled the inventory at the Master's office.

The deceased had four wives namely: LaMndzebele, LaSeyama, LaNkhambule and LaMbuyisa. At the time of his death, he had separated from LaSeyama and LaNkhambule. Except for LaMbuyisa who died in 2021 all the other wives are alive.

In the Will, deceased disinherited LaSeyama and LaNkhambule and bequeathed his properties to Thembi, LaMndzebele and to LaMbuyisa. LaMndzebele and LaMbuyisa were given their homesteads which are located on Swazi nation land. Both homesteads have flats that are leased to tenants who pay rent monthly. Thembi got a lion's share of deceased's property including a home in Ndlunganye, cattle and the business located in Matsapha. The Commission heard that the High court ruled that LaSeyama and LaNkhambule were wives of the deceased and that they were entitled to receive maintenance and a reasonable provision from the estate of their husband[31].

[30] The matter was heard on 24 January, 2024; 7 February 2024; 26 March 2024; 5-6 June 2024 and on 2 July 2024.

[31] See High Court case (1565 of 2019) [2022] SZHC 262 (29 April 2022)

The deceased has fourteen children[32].

On 3 September 2019[33] a next of kin meeting was held at the Master's office in Manzini. Assistant Master Ms Makhosazana Mdluli chaired the meeting where the Will was read and copies of the Will availed to the family. In terms of the provisions of the Will, attorney Mr Sipho Madzinane was appointed executor.

The Will was challenged at the High court by some members of the family who argued that Mr Madzinane should be removed as executor. The High court directed that the Master appoints a curator pending finalization of the proceedings where the Will was challenged[34]. On 28 January 2020, the Master appointed Ms Marcia Hillary-Figueiredo as curator. Ms Hillary's curatorship was valid from 19 May 2020 until 19 November 2020. In terms of her letters of administration, her curatorship was limited to *Standard Bank, FNB, Road Transportation Board and to Registrar of Companies*.

Ms Hillary was unable to carry out her duties as curator because the family was uncooperative. Thembi refused to give her the statement and books of account of the company she is operating; she collects rent from some flats and refuses to account for the money collected; she further directed the curator to collect motor vehicles belonging to the estate from some of her siblings; she further forcibly took a vehicle from one of her siblings. The motor vehicle was subsequently impounded by the police. Thembi first refused but later agreed to let the evaluator, Sakhile Ndzimandze to have access to the plant machinery and other trucks she administers. Richard Dlamini threatened the curator with violence. Ncamiso Dlamini refused to avail a BMW sedan and a Nissan van to the curator. To date he refuses to hand in the said motor vehicles to be dealt with in terms of the law. Ncamiso and Richard are children of the deceased. LaMndzebele collects rent

[32] In the hearing of 2 July 2024, LaMndzebele submitted that she has eight (8) children with the deceased and that deceased had eight (8) other children born from other relationships.
[33] Sixteen (16) days after the death of the deceased.
[34] High Court Case No: 1565/2019 (A) (B) (C).

from the flats in her homestead and refuses to remit the money collected to the Master's office. In 2019, the rentals collected and not remitted to the Master's office amounted to E115, 000.00 per month.

Swazi Auctioneers represented by Sakhile Ndzimandze evaluated some of the rented flats, vehicles and plant machinery belonging to deceased estate and charged E28, 002.50[35]. The Commission heard that Sakhile Ndzimandze was paid through the Master's office, not once but twice for the same evaluation he conducted of deceased's property. The Commission was told that the first evaluation was done based on instructions from the curator and the second evaluation was Mrs Cebe's instruction.

In 2020, the curator through the offices of Robinson Bertram attorneys approached the High Court for an order to preserve deceased's assets and to be allowed to collect rentals from deceased's flats.

The High Court dismissed the application and stated that the curator did not have *locus standi* to institute the proceedings as she was not authorized by her letters of administration to institute proceedings on behalf of the estate, much less to collect rentals from the said flats.

In High Court case number 473/2022 a consent order was granted that Ms Hillary be paid E100, 000 for work done as a curator in deceased's estate. She was eventually paid the said amount.

The deceased's estate has been subjected to a multiplicity of legal action at the instance of the beneficiaries. Many attorneys have been involved in the litigation and have been paid large amounts of money as costs. There is no proof that the Master ever taxed any of the costs that were paid to the attorneys. Some of the

[35] See page 14 of Curator's report

attorneys were paid for services that are not clearly specified. The estate was clearly a feeding trough.

The file was transmitted to the Master's office in Mbabane at the instance of the Master of the High Court. The Master had received a complaint from Thembi that she was unhappy with the way the file was being handled in Manzini. Thembi later approached the office of the Chief Justice to register her unhappiness at the manner her father's estate was being handled. The Master and some of her officials were summoned to the Chief Justice's office and a directive that the file be returned to Manzini was issued. According to Thembi, the Master was unhappy that she had escalated the matter to the Chief Justice. She was later ignored and frustrated by the office of the Master's office for having escalated the matter to the Chief Justice.

Complaints

1) Thembi complained that her father's estate was being looted by different people who were aided and abetted by officials from the Master's office.
2) Thembi stated that she found no joy each time she approached the Master's office as she was ignored, frustrated and sent from pillar to post by officials in the Master's office. She mentioned that she was not assisted when she approached the Master's office when she asked for money from the estate to shore up her father's business. She complained further that she got no help when she asked that the cattle which had been bequeathed to her be transferred to her name so she could take care of the livestock.
3) Thembi decried the fact that the estate file was removed from the Master's office in Manzini office to the Master's office in Mbabane under unclear circumstances.
4) Make LaMndzebele complained that she was married in terms of customary law; that the Master's office had no right to insist that rentals

collected in her homestead should be remitted to the Master's office as this was contrary to principles of customary law.

5) It was a complaint from Make LaMndzebele that by holding the first next of kin meeting before the period of *kuphuma endlini* of deceased's widows, the intention was to exclude them from the proceedings of the meeting.

Observation

There appears to be no evidence that the estate file was removed from the Manzini office to Mbabane so that it could be looted. The Master's explanation that the file was transmitted to Mbabane at her instruction because Thembi had approached her and complained that the file was being mishandled in Manzini was not disputed by Thembi. The Master's office in Mbabane has supervisory powers over the regional offices; on the face of it, there is no problem if the Master asks to have an estate file submitted to her office if there are complaints about how the file is handled at the regional office.

Recommendations

1. The law should be amended to clarify how assets of people married in terms of customary law with their homesteads and accommodation for rental on Swazi nation land should be handled.
2. The office of the Master should ensure that all the deceased's widows are present during the reading of the Will and the appointment of the executor. Widows who choose to observe the customary period of *kufukama* after the burial of their husband should be accommodated and not be sidelined.
3. The law must take its course regarding the beneficiaries who refused to hand in estate property to the executor and to the curator. Threatening the curator with violence for doing her job is a criminal offence and should have been reported to the police for further action.
4. Consider an enhanced inheritance rights for persons married under customary law given that currently the Master invokes the Intestate

Succession Act and the reasonable provision clause (S34) in the Constitution.

Conclusion

The matter is finalised.

96.ESTATE LATE HAMILTON SENZO NXUMALO EM 59/2019

Ms Sibongile Ruth Dlamini-Nxumalo first appeared before the Commission on 24 January 2024[36]. Ms Dlamini submitted that she was married in terms of civil rites to the deceased in 1986. In 2012 she left the marital home at Voctim and relocated to Ngwane Park, Manzini when her husband became involved in a romantic relationship with Faith Vilakati. Her husband married Faith Vilakati in 2015. The deceased died in 2019. LaVilakati died in 2023.

Ms Dlamini's complaint is that she was divorced without her knowledge and consent and that she was never served with the decree of divorce during the lifetime of her husband. During the hearing, summons instituting divorce proceedings was shown to the Commission. The summons reflect that the complainant was served with Court process. Ms Dlamini submitted that she only saw the decree of divorce for the first time after her husband died, when it was produced by Faith Vilakati during the family meeting held at the Pension Fund offices. Consequently, she was excluded from benefiting from her husband's pension and from deceased's estate. She hired a lawyer to have the divorce reversed so she could retain her position as a wife of the deceased. The application failed because the court record from Manzini Magistrate court[37] where the divorce was granted could not be located.

[36] The matter was again heard on 4 April 2024; 5 and on 12 August 2024.
[37] Case No: 2776/2012.

Ms Dlamini mentioned that during the proceedings seeking to set aside the divorce, the Pension Fund and Ms Faith Vilakati were represented by attorneys from Robinson Bertram. In Ms Dlamini's view there was a conflict of interest as the Pension Fund's interests were divergent to the interests of Ms Vilakati.

An appeal to the Supreme Court was noted but for unclear reasons was never prosecuted. Ms Dlamini's attorney, Mr Sobandla Dlamini informed the Commission that he had withdrawn as a legal representative of the complainant. Ms Dlamini stated that the matter is still pending in court.

Mr Knox Nxumalo, it was submitted is an uncle to the deceased and a father- in-law of the complainant. The Commission heard that Mr Nxumalo retrieved the file from the offices of Robinson Bertram long after he had ceased practicing with the law firm and that the file was never found when Ms Dlamini came looking for it.

The complainant submits that when deceased's death was first reported at the Master's office, her name was reflected in the file and she was reflected as a wife of the deceased. During the next of kin meeting complainant mentioned that a new file was opened and she was informed that only LaVilakati is the wife of the deceased. The new file contained a decree that she had been divorced by the deceased. During the next of kin meeting Ms Dlamini was with her mother-in-law-Josephine Nxumalo and her stepson Flag Nxumalo. Ms Dlamini's child with the deceased is Mpilwenhle.

The Master denied that two files were opened for the estate of the deceased.

Observations

1. Ms Dlamini received summons initiating divorce proceedings by her husband. It is likely that the divorce order was granted because she did not contest it. Without accessing the court record it is not possible to know how the matter proceeded in Court.

2. Without the Court record, it is also unclear how the joint estate of Ms Dlamini and the deceased was divided after the divorce was granted.

Recommendation

1. Attorneys should be careful to ensure that they do not represent parties with conflicting if adverse interests. The attorneys who represented the Pension Fund and the wife of the deceased could not properly act for the Pension Fund and the wife of the deceased against the complainant who alleges she is the wife of the deceased and has a child with him.
2. Parents of deceased persons should not be left destitute when a child who supported them dies. The law should be amended to provide that destitute parents should benefit from the estate of their child.
3. Before Ms Dlamini's attorney withdrew his services, he informed the Commission that there was no appeal pending before the Supreme Court on the decree of divorce of the complainant by the deceased. This submission was confirmed by the Registrar of the Supreme Court.
4. The High Court is said to have determined that Ms Dlamini is a divorcee without having sight of the court record that so determined. This was because the court record could not be found. It is any body's guess what the Court's conclusion would be if the court record was available. The Commission recommends that all court records be digitised for easy access and that even court records that in the archives be stored in an orderly and easy to access manner.

Conclusion

The courts should keep a comprehensive record of proceedings and ensure the security of same. Failure to ensure the safekeeping of the record results in serious injustice to members of the public. Such conduct should be condemned in the strongest possible terms, as it undermines the integrity of the administration of justice. The matter is finalised.

97.ESTATE LATE SIPHO THULANI BHEMBE EH 408/2021B

The matter was first heard by the Commission on 2 May 2024[38], the complainant was Thabsile Tenele Bhembe. Thabsile is the wife of the deceased. Thabsile and the deceased were married in terms of civil rites in community of property and no children were born of the marriage. The deceased has six children born from other relationships and their names are: Andile, Bongiwe, Simphiweyinkhosi, Andiswa, Avile and Aphelele. Except for Andile, all the children were minors at the time deceased died.

Brief background

The deceased died intestate on 16 December 2021. The deceased was a businessman in the public transport industry. He also had contracts with Usutu Forest School where he transported school children and was paid by the school for the service. On 24 December 2021 Thabsile Tenele Bhembe reported the death, completed the death notice form and compiled the inventory at the Master's office. The inventory listed the children of the deceased and their birth certificates were attached. The deceased had one plot at Ngwenya on which were three flats, a home on Swazi nation land at Motshane, private motor vehicles (an Audi, two Mercedes Benz, a Fortuner, a Touran, public transport motor vehicles (twenty Mercedes Combis), permits, three cattle, goats, chickens, contract to transport children at Usutu Forest School, cash at Standard Bank, First National Bank, Swazi Bank, Nedbank and at Swaziland Building Society.

In February 2022 two motor vehicles belonging to the deceased- namely an Audi XSD 266 CH and a Mercedes Benz were attached and removed from the possession of the widow by virtue of court orders.

Before the first next of kin meeting and without the knowledge of deceased's spouse, Khanyisile Masilela informed Thabsile that she had paid school fees for

[38] The matter appeared again before the Commission on 15 May 2024; 22 May 2024; 24 June 2024 and on 18 July 2024.

deceased's minor children after their mothers came to the office and asked for maintenance of the children. When Thabsile protested at this irregularity that is the payment of supposed beneficiaries without the knowledge of the executor of the estate; and when she further intimated that she did not know some of the children and therefore wanted them to be subjected to DNA testing, she was told by Khanyisile that her protestations were a disqualifying factor to the position of Executrix.

The first next of kin meeting was held on 7 April 2022 and it was chaired by Ms Khanyisile Masilela in the Master's office. Khanyisile rejected the nomination of deceased's spouse as executrix citing adverse protection of the interests of deceased's minor children. The Master reported that it was during the first next of kin meeting that the family also requested that a neutral person be appointed as an executor. On the second next of kin meeting held on 14 April 2022 Mr Bhekinkhosi Gama was appointed executor. The surviving spouse instructed attorneys from CJ Littler to challenge the decision of the Master to sideline her from being appointed as executrix. She was only allowed to be executrix on condition she swore she would not bring a claim against the estate or call for DNA testing of some of deceased's children. She was finally allowed to be co-executrix with Mr Gama in the next of kin meeting of 5 May 2022. This was after she had made an affidavit undertaking not to sue the estate and that she will only institute legal proceedings to protect the interests of the estate. It is Thabsile's view that officials in the Master's office sow distrust and discord within beneficiaries of an estate with a lot of money so that they can appoint their own 'neutral executor' so that they can easily fleece the estate.

Sidelining the surviving spouse in the nomination and appointment as executrix of deceased's estate for the reasons advanced by Khanyisile Masilela flies in the face of Section 25 of the Administration of Estates Act, 1902. There is nothing untoward with the surviving spouse requesting that some of the children allegedly

belonging to her deceased husband should undergo DNA testing. There are other matters where a surviving spouse has demanded that children allegedly born by the deceased be subjected to DNA testing but the widows in question were not disqualified to be executrices by the Master's office[39].

During winding up of deceased's estate, Usutu Forest School paid cash into the business account of deceased's transport business. The Executors met and resolved that Thabsile needed E20, 000 for running costs of the company that is, to buy petrol and to service the kombis. When Thabsile approached Khanyisile for the E20, 000, Khanyisile asked to be advanced with the same amount for her personal use. Thabsile says Khanyisile advised her to pay her the cash so that things concerning her file would go smoothly. Khanyisile allegedly told Thabsile to include and conceal the E20, 000 she was asking for in the amount requested for running costs of the business. Thabsile gave Khanyisile the amount of E20, 000 she had requested. Mr Gama did not object to the amount given to Khanyisile from the estate funds. Subsequently, Khanyisile asked for more funds from the estate for her private and personal benefit. She allegedly further advised the executors to help themselves to estate funds for private use. Consequently, the executors requested E60, 000 instead of E30, 000 for running costs of the business. From the E60, 000 Khanyisile was given E10,000 and each of the executors received E10,000. Mr Gama confirmed that he received the amount of E10,000. Children of the deceased were also given cash for maintenance and for school fees.

The first liquidation and distribution account was drawn and it reflected, among others payment of e The executor's fees which were paid into Mr Gama's

[39] Refer to Estate late Mathanzima Dlamini. Ms Kelly had a child with the deceased and deceased's wife asked that the child be subjected to DNA testing. The Master's office did not disqualify LaNhlabatsi for requesting DNA tests from being executrix.

account. There was no provision for the maintenance of the minor children in the first liquidation and distribution account.

In July 2022 the executors wrote to the Master's office requesting that E1,000 be paid to each of deceased's children. Khanyisile issued a letter to the Bank instructing it to pay the said amount to deceased's children. The anomaly is that Khanyisile's letter also directed the Bank to pay E1,000 to Celiwe Prudence Simelane. Khanyisile does not state why Celiwe was paid because she does not appear in the death notice as one of deceased's children.

Thabsile says Mr Gama met with the mothers of deceased's children without her knowledge and that she was not invited to the said meeting. After the second liquidation and distribution account was prepared, the mothers of deceased's children filed flimsy objections which were subsequently withdrawn. Thabsile mentioned that the objections were meant to delay the final winding up of the estate. It is Thabsile's view that the office of the Master sowed division and discord among beneficiaries if there was a lot of money in the estate. She mentioned that it was after the second liquidation and distribution account had been prepared that Khanyisile arranged to meet both executors at Tandoori restaurant where she promised to fast-track the approval of the liquidation account if Thabsile gave her money for her private use. At the time, it was mentioned by Thabsile that Khanyisile had been transferred to the High Court and had no business handling the estate file.

Thabsile says she then requested Mr Jele from Robinson Bertram to act on her behalf and request for a meeting to have the issue of objections on the second liquidation account addressed. The office of the Master was unhappy that Thabsile had roped in Mr Jele and they asked her how Jele was going to be paid. It is strange that the office of the Master would be uncomfortable with the surviving spouse instructing an attorney yet they were alright with the mothers of

deceased's children instructing different attorneys at different times to represent them.

Khanyisile denied all the allegations of corruption and theft levelled against her. Mr Gama confirmed Thabsile's version that Khanyisile was given estate money for her private use. Mr Gama further confirmed that Khanyisile further asked to be given E50, 000 but she was never paid that amount by the executors. He further conceded that he met with the mothers of deceased's children without the knowledge of Thabsile; that Thabsile was not present in that meeting.

Complaint(s)

1. Corruption in the Master's office, Khanyisile requesting to be given money from the estate when she is not a beneficiary.
2. The estate taking too long to be wound up because of flimsy objections supported by officials from the Master's office.
3. Khanyisile instructing the Bank to pay Celiwe Simelane who is not a beneficiary of the estate.

Recommendation

The matter should be referred to relevant fora for criminal investigation of the implicated official.

Conclusion

The matter is pending.

98.ESTATE LATE EMMANUEL DUMSANI MMEMA EH 150/2020

The complainant is Ms Simangele Mtetwa. She brings the complaint on behalf of her deceased son-Mzwandile Mmema. The complainant and deceased are divorced. During the subsistence of their marriage Mzwandile was born. The deceased died on 4 August 2020. Mzwandile died on 25 September 2023. During

the subsistence of their marriage, complainant submitted that she helped the deceased to start a business-Ecozone where the deceased was the sole Director. The company is in the business of installation and maintenance of air conditioners.

During the subsistence of their marriage, the couple bought a house at Sidvwashini where they resided. After the divorce, the deceased remained in the house at Sidvwashini with Mzwandile. The deceased has a daughter from a previous relationship. The deceased subsequently married Phumla Mmema. Phumla and Mzwandile did not see eye to eye.

After the death of Mmema, complainant received a telephone call from the Master's office in Mbabane inviting her to come to the office with Mzwandile so that an executor could be appointed. Complainant mentioned that Mzwandile had mental health issues and was a patient at the Psychiatric centre. Ms Mtetwa came to the Master's office on the appointed day and found Phumla and Mmema's sister. Mmema's first daughter was not present and had written an affidavit that she would accept the outcome of the meeting and was unable to attend meeting. Simangele submitted that she was abused by officials at the Master's office and told she could not be part of the meeting as she was not a next of kin of the deceased. Why, Simangele was left out of the next of kin meeting when she had been called by the Master's office to attend the meeting, was not clear.

In terms of Section 24 of the Administration of Estates Act, the law provides that the Master shall call a meeting consisting of the surviving spouse, the next of kin, legatees and creditors for the appointment of an executor. The Master is to call such a meeting through the Gazette and in such other manner as she may deem fit. The Commission observed that like in this case, only the next of kin and

spouses of the deceased are invited by the office of the Master to attend the meetings of the next of kin, yet the law includes creditors.

Contrary to the law, the notice of the meeting is not advertised in the newspaper by the Master's office. The reason given by the Master is that the stipulated charges for these notices are far below the actual cost of having a notice advertised in the newspaper yet there are no funds to advertise such meetings in the newspaper. There cannot be a good excuse to breach an express and mandatory provision of the law like this one.

Complainant submitted that she was told by the officer attending to them that the office was not concerned with rivalries between spouses of deceased persons. Another female official rudely told Mzwandile to furnish the office with a letter from the Psychiatric hospital if he was a patient there and was therefore unable to represent himself during meetings at the Master's office. Only Mzwandile was allowed to be in the meeting. Phumla was appointed executor of the estate. Only the house at Sidvwashini was reflected in the inventory. The company and its assets, deceased's shares in the company as well as motor vehicles were not listed in the inventory.

When Mzwandile asked why the company or the shares of the deceased were not listed in the inventory, officials in the Master's office flippantly dismissed his enquiry. The Master's office was hostile towards Mzwandile and the complainant.

On 11 February 2020, Phumla changed directorship of the company and became the sole director. She did not account for Mmema's shares to the Master's office. When they followed up the matter, they were informed that at the time of his death, Ecozone owed tax and that ERS was a creditor in the estate. It was stated that the house will have to be sold to settle deceased's tax debt. The Master's

office did not give complainants details of how much was owed to ERS by the company and by the deceased. The Master's office did not ask the executrix to provide financials of Ecozone as well as the value of deceased's shares in Ecozone. The Master's office further did not have information from the Registrar of Companies concerning the change of directorship of Ecozone after the death of deceased.

The executrix has been refusing to cooperate with the Master's office and not accounting to the Master about how far she has gone with the winding up of the estate.

The executrix appeared before the Commission and undertook to pay Mzwandile's share to the complainant in instalments beginning January 2025. That, according to the Master's office has not happened. The executrix further made an undertaking to provide financials of Ecozone to the office of the Master of the High Court but failed to follow through.

Observations

1. The executrix sold Mmema's motor vehicle for E140, 000 and did not remit the money to the Master's office. The executor has not been cooperative as she refuses to give the Master the company's books of account and financials of the company. Even during the hearings before the Commission, the executor made promises and gave conflicting versions about the financial standing of the company. She promised to buy Mzwandile out and later reneged on the undertaking. The executor does not seem interested to conclude the winding up of the estate expeditiously.

2. The Commission found that the Master's office is not complying with the mandatory provision in Section 24 of the Administration of Estates Act.

Recommendations

1. The Master should initiate proceeding to remove Mrs Phumla Mmema as executor.
2. The Master reported to the Commission that she had started a process to remove the executrix for failing to wind up the estate within the six-month period set out in the Administration of Estates Act.
3. The Master's office should maintain an Executor's Register through which the time limits for winding up estates can be followed up. The absence of such a register results in executors not being warned to comply with the six-month period and consequently, executors do not wind-up estates within the stipulated time with impunity.
4. The executrix must also account to the Master in respect of her executorship.
5. People employed in the Master's office should be trained on how to deal, particularly with bereaved and vulnerable people who are more sensitive than other people in other government departments.
6. The phrase 'next of kin' should be defined in the interpretation section of the Act. The definition should be such that it will comply with the way emaSwati understand the concept of 'next of kin.' Parents of the deceased, children of the deceased (and their Guardians), brothers and sisters of the deceased may be regarded as 'next of kin.'
7. The charges to effect the publications of the notices in the Government Gazette as well as in the local newspapers should be revisited and amended to meet with the cost of putting such gazette and advertisement in the newspapers.

8. The Master should cause the publication of the notices of meetings of the next of kin in the local newspapers, by following the same procedure in Section 42 of the Administration of Estates Act.

Conclusion

The matter is not finalised.

99.ESTATE LATE LUKE FANAKO SHONGWE EH 35/2021

The deceased died on 29 July 2021. The deceased was married to LaBhembe by civil rites. During the subsistence of the civil rites marriage, the deceased married Pinky Dlamini through customary law. Pinky Dlamini is the complainant in this matter. The deceased and the complainant have two children namely-Mlandvo and Siphelele. Mlandvo was born in 2001 and Siphelele was born in 2007.

The death of the deceased was reported to the office of the Master and a next of kin meeting was held. Tebo Shongwe was appointed the executrix. An inventory was prepared and it reflected that the deceased had cattle in the home where he lived with the complainant. Pinky informed the Commission that she bought the cattle during the lifetime of the deceased. The cattle were registered in the name of the deceased because the kraal was in his name.

The complainant is unemployed and lives with a disability. She mentioned that she struggles to pay for school fees and for the upkeep of both her children as the Master's office refuses that she sells some of the cattle to pay school fees. The Commission heard that the she approached the Master's office and asked to sell five cattle so she could pay school fees for her children. In her view, the executrix and the Master (Ms Masondo) have teamed up against her as they frustrate her when she comes to the Master's office to seek for help.

Complaint

Pinky complained that:

1. The Master and the executrix refused her permission to sell five cattle so she could pay school fees for her children. She mentioned that the cattle belong to her and not to the deceased, it is only that it is registered in deceased's kraal.
2. She was excluded from the list of beneficiaries by the Master because her marriage was viewed as bigamous by the Master's office.
3. She had to release the herd boy because she did not have money to pay him. The cattle remain in the veld unattended resulting in some being lost or stolen.
4. The liquidation and distribution account reflected that Siphelele was allocated nine cattle and yet one of the cows-number 01523 was missing and could not be found. The Master recommended that the cattle be sold and money deposited in the Guardian Fund on behalf of Siphelele-an arrangement that complainant was against.
5. She complained that the Master and the Executrix treated her like an outcast in the affairs of her husband.

The matter appeared on 29 January2024 and on 19 September 2024 before the Commission. On 19 September 2024, the executrix appeared following an invitation by the Commission. She submitted that she is one of the children of LaBhembe. She denied that she was in cahoots with the Master in frustrating Pinky. The liquidation and distribution account reflected that LaBhembe, Mlandvo and Siphelele were the only beneficiaries of the estate. LaBhembe's children signed affidavits and gave their inheritance to their mother. According to the Executrix, the estate has been finalized.

Observation

The liquidation and distribution account reflected that cattle were allocated to Mlandvo and to Siphelele. The Master suggested that the cattle be sold and the money deposited in the Guardian Fund where the children could claim it each time the need arose. Pinky objected to this arrangement. The liquidation and distribution account was altered to reflect that nine cattle were to be registered in Siphelele's name. It was agreed that Pinky will not sell the cattle before alerting the Master. Pinky agreed that the cattle be transferred to the beneficiaries.

The Veterinary department refused to register the cattle in Siphelele's name on the ground that in terms of the law, there is no kraal registered in the name of a person below the age of eighteen years. Siphelele turns 18 years old in February 2025. The Master and the Veterinary department agreed that the cattle should remain in the name of the deceased until February 2025 when Siphelele comes of age.

Conclusion

The matter is finalised.

100. ESTATE LATE ISAAC NHLANHLA GAMEDZE EH 152/2021

The matter first appeared before the Commission on 30 January 2024[40]. The complainant was Busisiwe Sithole and the third wife of the deceased. The deceased has three wives-namely Nonhlanhla Dlamini, Thuli Matsebula and Busisiwe Sithole. Nonhlanhla Dlamini has her home at Mpholonjeni, Thuli Matsebula's home is at eMangwaneni, Mbabane and Busisiwe Sithole's home is at Ngwenya.

[40] The matter was again heard on 29 July 2024

The deceased died intestate on 23 March 2021. The death was reported at the Master's office. All three wives were appointed executrixes and asked to prepare inventories of deceased's assets in their respective homes. The deceased left four motor vehicles: a GWM double cab; a Volvo (which had mechanical faults), a Citron motor vehicle blue in colour, and a BMW sedan.

The complainant mentioned that Nonhlanhla Dlamini and Thuli Matsebula connived with each other and shared deceased's cars leaving her with the GWM vehicle. Busisiwe sold the GWM vehicle for twenty-five thousand Emalangeni and remitted the money to the Master's office. She further remitted six hundred Emalangeni for a sound system that was in her home. Nonhlanhla Dlamini kept the BMW for herself and uses it for her personal benefit. The Volvo and the Citron are at Thuli Matsebula's home at eMangwaneni.

Busisiwe stated that in the year 2010 her husband bought a piece of land from Luke Shongwe for fifteen thousand Emalangeni. In 2014, they were informed by Mchalageni that Luke Shongwe had no authority to sell them the land in question and that they had to pay an amount of E109, 000.00 for the land on which they had built their home. Busisiwe mentioned that her home is on title deed land administered by Mchalageni. Mchalageni and deceased signed a deed of sale for the land on which her home is built to buy the land for an amount of one hundred and nine thousand Emalangeni (E109, 000.00). At the time of his death, deceased had not paid any amount for the land. The title for the land was in the name of Mchalageni at the time of the death of deceased. In 2021, Busisiwe secured a loan and paid for the land and transfer costs. The total amount she paid is E124, 000.00. The title deed is now in the name of Busisiwe Sithole. She also pays rates for the land.

The complainant mentioned further that she has two children who are living with disabilities and require maintenance. She mentioned that deceased has a child

born out of wedlock who was not catered for during the administration of deceased's estate.

The Master's office directed Busisiwe to pay E15, 000 into the estate account, this being money which was paid by the deceased to Luke Shongwe who illegally sold them the land on which her homestead is built. The Master is alleged to have insisted that Busisiwe's home be sold and proceeds thereof distributed among deceased's beneficiaries.

Complaint

1. Busisiwe complained about the Master's directive that her home be sold when the title deed of the property was in her name and not in the name of the deceased.
2. She mentioned that the BMW in the possession of Nonhlanhla Dlamini had still not been sold and was used by Nonhlanhla for her own benefit when it should benefit all beneficiaries of deceased's estate; that the Master was doing nothing about Nonhlanhla's failure to sell the vehicle.
3. Busisiwe complained that she was not getting money for the maintenance and upkeep of her child-Vuyisile Gamedze who is living with a disability.

On 29 July 2024, the Commission heard from Thabsile Gamedze who is a sister of the deceased mentioned that the BMW is in her possession and that she was trying to sell it through her husband's garage. She undertook to give the Master's office an update of progress in the matter.

The Commission heard that the Citron car is in the possession of Thuli Matsebula and is often seen on the road.

Observation

The Master's office decided that complainant's home would be sold and proceeds thereof distributed among deceased's beneficiaries simply because her home was

on title deed land. The other wives had their homes *eticintsini* and the Master made no decision that their homes would be sold and proceeds distributed among deceased's heirs. There is need to harmonise the law ensuring that deceased's wives are not left homeless once the husband dies and left his wife on title deed land. The right of widows to be treated equally and fairly must be upheld by the Master's office.

Assistant Master Ms Lethukuthula Nhlengethwa informed the Commission that there is a liquidation and distribution account that reflects that cash was distributed among the beneficiaries. In terms of the distribution account the child who is living with a disability has more maintenance money than the other children of the deceased.

The Commission was informed also that Busisiwe's home will no longer be sold as she now has the title deed in her name. The Master undertook to call Thuli Matsebula and have her account for the Citron vehicle. The estate will be wound up once the motor vehicles of the deceased have been sold and proceeds of the sale distributed among his beneficiaries.

Recommendation

The new law should reflect no discrimination between widows whose homes are on title deed land and those whose homes are on Swazi nation land.

Conclusion

The matter is not finalised.

101. ESTATE LATE SAMUEL SIBUSISO MKHWANAZI EM 487/2003 & EM 277/2004

The deceased died intestate in September 2003. The matter was reported to the Master's office and two files were opened for the estate. It is unclear why the estate has two files.

The deceased was married and had seven children. The complainant is one of the children of the deceased-Ndoda Mkhwanazi. He mentioned that at the time his father died, he was a fugitive from justice and was living in Johannesburg. He does not know if the estate was reported to the Master's office. He knows, however that during his lifetime, his father had a shopping complex (Sgood's nice) at Esigodvweni with a shop that was operational. The shopping complex was being leased out. There was a plot in Sterkstroom and another plot at Wilmer Park. There were three motor vehicles-a Ford van, a Mercedes sedan and an Isuzu van. According to the complainant, the deceased also had money in the Bank, cattle at eNkambeni and at Siphofaneni.

The complainant mentioned that while he was still living in Johannesburg he was given E11, 000 by his sister Khetsiwe. Khetsiwe is alleged to have told the complainant that the money was his inheritance from his father's estate; she is further alleged to have told the complainant that he will get the remainder of his inheritance from his mother.

When the complainant eventually returned home, he went to the Master's office to enquire about his father's estate and was able to peruse file EM 487/2003. His mother is the executrix. He noticed that some assets were not listed in the inventory. He also found that affidavits had been signed ostensibly by all the children of the deceased ceding one plot to deceased's wife. The other plot was sold and proceeds shared among the beneficiaries. Complainant says he never signed an affidavit to that effect as he was out of the country when his father died.

Complainant submitted that Lucia Lukhele was the officer responsible for deceased's estate. Ms Lukhele is alleged to have arrived at deceased's home and ejected him and some of his brothers.

Complaint

Ndoda wants the liquidation and distribution of his father's estate to start *de novo* as he alleges that some of the assets belonging to the estate were not included in the inventory.

Conclusion

The estate is not finalised.

102. ESTATE LATE COLIN SIDUMO NTIWANE EH 225/2007

The complainants are Sizakele Ntiwane and Sanele Ntiwane-the wife and son of the deceased. The death of the deceased was reported in 2007. In 2024, the estate is still not wound up.

At the time of his death, deceased was a practicing attorney. The complainants mentioned that deceased's estate was looted by the accountant in his law firm, the attorneys who were assigned to wind up the estate, the Master's office which dissipated the estate by paying undeserving children who did not belong to the deceased to the exclusion of his biological children.

According to the complainants, the deceased had title deed land and land on Swazi nation land which all disappeared when he died. The money in the office safe was also stolen by people who were in the office after the death of the deceased.

Complainants have taken the matter to other fora and have not been assisted.

Complainants stated that the service they received at the Master's office was atrocious as Sizakele was prevented by the Master from winding up her husband's

estate. The Master of the High Court mentioned that Sizakele was rude towards her both in the office and outside the office. Sizakele allegedly threatened the Master with violence and directed expletives at the Master when she saw her in town

According to Sizakele, no executor was appointed to wind up the estate. Mr Mkhwanazi was appointed curator and was responsible for taking care of deceased's legal practice in terms of the law. After the death of Mr Mkhwanazi, the Master appointed Sizakele as the executrix but failed to give her letters of administration. The Commission enquired why Sizakele was not given the letters of administration so that the estate could be wound up. Assistant Master Vuyisile Mdluli mentioned in the hearing of 28 October 2024 that Sizakele had since been given the letters of administration. Sizakele undertook to submit a report on 14 November 2024 about what she had done to wind up the estate. The Commission has still not received the report.

The Commission heard that Sizakele worked hand in hand with Mr Mkhwanazi. The Master allowed that some of the estate money be paid for the maintenance and school fees of deceased's children. Sizakele was allowed to take cattle and a car among others belonging to the deceased and she did not account for how she used the said assets.

From the submissions by the Master and from the complainants, it appears there are cases that were heard and disposed of in the courts concerning the estate. According to the Master, the estate has no money.

Conclusion

The matter is finalised.

103. ESTATE LATE VUSI ORPAH LOKOTFWAKO EH89/2014

The matter came before the Commission on 11 June 2024. The complainant is Phumlile Lokotfwako, a daughter of the deceased. The deceased was first married to Ncamsile Dube (LaDube) by civil rites and later married Phindile Zikalala (LaZikalala) by customary rites. LaDube had two children namely Bonginkhosi Dlamini (born from a previous relationship) and Phumlile Lokotfwako. LaZikalala has five children with the deceased. LaDube's matrimonial home is at Ngwenya. LaDube predeceased the deceased.

Deceased died in April 2014 and his death was reported at the Master's office by LaZikalala. LZikalala is the executrix. The inventory reflects that deceased had fifteen cattle, eight goats and two cars. In reflecting that deceased had two cars, the inventory was inaccurate because one of the cars, an Isuzu 4x4 was bought by LaDube and was registered in the name of Phumlile.

The complainant mentioned that although the livestock was registered in the name of the deceased, it was kept in LaDube's kraal at Ngwenya. LaDube's estate was not wound up.

Phumlile's complaint is that the home at Ngwenya belongs to LaDube and not LaZikalala. Phumlile mentioned that LaZikalala had no right to take over the livestock and cars that were at LaDube's homestead. She mentioned also that the Isuzu 4x4 did not belong to the deceased as it was registered in her name. She last saw the Isuzu 4x4 in 2017. LaZikalala left in 2016, ostensibly to evaluate the car and never returned. Phumlile mentioned that LaZikalala and her children live in Johannesburg.

She complains that the estate has still not been wound up ten years after the death of the deceased. The executrix is nowhere to be found as she long relocated to Johannesburg.

Phumlile complains that the Master refused to remove the Isuzu from the inventory even after she had informed the Master's office that the car was registered in her name. She laments that she was sent from pillar to post by the Master's office without relief.

Observation

The complainant mentioned that the people who dealt with the matter at the Master's office were Lungile Msimango, Temantimandze Shongwe and Phumzile Masilela. When the matter was heard by the Commission, the Master's office mentioned that they were unable to locate the file. The Commission requested that the Master's office should trace, through the motor registry and through the anti-theft unit where the car is. The Master's office was requested to prepare a report.

Recommendations

1. The Master must appoint a new executor to ensure that the estate is wound up, Phumlile is a good candidate to wind up the estate.
2. There's need to diarise the files in Master's office and to review files periodically to ensure that files are attended to timeously and estates finalized.

Conclusion

The matter is not finalised.

104. ESTATE LATE AMON TSANDVWANGUBANI MAMBA 74/2019

The matter was heard by the Commission on 11 June 2025. The complainants are deceased's children namely: Roy Mandla Mamba, Sibongile Mamba, Zwelithini Victor Mamba and Khulile Mamba. The deceased was married to two women- Virginia and to Beauty Mamba. Virginia is the first wife and she had seven children with the deceased. Beauty is the second wife and she had four children with the deceased.

The deceased died intestate in 2019. The family reported deceased's death at the Master's office. Khulile Mamba and Sive Mamba were appointed executors of the estate. Sive Mamba is dead now.

The inventory consisted of cattle and cash in Banks.

Roy, Sbongile and Zwelithini complained that the estate has still not been finalized. Khulile, the executrix mentioned that the estate has been liquidated and finalized. The Commission heard that the cash from deceased's bank accounts was distributed and each of his beneficiaries got twenty-two thousand Emalangeni. The cattle were sold and the cash distributed among the beneficiaries.

The complainants further mentioned that Khumbuzile, deceased's child born out of wedlock never received her share of the inheritance from deceased's estate. Khumbuzile's birth certificate bears her mother's surname and not that of deceased. The Master explained that Khumbuzile's share of the money is kept in the Guardian Fund and can only be accessed by Khumbuzile once the 'surname issue' is addressed.

Observation

The Births, Marriages and Deaths Registration Act provides that a birth certificate of a child born out of wedlock will ordinarily reflect the particulars of her mother.

The particulars of her father will only be reflected if the father gives consent and is present when the birth certificate is being registered. Where it is proved that the child belongs to the deceased, the Master should be able to make an explanatory note directing that the child be paid his or her due from the Guardian Fund.

Recommendation

An affidavit by the family attesting to the paternity of the child should be developed.

Conclusion

The matter is pending.

105. ESTATE LATE WANDA LOMGCIBELO SIBANDZE EM 91/2020

The matter came before the Commission on 13 June 2024. The complainant is Phumzile Sibandze. The complainant mentioned that the deceased died testate on 26 June 2020. The Commission was not shown the Will. The office of the Master was informed of the death by Bongani Nxumalo. Bongani Nxumalo and Phumzile Sibandze were appointed executors of the estate. Bongani Nxumalo later resigned as executor.

The inventory reflects that deceased had a home which had plots at Zone 1 KaKhoza, a house at Ngwane Park at extension 72, cash in the Bank and flats for rental at the home at Zone 1 KaKhoza.

Deceased's husband predeceased her. Deceased has two children-Phumzile and Bongani. Phumzile's complaint is that deceased's Will was never adhered to. The deceased is said to have bequeathed different plots to different people including to her children.

Phumzile's gripe is that Bongani refuses to cooperate in the winding up of the estate. Bongani is keeping cash belonging to the estate and is refusing to remit same into the estate account in the Master's office. After the death of the deceased, the Housing Board in the name of development came and divided the land in the area into plots and further compensated people for structures they had constructed on the land. Bongani allocated certain plots at deceased's home at Zone 1 to strangers and pocketed an amount of one hundred thousand for the home and flats that belonged to deceased's estate. Phumzile stated that Bongani allocated some of the land to his in-laws. She alleged that Bongani's wife collects rent from the flats that at deceased's home and refuses to remit the rental to the Master's office.

The assistant Master Ms Makhosazana Mdluli explained that the plots and home is located at KaKhoza, eMhobodleni and that area is not distributable by the Master's office because it is not title deed land. The Mhobodleni Local Authority is responsible for the administration of the area. The Master's office clarified that it is the Ministry of Housing that allocated plots to different people at Mhobodleni. The deceased allocated the plots to her heirs before the Ministry of Housing came into the picture with development of the area. The Master confirmed that Bongani has been paid one hundred thousand Emalangeni by Housing. The Master's office is unable to intervene in the matter because the area is outside the jurisdiction of the Master's office.

It is unclear how the Master's supervision concerning the property over which she has jurisdiction is going. It has not been explained why the estate has still not been wound up and what the Master's office has done to assist the remaining executrix to carry out her duties. The Commission awaits a report from the Master.

Conclusion

The matter is finalised.

106. ESTATE LAWRENCE MTHIMUNI PHIRI EH306/2021

The matter was first heard before the Commission on 18 June 2024[41]. The complainants are daughters of the deceased and their names are: Nozizwe, Nombulelo and Bonsile. Complainants are born out of wedlock and they have different mothers. The deceased died intestate in 2021. The deceased was married to Nomvula Phiri through customary rites.

The death of deceased was reported to the Master's office. The surviving spouse was appointed executrix. The inventory reflects that deceased had a car, flats for rental at Mpholonjeni, Mbabane, a store and land next to his home.

It is complainants' lamentation that their father's estate has still not been finalized and that they have not benefited from their father's estate.

Assistant Master, Ms Thobeka Dlamini informed the Commission that deceased's children do not see eye to eye with Nomvula. She mentioned that Nomvula does not have a child with the deceased but has a son from a previous relationship. It was Ms Dlamini's submission that Nomvula does not remit rentals from the flats and from the grocery shop to the Master's office. In the file there were affidavits signed by deceased's children giving everything to the surviving spouse. Deceased's children subsequently withdrew the affidavit sighting absence of informed consent on their part.

The Master's office undertook to write to Nomvula and remind her of her duties.

On 18 November 2024, the executrix, Nomvula Phiri appeared before the Commission. She mentioned that she is the surviving spouse of the deceased. She informed the Commission that the shop/grocery is no longer operational; that there are no flats for rental at her marital home and that the car that deceased left is currently parked at Mpholonjeni and has not moved since deceased died.

[41] The matter returned before the Commission on 18 November 2024.

Observation

The complainants unanimously withdrew their complaints and mentioned before the Commission that they were not fighting their step-mother and had no appetite to pursue the matter.

Conclusion

Matter was withdrawn by complainant.

107. ESTATE LATE GEORGE MASIYA EP08/2021

The matter came before the Commission on 18 June 2024. The complainants were deceased's wife and her children. Deceased was married to Sibongile Masiya. The children who appeared before the Commission were Thembile and Futhi Masiya. Deceased had seven children with his wife and eight children born out of wedlock. Two of the children born out of wedlock are still minors.

The death of the deceased was reported to the Master's office. Thomas Masiya and Fatima Masiya were appointed executors after the surviving spouse declined to be nominated as executrix. Thomas is deceased's younger brother. Fatima is deceased's daughter born out of wedlock.

The inventory reflected that deceased had a car, a store and shares in two Associations namely Mangweni Farmers' Association and in Tingonini Farmers' Association.

Deceased's wife collected dividends/shares from both Associations from 2012-2021 and did not remit the money to the Master's office. The surviving spouse mentioned that she used the money for the upkeep of the family and for school fees for deceased's children. Sibongile mentioned that she was a member of Mangweni Farmers' Association while the deceased was a member of Tingonini Farmers' Association. After deceased died, Sibongile mentioned that her shares were taken by Thomas for unclear reasons. Sibongile complained that the

Master's office directed that she be stripped of her shares and that they be given to Thomas.

The assistant Master from Piggs Peak, Mr Phinda Dlamini mentioned that the office received a letter from the Chief where the Associations operate with complaints from deceased's children born out of wedlock. The children were unhappy that they were not benefitting from their father's shares as the surviving spouse was taking all the shares for her own benefit. The family was advised to meet and agree on who would take over deceased's shares on behalf of his heirs. In the family meeting, it was agreed that Fatima would take charge and distribute the shares to members of the family. The shares were transferred to Fatima in November 2021. The matter was again heard by *indlunkhulu* which ruled that Fatima must be removed as a shareholder and that the shares should revert to deceased's surviving spouse. The family returned to the Master's office to complain about the new ruling. The Master's office is alleged to have told the family that it had made a ruling on the matter and that there was nothing more the Master's office could do.

The Deputy Master, Ms Magagula made an undertaking to get in touch with the Committee of the Associations and revert to the Commission with a report. The Commission has still not received the Master's report. The Deputy Master further undertook to intervene and help the widow to get money for maintenance.

Conclusion

The matter is finalised.

108. ESTATE LATE TITUS CHAXIE KUNENE EM 59/2003

The matter was first heard by the Commission on 7 May 2024 and on 12 November 2024. The deceased died intestate on 28 January 2003. At the time of his death, he was a widower as his wife predeceased him. He was, however

cohabiting with Eliza, a Mozambican woman and they had a minor child named Desiree Kunene. Eliza was shot dead after the death of the deceased.

The deceased had thirteen children at the time he died and two of the children were minors. The death notice reflects the children to be: (1) Archibold Kunene; (2) Sipho Kunene; (3) Lucky Kunene; (4) David Kunene; (5) Trevor Kunene; (6) Nombulelo Kunene; (7) Noxolo Kunene; (8) Sabelo Kunene; (9) Zodwa Kunene; (10) Khonzumthetho Kunene; (11) Simphiwe Kunene; (12) Sandile Kunene and (13) Desiree Kunene.

The estate was reported to the Master's office by Lucky Thulani Kunene. Attorney Lindifa Ronald Mamba was appointed executor. After a court application, Lindifa Mamba was removed as executor and attorney Sdumo Mdladla, Ellen Kunene (deceased's sister) and Lucky Kunene (deceased's son) were appointed co-executors. On 25 November 2004 after he was appointed executor, Sdumo Mdladla took out a bond of security for an amount of E2, 081, 982.70. The Commission has not been told if Ellen and Lucky also provided bonds of security before they started winding up the estate as executors. The Commission was also not told if Sdumo Mdladla's bond of security had been renewed twenty years later when he appeared before the Commission to explain his role in the winding up of the estate.

The inventory reflected the following immovable properties: (i) Lot 443/1 Matsapha valued at E800, 000; (ii) Lot 443/2 Matsapha valued at E124,000; (iii) Lot 186 Matsapha valued at E474,000; (iv) Lot 112 Matsapha valued at E124,000; (v) Lot 113 Matsapha valued at E124,000; (vi) Lot 114 Matsapha valued at E2Million and (vii) Portion B of Farm 22 Lugaganeni valued at E3Million.

Movable properties are reflected as various items valued at E200,000. There was cash amounting to E2,081,982.70. There were claims in favour of the estate

registered as a Farm at Lundzi, Watergate (Pty) Ltd and Goodenburg (Pty) Ltd. In terms of the inventory the estimated worth of the estate was E8, 627, 982.70.

The complainant is Sandile Kunene. Sandile complained that deceased's estate has still not been finalized twenty years after he died. He lamented that some of deceased's properties were sold under unclear circumstances and shared among some and not all beneficiaries. He complained that the executors' operations were shrouded in secrecy and that they were not accountable to the beneficiaries.

In 2020 the farm at Lugaganeni was sold for E1.5Million under unclear circumstances to Moses Motsa by Lucky Kunene without the knowledge of the other executors. Except for Lucky Kunene who received E390, 000 Sandile Kunene, Khonzumthetho Kunene, David Kunene and Simphiwe Kunene each received E205, 000 from the proceeds of the sale of the farm at Lugaganeni. As a result of the outcry from the beneficiaries who did not benefit from the sale, Lucky Kunene resigned as executor. The cheques drawn in the payees' favour were from Nzima and Associates. From the payments there is a shortfall of E295, 000 which is not accounted for. The executors, Lucky Kunene and Nzima's office must shed light on what could have happened to the shortfall. According to the Master's report, the executors promised to follow up on the issue of the shortfall. The executors further undertook to pay beneficiaries who benefitted from the payment of E1.5Million less the amounts received in subsequent liquidation and distribution accounts. It remains to be seen if the executors have lived up to their undertaking. The complainant decried the fact that the executors did not live up to their undertaking as in subsequent liquidation accounts the beneficiaries who benefitted in the sale of the property at Lugaganeni were also paid much against the executors' undertaking that they were going to be paid less the amount they had benefitted already.

The Commission heard that the rest of the farm at Lugaganeni was later sold to Moses Motsa for E2,3Million an amount that was far below the value of the

property. The value of the property was estimated to be between E3.5Million and E4.175Million.

The beneficiaries further agreed that a house at Fairview be given to Desiree Kunene. During the hearing before the Commission attorney Mdladla undertook to immediately effect the transfer the house at Fairview into Desiree's name because she is now an adult. The Master's report does not state if Mr Mdladla has transfer ownership of the property to Desiree's name. The house at Fairview was leased out and rent was collected since the death of deceased. The Commission was not told how much was collected and where the money is kept.

In March 2005 the first liquidation and distribution account was approved by the Master and beneficiaries shared proceeds from sale of some of deceased's properties. No sooner had a second liquidation and distribution account been prepared than the executors took the Master to the High Court for an order directing the Master to authorize the sale of the remaining extent of portion 23 of farm No. 11 in the Manzini district[42]. The Master had refused to sign the consent form after all but one (Sandile Kunene) of the beneficiaries had refused to sign the consent form. The Master had stated that she would authorize sale of the farm once all the beneficiaries had signed the consent form. The litigation at the High Court was abandoned after Sandile Kunene subsequently signed the consent form for the sale of the property.

On 5 February 2024, one of the executors Sdumo Mdladla resigned. On 11 April 2024 Sdumo Mdladla transferred an amount of E2, 200, 000 into the Guardian Fund. After making his submissions before the Commission Sdumo Mdladla agreed to withdraw his resignation and complete the winding up of the estate as only proceeds from one immovable property remained to be distributed. The Master met with the executors on 13 May 2024 and discussed the third liquidation

[42] High Court Case No: 1137/2020.

and distribution account with them. The third liquidation and distribution account is yet to be examined by the Master's office once amendments are made.

The complainant, Sandile Kunene mentioned that deceased's estate was worth E68Million but was looted and some of the properties belonging to the deceased was not reflected in the inventory. Such properties included an airplane and a farm at Lundzi which now belongs to Sdumo Mdladla. Sdumo Mdladla denied that he owns the farm in question. Sandile complained further that assistant Master Khanyisile Masilela sold deceased's guest house located in the farm at Lugaganeni to attorney Sabelo Bhembe. Khanyisile was subpoenaed to appear before the Commission to respond to the allegations by Sandile. She did not come and the Commission heard from the secretary that she had said she was sick on the date of her appearance. No sick note was furnished to the Commission.

The Master mentioned that Khanyisile was not involved in the sale of the property in question. She stated that there was no endorsement in the file that Khanyisile authorized the sale of the Guest house to Bhembe. It was her submission that Khanyisile only joined the Master's office in 2020 and long after deceased's property had been sold at the instance of Lucky Kunene.

The Master's report states that the executors are not cooperating.

Conclusion

The matter is not finalised.

109. ESTATE LATE DAVID PHENEAS M. MAKAMO EH 76/1997

The matter was first heard by the Commission on 20 February 2024[43]. Deceased's daughters, Gugu and Colile Makamo are complainants in this matter. Deceased's children are: Nelly, Sifiso, Xolile and Ntombikayise. Sifiso died after the death of the deceased.

The deceased died intestate on 5 February 2006. Deceased was not married but was cohabiting with Lizzie Nkambule. Andreas Lukhele was Lizzie Nkambule's attorney. The estate was reported to the Master by Lizzie Nkambule. Lizzie was appointed executor of the estate in 1997. Deceased's children were not called to a next of kin meeting at the Master's office.

The assets in the inventory consisted of a plot at Ngwane Park, 3 cars, a home at Zone 4 Hilltop and a Liberty Life Policy amounting to E88, 000.

The complainants were unhappy that Lizzie was executor of their father's estate and yet she was not married to the deceased. Lizzie was subsequently removed as executor. In her place, the Master appointed Andreas Lukhele as an independent executor. It is unclear how Mr Lukhele could be an independent executor when he was Lizzie's attorney. Gugu mentioned that they never received their share of the money from the policy. Gugu submitted that Mr Lukhele sold the plot at Ngwane Park for E86, 000 without the knowledge of deceased's children. When Gugu enquired from the Master why the plot was sold without their knowledge, she was told to ask Mr Lukhele. Mr Lukhele is alleged to have mentioned that the plot was sold by CJ Littler law firm. The plot was evaluated bySifiso and its value was placed at E220, 000. The plot was sold for E130, 000. One of the cars, a Toyota was sold and the money was not remitted to the Master's office. Gugu mentioned that she does not know who sold the car.

[43] The Commission heard the matter on 20 February 2024; 20 August 2024; 9, 16 September 2024.

Gugu was appointed executor in 2019 after the plot was sold by Mr Lukhele who subsequently stepped down as executor.

The Master mentioned that the file is still pending because it is difficult to get the family to meet because they do not see eye to eye. The Master submitted that Gugu is renting out a house belonging to the estate and not remitting the money to the Master's office. Gugu denied that she was renting a house at the family home. The Master further mentioned that Lizzie was appointed executor because she had a minor child with the deceased. The child's name is Nokuthula Makamo. The Master submitted that Lizzie did not submit Nokuthula's birth certificate. It later transpired that Nokuthula is not a Makamo but a Matsebula.

Mr Sebenele Nhlengethwa from Dunseith Attorneys appeared before the Commission representing Mr Lukhele. Mr Nhlengethwa mentioned that Dunseith attorneys were instructed by Lizzie Nkambule to claim the insurance money from Liberty Life. It was mentioned that Andreas was Lizzie's attorney and did not represent deceased's estate. The money from deceased's life cover with Liberty Life was deposited at Lizzie's attorney's bank account. A total of E60, 000 was paid towards Nokuthula's maintenance while Sifiso Makamo received E38, 427.90 and the rest of deceased's children did not receive their share. Deceased's children were all minors when he died. The Master mentioned that Dunseith attorneys spent a large part of the insurance money on Nokuthula's maintenance without the authority of the Master's office. The Master submitted that only E31, 000 was transmitted to the Master's office by Dunseith Attorneys and that the said amount is in the Guardian Fund.

Lizzie admitted that she claimed deceased's money for the maintenance of Nokuthula Matsebula. She admitted that Nokuthula is not deceased's child. Lizzie mentioned that she was informed by Doreen Khumalo, a secretary at Dunseith attorneys to collect money received from Liberty Life.

In her report of 17 March 2025 assistant Master Ms Temantimandze Shongwe mentions that Gugu resigned from being executor and in her place attorney Sandile Shabangu was appointed executor on 4 November 2024. Mr Shabangu prepared a second liquidation and distribution account for the distribution of the amount of E87, 975.33 held in the Guardian Fund since 2015. Mr Shabangu's distribution account was not approved because it excluded Ntombikayise Makamo, one of the daughters of the deceased. Before this issue could be resolved, Mr Shabangu resigned. The Master's report does not explain the reasons for Mr Shabangu's resignation and if he was paid for his services, if so how much.

On 14 March 2025, Ms Nompendulo Dlamini was appointed executor after Mr Shabangu's resignation. She has submitted a second liquidation and distribution account which has been approved and is currently being advertised and lying for inspection for twenty-one days.

The Master's report of 17 March 2025 does not reflect the final liquidation and distribution account. The report does not mention how much was paid to Gugu Makamo and to Mr Shabangu when they resigned.

Recommendations

1. Lizzie should pay back the money that was used to maintain a child who is not a beneficiary of the estate.
2. The Master was negligent to appoint Lizzie as executor because she was not married to the deceased.
3. The Master must have reports from executors who resign before the estate is wound up. The office must also ensure that the executor who finalizes the winding up of the estate files his report too.
4. The appointment of executors who resigned in quick succession must be explained to the beneficiaries.

5. The financial repercussion of the appointment of attorneys as executors in estates with limited funds must be minimized or avoided by the Master's office.

Conclusion

The matter is finalised.

110. ESTATE LATE PRINCE MAHHOMU JOHANNES DLAMINI EM 467/2003

The matter was first heard by the Commission on 30 April 2024[44]. The complainants were Khanyisile Dlamini (LaDludlu) and Ayanda Dlamini. LaDludlu is deceased's second wife and Ayanda is deceased's daughter born of the LaDludlu.

The deceased died intestate on 27 March 2003. He was married through customary law to Jabulile Shadile Thwala (LaThwala) and to Khanyisile Ethel Dludlu (LaDludlu). The deceased had nine children namely-Mbongeni, Nkosingiphile, Kholiwe, Hlengiwe, Sanele, Bacebile, Hlobsile, Simile and Ayanda. LaThwala's children are Mbongeni and Bacebile. LaDludlu's child is Ayanda. The remaining number of children were born out of wedlock.

LaThwala died in 2005.

The Master's office was informed of deceased's death by his surviving spouses on 10 November 2003. The inventory reflects that the deceased had an unspecified number of cattle. LaDludlu mentioned that there were twenty-one cattle at home and at eHlandzeni. As of 28 November 2024, Mbongeni said there were thirteen (13) cattle remaining. The inventory further reflected that there

[44] The matter was also heard on 13, 18 November 2024.

were two motor vehicles, two tractors, a house at Two Sticks, a house at Zakhele, flats at Fairview (Makholweni).

LaDludlu complained that she only got a share of deceased's gratuity. The rest of deceased's property was grabbed by Mbongeni and was distributed without the knowledge of the beneficiaries and of the executor. LaDludlu mentioned that Mbongeni sold a cow and that only seven cattle remain. It is alleged that when the Master's office sent letters to tenants of the flats at eSicelwini to pay rent in the Guardian Fund, Mbongeni shredded the letters. LaDludlu informed the Commission that in 2017, rentals from the flats at eSicelwini amounted to seven thousand, five hundred Emalangeni. Mbongeni sold a tractor for seven thousand Emalangeni and gave money to LaDludlu for Ayanda's school fees. Mbongeni sold a motor vehicle for five thousand Emalangeni. The Commission heard from the Master that in 2008, Mbongeni agreed that each of deceased's wives would be given ten cattle from the estate but that this never happened.

LaDludlu mentioned that during his lifetime, deceased planned on letting her live at the house at Two Sticks and that she had vacant land at Mpholonjeni, Mbabane. She later bought herself a home at Thembelisha.

The executor of the estate is deceased's brother Prince Siphila Dlamini. He mentioned that when he took over as executor, the first wife LaThwala did not want deceased's property equally shared between the spouses of the deceased. The executor mentioned that he has not been able to wind up the estate because the family does not see eye to eye. The executor confirmed LaDludlu's submission before the Commission that the family had agreed that LaThwala takes the house at Zakhele and that LaDludlu takes the house at Two Sticks. Mbongeni protested and mentioned that both the properties at Zakhele and at Two Sticks were amassed by his mother working with his father. Mbongeni further submitted that the flats at eSicelwini belonged to his father and LaThwala because his father *wakhonta* with and for LaThwala; that for this reason, he cannot share

proceeds of rentals from the flats with other beneficiaries. Mbongeni further mentioned that he was summoned by *indlunkhulu* at eMakholweni and advised that he renovates the flats. He submitted that he used a lot of money renovating the flats and was not compensated for doing so. Mbongeni admitted to selling tractors, cars and some cattle. He mentioned that he used some of the money for the maintenance and upkeep of the family. Mbongeni mentioned that he consulted with his elder brother before he sold some of the cattle.

Conclusion

The matter is still pending.

111. ESTATE LATE ZODWA JANE MASEKO EH46/2021

The matter came before the Commission on 17 June 2024. The Complainants are Ndumiso Maseko and Zanele Maseko. Deceased is an aunt to the complainants. The deceased died intestate on 16 January 2021. Deceased was not married and did not have children of her own. Deceased had a home at Dalriach where she lived with children of her relatives.

The inventory reflects that deceased had a car, a house at Dalriach and cash at Bank amounting to twenty-one thousand Emalangeni.

Fakubi Melina Shabangu is deceased's sister and an aunt to the complainants. The complainants mentioned that they were told by the Master's office that Fakubi Melina Shabangu is the only beneficiary of deceased's estate since deceased died without having children of her own. Fakubi has informed the complainants that she wants the house at Dalriach sold and the complainants are worried that the children who were living with deceased will be rendered homeless once deceased's home is sold.

The assistant Master, Ms Charity Dlamini stated that the Master's office is not aware about the plight of the children.

Conclusion

The Master's decision is supported that the house should go to Melina Fakubi Shabangu, the sister of the deceased by virtue of common law. The matter is finalised.

112. ESTATE LATE KENNETH BHEKIZIZWE NGCAMPHALALA EH88/2020

The matter came before the Commission on 18 June 2024. The complainant was Thembi Glory Dlamini, the wife of the deceased. Thembi appeared before the Commission with the children of the deceased-Thandeka, Xolani and Thenjiwe. Thandeka is deceased's child with Thembi, the other two children have different mothers.

The deceased died intestate on 28 March 2020. He was married through customary rites to Thembi Glory Dlamini. Thembi is visually impaired. The inventory reflects that deceased had a house at Malkerns and a home at Mvutjini as well as a car.

The house at Malkerns was eventually sold by Swazi Bank because mortgage was not serviced by deceased. The house at Malkerns was sold for E1.6million and the Bank remitted the residue which was eventually shared between beneficiaries. All the beneficiaries received a child's share. Thembi was unhappy to receive a child's share as she claimed that she ought to have received fifty percent of the share because she was in a universal partnership with the deceased. The Commission heard that the matter had been to the High Court and that Thembi's application was dismissed.

Thandeka and Thenjiwe were co-executors and they drew the liquidation and distribution account.

The Master's office through Mr George Langa explained that Thembi was only entitled to a child's share because she was married in terms of customary rites. The Commission heard that Thembi has still not claimed her share amounting to E209, 000 in the Guardian Fund.

Conclusion

The matter was finalised.

113. ESTATE LATE VUSI JEREMIAH DLAMINI EH14/2013

The matter was heard by the Commission on 10 June 2024, 17, 19 and 23 September 2024. Melusi Dlamini, Mncedisi Dlamini and Nombuso Dlamini are the children of the deceased and complainants in this matter. The deceased died intestate on 4 October 2012. Deceased was not married. Deceased's brother, Joshua Dlamini was appointed executor and was later replaced by Sikhatsi Dlamini.

The inventory reflects that deceased had a two-bedroom house at Sidvwashini, Mbabane and two houses on a plot on a 99 years lease at Msunduza. The plot was initially registered in the name of Samson Dlamini. Samson Dlamini is deceased's and Joshua's father. Samson Dlamini predeceased Vusi Jeremiah Dlamini. Samson died testate and bequeathed the plot at Msunduza to the deceased. The deceased built a house at Msunduza and lived there; he also had a house which was occupied by tenants and from which he collected rent. Joshua lived on a plot adjacent that belonging to the deceased in a stick and mud house. In 2012 after deceased died, Joshua moved into deceased's house at Msunduza and remains there to date. Joshua refuses to vacate deceased's house.

Beneficiaries of deceased's estate were granted an order by the High Court evicting Joshua from deceased's house. Joshua appealed the High Court order in the Supreme Court and on 2 May 2019 the matter was remitted to the High Court to be heard afresh. The matter is pending before the High Court to date. Joshua argues that the plot at Msunduza belongs to his father, Samson Dlamini and not to Vusi Jeremiah Dlamini. Mr Langa from the Master's office mentioned that Samson Dlamini bequeathed the property at Msunduza to Vusi Jeremiah Dlamini in his Will. Mr Langa stated that the Housing Board has evidence that the immovable property at Msunduza in registered in Vusi Jeremiah Dlamini's name.

The assistant Master mentioned that the beneficiaries of deceased's estate signed affidavits to the effect that deceased's immovable properties should be sold and that the proceeds of the sale be shared among beneficiaries. The Master signed consent to sell immovable property.

The Commission heard that the property at Msunduza was sold and transferred to the name of a third party who demanded his money back when Joshua refused to vacate deceased's house at Msunduza.

Joshua mentioned that the plot at Msunduza belongs to Samson Dlamini and not to Vusi Jeremiah Dlamini. When the matter returned before the Commission on 23 September 2024, Mr Langa mentioned that the file was now lost and cannot be found.

Joshua was subsequently removed as executor and was replaced by Sikhatsi Dlamini. The reason cited for his removal was that he was conflicted.

Recommendation

File management system must be computerized to minimize disappearance of files at the Master's office and consequent delay thereof.

Conclusion

The matter is still pending in court.

114. ESTATE LATE ABEL MBONIWANKULU DLAMINI

The matter was first heard by the Commission on 6 June 2024. The complainant is Musawenkhosi Dlamini a son of the deceased. The deceased died intestate and widowed on 14 October 2017. Deceased had ten children. The complainant reported the death at the Master's office in 2020. The reason for the delay in reporting the estate was that Gcebile Dlamini, the older sibling of the complainant kept deceased's death certificate and refused to give it to Musawenkhosi. Gcebile is alleged to have told Musawenkhosi that she was now in charge of the assets belonging to deceased's estate.

When the Master called the next of kin meetings, the family snubbed the meetings. The Master appointed attorney Wandile Maseko as a neutral executor to help in the winding up of the estate. The executor was locked out when he sought to compile the inventory from deceased's home at Ka LaMgabhi, Etiyeni.

The complainant mentioned that Mnisi is the assistant Master he reported the matter to. He submitted that the assistant Master informed him that he could not be appointed an executor because he had an older sibling. The basis of this ruling by the assistant Master is not supported by law.

The complainant mentioned that deceased had a car, a tractor, plow, harrow and other farm implements. There was also a plot at Zone 4, Nkwalini, seven sewing machines, six cattle and a water tank which is no longer at deceased's home.

Musawenkhosi's complaint is that the estate is not being wound up and the Master seems to be powerless to rein in his siblings to attend the next of kin meetings called by the Master.

The Commission subpoenaed Gcebile and she appeared before the Commission. Gcebile questioned how Musawenkhosi got a copy of the death certificate and enquired what powers he had to open the estate file in the Master's file without her knowledge and consent as an older sibling.

Recommendation

The Master's office should have power to subpoena next of kin members to attend next of kin meetings. If they refuse to attend the meeting, the Master should ask for help from the police to effect the subpoena.

Conclusion

The matter is not finalized.

115. ESTATE LATE THANDI GININDZA EH2171/2022

The deceased died intestate in 2011. The complainants are Grace Pategwana and Linda Du Pont. Linda Du Pont is deceased's daughter, Grace Pategwana is deceased's sister. Deceased was unmarried at the time of her death. The executor is Grace Pategwana. Linda is the only beneficiary of deceased's estate. When the estate was reported to the Master's office in November 2022, the inventory reflects that there was an insurance policy from eSwatini Royal Insurance Corporation (SRIC) which had matured in 2022 and whose money had been handed over to the Master's office. The executor was given a letter by SRIC reflecting that the money had been transferred to the Master's office. When the executor took the letter to the Master's office, the Master asked for proof of payment and mentioned that SRIC did not pay them any money from the insurance policy.

Assistant Master Ms Lethukuthula Nhlengethwa mentioned before the Commission that the amount of E46, 569.69 was in August 2023 transferred to the Master's office but the executor was not informed. The Master's office

mentioned that it took a while to locate the beneficiaries. The Master informed the Commission that the executor should prepare a liquidation account and have the amount distributed and that would result in the winding up of the estate. The Master promised to give the Commission a final report on this matter. The Master has since filed the Liquidation and Distribution Account.

Conclusion

The matter is finalised.

116. ESTATE LATE ALBERT AARON NXUMALO ES146/2005

The deceased died intestate in 2005. Thembi Dlamini reported the death at the Master's office. Complainants are Joyce Maziya-Nxumalo and Vuma Nxumalo. Joyce is deceased's first wife and Vuma is deceased's son. Deceased was married to Joyce Maziya by civil rites and to Thembi Elizabeth Dlamini by customary rites. Both wives each had two children.

The inventory of the estate reflects that there was a plot in Nhlangano, two houses, two tractors and nine thousand Emalangeni at Standard Bank. The executor is Joyce Maziya-Nxumalo.

The executor complained that the Master's office gave preferential treatment to the second wife and sided with her. The second wife had her home on the plot belonging to the deceased in Nhlangano. Prior to his death, deceased had taken a loan of E200, 000 from Swazi Bank. The plot was subsequently auctioned by Swazi Bank much against the executor's protestation that she had found a buyer who was willing to pay more for the plot. Joyce stated that Zama Dlamini had agreed to buy the property for E800, 000. Joyce mentioned that the Master's office refused to cooperate with her when she attempted to sell the plot. Joyce mentioned further that Mr Zonke Magagula represented Swazi Bank when the plot was auctioned.

The value of the property that was auctioned was E850, 000. The plot owed rates amounting to E400, 000 and E200, 000 claims were filed by a debtor who bought the property from deceased during his lifetime.

The deputy Master informed the Commission that her office does not have the details of how the property was sold without the Master's knowledge and consent. It was mentioned that the second wife did not have a marriage certificate, only an affidavit was produced stating that she was married to the deceased.

Complaint(s)

- The office of the Master played a major role in the sale of the property in Nhlangano through fraudulent means.
- Joyce alleges that she was threatened by officers in the office of the Master and told that they would ensure she did not benefit from her husband's estate.
- The Master did not explain the process of winding up the estate to her as an executor.
- Beneficiaries got nothing from the properties that were sold.
- When Joyce and her family enquired about the estate, they were accused of causing chaos at the Master's office.
- Mr Zonke Magagula, the lawyer who represented Swazi Bank at the time said E250, 000 was the balance remaining from the sale of the plot. The balance was never remitted to beneficiaries.

The Deputy Master made an undertaking to enquire from the Swazi Bank about the process followed in the sale of the property in Nhlangano. She undertook to revert to the Commission with a report two weeks after the hearing. The Commission awaits feedback from the Master in this regard.

It was suggested that Mr Magagula should furnish the Commission with a report of how the property was sold and what happened to the money that remained after creditors had been paid.

Conclusion

1. Zonke Magagula Attorneys to account for the property sale residue of E250 000.00 to the Master and the Eswatini Law Society.
2. The matter is concluded as far as the Commission is concerned.

117. ESTATE LATE RUTH BAGEZILE THOMO (born DLAMINI) EM 279/2018

The deceased died intestate on 3 October 2018. The deceased was married to Michael Thomo through customary law. There were no children born of the marriage. Thandokuhle Trevor Leaf is a son of the deceased from a previous relationship. The complainant is the husband of the deceased and executor in this matter.

Thandokuhle Leaf reported the death of his mother to the Master's office on 16 October 2018. The inventory reflects that deceased had a house at Two Sticks and a house at Ngwane Park. Both houses are valued at E1, 340 000.00, cash at Bank and a car.

The next of kin meeting was held on 30 October 2018 and the surviving spouse was chosen as the executor. Mr Leaf subsequently wrote a letter and objected to Mr Thomo being appointed as an executor. The basis of his objection was that deceased and Mr Thomo had been separated since 2001 and at the time of her death, the deceased had instituted divorce proceedings.

The liquidation and distribution account was prepared by the executor and approved by the Master on 1 August 2019. Mr Leaf objected to the liquidation

and distribution account and filed an application in the High Court being High Court Case No: 164/2020. The matter is still pending in court.

The executor mentioned that of the two plots, one is residential and the other has flats that are being rented. He mentioned that since the death of the deceased, Mr Leaf has been collecting rent and not remitting the amount in the estate account. The executor told the Commission that there was cash at the Bank amounting to E86, 827.45.

Mr Thomo's complaint is that the estate has still not been wound up because of a matter that is pending in court. During the last hearing before the Commission Mr Thomo undertook to instruct his attorney to follow up on the matter.

The concerned parties agreed to the sale of the immovable property described as Lot No. 1043 situated at Ngwane Park, Extension No.1 Township, Manzini District and proceeds thereof to be distributed equally.

They further agreed that the following assets will be inherited by the son of the deceased Thandokuhle Travor Leafe:

1. Immovable property Lot No. 460 Zakhele Township Extension 3, Manzini District.
2. Motor vehicle described as Toyota sedan registered PSD 871 AS
3. Cash available in the estate.

Conclusion

The matter is finalised.

118. ESTATE LATE MICHAEL JACOBUS LA GRANGE

ESTATE CAROL LA GRANGE EM/EH 199/2010 A & B

Brief Background

The matter was first heard by the Commission on 31 January 2024[45]. The complainant is Mphatsi Patrick Mhlanga. Michael and Carol LaGrange were married and one child was born of the marriage. The name of their child is Magdalene Susan LaGrange. Michael died intestate in 1971. In Michael's name was registered Portion 5 of Farm 65, Malkerns in the Manzini district held under deed of transfer 213/1970. Magdalene died in 2004. It appears that Michael and Magdalene's deaths were not reported at the Master's office at the time of their deaths. Carol LaGrange (nee Van Niekerk) died intestate in July 2010. At the time of her death, Carol lived on the farm registered in her husband's name in Malkerns.

At the time of Carol's death, Mphatsi Patrick Mhlanga and Thabile Mhlanga (nee Mkhaliphi) were married and they both resided on Carol's farm. Mphatsi and Thabile subsequently divorced. Mphatsi mentioned that from a young age, he lived with the deceased and that deceased was responsible for his upkeep as she also paid for his school fees.

The Commission heard that at the time of her death, Carol had no known relatives living in Eswatini. The complainant mentioned that he tried to look for deceased's relatives by contacting the Ministry of Foreign Affairs and the Embassy of Eswatini office in London but did not get positive feedback.

Report of death at Master's office

The death of Michael and the death of Carol was reported by Thabile Mhlanga on 12 August 2010. Thabile filed an inventory on the same day reflecting that the

[45] The matter returned before the Commission on 10 April 2024 and on 5 August 2024.

couple had no children as their only daughter died in 2004. The inventory reflects that deceased had a farm valued at E1, 408, 496.00 at the time of her death.

The first next of kin meeting was held at the Master's office in Manzini on 7 October 2010 and the estate of Michael LaGrange and that of Carol LaGrange was discussed. Present in the meeting were: Mr Magagula (Master), Sethu Makhanya (relative), Gugu Makhanya (relative), Thabo Mzamo (relative and associate), Mnguni Simelane (acquaintance), Mbongeni Steven Motsa (acquaintance and neighbour), Patrick Mhlanga (acquainted relative), Doctor Ntshangase (acquaintance and relative of Mrs Mhlanga Thabile), Thabile Mhlanga (Guardian, acquaintance) and Martin Dlamini (attorney for Thabile Mhlanga). Notably, the complainant mentioned that there were no known relatives of the LaGrange family living in Eswatini at the time of Carol's death yet the minutes of the 'next of kin' meeting reflect names of people who were reflected as relatives. Clearly, this is untrue and misleading information given to the Master's office.

In the absence of relatives and next of kin of the deceased in this estate, the Master's office only had to appoint a curator to preserve the estate while relatives were being sought. That did not happen. Instead, the estate property was dissipated and immovable property sold and transferred to people who clearly did not have clear claims against the estate.

Appointment of Executrix

During the first next of kin meeting, Doctor Ntshangase (a relative of Thabile Mhlanga) nominated Thabile Mhlanga to be executrix. All present, seconded Thabile's nomination and she was appointed executrix. The complainant challenged Thabile's appointment in Court but later abandoned the litigation.

Work done by the executrix

The executrix transferred the Portion 5 of Farm 65, Malkerns from Michael LaGrange's name to the name of Carol LaGrange. Conveyancer M.J. Manzini prepared a deed of transfer and registered it on 26 May 2014[46]. Thabile began the process of winding up Carol's estate by collecting estate property and attending to claims against the estate. The Master's report states that Thabile determined the estate heirs[47]. How that determination of estate's heirs was determined, is not stated.

The Master's office received individual claims against the estate from the executrix and her children, from Gugu Makhanya, from Thabo Clifford Mzamo, from the Malkerns Irrigation and Development Company Ltd and conveyancer's fees. The Master gave consent to subdivide the farm, sell a portion thereof and settle the outstanding debts against the estate. On 30 April 2015, the Master gave consent for the sale of Portion 79 (a portion of portion 5) of Farm 65 by the executrix. The portion was sold to Woodman's Family Trust. The purchase fee was received by the conveyancer and later deposited into the Guardian Fund.

The Master's office submitted that it was an oversight for the office to have given the executrix the authority to have a certain portion of deceased's farm transferred to her name without a deed of donation. The Master's report states that the office tried to withdraw the documents lodged with the conveyancer authorizing the transfer of portion 81 (a portion of portion 5) of farm No: 65 but found that the land had been transferred to the executrix already.

[46] Deed of Transfer No: 435/2014

[47] See paragraph 9 of Master's report on the estate of the late Michael Jacobus LaGrange and estate late Carol Catherine LaGrange dated 19 February 2025 signed by Temantimandze Shongwe.

Complaint

Mphatsi complained that the executrix sold deceased's property to all and sundry and transferred a portion of the property to herself while relatives of the deceased were still being sought.

Recommendations

1. The Master's office was negligent to have convened a meeting with people who were neither heirs nor 'next of kin' and to allow the distribution of the estate to people who were not beneficiaries of the estate.
2. The LaGrange estate is in law considered as property without a rightful owner. The property reverts to the State. Where no heir is found, the deceased's estate is forfeited to the State. Section 103 of the Administration of Estates Act[48] (immovable property as opposed to unclaimed monies) states that unclaimed estate funds are placed in the Guardian's Fund and they should remain there for forty years before they are forfeited to the State.
3. The Master should instruct the Attorney General to initiate legal action to reclaim the land that was fraudulently sold and transferred to people who made baseless claims against the estate.
4. The manner the executrix sold parts of deceased's land is a matter for further criminal investigation.

Conclusion

The matter is still pending.

[48] No: 28/1902.

119. ESTATE LATE SAMUEL MANDLA KOLONI DLAMINI: EM 83/2015

The Commission heard this matter on 6 and on 29 May 2024. The complainants were Nonhlanhla and Nosipho Dlamini, children of the deceased.

The deceased died testate on 27 March 2015. At the time of his death, deceased was married to Ellen Dlamini (LaMkhonta) by civil rites. The death notice reflects that deceased had seven children. Three of the children predeceased Samuel Mandla Dlamini. The children who are beneficiaries are Muzi, Nosipho, Sikhumbuzo and Nonhlanhla. Sikhumbuzo is the only child alive born of the marriage between deceased and LaMkhonta.

On 16 June 2015, a next of kin meeting was held where LaMkhonta and Peterson Dlamini were nominated and appointed executrix and executor respectively. The inventory reflects that the deceased had ten motor vehicles, money in different bank accounts and immovable properties. During the hearings before the Commission, it transpired that the deceased had flats that were rented. It was mentioned by the complainants that in 2021, SPM collected E60, 000 per month as rentals from deceased's flats. From 2015-2020 rentals were never remitted to SPM.

Ms Ziphozonke Fakudze from the Master's office mentioned that the motor vehicles were transferred to the names of the beneficiaries and cash was also shared among the beneficiaries. Peterson stated that the Master's office was helpful in guiding them about how to carry out their duties as executors. Peterson further mentioned that after the distribution of assets to the beneficiaries, the remaining properties belonging to the estate was massed and donated to a family Trust in terms of the Will. LaMkhonta is a Trustee.

Sikhumbuzo told the Commission that they are unable to pay other beneficiaries from the Trust funds because expenses incurred in paying rates, paying

employees and maintenance of the flats far outstrip the money brought into the Trust through rentals.

It was mentioned by complainants that they took the matter to the High Court and got an interim order that they be paid a certain amount from the rentals collected from deceased's flats. The applicants at the High Court were Nonhlanhla, Nosipho and Muzi. They were represented by Mr Sifiso Jele. The beneficiaries met at SPM and it was agreed among themselves that the complainants would each be paid E3, 500 per month. LaMkhonta appealed the High Court ruling. The Supreme Court ruled that the beneficiaries should be paid from the Trust but remitted the matter to the High court for determination of the amount to be paid to each of the beneficiaries. Mr Jele mentioned that he never pursued the matter at the High court because he withdrew his services after his clients expressed dissatisfaction with his services.

Complaint(s).

- Complainants informed the Commission that they were unhappy that the Master did not give them updates while the winding up of the estate was ongoing; they said they were shocked to be informed that the file was closed when they thought it was still being wound up.
- Complainants are also aggrieved that the Trustee of the Family Trust refuses to pay them from the Trust Funds.

Recommendations

1. The Commission advised the complainants and their legal representative to meet with Sikhumbuzo and LaMkhonta to see if they could not reach an amicable conclusion of how they could benefit from the Family Trust.
2. The matter is now outside the jurisdiction of the Master's office. There are no complaints about what was distributed under the supervision of the Master's office.

Conclusion

The matter is pending.

120. EST. LATE WILLIAM JOHN DUNBAR GRAY EH 244/2022

The Commission first heard this matter on 5 February 2024[49]. The complainant is the wife of the deceased Ms Vinah Mamba. The couple was married through civil rites and were issued with two marriage certificates in 2001 and in 2019 respectively. The couple was married on 7 January 2011. The marriage was out of community of property[50]. Sometime in 2019 the couple purported to change their marital regime to marriage in community of property. This, according to Ms Vinah Mamba, they did pursuant to advice that they sought and obtained from the office of the District Commission's office. Regarding the actual process to be followed in order to achieve their objective, the couple approached the office of the Principal Secretary in the Ministry of Home Affairs. They were advised to prepare an affidavit stating that they desired to change the status of their marriage from one which was out of community of property to a marriage in community of property. A certificate issued on 29 October 2019 stated that their marriage was now in community of property.

The inventory reflects that the deceased had immovable property-portion 2, farm 987 in Motshane, a main house on the farm, a woodworking factory, a mobile home and a 1991 Mazda LDV USD 551 AM. Deceased owned sixty percent of the shares in Motshane Development Pty Ltd and fifty percent shares in Timbercraft (Pty) Ltd[51]. In terms of the Will, deceased's shares in both companies were bequeathed to his wife, his daughter and his son[52]. In terms of the liquidation

[49] The matter returned before the Commission on 13 May 2024; 9 and on 16 October 2024.
[50] See Ante-nuptial Contract No: 3/2001
[51] See page 1 of the Liquidation and Distribution Account dated 30 July 2024.
[52] See paragraph 3.6 and 3.7 of the Will No: 187/2023.

and distribution account's executrix's notes it is stated that Allistair Gray had forty percent shares in Motshane Development Company (Pty) Ltd and fifty percent in Timbercraft (Pty) Ltd. The executrix's notes further state that during the lifetime of the deceased in this matter, he reached an agreement with the executor of Allistair's estate that a swop would be done in that Allistair Gray's estate would abandon its fifty percent shareholding in Timbercraft (Pty) Ltd for an additional five percent in Motshane Development Company (Pty) Ltd. There are no supporting documents to this effect.

The deceased died testate on 27 November 2022. His death was reported to the Master's office by Ms Vinah Mamba on 7 December 2022. The deceased's biological children are Allistair Gray (who predeceased him) and Jacquelene Keel who is executrix in terms of the Will.

Ms Mamba submitted the marriage certificate that was issued in 2019 in the Master's office in assertion of her rights arising out of the revised proprietary marital regime. Subsequently, and at the instance of the executrix, the marriage certificate in community of property was re-converted to one out of community of property without Ms Mamba's knowledge. Jacquelene's conduct in this regard was prejudicial to the proprietary interests of Ms Mamba. The High Court dismissed Ms Mamba's application to interdict the Principal Secretary in the Ministry of Home Affairs from revoking the marriage certificate issued in February 2023 at Jacquelene's instance[53]. The application was dismissed on the ground that Ms Mamba did not meet all the requirements for an interdict. The Court held that she had a case worth pursuing by way of review of the Principal Secretary's conduct of cancelling Ms Mamba's marriage certificate without affording her a hearing.

[53] High Court Civil Case No: 2598/2023

The first next of kin meeting was held on 21 December 2022 where the Will was read. Ms Mamba pointed out an anomaly in the Will that it had a missing page. The executrix stated that it was a numbering error and no page was missing in the Will. Jacquelene's explanation was confirmed by John Perry who prepared the Will. The Master's office accepted Jacquelene's explanation.

Jacquelene changed the share certificates of deceased's companies into her name and into the name of Stella Zwane, the widow of Allistair Gray, as she put it, for the purpose of continuity. It is unclear why Vinah's name was left out when the names on the share certificates were changed while that of Allistair's widow was added on the share certificate. In terms of the Will, the beneficiaries of the shares in Motshane Development Company (Pty) Limited are Vinah Mamba Gray and Jacqueline Ann Keel. Why the share certificate was changed to reflect the name of Allistair's widow when Allistair is not a beneficiary in Motshane Development Company (Pty) Limited is unclear. What is clear is that the relationship between the executrix and Ms Mamba-Gray is frayed.

It has not been explained to the Commission how Allistair could have been a beneficiary to his father's estate when he predeceased his father. The deceased bequeathed certain property to his son and not to the descendants of his son. The inheritance vests on the heir when the deceased dies. If the heir dies before the inheritance vests on him, he may not benefit from deceased's estate. In supervising the administration of the estate in this matter, the Master should have brought this position of the law to the attention of the executrix.

Changing the names in the share certificate into the executrix's name finds support in section 97(3) of the Companies Act, 2009 which provides for the registration of an executrix in the company's register as *nomine officii*. Such nomination of an executrix does not exclude the Master's jurisdiction to supervise the administration of deceased's estate nor does it exempt the executrix from being answerable to the beneficiaries of the estate.

Ms Mamba mentioned that Timbercraft Company was no longer operating as it had been hollowed out by the executrix who removed the tools within the workshop at will without Ms Mamba's knowledge. This allegation was not disputed by the executrix.

Ms Mamba mentioned further that during his lifetime, the deceased had opened a joint bank account in Mauritius in deceased and Vinah's name and that she had no knowledge whether the monies in the account had been repatriated to the country by the executrix. Deceased's Will however reflects that proceeds from his IPRO Investment in Mauritius is left to his beneficiaries being his wife, his daughter and son[54]. It was mentioned that the money had since been repatriated from Mauritius and was reflected in the Liquidation and distribution account of 30 July 2024 and it amounted to E1, 712,122.70.

A liquidation and distribution account of 30 July 2024 was filed by the executrix. On the face of the account, deceased's private assets and companies' assets as well as expenses have been lumped together much against the principle of companies having a separate and distinct personality from its owner, director or shareholder. This liquidation and distribution account was not approved by the Master for the following reasons: first that the method adopted by the executrix to combine all the assets of the estate in one account resulted in her getting a lion's share of the estate in executrix's fees and her inheritance much to the detriment of other beneficiaries. The executrix was advised by the Master to prepare a periodic account in terms of section 51(4) of the Administration of Estates Act to ensure fair distribution of the estate to all beneficiaries. Through her attorneys, the executrix enquired about the rationale of preparing a periodic liquidation and distribution account and the matter has not moved since. The executrix further refused to remit the money belonging to the estate in the

[54] See Paragraph 3.2 of Will No: 187/2023

Guardian Fund and asked to be given a copy of the directive that requires her to do so[55].

The executrix has consistently refused to provide maintenance for the surviving spouse even though requests for maintenance have been made by the surviving spouse.

In her report, the Master has undertaken to move an application for the removal of Jacquelene as executrix because of her failure to cooperate with the Master's office in the winding up of the estate. The Master further mentioned in her report that the strained relationship between the executrix and deceased's surviving spouse is another reason why the Master's office wants to remove the executrix in terms of section 84 of the Administration of Estates Act, 1902.

Complaints

- Executrix refused to pay maintenance to the surviving spouse
- The Will relied upon in the distribution of deceased's estate was incomplete as there was a page missing. The complainant did not, however take this matter up in Court.
- The complainant lamented that she was sidelined by the executrix in the winding up of her husband's estate.

Recommendation

It appeared to the Commission that the executrix and the surviving spouse do not see eye to eye; that the executrix has, without good reason failed to pay the surviving spouse maintenance from the available funds in deceased's estate. The executrix has refused to cooperate with the office of the Master when she was advised to deposit the estate money in the Guardian Fund. It is recommended that the executrix be removed and a neutral executor be appointed to finalise the winding up of the estate.

[55] See attachment MCL7.

Conclusion

The matter is still pending.

121. ESTATE LATE CLARA SONILE MDLULI EH 1/2015

The matter first appeared before the Commission on 30 April 2024. The complainants are Michael Mndzebele, Mncedisi and Mongi Mndzebele. The deceased is Michael's mother and a grandmother to Mncedisi and Mongi.

The deceased died on 24 December 2024. Her death was reported at the Master's office by Michael and a next of kin meeting was held where Thuli Makama was appointed Executrix. Thuli Makama is related to Michael in that her mother is a younger sister to the deceased in this matter. The inventory reflects that the deceased had a van, a home on plot 24/25 at Waterford Park.

Complaint

The complaint before the Commission is that the beneficiaries do not have a title deed of the land on which their home is situate because Thuli Makama disappeared with the title deed. Thuli tried to sell the land without the knowledge and consent of the beneficiaries. In 2019, the High Court issued an order that Thuli must return the title deed to Michael. Thuli has still not returned the title deed. Michael has failed to locate Thuli as she is said to have left Eswatini and her place of domicile is not known to the beneficiaries.

The complainants do not have money to apply for a lost title deed. The Master's office said the estate is at the distribution stage.

Recommendation

Complainants are advised to apply for a new title deed. Sell a portion of the land to cover sale costs.

Conclusion

The matter is pending.

122. ESTATE LATE LOIS DOROTHY WAY EL105/1992

The matter was heard by the Commission on 12 June 2024. The deceased died testate on 23 March 1985. In her lifetime deceased was married twice; first to Mr Way and later to Mr Cook. Both husbands predeceased her. The estate of Mr Way, Mr Cook and that of Dorothy Way have not yet been wound up. Dorothy did not have children with Cook. The complainants are Raymond Munroe, Kevin Way, Rodney Way and Karl Way.

The estate was reported to the Master's office by Benjamin Way on 30 June 1992. Benjamin is deceased's son. Benjamin was subsequently appointed executor. Benjamin is now dead. Kevin Way was appointed as executor replacing Benjamin. The Commission was told that the estate had immovable properties namely: Farm 229 Lubombo measuring 115 hectares; Portion 23 and 24 of Farm 80; Portion 4 of 182 and Portion 2 of 182. The estate also had cattle, goats, firearms and household effects.

Complainants' gripe is that thirty-two years after the death of the deceased, the estate has still not been wound up. They also complained that Benjamin transferred all of deceased's immovable properties into his name without the knowledge of beneficiaries. The question is how did Benjamin donate deceased's properties to himself, did the Master consent to such donation and transfer? The complainants mentioned that the documents transferring deceased's immovable properties to Benjamin were done fraudulently.

The complainants mentioned that they instructed Joseph Warring to challenge Benjamin's transfer of deceased's immovable properties to his name in the High

Court and they lost the case in court. The complainants informed the Commission that the matter is still pending in the Supreme Court.

The Commission heard that some of deceased's properties (portion 3 of farm 229) has been registered in complainants' names after it was taken out of Benjamin's estate. The executors of Benjamin's estate are Gigi Reid and Nkosingivile Dlamini. Deceased's estate has filed a claim against Benjamin's estate.

Mr Xulu, the assistant Master at Siteki mentioned that the office was duped by Benjamin in the first Liquidation and distribution account. Benjamin informed the office that the properties he distributed and transferred to himself were in his name even though he distributed them in terms of the Will.

Conclusion

Th**e** matter is pending.

123. ESTATE LATE PROFESSOR MUSA PERSON DLAMINI EM 414/2021

The matter came before the Commission on 13 May 2024. The deceased died intestate. He was married to Sibongile Victoria Mkhwanazi (LaMkhwanazi) and to Gabsile Candy Nkhambule (LaNkhambule) in terms of customary law. The deceased has nine children born from his wives and from other relationships. The names of deceased's children are: Thulani, Bongani, Mkhululi, Sakhile, Melusi, Zibonele, Siyabusiswa, Temaswati and Nothando. Melusi is the complainant.

The inventory showed that the deceased had the following immovable properties: Plot 72 Trelawney Park, Plot 987 Extension 9, Plot 519 Ngwane Park, Plot 527 Siteki and Farm 33 of Portion Pebbles Block. Deceased had two motor vehicles, a Ford ranger and a Land Cruiser. He also had cash in Bank accounts held at Standard Bank and at Swaziland Building Society.

The estate was reported to the Master's office on 2 September 2021 by Thulani Dlamini. In the next of kin meeting held on 15 July 2022, Sakhile, Thulani and Melusi were appointed executors. All the beneficiaries except Melusi agreed that LaMkhwanazi and LaNkhambule should keep their homes at Trelawney Park and at Fairview respectively. Melusi refused to sign the agreement forms to that effect. The Master's office endorsed the agreement by the majority of the beneficiaries. On 15 June 2023, and through a court order issued under High Court case Number 1281/2023, Melusi was removed as executor and his letters of administration were revoked. Subsequently, the Master's office received affidavits from the remaining executors stating that Melusi will be paid executor's fess in respect of the first liquidation and distribution account.

Before the Commission Melusi complained that he was never paid in full the executor's fees as promised by the executors. Melusi alleged that he was owed E17,000 as executor's fees. The executors and the Master's office promised to pay Melusi the owed amount after the sale of the plot in Siteki. The Commission was informed that except for the plot in Siteki which is yet to be sold and its proceeds distributed among the beneficiaries, the estate has been wound up.

Conclusion

The matter is finalised.

124. ESTATE LATE PROFESSOR LWANDLE KUNENE EH 19/2021 AND ESTATE LATE MTIKIZA PHILIPHINA KUNENE EH 40/2022

The matter came before the Commission on 8 May 2024. The deceased Professor Lwandle Kunene died intestate on 28 December 2020. Mtikiza died on 7 February 2022. Lwandle and Mtikiza are sisters. Lwandle did not have children and was

not married at the time of her passing. Both deceased persons are Thabiso's grandmothers.

Professor Lwandle's estate was reported at the Master's office. Thabiso mentioned that Mbhekwa Mthethwa was imposed on the next of kin of Professor Lwandle's estate after the Deputy Master alleged that the next of kin of deceased were not seeing eye to eye.

The inventory reflected that there was a house at Mukela township and another house at Thembelihle. The house at Thembelihle was leased out and rentals were collected. VJR is responsible for the collection of the rentals and has failed to account for the rentals. There were two plots at Madonsa (which were sold by Professor Lwandle during her lifetime) and cash at Bank. Thabiso mentioned that there was a policy in Namibia and a funeral policy at Nedbank, a generator at Mukela and books authored by Professor Lwandle.

Thabiso's complaint is that the beneficiaries were never informed about progress in Professor Lwandle's file. Instead of getting updates, they were told that the file was lost and each time they came to the Master's office they were made fun of. Thabiso told the Commission that there was cash in the bank but it was not reflected in the liquidation and distribution account. Thabiso mentioned that Mtikiza and Gostina are Professor Lwandle's siblings and beneficiaries in her estate.

The executor mentioned that he evaluated the properties and engaged Swazi Auctioneers to sell the property at Mukela. The house at Thembelihle was transferred to the estate of Mtikiza. VJR remitted E45,000 as money received for rent of house at Thembelihle. In the Nedbank and Standard Bank accounts there was E19,000 and E18,000 respectively. The executor mentioned that only the cash at Bank remains to be distributed to beneficiaries. The rentals from the house at Thembelihle now belong to the estate of Mtikiza. The executor undertook to

provide the Commission with his report attaching all relevant documents. The executor's report has still not been submitted to the Commission.

The deputy Master informed the Commission that it is not true that the file was lost. According to the Master's office, Mr Kunene accessed the file.

Recommendation

The executor should submit his report as promised.

Conclusion

The matter is still pending.

125. ESTATE LATE KHALALEMPHI JOSEPH MNDZEBELE EM 427/2007

The matter came before the Commission on 9 April 2024 and on 14 November 2024. Mbusi and Gabi Mndzebele are the complainants and sons of the deceased. The deceased died testate on 3 November 2007. The estate was reported at the Master's office on 16 November 2007 by Makhosahlangene Mndzebele a son of the deceased. The deceased was married to five wives in terms of customary law. The first wife is Patricia Siphiwe Mndzebele (LaDlamini). LaDlamini is Makhosahlangene's mother. The deceased had thirty-seven children.

The inventory reflects that the deceased had Farm 693 in Manzini next to Dwaleni Power station and Farm 167 situated in the Manzini district, two shops on nation land, two Mercedes Benz, two Toyota vans and two tractors. The complainants confirmed the items in the inventory but added that the deceased had sixteen cattle which disappeared without trace after the death of the deceased. Complainants mentioned that the cattle were taken to Shiselweni by Makhosahlangene.

Patricia Siphiwe Mndzebele was nominated as the executrix in terms of the Will at a next of kin meeting held on 4 December 2007. She prepared two liquidation

and distribution accounts which never saw the light of day because application proceedings were instituted at the High Court under case Nos 604/2014 and 1746/2014.

Complainants mentioned that they are unhappy about the Will because it gives everything to Makhosahlangene and does not provide for the maintenance of the widows of the deceased much against provisions of the Constitution. They complain that the Will was challenged in Court in 2015 and the matter is still pending in court. Mbuso Simelane is the attorney representing the applicant in the matter challenging the validity of the Will. They are unhappy that Mbuso now claims that the two Mercedes Benz belong to him. They also mentioned that all the cars and tractors have since been sold and they did not benefit from the proceeds of the sale.

Ms Ziphozonke Fakudze mentioned that the winding up of the estate was stalled when Phuzukuvela (one of deceased's sons) filed application proceedings at the High Court for the removal of the executrix and other proceedings seeking to have the Will declared null and void.

Complainants mentioned that they had no gripe against the Master's office. Their complaints are against Makhosahlangene and the executrix who are said to be benefitting from deceased's estate while the other widows are not getting maintenance from the estate. They mentioned that the executrix has bought heavy machinery a TLB, horse and trailer before the estate has been wound up.

On 14 November 2024 the Commission heard from Makhosahlangene and from the executrix. The executrix mentioned that the estate has still not been wound up because there is pending litigation in court.

Makhosahlangene mentioned that deceased registered Makhomba Jewel Company during his lifetime. The company was responsible for managing deceased's business. Since the death of deceased, the company is responsible for

the estate and the widows get maintenance from the company. Deceased's second wife Ncane confirmed that they get money from Makhosahlangene and that he also gives them farming implements and helps them with farming. Complainants stated that Makhosahlangene has now registered Makhomba Logistics which is now hollowing out Makhomba Jewel Company to benefit the executrix and Makhosahlangene.

Conclusion

The matter is pending in Court.

126. ESTATE LATE LUKE MLUNGU MBINGO EH 9/2007

The deceased died testate on 10 November 2006. His estate was reported to Master of the High Court on 12 December 2006 by his son Bongani Mbingo. He had three wives, Nokukhanya Mbingo born Chirwa, Ntombi Siponono Mbingo born Mkhabela and Margaret Mbingo who is the Applicant in High Court case 4254/08 whose marital status is being questioned. Deceased had four minor children and six major children who survived him.

The inventory reflected about 20 rental properties located on Swazi nation land at Ntabamhlophe; a home at Ntabamhlophe; flats at Esitjeni; a herd of 8 cattle at Mahebedla and cash at bank. The will appointed Bongani as the Executor, he was reported to be the one collecting rentals in these properties. In terms of the will the deceased bequeathed the rental income from the homestead at Ntabamhlophe to the two wives and minor children. The minor children of the deceased are not benefiting from these collections when they should. The Master reported that the Executor has to give an account for the rentals collected by him over a number of years. The Master mentioned that there is some money in the guardian fund which had been deposited by the Executor from the rentals before he decided to appropriate it to himself. The minor children belonging to Siponono Mbingo

received some money from the guardian fund however. The Master's Report indicates that during 2007 Siponono Mbingo requested funds from the estate to cater for school expenses for her children and was given.

Following his appointment in a next of kin meeting held on 25 August 2008, the Executor published a liquidation and distribution account dated 20 October 2008. In terms of the said account the Executor distributed E62, 216.26 to six beneficiaries namely Nokukhanya Mbingo, Siponono Mbingo (the two wives) and Philani Mbingo, Philile Mbingo, Khethukuthula Mbingo and Nomphumelelo Mbingo, who were minor children in terms of the will. The will of the deceased excludes the third wife Margaret Mbingo. The will of the deceased also bequeathed his livestock in terms of which he directed that same be sold and the proceeds be distributed equally among his two wives and minor children. Further that the property of his predeceased son should remain in the possession of Nokukhanya Mbingo in order to enable her look after Nqobile Mbingo his grandchild. Another liquidation and distribution account dated 31 March 2008, distributed the rentals collected to the beneficiaries of the deceased. Sums ranging from E370 and E320 were paid out.

On the 28th November 2008, Mrs Margaret Mbingo launched an application in the High court seeking an order declaring her as a surviving spouse of the deceased and stopping the Master and the Executor from proceeding with the winding up of the estate pending finalisation of the matter. She attached an affidavit confirming her Swazi Law Marriage to the deceased dated 19 February 2019. The High Court file pertaining to this matter was reportedly missing at the High Court making it difficult for the attorneys to proceed with the matter. The estate matter under discussion is currently pending at the High Court under case no.4254/2008. In yet another court application Margaret Mbingo sought an interdict against interference with her occupancy of the homestead she occupies.

The Applicants attorneys are allegedly inactive in prosecuting the matter. The Master has opted to halt the finalisation of the estate pending the finalisation of the matter in court. The matter should however be followed closely so that the estate is wound-up expediently. The matter remains unresolved as the High court has not finalised Margaret's matter.

Observation

Master does not have a system in place to follow up on the estate files thus leading to the lengthy delays in winding up estates. Deceased estates remain pending for lengthy periods with no follow-ups.

Recommendations

1. That the Masters office should have a legal advisor to attend to legal matters and to represent it in court under the guidance of the Attorney General.
2. It would be important to also learn from other jurisdictions on how they have addressed the capacitation of the office of the Master in handling complex legal matters.
3. The Master needs to have a case management system for proper case management processes and follow-up.

Conclusion

The matter is finalised.

127. ESTATE LATE ESSOP ISMAEL TILLY MOONSOR EM 90//2015 and EH 257/2015

The Commission heard this matter on 13 May 2024 and again on 6 June 2024. In this estate the deceased, a South African business man and resident of Ermelo, died testate on 7 May 2009. In October 2014, the brother of the deceased, Mohammed Ismeal Tilly opened an estate file in respect of the deceased under

file number EH23/2015. He listed the assets of the deceased in this file as being the following;

- Portion 277 of farm 2 Hhohho
- Portion 51 of farm 50
- Remaining extent of Portion 10 of farm 50 Hhohho
- Portion 59 of farm 50 Hhohho
- Portion 18 of farm 34 Manzini
- Portion 133 of farm No.2 Hhohho

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Incidentally the same person, Mohammed Ismeal Tilly opened yet another estate file in March 2015, this time the file was opened in Manzini under estate file EM90/2015. The assets of the deceased in this instance were listed as being the following:

- Portion 41 of farm 50 Hhohho.
- Portion 132 of farm 2 Hhohho.

The deceased was widower at the time of his death. The deceased had an undisclosed number of children resident in Eswatini and the Republic of South Africa.

The complainants told the Commission that deceased had properties in two jurisdictions, the Kingdom of Eswatini as well as in the Republic of South Africa. He had fixed assets in Eswatini as listed above.

Three estate numbers were allocated to this matter; file number. EM 90/2015; EH 257/2015 and EH23/2015. During the hearing of the 13 May 2024, the Commission had occasion to listen to Noushaat Omargee a South African based attorney making representations on behalf of some of the beneficiaries.

In the High Court Case No.198/2015 a son of the deceased filed an application to court seeking an order to stop the winding up of the estate, and one of the brothers to the deceased was one of the respondents. Tilly sought to wind up the estate under two estate numbers. The High court issued a judgement on the 21st February 2017, ordering a consolidation of the two estate files. The court also directed that the letters of administration issued in favour of the brother of the deceased as executor be revoked.

A next of kin meeting was held at the Master's office wherein the family appeared. The four sisters of the deceased attended the meeting. A certain Mr Baggas was also present at the meeting with the Tilly family. The Tilly sisters were allegedly coaxed and or/tricked by their brother and a certain Mr. Ioiel Aolam to pretend that Baggas was a member of their family, and that he should be appointed as Executor of the deceased estate.

One of the sisters is said to have objected to this appointment of Bagas, she was preparing to file an affidavit stating as much according to the complainant.one of the sisters is said to have lied under oath that Bagas was a family member.

A resolution for the sale of 33% of the Manzini Trust (Pty) Ltd was signed in favour of Tilly Property investments (Pty) Ltd owned by Mr Bagas and Hussain. It was said some of the shares in this company were owned by Mr Tilly's deceased estate.

One of the properties transferred to the new company was bringing in cash. The shares in the Manzini property were not held by the deceased estate but they were held by one of the brothers of the deceased Mr Mohamed M.A Tilly. When the shares were transferred the Registrar of deeds also effected the transfer of the properties. It was submitted that this step was improper as it was not consented to by the other two Directors. Mr Tilly subsequently showed the other directors a share certificate indicating that he owned one third (1/3) of the Manzini Trust,

which was disputed by the other Directors. Bagas wanted dividends to be paid to Mr Tilly; a proposal which was rejected by the other directors. The bank account for the Manzini Trust was then frozen on the instruction of the Master.

Mr Bagas then called a meeting with the directors of the Manzini Trust in order to discuss the collection of rentals in some of the properties. The directors were pressurised to pay Mr. S. I. Tilly, which they did. Mr Bagas and Mr Hussein benefited from the rentals. In 2021 Bagas and Mr S.I Tilly filed an application for an order declaring Mr S.I. Tilly as a shareholder in the Manzini Trust.

Tilly brought the application in his capacity as executor. The Manzini trust account was then frozen. Tilly lost the matter, as the court ruled that he was not a shareholder in the Manzini Trust. The properties belonging to the deceased were transferred to many different entities at the instruction of Bagas. Which entities are related to Bagas. The beneficiaries of the deceased do not receive any monetary benefits from the estate. Whilst Bagas is benefiting financially.

Mr Zweli Jele

Mr Jele submitted that after the court had ordered a consolidation of the estate files this was not effected instead a new file was opened file EH 23/2013 for the same estate. It now had three files; EM 90/2015; EH 257/2015 and EH23/2015. On the 24th March 2015, two parallel letters of administration were issued by the Master in respect of this estate. These were issued to Levut and Adams and another to Bagas. Soon after these letters were issued, a property (Lot 587) belonging to the deceased estate situate at Matsapha was disposed of. A liquidation and distribution account was then prepared. The same property was dealt with in two estate files with two different values. In the Manzini file its value was reflected as being 6 million, and in the Mbabane file it indicated a value at E2.5 Million.

The property was later disposed of at E2.5 million. The beneficiaries were not paid anything. The late Mr M.I Tilly donated his shares to his brother. One of the brothers believed that he had oversight. In a bid to compel the other shareholders to recognise this shareholder who had come in, in unclear circumstances the Master is said to have abrogated to herself powers in a shareholder matter and ordered the freezing of bank accounts. The Deputy Master reported that their office wrote to Nedbank in 2020 seeking information regarding the signatories of the Manzini Trust account as they had been advised that the deceased had been a signatory. She denied that the bank was instructed to freeze the company accounts. The bank replied on the 3rd June 2020 and advised of the signatories as being Mohamed Tilly and Dagwood Barbalia. The Master denied that their office disregarded the High Court order issued on the 2nd February directing the Mater to consolidate estate file numbers EM 90/2015, EH23/2005 and EM 257/2015, and instead issued letters of administration to Bagas Adams on the 24th March 2017 under different file numbers. She told the Commission that, what she suspects was happening is that the family of the deceased would open different estate files in the different regional offices of the Master. Baggas has been removed as Executor of the estate in terms of a court order dated 12 May 2025, the Court further ordered that the Master should hold a next of kin meeting within 14 days after the removal of Baggas for the purposes of appointing a new executor. The Master should comply.

Observations

1. It will appear that the Masters office cannot trace files already recorded by their offices. The reporting of this matter in two centres is confirmation of that fact.
2. The office of the Master is complacent in supervising Baggas as executor and ensuring that he provides security.

Recommendations

1. There is a need for the Master's office to be capacitated in handling foreign deceased's estate and companies.
2. The Master's office should be provided with continuous refresher courses on all aspects of their work.
3. There is need to establish the criteria for identifying the next of kin, and persons who should attend such meetings.
4. The office of the Master's handling of foreign estates has to be guided.

Conclusion

The matter is pending in court.

128. ESTATE LATE NKOSINATHI DLAMINI ES22/2022

The deceased, Nkosinathi Dlamini died on 24 June 2022. His death was reported at the Hlathikhulu office of the Master's offices on 5 July 2022. He had two wives, Sibongile Nana Dlamini and Zandile Dlamini to whom he was married in terms of Siswati Law and Custom. Deceased had twenty (20) Children.

The deceased had two homesteads, one at Mbikwakhe/Mahlabatsini and another at Sibetsamoya in Hlathikhulu. Other assets of the deceased in terms of the inventory submitted were; a Nissan sedan, a herd of cattle, goats,cash at Eswatini Bank and some with a cooperative called Buhle Betfu Bunye Betfu.

The surviving spouses were both appointed as executrixes of the estate at a next of kin meeting held on 19 July 2022. The issues raised in the meeting were that of the home and land at Mbikwakhe/Mahlabatsini and cattle at Sibetsamoya in Hlathikhulu. In relation to the land, Jabulani Dlamini, the eldest son of the deceased stated that the flats at mahlabatsini were generating income on a monthly basis hence the Master had to intervene and regulate the rentals for the benefit of all the wives and children of the deceased/beneficiaries.

There was an objection by Zandile Dlamini who stated that the homestead at Mahlabatsini belonged to her and should not be part of the estate of the deceased. She also stated that the homestead at Sibetsamoya belonged to Sibongile Dlamini. It was agreed that the two homesteads would not be included in the liquidation and distribution account as they were both on Eswatini Nation land. Zandile Dlamini produced a letter from the Masundvwini Royal Kraal confirming that the deceased acquired the land through Khonta at Mahlabatsini with her. It was agreed that all beneficiaries would benefit from the deceased's other assets and that the two homesteads would not be included in the inventory.

A creditor, Amen Mayisela lodged a claim against the deceased's estate for cattle which he claimed to have given the same to a sister of the deceased named Miriam Dlamini. Amen submitted that he had asked Miriam to take care of the cattle on his behalf. Miriam is said to have subsequently transferred the cattle to Nkosinathi Dlamini as she was not able to look after them.

The claim was allowed after confirmation by the office of the Director of Livestock and veterinary services of the transfer of seven cattle from the name of Amen Mayisela to Nkosinathi Dlamini.

A total of seven cattle were located and it was ruled that Mayisela be given the 7 cattle. Mayisela delayed to facilitate the transfer of the cattle and by the time of the transfer, he found that three of the cattle had been sold, and only managed to get four of the cattle. The cattle were sold by two of the beneficiaries Khetha Dlamini and Ntokozo Dlamini who sold four of the cattle and were keeping the proceeds for themselves.

Observation

Although the claim by Amen Mayisela against the deceased's estate for cattle was proven to be genuine, Mayisela could not be fully compensated. The Commission observed that he too had not taken sufficient steps to ensure that his

cattle were kept in good order and were safe. There was also not much in the estate with which he could be compensated.

Recommendations

1. Jabulani Dlamini, the eldest son of the deceased was requested to sell the remaining cattle, which he did and the money was deposited into the guardian's fund. It was agreed that Mr. Mayisela be compensated for the loss of his cattle by a sum of E21 000.00.

2. Where cattle are sisaed there is a need for the registration processes to be improved so as to indicate the individual livestock owners in a particular kraal.

Conclusion

The Estate was finalised.

129. EST. LATE LUBALO CENSUS KHUMALO FILE EH 17/2021

The Deceased died intestate on the 9th January 2021, and his death was reported to the Master's office. Deceased was not married and had no children. He was survived by four siblings, to wit; - Thembisile Khumalo, Phatsiwe Khumalo, Mabheki Khumalo and Nelsiwe Khumalo-Manikela.

The inventory showed the deceased owned rental flats on Eswatini Nation Land at Empholi area in Manzini. There was also money at the bank, Policies with SNAT and Eswatini Royal Insurance and a car. (The make of the vehicle was not disclosed nor was its value). On the 20th January 2021 a next of kin meeting was held for the sole purpose of nominating an executor. Only the four siblings of the deceased we present in that meeting which was chaired by the Deputy Master.

Two people were appointed as co-executrix namely, Thembisile and Nelsiwe Khumalo.

The complainant's before the commission were Phatsiwe and Nelisiwe, they told the commission that whilst there were rental being collected from the assets of the deceased. These rentals were paid directly to the estate account as directed by the Master, Nelsiwe, alleged that she and Phatsiwe did not receive any benefit from the rentals collected by Thembisile.

The Master responded to the issues raised and advised that as an office they received an amount of E 29,524.15 from the First National Bank as part of the money received as proceeds from the sale of a motor vehicle the deceased owned. A further cheque of E571.55 was received from the same bank, FNB. Another payment of E37, 480.28 was received from Eswatini Royal Insurance Corporation (ERIC). A cheque payment amounting to E59, 877, 91 was issued by SNAT to the estate.

Observation

A liquidation and distribution account was filed by the co-executors on 1 November 2021 and approved by the Master. Payments were made to Thembisile and Mabheki as part of their inheritance. There was an issue with the payments to the other siblings because of their birth certificates, which were said to have had certain variances with that of the deceased. The Treasury Department responsible for issuing the payments to beneficiaries emanating from the office of the Master, questioned the birth certificates of Phatsiwe and Nelsiwe as their fathers name was reflected as Sogobokazi yet on the birth certificate of the deceased his father's name was indicated as Mngamanzi, making it difficult to prove their relationship as siblings. This issue has now been sorted, following their appearance before the commission. The inheritances of the two siblings who had been left out have now been paid and honoured by the Treasury Department.

Recommendations

1. Some other legally acceptable documents or means should be adopted by the Master and Treasury as proof of a claimant's identity in some instances where necessary.
2. Advertising or publishing an announcement calling upon people to claim inheritances with the Master's office is necessary, the Administration of Estates Act makes provision for the same.

Conclusion

The complainants were paid and the matter was finalised.

130. ESTATE LATE JAPHTA LOMANDIYA MASANGANE EM 161/2000

On June 3, 2024, and again on June 23, 2020, the Commission convened to hear a complaint concerning the estate of the late Japhta Lomandiya Masangane. The deceased passed away on the 30th April 2013. He was married to Busisiwe Mary Masangane (nee Dlamini) and one child, Thami Masangane was born of the marriage. He had five additional children from different mothers: Tengetile, Phumlile, Winile, Takitsi, and Mlungisi. The wife of the deceased, Busisiwe Masangane reported the death to the Master's office, initiating the estate proceedings.

The inventory revealed that the estate comprised three motor vehicles: a TATA Truck (RSD 530 AM, valued at E30, 000), a Toyota Hilux (OSD 444 AM, valued at E32, 000), and a Corsa Van (MSD 444 AM, valued at E20, 000). All the vehicles were reported to be in good running condition. Additionally, the deceased had E500, 000 in cash at the Building Society of Eswatini.

A next of kin meeting took place on the 23rd October 2013, where certain disputes arose, particularly regarding the legitimacy of the marriage between the

deceased and Busisiwe Masangane. Due to the impasse in appointing an Executor, the Master appointed neutral Executors from MH Mdluli Attorneys on the 25th October 2013. The Executors conducted several next of kin meetings, ultimately drafting two liquidation and distribution accounts, with the final account being approved by the Master on the 7th June 2017.

Thami Masangane presented his concerns before the Commission, asserting that the deceased was a member of the Umbane Sugar Co-operative Scheme, which generated dividends totalling E100, 000 that had yet to be distributed among the beneficiaries. He also alleged that the deceased owned a shop in Ludzeludze named Lomandiya, from which the beneficiaries should have been receiving benefits.

Observation

The estate account has some money from the sale of the shares deceased held with UMBANE a cooperative belonging to employees of Eswatini Electricity Company. The beneficiaries agreed that this amount will be distributed amongst all of them. However, since Thami is disputing the ownership of the shop at Ludzeludze it was observed that perhaps the other beneficiaries could buy him out of the shop business using their benefit from UMBANE. The commission was not advised of the family's final decision as they advised that they were yet to consult their elders regarding Thami's share from his late father's benefit from the shop.

Recommendations

1. Confirmation is sought from the traditional authorities on the ownership of the shop. Further that businesses on Eswatini Land should be regulated properly for purposes of take over upon death of the owner.

2. Whatever the Chief decides Thamis father, the deceased had a share in the business, as such Thami must be given his father's share of inheritance.

Conclusion

The estate has been finalised. The only remaining issue is property on Eswatini Nation Land.

131. ESTATE LATE ABEDNEGO KUSENI HLOPHE EM275/2014

The deceased, Mr. Abednego Kuseni Hlophe passed away on the 7th September 2014.The Commission heard the complaint in this matter on the 6thJune 2024. The estate was reported to the Master on the 12th December 2014 by Mangaliso Hlophe a child of the deceased. The deceased was widowed by the time he passed away. He had been married to two wives during his lifetime, and had 13 children, namely: Lobahlophe, Thabsile, Dumsile, Bongiwe, Mawandla, Lolo, Lomvula, Dumandzaba, Lomakhonkhosi, Mangaliso, Cebsile, Mjibeka, Happy and Lomcebo. The inventory indicated that the deceased owned a Mercedes Benz and an unmentioned number of cattle.

The main complaint before the Commission was that some of the children of the deceased did not have a place to call home because their other siblings were letting the homestead out. Zephania Hlophe, one of the sons of the deceased was accused of having constructed a house for his mother on their land, which house was now attracting rentals for a certain Jikijela Dlamini.

The available cattle were transferred to a certain Dorcas Dlamini, who it was alleged was the owner, as reflected in the liquidation and distribution account. In terms of the next of kin meeting minutes dated the 3rd November 2022.Three children of the deceased were to be allocated an amount of E1,600 each namely Cebsile, Mjibeka and Mabuya, this is also reflected in the liquidation a distribution account as approved by the Master. There was nothing left in the estate after distribution.

Observation

The deceased had two wives, whose homesteads were close to each other. It is not clear if the boundaries of their homesteads were clearly demarcated. A child of the deceased complained that they did not have a place to call home. Some of the children of the deceased who are alleged to be letting out the homestead were called to appear before the Commission and they advised that the matter concerning their father's estate was before the Liqoqo.

Recommendation

Legislation is necessary to regulate the distribution of property including and /or especially the marital home in customary law unions.

Conclusion

The matter is pending before traditional structures.

132. ESTATE LATE PETER J. DLAMINI

The deceased passed away in 2004 and his estate was reported to the Master's office. He was married and had 12 children. Four (4) of his children were born of the marriage with his wife LaShongwe which had been in terms of Eswatini Law and Custom. The other 8 children had different mothers and were born out of wedlock. The deceased had six properties on both title deed land and Eswatini Nation Land.

Lucky Dlamini and Busisiwe Dlamini were jointly appointed as Executor and executrix testamentary respectively. An objection was raised when Lawyer Ndlangamandla was nominated for the appointment as Executor by one of the children of the deceased. It had been reported that he represented the wife of the deceased.

Rentals were being collected in some of these properties with no proper monitoring or accounting for the same. The children of the deceased complained that they were not reaping any benefit from it. A trust was supposed to have been set up.

The deceased is reported to have requested his wife to allow him build a home/house for his other children not born of the marriage, a proposal that the wife had agreed to.

Mr Sabelo Masuku is reported to have advised one of the children of the deceased that a next of kin meeting had been held at the Masters offices to deliberate the affairs of the estate and that he, (Mr Masuku) had been unsuccessful in trying to get hold of him. MS Maziya (Assistant Master) authorised certain transactions in this estate. Ms. Lungile Msimango approved the distribution and liquidation account without the involvement of the Co-Executor, Lucky which was a cause for concern for him.

Lucky alleged that the land at Ka-Khoza was allocated to him by the deceased during his lifetime. Lot 658 at Nhlangano was said to have been purchased by the deceased for a certain Reginah Dlamini as indicated by the Nhlangano Town council documents yet Regina's surname is Tsotso.

Another homestead at Mahamba was acquired through the *khonta* system by the wife of the deceased. As she had another home on lot 11 and 12 Nhlangano, her husband asked for her permission to use the Eswatini nation land in order to build a home for his other children, the eight children born out of wedlock. The will of the deceased addresses the need to build a house for the said children. The widow has a plot in which she built a house adjacent to another in which she has an orchard. A first meeting of the next of kin was held on 13th January 2005 and a liquidation and distribution account was prepared and signed by Mr. Sabelo Masuku.

Observation

The collection of rentals was not properly monitored by the Master's office. Some executors are left to do as they please with estate monies. The Master has to give a report concerning the outstanding issues in this estate, there is property that is to be transferred to the wife of the deceased. A home was to be constructed for the children of the deceased.

Recommendations

1. The Master should be able to deal with people or executors who fail to account for estate monies or assets in their possession.
2. Master must ensure close supervision on administration of estates and make follow ups on all files in the registry.

Conclusion

The matter is pending.

133. ESTATE LATE DR. CLEMENT BHEKITHEMBA DLAMINI EHL50/2021

This matter came before the Commission on the 4th June 2024.Complainants were Nonsikelelo Zwane represented by Lawyer Nkosingivile Dlamini and Simphiwe Dlamini. The deceased passed away in 2003 intestate. He was married, and had had two wives in his life time. He got married to his second wife LaZwane in 2005.When he passed away, he had been estranged with his first wife. The inventory reflected that the deceased had the following properties; Plot 269, Farm 50 Ezulwini, Plot 260 Mahwalala, Plot 412 Mahwalala, Plot 261 Mahwalala, Plot 2081 Mahwalala, pigs rearing style sheds at Mvutjini, red tractor, three vehicles; an Audi Q5, another Audi A4 and a Mahindra. Cash at bank. Expected cash from an unfair dismissal claim, royalties from a book being on AMAZON titled "E-Siswati Math book"; "Discourse practices of math high achieving LEP Nguni

learners". The children of the deceased told the Commission that upon their mothers passing they were told that their father had left all his assets for the benefit of Ms. Zwane his second wife. It was the children's contention that their mother the first wife, had assets with the deceased prior to his marriage to Ms. Zwane. They alleged that in 2001 the first wife and the deceased purchased a plot at Ezulwini, further that the house in which their late mother resided was being rented out. The children further stated that there were shops in a business area which the deceased had obtained through *khonta* way before he married Ms. Zwane.

Bhekinkosi Gama had been Executor of this deceased estate at some stage, He allegedly resigned after being questioned about rentals and the sale of motor vehicles. It is alleged Gama misappropriated estate funds including a sum of E7, 000 which he supposedly took to repair geysers which were never repaired.

Ellah Mbonani, the first wife had challenged Zwane's marriage to the deceased in court[56].

One of the children of the deceased was reportedly refused permission to buy his late father's Audi and accommodation on the estate properties.

Ms Masondo (Assistant Master) approved the Liquidation and distribution accounts prepared by Mr. Gama despite their objections to it. Bonkhe Basize Dlamini deposed to an affidavit declaring that he was alienating his share in the estate to LaZwane his step mother.

Observation

There is a pending court case in this estate, in which Simphiwe Dlamini, one of the children of the deceased is challenging the L&D. The previous executors need to account to the Master for their handling of the estate or present reports

[56] Ms Mbonani apparently later withdrew the application and agreed to negotiate a settlement as suggested by Ms.Zwane.k

concerning their work. Mr Gama's report should include a statement on the rental collections.

Recommendation

Pending the introduction of a law that will guide the allocation of a reasonable share to the children of a deceased person who dies intestate it is recommended that a practice directive to guide the Master's office on how a reasonable provision for the adult children of the deceased is to be determined.

Conclusion

The matter is pending.

134. ESTATE LATE MSHUNGWANE GEORGE MBATHA ELS 14/2023

The deceased passed away on the 6th March 2022 and his estate was reported to the Master's office by Nomvula Mbatha. The Commission heard the complaint pertaining to this estate on the 30th May 2024.The deceased was married to two wives in terms of Eswatini Law and Custom, Thembisile Mbatha and Zodwa Mbatha. He had 19 children.

The deceased had the following properties as reflected in the inventory filed with the Master's office: a home at Lomahasha, cattle, goats, a kombi, a Toyota Van, tractor, 20 donkeys, a block of gold, an award medal and a sum of E25 000.00.

The complainants Sikhumbuzo and Zandile Mbatha appeared before the commission on the 30th May 2024, they had numerous complaints. Goats were allegedly being sold by some of the children of the deceased without the consent of the Master. A sum of E6, 000 was not declared. An *insulamnyembeti* was claimed from the estate. A cow was slaughtered by some of the beneficiaries. Some estate assets were allegedly also sold by some of the beneficiaries without

the involvement of the Master. Bongani Mbatha, a son of the deceased was accused of abusing the assets in this estate such as the kombi.

Sandile Dlamini was appointed as executor in 2023.He replied to the complaints before the commission and advised as follows; he reported that Bongani Mbatha had in his possession the gold bar and cash belonging to the deceased. The van, a Toyota Hilux had been sold. The Executor reported that he wanted to have the kombi disposed of as Sikhumbuzo Mbatha one of the siblings who had been mandated to run it, failed to account for its takings.

Efforts to sell the Kombi were thwarted when it was discovered that it had been stripped of most of its parts. It could not be ascertained who and how the kombi got to be stripped, hence the police were solicited to investigate.

He drew a liquidation and distribution account dated 27 July 2023 in terms of which he distributed a sum of E101 907.84 being cash from the account of the deceased held at Eswatini Bank and E70 000.00 from the sale of a motor vehicle a Toyota Hilux registered JSD 617 AM. The First Liquidation and Distribution Account approved by the Master on 26 July 2023 distributed a sum of E144 080.04 which was cash found in the bank account of the deceased at Eswatini Bank from which each beneficiary received a sum of E7 204.00. The beneficiaries were: Thokozile Mbatha, Zandile Mbatha, Nomvula Mbatha, Ntombifuthi Mbatha, Nothando Mbatha, Thandekile Mbatha, Nodumo Mbatha, Phetsile Mbatha, Nongebo Mbatha, Lethokuhle Mbatha, Nomfundo Mbatha, Bongani Mbatha, Fana Mbatha, Sikhumbuzo Mbatha, Musa Mbatha, Sandile Mbatha, Mayibongwe Mbatha, Duma Mbatha, Themba Mbatha and Thembisile Lukhuleni. The Second Liquidation and Distribution Account which was approved by the Master on the 8 April 2024 distributed to each of the same beneficiaries an amount of E5 208.94 which were proceeds from the sale of tractor and herd of cattle totaling E135 250.37. The same beneficiaries received an amount of E3 734.32 from the Third Liquidation and Distribution Account

approved by the Master on 10 December 2024 which were proceeds from the sale of kombi amounting to E74 686.64.

Conclusion

The matter is finalized.

135. ESTATE LATE MFANIMPELA SAMUEL MNISI EH20/2006

The Commission had occasion to deliberate over this matter on the 30th May 2024. Deceased passed away on the 31st January 2005.The estate was reported to the Master in 2006 by Mfana Mnisi. The deceased had not been married during his lifetime, and had six children. Before the Commission were Nhlanhla Fortune Mnisi and Richard Mnisi, they complained that their family *tekaed* a wife for their father after his demise. The lady Tentile Khumalo was *tekaed* as wife to the deceased after his death. She too passed away on the 15th October 2022. The inventory reflected the following properties of the deceased: - a herd of 24 Cattle, a herd 17 goats 2 sheep and rental flats. Samariah Mnisi was appointed as Executrix on the 23rd June 2006.

The children of the deceased complained that their father's estate was wound-up in their absence and without their involvement. Further that their step mother Tentile Khumalo, did not allocate anything to them from their father's estate.

Observation

There are questions around whether the posthumous marriage was lawful. The new wife did not allocate assets of the deceased to his illegitimate children. There is no illegitimate child in terms of customary law, even before the Constitution.

Why and how did the Master choose the legal system to apply on this estate?

Recommendation

The Master should be provided with guidance on the legal system applicable to each estate.

Conclusion

The matter is finalised.

136. ESTATE LATE TIMOTHY MNISI EH 169/2012

The deceased died in the year 2020.His estate was reported to the Masters office by his wife La-Sikonela. The deceased was married in terms of civil rites to Francina Mnisi (LaSikonela), with whom he had 6 children. The deceased had an extra-marital child Mfanukhona Mnisi who it is alleged was raised with all his other children by Mrs Francina Mnisi.

The deceased had a home at Nkoyoyo from which the wife of the deceased was collecting rentals, a cutlery business and a plot valued at E300 000 according to the valuation provided by the Executor.

The Commission heard the complaint in this matter on the 29th May 2024 and on the 30th June 2024.On the first occasion Mfanukhona Mnisi the complainant, appeared alone. When the matter was heard on the second occasion Mrs Mnisi had been called and Mfanukhona was with his biological mother, LaZwane. He called her to give evidence on his behalf confirming that he was a child of the deceased. This fact was not disputed by anyone who mattered in the estate except that Mfanukhona's birth certificate had been issued with the wrong birthday for his late father. He was thus unable to benefit from the estate pending the correction of the errors in his birth certificate. Mfanukhona complained that the wife of the deceased was selling cattle at E5000.00 each which to him was an undervaluation.

Mrs Skonela told the Commission that the business had closed down. The only thing remaining was the tent they rented out. She highlighted further that they were still trying to sell the only asset available, for the beneficiaries to share the proceeds. The Master advised that a new evaluator would be appointed by her office in order to carry out the valuation again, and independently of the executor. The Master clarified that concerning the properties of the deceased at Nkoyoyo and Hhohho, these fell outside her jurisdiction. She further clarified that an amount of E36, 000.00 had been deposited into the guardian fund pending distribution to the heirs of the deceased. All this information was to be shared with the beneficiaries of the estate including the way forward in finalising the estate in a meeting which had been scheduled for the 3rd September 2024.

Observation

Why should the children born out of wedlock decide what the reasonable provision should consist of, or any child for that matter? If this is allowed the children can refuse a cash pay-out equivalent to the value of the property available for distribution in favour of the widows' home.

Recommendation

Executor to be telephonically called to clarify the allocation of the homestead on Swazi Nation land (Nkomanzi) to the complainant. Master to request the family to bring the meeting date forward as September is quite far. The Executor and Master should address the question of a reasonable provision or whatever allocation the children should get.

Conclusion

This estate has not been finalised.

137. ESTATE LATE MAKALINYANE ANDRIAS DVUBE EM 171/2008 AND ELIZABETH LOMADUDUSI DUBE EH 302/22

The deceased Makhalinyane Dube died in October 2004. The death was reported to the Master on 24 April 2008 by Elizabeth Lomadudusi Dube. Paulos Dube was appointed as Executor of the Estate. Deceased was married to one wife Elizabeth Dube in terms of Siswati Law and Custom. He had six children namely Sipho Andrew Dube, Sandile Dube. Zweli Dube, Paulos Nene Dube, Thomas Dube and Chamukile Dube. According to the inventory prepared the deceased had the following properties: -25 Cattle, 36 goats and 1 sheep. The Complainant before the Commission was Paulos Dube the Executor. He appeared before the Commission on the 12th February 2024, 6th August 2024 and again on the 13th August 2024. He told the Commission that when his father passed away the family was advised by the dipping tank keeper to register the cattle in the name of someone who was alive within the family as their father in whose name the cattle were registered had passed on. The family then indicated that their mother, should be registered as holder of the cattle. It was then suggested by the Veterinary Assistant that a helper be added to assist her as she was elderly. The eldest brother Sipho was then suggested. An affidavit was deposed to by Sipho confirming that he would assist his mother in minding the livestock. The siblings also deposed to another affidavit confirming this fact. However, to the other siblings' surprise, Sipho's name was found to have been registered at the dip tank after their mother passed on. The result of Sipho's actions is that when their mother passed on, they discovered that the livestock had been registered in Sipho's name from 2012. Lomadudusi had no livestock under her name.

The eldest brother Sipho registered the family cattle in his name. Sipho then started selling cattle without the consent of the other siblings or the Executor. Sipho's explanation was that he wanted to erect a house for their grandmother which was found to have never been erected. This was their main

contestation before the Commission. When called, Sipho claimed ownership of the cattle, the matter remained unresolved.

Observation

The Vet Assistant and the Master's office should not have allowed Sipho to register the cattle in his name without the consent of the other beneficiaries. At some point some of the cattle were distributed informally by the family and the Masters office was not advised.

Recommendations

1. Veterinary Assistants should have refresher courses and screened before appointment to avoid theft and unlawful transfer of livestock registered with them.
2. Where livestock ownership is involved, enhanced guidelines are necessary for change of livestock ownership at the Veterinary Offices.
3. The Ministry of Agriculture must devise a system to determine the ownership of cattle within a kraal.

Conclusion

The matter was finalised.

138. LATE BONGANI SANDILE MNGOMETULU EH 290/2014

The deceased, Bongani Sandile Mngometulu died on the 14th December 2014 as reflected in the death notice filed by his sister Maggie Mavuso on the 24th December 2014. Deceased was married to Nonhlanhla Mngometulu (nee Ngcamphalala) in terms of Eswatini Law and Custom in 1997. The couple had one child, Nolwazi born of the marriage. Nolwazi, Tebesutfu and Malela are listed as children of the deceased in the death notice. The inventory indicated the under listed properties as assets of the deceased:

Nine herd of cattle, a Ford ranger, a Corsa Van, four other vans, five goats and cash at Standard bank. The deceased also had registered a company called Bomed (Pty) Ltd, there were some vehicles listed under this company.

Although, the wife of the deceased was eventually acquitted and discharged, she was arrested following the death of her husband alongside two of their children and were charged with his murder.[57] Between the date upon which the deceased passed on and subsequent arrest of his wife, 14 December 2014 and 19 January 2015 when the widow was released on bail, there was no one to continue the affairs of the estate hence the Master appointed Bongani Sydney Dlamini as Curator on the 14th January 2015, in terms of the Administration of Estates Act.[58] The Curator, requested and was allowed a sum of E39, 500 by the Master. This was money needed in order to continue the business of the deceased and payment of salaries to the employees of the deceased. This amount was requested by the Curator on the 19th January 2015. A further sum of E49, 220 was requested from the Master by the sister to the deceased, Ms Maggie Mavuso. The Master issued a letter directing the bank to give Maggie Mavuso this amount in order to facilitate the payment of wages to the employees of the company of the deceased.

On the 24th February 2015 a next of kin meeting was held chaired by the Master's assistant, in this meeting the wife of the deceased was present together with the Curator. The wife of the deceased complained about the Curator concerning the money he had withdrawn from the estate; it is reported that the Curator then withdrew his services on this day.

The deceased had registered and ran a company called, Bomed Investments (Pty) Ltd. It is not explained what the business of the company was. In the meeting of

[57] The King v Nonhlanhla Mngomezulu High court case No.442/2014

[58] Section 21(1) of the Act provides as follows "In all cases where it may be necessary or expedient to do so, the Master may appoint a Curator Bonis to take custody of and charge of any estate, until letters of administration and distribution thereof, and every such Curator *bonis* may collect such debts and sell or dispose of such perishable property belonging to the estate as the master shall specially authorise.

the 24th February 2015, the wife of the deceased informed the Master that the Company was jointly owned by her late husband and Emmanuel Dlamini. She advised that Mr Dlamini had been paid off and that she now held 79% of the shareholding in the company.

A number of meetings for the next of kin were held. Nothing much took place in these meetings in terms of the Masters report. About four persons were appointed as Executors for this estate at different times namely; firstly, Emma Fruwith was appointed on 14 August 2015, Mbhekwa Mthethwa appointed on 8 September 2016, Mandla Mdluli appointed 19 November 2018 and lastly Mduduzi Brutus Ngcobo was appointed on 16 October 2019. Vehicles belonging to the company of the deceased were disposed of through selling them and otherwise by the wise of the deceased and his sister Maggie. No reasons were furnished for the disposition of the vehicles nor was there any cash payment made to the estate account as proceeds of the sale of the estate vehicles. The Master's office assisted the Widow and Maggie to obtain lost blue books or to facilitate transfer of certain vehicles to buyers. One of the vehicles an Opel LDV was said to have been sold for E10, 000 by Maggie Mavuso, the sister of the deceased. The cash realised from this sale was not accounted for by Maggie.

When called before the commission Maggie did not deny that she sold this vehicle.

There is no liquidation and distribution account in this estate, at least none had been prepared when the matter appeared before the Commission. The wife of the deceased sold a herd of 6 cattle and deposited a sum of E20, 000 with the Masters office. This money was said to be in the guardian fund account. The widow alleged that this money is no longer in the guardian fund she was advised that there are three children who withdraw maintenance from this estate. The wife of the deceased told the Commission that she was not aware of these children and that she did not know any of them.

A number of irregularities can be observed from some of the transactions in this estate. Such as the payment of E49, 000 to Maggie allegedly to pay employees of the company of the deceased. Maggie was not an executor nor is curator, it not clear in what capacity she was allowed to withdraw cash from the estate. Maggie further sold vehicles and disposed of some, at times with the Masters authorisation and did not account for the money realised from such transactions.

Only E18, 500 remains in the guardian fund according to the Masters report.

The question that begs an answer is what happened to the shares in the company that deceased owned. What happened to the several vehicles listed in the Master's report as having been owned by the deceased at some stage? Should this looting go unpunished? Or even unexplained.

Observation

The Master and the curator negligently enabled Maggie to have access to cash in the estate and also to sell and transfer vehicles belonging to the deceased and/or his company. Maggie was neither an executor nor a beneficiary in the estate. Master failed to cause Maggie to properly account for the estate assets (vehicles that were sold improperly).

Recommendations

1. Guidelines are needed for the Masters office on who should withdraw money from an estate account and supporting documents or evidence to accompany such withdrawals. In this estate children unknown to the wife of the deceased were provided with maintenance from the estate coffers.
2. The office of the Master should consider compensating the widow for the losses suffered as a result of poor supervision of the curator.

Conclusion

Registrar of Companies should provide clarity on the shareholding of BOMAD (Pty) Ltd as at the death of the deceased and currently. The matter is pending.

139. ESTATE LATE JABULILE FREDA DLAMINI EH182/2018

Ms Jabulile Freda Dlamini died on 29 March 2018. She had been married in terms of Eswatini law and custom, however her husband apparently predeceased her. The husband's estate was distributed by his brother who had been appointed Executor Mr A.T Dlamini. The deceased did not have children of her own. Her husband had one child with his second wife Ms Greenhead.

The dispute in this estate was over the inheritance left by Freda Dlamini, the question was whether the Dlamini family (her in laws) or the Dube family, the deceased bride's people should inherit from her.

A girl child, Zanele Futhi Dlamini a relative of the deceased who had lived with the deceased and her husband submitted that she had been adopted by the couple in terms of Eswatini culture and customs. There was however nothing in support of this assertion, as even the Dube family members could not support the claim. The girl child, Zanele claimed ownership of the house which belonged to her late Aunt, the deceased.

Complainants were two of her brothers in law; Christopher Dlamini and A.T Dlamini. They, the Dlamini family believe that the house should devolve amongst themselves as brothers of the deceased.

Issues

What system of law should govern this estate in light of section 68 of the administration of estates Act? What does the custom of 'kufakwa esiswini' involve?

The 2020 Supreme Court of Eswatini in a recent civil Appeal Case change its original position. Previously in its 2016 and 2020 Judgements the court had ruled that if the deceased carried himself as Liswati, Swazi Law and Custom should apply to his estate but if he carried himself out as a European, then his estate shall be administered in accordance with the Administration of Estates Act, 1902.If the

deceased chose during his life-time which law regime should govern the consequences of his marriages including the disposal of his properties after his death that system should apply.

Section 25 of the Marriages Act, 1964 is also relevant, it states: "***25 (1) If both parties to a marriage are Africans, the consequences flowing from a marriage shall be governed by the law and custom applicable to them unless prior to the solemnisation of the marriage the parties agree that the consequences flowing from the marriage shall be governed by the common law."***

This provision emphases the fact that as long as you are an African, unless prior to solemnisation of the marriage you contract-out of the application of this provision, the consequences flowing from the marriage shall be governed by Swazi Law and Custom. This means even if an African marries under the Act that is the civil marriage, he is still governed by Swazi Law and Custom unless he has contracted out as stated in the provision. Under the Act the consequences of marriage shall be governed by Swazi Law and Custom "unless prior to the solemnisation of the marriage the parties agree that the consequences flowing from the marriage shall be governed by the common law."

Section 4 of the Intestate Act of 1953 has the same language as follows –

"4. ***This Act shall not apply to any African if the estate of such African is required to be administered and distributed according to the customs and usages of the tribe or people to which the African belonged by virtue of section 68 of the Administration of Estates Act, No. 28 of 1902."***

MCB Maphalala J, as he then was stated the following in his Judgement;-

In casu, the statutes commands that Africans who not having contracted a lawful marriage during their life-times (and who die intestate) shall not have their properties administered under the Act after their demise. This means that deceased estates of African spouses married under custom shall be administered

in terms of customary law. Until Parliament changes that command, it shall remain a provision to be given effect by this Court. The Court concluded that section 68 of the Administration of Estates Act, 1902 was valid and applicable to the case at hand. Section 68 of the Administration of Estates Act specifically provides that deceased estates of African spouses married under custom shall be administered in terms of customary law. This Act further provides that the Master of the High Court is not mandated to interfere in the administration of such an estate if a dispute arises, and, that only Swazi Courts shall have jurisdiction.

The Supreme Court held further that the matter concerning the winding up of the estate, and any dispute arising out of it, should be dealt with under Swazi Law and Custom.

A dissenting judgment was penned by M.J. Manzini AJA dissented and concluded that the High Court did not lack jurisdiction to deal with the matter at hand. He said that the constitution allowed the Supreme Court to 'depart from its previous decisions when it appears that it was wrong', and the High Court's decision in the Mpanza matter 'cannot be faulted'.

Observations

1. We observe that, this matter like that of Petros Mpanza fall to be wound up by the office of the Master as in terms of the judgment of the Supreme Court in the Mpanza matter, the Master had jurisdiction over the estate of Petros Mpanza since he was 'lawfully married and his estate was not excluded by section 68 from the jurisdiction of the Master'.
2. The Dlaminis have taken this matter before the traditional structures.
3. The Master's Office should refer the matter to the Attorney General for guidance regarding the clash of laws.

Recommendation

There should be clear guidance in terms of a practice directive perhaps to the Master's office to apply customary law where need be.

Conclusion

The matter is pending before the traditional structures.

140. ESTATE LATE NICHOLAS SIBOBO VILANE EL21/2019

Nicholas Sibobo Vilane's estate matter was heard on the 27th May 2024. The complainants in this estate matter, Mduduzi Vilane and Bafanabakhe Vilane appeared before the Commission. They told the Commission that the deceased passed on in 2019.The deceased was married to Elizabeth Vilane in terms of Customary Law. The estate was reported to the Master's office by the complainant' Bafana and Mduduzi in the company of Mtjengiseni Vilane and Sipho Mabila. The wife of the deceased was nominated and appointed as the Executor with Sipho Mabila being appointed as co-executor. The inventory reflected the under listed properties of the deceased; -a farm at Nyetane, two (2) tractors with implements,80 cattle, some cattle at Sisa Ranch, some cattle at Kashoba,2 vehicles and a home at Nyetane.

He had three children with Elizabeth and eleven other children with different women. The complainants alleged that the Master attempted to sell the farm embodying their family homes. Further that some equipment or farm implements were disposed of or sold without their knowledge and there was no accounting for same. The homesteads of the other women who had children with the deceased were also situated at the Nyetane Farm. Sipho Mabila eventually sold the tractors. Mabila could not account to Mrs Vilane for the sale of these items when asked. A sum of E13, 500 was said to have been received from a certain farm at

Sidvokodvo which Sipho failed to account for as well. Sipho apparently sold a number of the estate assets without accounting for the proceeds to the Executor. These properties included cattle sold at E22 500 to a certain Morris Dlamini. He sold 5 cattle kept at Sisa Ranch with authorisation from Assistant Master Xolile. Sipho also took some cattle to Maphatsindvuku to a certain Jeffrey Carmichael who ran an abattoir. No explanation was afforded the beneficiaries by Mabila on the disposition of these properties. The Complainant stated that he purchased a vehicle (a van) from the estate for a sum of E5, 000.00. A sum of E2000, 00 had to be paid back to the person who had purchased it before him, as preference has to be given to beneficiaries in terms of section the Administration of Estates Act. One car was retained by Mrs Vilane it was valued at E52.000.00.The Tracker was also sold at E30.000, 00. Part of the money (an undisclosed amount) recouped from the sale of one of the vehicles belonging to the deceased estate, a van, was said to have been paid to the Masters office an assertion disputed by the Masters office. The complainant alleged that the receipt which could have supported his claim got lost at the Masters office, he however had a copy of the receipt in his phone. Mabila was said to have been a helper at the farm assisting the deceased by herding his cattle.

The Master's assistant told the commission that the receipts which the complainants alluded to had been removed from the estate file, hence the file was empty. A new executor in Thembumenzi Bhembe has been appointed. A distribution account had been prepared. A sum of E203, 000.00 was being distributed and a herd of 38 cattle.

Observation

The executor Thembumenzi Bhembe has to give an update and the former executor Sipho Mabila to give an account.

Recommendation

The executors need to be sensitised to adhere to the 6 months' time frame for winding up deceased estates failing which periodical reports should be given to the Master in terms of the Act. In the event an executor resigns or is removed, there should be a report of his performance before fees are paid to him/her.

Conclusion

The matter is pending.

141. ESTATE LATE HEBERT OBED DUBE: E342/94

This matter was heard by the Commission on the 16th May 2024.The deceased died in 1994. He was married and had two children with his wife, namely Phindile and Dudu Dube. Deceased had three other children born out of wedlock. These were Sanele Winfred Dvuba, Thandeka Bhekiwe Dube and Bhekinkosi Sandile Dube, they were the complainants before the Commission. Only Sanele Winfred Dvuba's payment voucher had the surname spelt Dvuba and not Dube.

The three children of the deceased complained that they had not received their inheritances due to them from the estate of their late father. The inventory indicated that the deceased owned land at Co-operation Mbabane which was sold for E192, 000.00.

Three children of the deceased who had not been paid their inheritances, had the same processed and paid after appearance before the commission. These were Sanele Winfred Dvuba, Thandeka Bhekiwe Dvuba and Bhekinkosi Sandile Dvuba. Payment vouchers dated 18 July 2024 in favour of Sanele Winfred Dvuba for an amount of E19, 500.00, Thandeka Bhekiwe Dube for an amount of E33, 547.50 and Bhekinkosi Sandile Dube for an amount of E16, 500.00 were submitted with the Master's report on the estate, signed by Assistant Master Temantimandze Shongwe. She reported that no further action was necessary at

that stage. One wonders why, if this matter was not reported to the police, this was not done at the stage it was discovered. Such occurrences ought to be reported for two reasons; first of all, who ever tried to defraud the estate committed a criminal offence. Further if such activities on files are not reported to the police, would be offenders will not be dissuaded from trying their luck on files too.

Observation

It is clear to the Commission that the imposters would not have known about the existence of the unclaimed inheritances on the file except if they were told by someone who knew about it. The Commission learnt that an officer at the Master's office was involved in trying to defraud the estate. Birth certificates and identity documents were served on the commission as having been found at the Masters office file being used as proof of identification for the children of the deceased yet these documents belonged to imposters who were unknown to the children of the deceased. The master's official used these documents to prepare payment vouchers for the imposters.

Recommendation

A thorough investigation at the Master's office is necessary to ascertain the extent of the criminal activities in this estate account. Including whether the attempt to steal from the file was not actually seen through by the perpetrator(s). Ascertaining who they are and meting the necessary disciplinary action is key in this matter. The commission was told that a certain Ms Maphalala who was an estate accounts examiner at the Masters office, carried out these activities on the file. Investigations into her conduct is recommended by the Commission including reporting the matter to the police for further investigation.

Conclusion

Except for the pending police investigations, the estate was eventually wound up.

142. ESTATE LATE JAMES MANCOBA BIYELA

The matter was heard by the Commission on 21 May 2024.The deceased passed away in 2014 and the estate was reported to the Master by one of his wives on the 10th September 2014.The deceased had two wives. It was reported that the deceased owned shares with the Ingcayizivele Farmers' Co-operative Society. He had a sum of E24 000, 00 in cash. A next of kin meeting was held on 25 September 2014 and Grace Biyela was nominated and appointed as the Executor. The Commission was told that the wife who reported the estate was Beauty Biyela (LaGinindza).

The complainant who came before the Commission was Thandi Grace Biyela. She reported to the Commission that LaGinindza did not mention to the Master's office when reporting the estate that she was not the only wife that the deceased had. Bettina Tsabedze was the other wife not mentioned. Bettina is said to have deserted the deceased for 30 years and only to return when he was sick. Bettina is said to be Robert's Mother. The deceased was a member of a Sugar Scheme Co-operative Society called Ingcayizivele farmers' co-operative. The benefits under the scheme were allegedly passed to Robert, and that Robert was not the correct person to whom these benefits/rights should have been transferred to alone.

Observation

The observation made with regards the succession procedure for the sugar co-operatives in other matters such as the Viye Ntshangase matter heard by this Commission, finds application here too. The Regional Administrator's office, (RA) should be involved in disputes around succession to the schemes as the responsible office.

One of the wives of the deceased submitted a false report to the Master or supplied false information, such acts should be criminalised by legislation as it can be detrimental to the hidden beneficiaries.

Recommendation

The Master's office should be encouraged to exercise uniformity when handling similar matters. Guidelines should be prepared for all officers in all regions on what should be done when dealing with such matters.

The information supplied to the Master should be on affidavit.

Conclusion

The matter is pending.

143. ESTATE LATE EDWARD SILINDZA EH115/2012

The deceased died in 2012.The estate was reported on the 4th August 2020, eight years after the demise of the deceased. The complainant had two children. The inventory indicated that the deceased had the following; a plot in zone 4, he had a plot at Nkwalini and rental flats. He was not married. It is reported that a next of kin meeting was held chaired by Ms Lindelwa Magagula and Bongani Silindza was appointed as an Executor. Present at the meeting were the following; Michael Mabuza (a creditor), Xolani Mabuza, mother of deceased and father of deceased.

The deceased apparently owed E15000 to Michael Mahlalela. The family sold the plot for E50 000 to Mahlalela in order to defray his debt. Bongani and the mother of the deceased (Gogo Mahlalela) gave Mahlalela the plot they attested to an affidavit confirming that the deceased had disposed of the plot during his lifetime by selling it to Mahlalela. The distribution and liquidation account in this estate was approved by the Masters officials.

The difficulty in this matter is that Mahlalela was not called to prove his claim, it is not clear whether Mahlalela was truly owed or not.

The matter was finalised, as all that was there to distribute, the plot was disposed of. The complainant alleged that the executor misappropriated the estate properties.

Observation

No proof was furnished by Mahlalela for his debt.

Recommendation

A system to confirm creditors should be put in place in the office of the Master.a mere statement or allegation that one is owed should not sufficient.

Conclusion

The matter is finalised.

144. ESTATE LATE MICHAEL MNCANDZE TSABEDZE: E4050/1981

The deceased died in 1980. He had three wives and only one child who survived him. Two of the wives, the first and the last had been married in terms of Civil Rites whilst the second one had been married in terms of Customary Law. Two of the wives of the deceased survived him, namely Gertrude Tsabedze (LaSikhosana) and Alice Loziga Tsabedze. The daughter of the late Eunice Tsabedze and her son Sanele Sitfungo appeared before the commission. Eunice complained that whilst her father owned a farm during his lifetime, she being an only child of the late did not know how it was disposed of. The deceased did not have a will. Eunice alleged that the deed of sale pertaining to the sale of her father's farm had been signed three days prior to his death. There are questions around the sale of the farm. Eunice was not convinced that the farm had been sold

by her late father during his lifetime. If indeed the farm was sold by the deceased three days before he died what happened to the money realised from the sale.

Observations

1. The Master should require proof of debts and such other documents supporting the proof sale of the farm especially as it was sold allegedly 3 days before deceased died. Proof of his debt with the buyer of his farm etc.

2. The second wife was not called to confirm the sale of the farm by the deceased three days before he died.

3. The other issue pertains to the cash received from the sale, whether it was distributed to the beneficiaries.

Recommendation

Proof of debts by a deceased person should be solicited by the Master.

Conclusion

The matter is finalised.

145. ESTATE LATE VIVIAN SEKWANELE ZONDI EM 238/2006

The deceased died on 16 June 2006 in terms of the death notice filed. The estate was reported to the Master on 16 June 2006 by Emmanuel Mandla Zondi. The Commission heard the matter on 22 May 2024. The inventory reflected that deceased owned a plot at Ngwane Park in Manzini. He was a divorcee and had one child named Emmanuel Mandla Zondi. A next of kin meeting was held on 27 November 2006 and Mandla Zondi was appointed as executor. The plot was sold to Fundi Dlamini through an agent. Attorneys, Ben J.Simelane were engaged to carry out the transfer of the property to Fundi Dlamini and transfer costs were duly deposited with the Attorneys.

Observation

Fundi Dlamini came before the Commission complaining that several years later he still did not have his property registered under his name. Problems were encountered in the registration of the plot as it had not been registered in Zondi's name but was still registered under the city counsel of Manzini. The executor was to have departed from the country and was not helpful at all. When the commission called the Attorneys, It was revealed that Attorney Sabelo Bhembe handled the matter and was engaged as a conveyancer in this matter. He advised the commission that he had refunded the purchaser of the plot his transfer costs as he could not see the process through. There was thus no executor in the estate when the matter came before the commission, hence there was no one to see the transfer through.

Recommendations

1. The Master should not leave a vacuum in the office of executor in an estate. The office of the Master should be empowered to remove uncooperative executors.
2. Special courts should be set up to attend to matters pertaining to disputes in estate matters and other family matters on an urgent basis.
3. The next of kin should be defined in the interpretation of the Act. The definition should be such that it will comply with the way Emaswati understands the concept of the next of kin; surviving spouse, children of the deceased, parents of the deceased, guardians of the children.

Conclusion

The matter is finalised.

146. ESTATE LATE THULANI RUDOLPH MAHLANGU E4434/1985

The Master's Office was notified of Mahlangu's passing by his sister Matilda Tsembani Dladla on 14 August 1985. Deceased died intestate and unmarried. He had five children namely; Zeni, Musa, Lwazi, Bhekie and Bandile Mahlangu.

He had movable and immovable properties to wit: - Lot No. 195 at Zakhele Extension Manzini, plot at Manzini and another in Mbabane, (½ portion of 255 of farm No. 2 Mbabane, owned with deceased's Brother Ralph Mahlangu) a life insurance policy, vehicles and cash at bank. Matilda was appointed as an Executrix in a next of kin meeting held on 11 October 1985. A first and distribution account was lodged and approved by the Master. Thembela Andrew Simelane was appointed as curator for the minor children on 26 November 1993. On 26 May 2004, a power of Attorney to transfer the property at Zakhele Extension Manzini to a certain "Besuthu Family Trust", after it had been sold for a sum of E170, 000.00. Ralph Mahlangu had also been appointed Executor of the estate on 23 June 1992. Ralph did not account to the beneficiaries for this sale of the Zakhele property.

It will appear that the brother to the deceased bonded the property with the building Society an order had been granted for its sale in execution at some point when the loan was not being serviced. The property was eventually sold for E700, 000 and each of deceased's children were paid E50, 000 as their share. It is noted that the Deputy Master gave consent for the sale of this property, stated that she would accept a sum of E350, 000 as being an equitable share of the five minor children of the deceased. (See Master's letter to the Registrar of Deeds dated 16 July 2010). The beneficiaries of the estate have challenged the transfer of Lot No. 255 of Farm No.2 Mbabane. It is only after negotiations that they agreed to the transfer of the property to Jeke (Pty) Ltd.

The complainant in this matter, Nomsa Motsa submitted before the Commission that when the deceased passed-on her only child with him was 6 months old and she hardly received any maintenance from the executors except for two payments of E7, 000.00 and E4, 000.00 respectively. It is not clear if she received the E50, 000.00 for the sale of Lot 255 Mbabane, which the other children received.

Observation

There was laxity and poor supervision in the administration of the estate by the office of the Master; they allowed the executor to do as he pleased. Assets of the deceased were not properly collated/supervised.

Recommendation

When Executors sell estate assets in terms of Section 66 of the Administration of Estates Act 28/1902, there is a need to state what those debts are and itemise them.

Conclusion

The matter is finalised.

147. ESTATE LATE RICHARD VAYE NTSHANGASE EL43/2019 AND 1283/2017

The deceased died testate in 1975. He was married with five children. Some of the children were born out of wedlock except for Robert. They are Robert, Alfred, Thabsile and Phindile Ntshangase. The deceased was a quota holder at Vuvulane sugar cane farms. He was married to Kheselinah Ntshangase who succeeded him at the farm cultivating sugar cane. The estate was reported as a result of a court order that directed that it be so reported to the office of the Master. A next of kin meeting was held on the 5th June 2019, where succession issues were discussed. Robert Ntshangase had succeeded his mother in running the farm. The Master opined in that meeting that her office does not ordinarily handle succession in the

Vuvulane farms and that same was handled by the Regional Administrator. (RA). It was revealed in that meeting that a sum of E330 770.07 was being held by Roberts Attorney's in their trust account. This was money derived from a harvest and had been released by RSSC. Two liquidation and distribution accounts were drawn in this estate. The first was done on the 6th January 2020 by Mr Thomo, who was the Executor. Each beneficiary was allocated E14 375.23 and the other was drawn by Thembumenzi Bhembe in terms of which each beneficiary got E 19 256.78. The second distribution was done on the on the 19th of November 2020.In each instance the Executors were distributing cash from the sale of farm implements.

Court processes were initiated by one of the beneficiaries, Robert regarding the cash that had been paid by RSSC under case 466/2020.Robert prayed that the court finds that the money belongs to him as he had been the one who was cultivating the farm yielding the produce.

Observations

The succession to the farm does not create/establish ownership rights in favour of the successor. It being common cause that the farm is owned by Ingwenyama and only held essentially in trust by the successor to the original/first lesser. The successor to the first lessor holds the farm and the farming products in trust for the family of the original holder. The successor is then a successor to the leasehold.

The successor holds the farm in trust for the family of the predeceasing lessee. That is the successor to the lessee cannot discard the children or beneficiaries of the lessee and only feed his/her own children. Such an eventuality could happen if on the death of the lessee or successor lessee, the leasehold terminated and started afresh in which case the new lessee would be entitled to forget his/her siblings and provide only for his/her own children.

In the present case and the manner in which he became successor Robert is bound to provide/share with his siblings who had been provided for by their mother and father before him.

The matter is not entirely an estate but has elements or features of an estate attracting the intervention of the Master's Office. When the holding lessee-successor dies, he/she leaves behind estate assets from the farm proceeds. If these assets are not to be death with as estate assets how else are they to be treated? The farm as such is not an issue; it is the product of the farm that falls for dissemination involving the Master's Office. The farming products do not belong to the lessor and also do not belong to the lessee-successor. The latter holds in trust for the beneficiaries of the predeceasing holder. The succeeding lessee is in effect automatically an executor – and him a quasi-executor trustee. In other words, the Master's Office cannot entirely disassociate itself from the liquidation-distribution of assets generated from the farm.

The learned Mlangeni J stated thus:

"9. The protagonists are siblings born to the late Richard Vayi Ntshangase who died in 1976. I have already observed above that he left no assets behind. Despite this, the court repeatedly and unwittingly treated the matter as an estate of a deceased person. The Master of the High Court saw it otherwise. In response to the very first High Court order dated 27th February 2019 which directed that the matter be resolved as an estate and that the next of kin be convened in meeting, the office of the Master filed a report. In the report, it postulated that the real dispute was one over the rightful "successor' to the lease over the farm, and that the appropriate office to deal with this was the 'Regional Administrator as an office duly (sic) empowered to determine such matters in accordance with its rules and regulations."

The learned Judge went on to observe that the Master in her report had suggested to the Court that the siblings be ordered to hold a next of kin meeting at the Regional Administrator's Office to appoint the successor to the farm lease.

The learned Judge seems to have accepted the Master's proposal on the way forward even though it does not tell us of the 'rules and regulations' to be followed in such cases. The mere change of venue from home to the Regional Administrator's Office for holding the next of kin meeting does not mean much. The next of kin meeting is usually associated with estate matters of which it is said not to be the case here. If the proceeds of the farming operations do not constitute an estate in the hands of the successor holding in trust for the beneficiaries or successive beneficiaries of the deceased lessee it is difficult to understand or characterise these proceeds. Yet these proceeds constitute valuable assets. Maybe it is not the proceeds of the farming that needs to be characterised but the original lease agreement in terms of which the lessor leases a farm to lessee to carry on productive operations for his family. The lease is not terminated by the death of the lessee. The lessee is replaced by a successor from within the family and the lease goes on and on. Why the farm are proceeds not distributable assets in the hands of the successor-lessee, Robert Ntshangase.

Mlangeni J concluded that the issue was not one of succession to the lease but "equitable distribution of present and future income generated on the farm as operated by the applicant." Accordingly, the dispute is not an estate issue, and as such not a concern of the Master of the High Court.

To note is that Robert Ntshangase as successor to his late mother who in turn had succeeded the late Richard Vayi Ntshangase, is not owner of the farm proceeds. Robert is a trustee for beneficiaries. Thus, the amount of E228, 941.38 said to be in the Guardian Fund is not owned by Robert but belongs to all the siblings.

Recommendation

As observed above the succeeding lessee is in effect automatically an executor – and him a quasi-executor trustee. In other words, the Master's Office cannot entirely disassociate itself from the liquidation-distribution of assets generated from the farm. The Master should be provided with guidance on how to handle such estates with uniformity.

Observation

A court application in which Robert is said to be challenging the High Court Judgement is pending.

Conclusion

The matter is finalised.

148. ESTATE LATE MBUSO PETROS SIMELANE 245/2019

The deceased died testate in 2019. He was widowed, and six children, namely Mabutho, Tobhi, Samukelo, Makhosazana, Phindile and Roy. The deceased estate was reported to the Master on 20 August 2019 by his son Mabutho Sifiso Simelane. In terms of the inventory prepared the deceased had four immovable properties to wit the following: Lot 1128 at Ngwane Park, plot Ka-Shali (SNL), plot kaLuhlokohla (SNL) and at Mkhuzweni. He had four vehicles a compressor Mercedes 2004, Honda, Mercedes and a Toyota Hilux. Deceased had three bank accounts as follows; - Eswatini Bank, Swaziland building Society and Nedbank respectively. A next of kin meeting was held on the 5th September 2019 for purposes of appointing an executor. It was disclosed in the meeting that he had a will. Some of his beneficiaries objected to the will stating that the deceased was mentally unstable at the time of his death and could not therefor be in a position to execute a will. A liquidation and distribution account was approved by the Master on the 12th July 2020.

The complainant before the Commission had been Mabutfo Simelane. He submitted that his father had donated a plot to him during his lifetime whilst he was still very young. The deceased will did not allocate anything to him, even this home which had been donated to him had been transferred to someone else. The Master reported that the deceased revoked the donation in his lifetime through a court application.

Observation

A copy of the Will was not attached to the Master's report. The deceased bequeathed a plot which had been donated to one of his children during his lifetime. The donation had apparently been revoked. A court application is pending with case number 133/17, concerning the cancellation of the deed of donation of the said plot.

Recommendation

The need for a legal officer in the office of the Master is again reiterated. The Testators Will could have been questioned in light of the deed of donation. The complainant could have been advised accordingly.

Conclusion

The matter is pending.

149. ESTATE LATE ZAZI ABSALOM MABUZA EH 212/2001

The deceased passed away on 5 March 2001.The estate was reported to the Master by Robert Mpalantane Mabuza, a brother to the deceased. Mabuza was married to three wives; the first wife Priscilla La-Dube, to whom he was married on the 28th June 1969 in terms of civil rites. On the 30th December 1976, the deceased entered into another marriage contract, this time in terms of customary law; Deceased married Thembisile Elaine Simelane. The third wife is Nompumelelo Dlamini who was also married in terms of customary law. The inventory

indicated that he had the following properties; Lot no.89 Mathendele Ext.1, a motor vehicle gratuity from government (E75, 486.42) and a life insurance policy.

In the next of kin meeting held on the 3rd October 2001, the three wives of the deceased were present. Namely Priscilla, Nompumelelo and Thembisile Elaine Simelane. Robert Mabuza a son of the deceased was nominated and subsequently appointed as Executor Dative. He resigned from his duties by letter dated 5 March 2002, citing interference with his duties. A neutral person was then appointed as executor of the estate by the Master in terms of the Administration Act.[59] The Neutral person appointed was Ms. Fikile Mthembu, who was appointed on 22 July 2022.Ms Mthembu prepared a liquidation and distribution account which was approved by deputy master Mr Isaac Dlamini. The beneficiaries according to a letter written by the executor Bongani Mabuza alleged that the beneficiaries did not receive the money allocated in terms of the Liquidation and Distribution account, this was to be confirmed by the Assistant Master Ms.Dlamini who confirmed this by letter dated. That there was proof on file that these monies were paid to the beneficiaries. The Attorney General was robed in to try and get Mthembu to account to no avail she sold a plot at Nhlangano/Mathendele for a sum of E50, 000 in 2004. A deed of sale between Estate late Zazi Mabuza and Welcome Sipho Nxumalo had been prepared by Mthembu Mabuza Attorneys dated 20 October 2004. The proceeds from the sale of the Mathendele plot, said to have been distributed did not reach the beneficiaries. A Liquidation and Distribution dated 8th June 2006 and approved by the assistant Master Isaac on 5th August 2006, purporting to distribute proceeds of the sale of the plot with each beneficiary being allocated E3,040,42 was approved by the Master, however the beneficiaries deny having received these amounts. Ms Mthembu did not provide security following her appointment by Issac Dlamini. At some point the estate

[59] The Administration of estates Act empowers the Master to appoint a neutral person as Executor.

was issued with a demand for rates owing by the Nhlangano Town Clerk, it is not clear why the rates were not being paid as the estate was liquid with the rentals being collected and gratuity from Government having been received. The plot could not have been sold to defray the rates owing. Isaac gave authorisation for the plot to be sold and did not give any reasons why it had to be sold when it was, except to say it was to pay "*expenses of the estate."* There is on file a receipt on file dated 19 June 2014 in respect of payment for rates from the Nhlangano Town Council for an amount of E2573.35. The Executor had obtained a different valuation of the Nhlangano property from Springbok Property Valuations, which gave a valuation of E71, 000.This was in August 2004.

The Commission learnt that one of the wives of the deceased, (Thembisile Elaine Simelane) had her customary union with the deceased annulled. There is an affidavit attested to by Thembisile Simelane dated 7th November 2001, confirming the nullification. She was however present in the next of kin meeting and was involved in all the processes, it is not clear if the family and herself sought to ignore the nullification.

Fikile Thalitha Mthembu was granted consent by the Master to sell the property at Mathendele in terms of the Administration of Estates Act.[60] A liquidation and distribution account was prepared and approved by the Master on 17 February 2004. Priscilla Mabuza objected to this account as she had been married to the deceased in terms of civil rites and was as such entitled to a half share. The master concurred with her objection. The Master approved another liquidation and distribution account on 8 June 2006. It indicated that the Mathendele property was worth E50, 000.00. Some of the deceased's beneficiaries objected to this distribution as they had not been included in the distribution, they were Thembisile, Nompumelelo, Bongani and Mlungisi. In terms of a High Court

[60] It is not clear if this property was sold and for how much. And whether the proceeds were distributed to the beneficiaries in terms of an L&D that was acceptable to all relevant parties.

order in case 1400/2007,[61] the Executor was ordered to amend the distribution account to provide for equal shares for Priscilla, Thembisile and Nompumelelo (it is not clear what the court said about Mlungisi). Another valuation of the Nhlangano property indicated that the value of the property was E261, 000.00

The Executrix Fikile Mthembu was accused of having misused estate funds. She was subsequently removed and replaced by Bongani Mabuza as Executor Dative. However, before her removal the Master had solicited assistance from the Attorney General's office in getting Mthembu to account and holding her accountable for the rentals she had collected over a number of years at the Mathendele property and the gratuity received from the government. There was no feedback from the Attorney General's office.

Attorney's M.C Simelane sued the estate for fees amounting to E14, 962,[62] and placed an interdict on the Mathendele Township property an act the Master warned him against as section 43 and 44 prescribes the procedure for lodging claims against estates. Bongani Mabuza resigned as Executor on 4 May 2022 without stating reasons for his resignation. George Langa suggested in his report that they would hold discussions with the last executor with a view to have the estate wound up.

Observation

There was a vacuum in the office of executor when the matter was heard. Master's report. Valuations in deceased estates are a cause for concern, delays are occasioned and the costs are high.it could help where the parties agree to merely allocate the properties to each other as a first option. The Master sought assistance from the Attorney General's office in getting Mthembu to account for the rentals she had collected over a number of years at the Mathendele property and the

[61] The persons listed include the wives some of whom had separated from the deceased in terms of a nullification order in the one instance.
[62] It is not clear why Simelane was owed.

gratuity received from the government. There had been no feedback from the Attorney General's office when the commission heard the matter.

Recommendations

1. There is a need for closer monitoring of executors collecting rentals and other revenue on behalf of estates.
2. Lawyer Simelane should be called to clarify whether he was paid his debt and what it was in respect of.
3. The Attorney General's office should be requested to designate a particular officer(s) to deal with the matters from the office of the Master to avoid delays in providing guidance etc.
4. The Master should not allow a vacuum in the office of executor.

Conclusion

The matter remains pending.

150. PETER ROY SHOVELA MUNRO E274/1995

Deceased passed away on 28 May 1995 and had a will in place. He had three wives. He married his first wife, Elizabeth Masango in terms of civil rites. The deceased then got married two women in terms of customary rites. Elizabeth had three children with the deceased. The other wife Busisiswe Masango had 5 children. The third wife Phindile Shongwe had four children.

The inventory reflected the following properties; 2 shops at Siteki town, 2 homes also in Siteki, a filling station, 500 cattle, three farms, one at Mzilikazi, the Nothcliff Farm and Hilltop Farm; he also owned two plots in Siteki town.

The complainant before the Commission was Bridges Phillip Munro son to the first wife, Elizabeth. He complained that the estate late account has not been wound up in 28 years and that as a result there is a filling station which was owned

by the deceased and meant to benefit all the children of the diseased but this was not happening.

The children of the first wife produced an Anti-Nuptial Contract, Mzilikazi complex was sold and proceeds were shared amongst the children of the first wife. Busi got the shop at Siteki town and a farm at Moyeni. The third wife was allocated the farm known as the Mahaha Farm. This was as a result of the deed of donation by the deceased.

The distribution is being done piece meal. Some cases are before the courts. Cornwell and Clifford are executors. Master called a meeting in April 2017 she said farm had been sold. Master advised that the court directed that the farm be given to La-Shongwe's children. Following a donation made to her by the deceased.

Observation

The deceased allocated all his homesteads to his respective wives, leaving out only the garage for all of his beneficiaries to share. It appeared to the commission that this was not attainable.

Recommendations

1. The Umphakatsi of the area should give guidance on the ownership of the garage since same is on Eswatini Nation Land.
2. Clear guidelines should be set for businesses established on Eswatini Nation Land.

Conclusion

The matter has been finalised.

151. ESTATE LATE PETER MASHABA: EL 11/2005

The deceased passed–away on 1 January 2005. The estate was reported to the Master's office by the deceased brother Jacob. The matter was heard by the commission on a number of dates,[63] starting with 2 April 2024. Deceased died intestate and was unmarried. He had 3 extra marital children namely; Takitsi, Mpendulo and… Mashaba. As the deceased was not married his mother and siblings after her death inherited from him. The children of the deceased were only offered maintenance.

The mother of the deceased Nana Miriam Mashaba survived the deceased, she was appointed Executor. Miriam Mashaba was assisted by Jacob Mashaba as Executor because apparently, she had advanced in age. Johannes Mashaba, was another son to Miriam, he too took part in running the affairs of the deceased estate. Miriam unfortunately passed on in 2009 before finalising the distribution of assets in this estate. At this point, the complainant in this matter Takitsi Mashaba, told the Commission that their problems began. Their uncle Jacob started refusing to pay the children's school expenses, it is alleged he insulted them and called them *"bantfwana betingwadla*." The Master's Office was approached but could not assist them in any way. It was only after publishing the matter in the print media that their uncle Jacob paid Takitsi's school fees. Attorneys were also engaged to pursue the matter in court. Takitsi told the Commission that she even struggled through university.

Their late father's business Peters Transport was converted into a company now owned by Jacob and his wife. A sum of 4.8 million was said to be owed by the Mashaba business. Mr Mashaba alleged that he paid maintenance and school fees for the children of the deceased. He alleged that he put up Mpendulo Mashaba, one of the children of the deceased at St Christopher's and as his mother is late,

[63] The matter was first heard on 2 April 2024 and again on the following dates; 24 June 2024,

he (Jacob) was solely responsible for his education from the time he started grade one. In making these assertions he was refuting the allegations that he was not maintaining the children of the deceased yet they were entitled to same through their late father's business. Mpendulo was said to be enrolled at Mhlume when the family appeared before the Commission being sponsored by his late father's business allegedly.

Takitsi Mashaba, the complainant and one of the children of the deceased, refuted that she was fully supported in her schooling by Mr Mashaba. She mentioned that she struggled with getting all the supplies she needed whilst at boarding school at Cefups-South Africa. Takitsi mentioned an incident when she even had to approach SWAGGA and the media in order to get help with her owed fees at Cefups of E18, 000. She submitted that this stance got her uncles attention as he eventually paid her fees. Solomon, another of the children also corroborated his siblings and submitted that as children of the deceased they were not well taken care of whilst their uncle's children were being catered for by their father's business to the extent of being schooled overseas in Russia.

The children alleged that the Deputy Master refused to meet them to discuss their plight.

The commission directed that the Master and the Executor should correct the affairs of the deceased's business and wounding up of the estate in a period of 2-3 weeks. The matter was to be reported back to the commission.

Xulu from the Masters office told the Commission that the mother of the deceased was his sole heir. The brothers inherited from their mother upon her demise. A sum of E130.000, 00 was distributed to the children of the deceased. The acting assistant Master, Xulu confirmed that the maintenance of the deceased children was always a problem as the Executor was not cooperative. He further confirmed

that assets of the deceased company Peter's Transport, were transferred to Jacobs Company in unclear circumstances.

Xulu promised to file a report which is still outstanding.

Observations

1. The children of the deceased were robbed of their late father's assets which should have benefited them in terms of being properly cared for. The family had agreed that the children of the deceased should benefit from the assets of their father. The executor was not so candid with the truth about the handling of the assets of the deceased who owned a transport business called Peters Bus Services during his life time.
2. The Master was wrong to rule that the children of the deceased were illegitimate and therefore could not inherit from their father because in terms of the law at the time the children were born of a Swazi who is an African living South of the Equator and was unmarried at the time of his death. For purposes of section 68 the Master had no jurisdiction over this estate. Swazi Law and Custom should have applied and in terms of that law there is no illegitimate child. Peter's children were entitled to inherit from their father.

Recommendations

1. There is a need for the Masters office to be empowered to be able to supervise executors properly and deal with those that fail to cooperate.
2. The Road Transportation Board (RTB) should have clear guidelines as to how to manage road transport permits held by deceased persons.

Conclusion

The matter is pending.

152. ESTATE LATE SIMON PHONDO DLAMINI EM51/2023

The matter first appeared before the Commission on 6 February 2024. The complainant was Winile Matsebula Dlamini. The deceased Mr.Simon Phondo Dlamini, passed away in October 2013, intestate. He was married to Winile Dlamini (LaMatsebula) in terms of Eswatini law and custom. The wife was appointed Executor.

He owned rental flats at his home. He also owned shops on Swazi Nation land. He had one son. After Simon's death some children surfaced claiming to be his brother's children and sought to stop the widow from collecting rentals from her late husband's flats. The issues raised before the Commission were that a certain Logwaca Dlamini claimed ownership of the Flats, alleging that he used to send money to the deceased for their construction whilst he was working in South Africa. Logwaca collected rentals at the homestead for a while and then confessed that he had lied about his ownership of the flats. The rentals collected during this period remains unaccounted for by Logwaca.The matter concerning ownership of the flats was reported to Masundvwini, but no verdict was issued to date. The widow/complainant was removed as Executor allegedly for not depositing all the money in the estate account. Deceased's nephew was made executor and the widow was advised to request for her needs from him. The Master confirmed that rentals of about E11, 000 were being collected monthly and that the wife to the deceased had not been depositing the rentals in the estate account as a result of which she was removed as executor by the Master. Fanana was then appointed Executor. Mathokoza, a son of the deceased wrote to the Master from Correctional Services where he was kept to request that Fanana assists him by sending his share to his children. The family agreed to share the rentals equally. Allocations were made concerning who was to collect from which property and so on. The estate has been resolved after the appearance before the Commission.

Observation

The surviving spouse in this estate was removed by the master from being executor unjustifiably.

Recommendation

The surviving spouse should be given preference in the appointment of the executor as enjoined by the Administration of estates Act.

Conclusion

The matter is finalised.

153. ESTATE LATE JOEL LUSEKWANE NKHAMBULE EM77/2021

The deceased Mr Lusekwane Joel Nkhambule passed away in 2021. His death was reported to the Master of the High Court on the 8th February 2021 by one of his wives, Happy Khanyisile Nkhambule. A next of kin meeting was held on the 1st April 2021 for purposes of appointing an Executor and Nomfundo Nkhambule was appointed Executor testamentary in terms of the will. He had two wives namely Happy Khanyisile Nkhambule and Gcebile Hlatjwako-Nkhambule. He had five children namely; Nkhambule Nomvuselelo, Nkhambule Simphiwe, Nkhambule Mancoba, and Nomfundo Nkhambule.

In terms of the inventory prepared by the Executor, the deceased had two motor vehicles namely; - an Isuzu van registered HSD 338 AM and a Ford van registered ESD 028 CM and a home all of which he bequeathed to Nomfundo Nkhambule.The paternity of Nomfundo was disputed by the first wife and other family members. DNA tests were taken after the family appeared before the Commission, which proved that she was the child of the deceased.

The first wife challenged Nomfundo's paternity in court, the marriage of the second wife to her husband and the validity of the will itself for the following reasons *inter alia*; - A married testator has no right in law to disinherit his spouse in favour of a minor child from another woman. This it was submitted would fly in the face of section 34 of the constitution of Eswatini Act 01/2005. Section 34 provides that a married testator shall reserve a reasonable provision for his/her surviving spouse under a will. The matter had not been decided at the time of reporting. The Master appointed a Curator in the interim to look after the estate. It is not stated what this Curator has done nor who she is.

Observation

The Master appointed a Curator to look after the estate. It is not stated what this Curator has done nor what her name is. Master's update.

Recommendation

Curators appointed by the Master should file reports in Terms of the Act.

Conclusion

The matter is finalised.

154. ESTATE LATE CORNELIUS LUKHELE EH 124/2005

The deceased died testate on 7 June 2005. His estate was reported to the Master of the High Court by Manqoba Innocent Lukhele on 14 June 2005. He had two wives Lindiwe Nyawo-Lukhele and Elizabeth Dlamini-Lukhele. He had five children namely; Emmanuel Lukhele, Phila Lukhele, Ncamiso Lukhele, Lungelo Lukhele, Ntombizile Lukhele and Mcebo Lukhele.

In terms of deceased's will he had nominated lawyer Justice Mavuso and his nephew Mancoba Lukhele as Executors testamentary of his estate. In terms of the inventory prepared for the Masters office he had the following properties: A

home at Dlangeni, three motor vehicles, cattle, goats, USDF cash payment of E177 206, 35 and five life insurance Policies. His will bequeathed his assets in this manner: - The homesteads were to remain with each wife. The wives were to share the cash residue in the following manner 20% each wife and the balance to be shared by the children of the deceased.

The cash pay-out from USDF had been released to the Attorney who started distributing it before preparing a liquidation and distribution account. No provision for maintenance was made for the minor children.

A brother to the deceased is said to have disposed of vehicles and cattle belonging to the deceased. The same brother also allegedly collected cash meant for the deceased estate from Hlalawati Association. Despite numerous requests by the Master to finalise the distribution of this estate the Executors failed to do so and did not provide periodic accounts to the Master. Following the families' appearance before the Commission, the Executor filed a report and an unapproved liquidation and distribution account. He submitted that the complainant, Mrs Sindisiwe Lukhele had been overpaid. Mrs Sindisiwe Lukhele had also complained about the deceased's livestock as not having been distributed. The last will and testament of the deceased bequeathed his livestock in the following manner; *"with regards to stock, each of my two wives mentioned in paragraph 4 above, is to keep whatever cattle, sheep, goats, horses(stock)in her possession, in trust, for her children."*

This settles the complaint about the livestock distribution. Even the life insurance policies complained about were distributed in terms of the will to the beneficiaries indicated therein.

Observations

1. Some assets of the deceased were not known to his first wife and her children. It could not be ascertained if the said assets were misappropriated or whether if they ever existed at all.
2. The Master's report to the Commission was dated 12 February 2024 and it indicated that liquidation and distribution account submitted by the Executor had not yet been approved by the Master.

Recommendation

There is a need for the matrimonial property legislation to be passed to regulate the property due to surviving spouses especially in polygamous marriages such as in this instance.

Conclusion

The matter is finalised.

155. ESTATE LATE LEO WILSON MCABANGO MAZIYA EH303/2010

The deceased died intestate on 15 December 2010. He is survived by his two wives to whom he was married in terms of Customary Rites; Veronica Mziya and Thulie Maziya. Make LaMabuza and Make LaNkhosi. Deceased had six children, namely Thulani Roger Maziya, Elvis Mbongeleni Maziya, Thembeka Mziya, Cebile Maziya, Wakhile Maziya and Themba Maziya. When the deceased passed away Wakhile and Cebile were minors.

The estate consisted of the following assets: several farms following properties: Bed sitters, a business at Nokwane, Flats at Siteki, five farms, three motor vehicles and cattle.

The deceased also had a company known as "The Brothers (Pty) Ltd. This company owned the following properties: Farm 1014 Siteki District of Lubombo, Farm 1015 Siteki District of Lubombo, Portion "D" of Farm No.2152 and Farm 923 Lubombo District. In the said company the deceased was a 99% shareholder, whilst the eldest son of the deceased, Roger Thulani Maziya and complainant herein was a nominal shareholder for the additional 1%.

The family met and appointed one of the children of the deceased Elvis Maziya as Executor of the estate. Elvis was later replaced by Attorney Mr. Manene Thwala as Executor.

The complainant before the Commission was Thulani Rudolph Maziya. He objected to the way the Master handled the sale of their family farms by the Executor, Mr Thwala. The Executor filed the second and final distribution account dated 20 October 2020 which was approved and advertised for inspection by all those interested in the estate. The farms as described above and held by the Brothers (Pty) Ltd, were sold to Big Bend Store Limited.

In the first Liquidation and distribution account filed on 24 June 2015, the executors note had indicated that the farms should be sold to defray the estate liabilities which amounted to E4 705 554.56. The first liquidation and distribution account was approved on 15 October 2015. The complainant before the Commission, Thulani stated that he had expressed an interest in buying the farms belonging to the deceased as his father, in order to keep them in the family including preserving the family grave sites. Thulani told the Commission that he found the farms in use before they were sold. He alleged that a certain Doctor Pond's had been using the farms. Mr Ponds appeared to have started planting trees and installing irrigation equipment even before he bought the farms according to the complainant Thulani.

Thulani believed he could buy all the farms he wanted to buy through his inheritance entitlement. The farms were eventually sold for E2.1million to Dr. Ponds. It was the Masters report that even though the farms were advertised for sale on a number of occasions from 6 April 2016, 13 May 2016 and 16 June 2016 Thulani could not raise the finances needed on time.

The other beneficiaries had all agreed that the farms be sold. Thulani had also consented to the sale although according to the Master he wanted to be the one to whom the farms are sold to. The Master reported that a meeting of the next of kin was held on the 12th December 2019 wherein the beneficiaries were advised of the offer of 2.1 million tabled by the Executor. Complainant requested to be given preference to buy the farms first. He requested in the meeting of December 12 2019 to be given until 31 January 2020 in order to come up with the offer. It is reported that nine months later he still could not come up with the funding in order to enable him buy the farms. The farms were eventually sold for the money that had been offered as follows Farm 1014 was valued at E860 000 00, Farm 1015 at E400 000.00 and Farm 923 at E550 000 00 and portion D of Farm 152 at E3000 000. Totalling 1.1 million.

Thulani also complained that he was a director and held shares in his late father's companies. The late Lindifa Mamba was enlisted to help him, Thulani, buy the farm with family graves as he was advised that he was a shareholder in all of his father's businesses, but this too could not happen as he needed title deeds for the properties which Mr Thwala could not release to him.

Thulani then moved an application before the High Court in order to reverse the sale of the farms. He was not successful as the court approved the sale of the farms. The complainant then escalated the complaint to the Supreme Court. In its judgment dated 12 June 2025 and under case No.62/2024 the complainant was again dismissed. Thulani Rudolf Maziya had sought various orders, the thrust of which was to render ineffective the Second and Final Liquidation and

Distribution Account in the Estate of the late Leo Wilson Mcabango Maziya. He also requested to have the properties that had been sold and the proceeds therefrom meant to be distributed in terms of the challenged account, cancelled and their transfers being reversed. The court dismissed the appeal, holding that "*whatever irregularity there could have been in compliance with the provisions of the Administration of Estates Act 1902 by the Master and the Executor such was dealt a blow by the crucial or watershed meeting of 12 December 2019".*

The beneficiaries of the deceased had met in a next of kin meeting on 12 December 2019 and reached consensus that the properties had to be sold for how much and to which possible buyers. The court stated the following further in dismissing the appeal; *I agree with what the Master said in her ruling on the objection by the Appellant when she referred to an extract from Weichers and Voster's Book,* ***Administration of Estates (1999 edition)*** *which states that;-*

> *'The wishes and interests of the heirs play an overriding role in the administration of Estates, which applies also to the realisation of assets. In fact, if the heirs choose total disposal of the estate, the executor will do so and pay out their inheritances".*

The matter is thus settled.

Observation

The beneficiaries (mainly the complainant was not happy that he was not afforded time to raise money to buy the farms he wanted).

Recommendation

Beneficiaries should not be allowed to stall the work of the executor especially where they are divided. The executor acts as an agent of the Master to ensure that the estate is wound up timely.

Conclusion

The matter is finalised.

156. ESTATE LATE ZEPHANIA MATHANDA MAGAGULA EH143/2021

Complaints in this estate were heard on the 6th February 2024. The family of the deceased Mathanda Magagula came in two groups the first group being heard in the morning whilst the other one was heard in the afternoon of the same day. Mr Magagula passed away on the 29th March 2021. He had three wives, Anna Thomo, LaMalaza and LaZwane. One of the deceased's wives passed away. Magagula died testate. Phumaphi Magagula was appointed Executrix testamentary. An inventory was prepared and reflected that the deceased had the following: 3 vehicles, about 100 cattle, five million Emalangeni cash at bank, a farm, a tractor and farming implements.

The deceased had prepared a Trust instrument during his lifetime with the assistance of lawyer Sikhumbuzo Simelane. He had it introduced to his family during his lifetime. Four of his children were appointed trustees, namely Ndlelo, Musa, Mjaji and Phumaphi. The deceased had 12 children, including three who were born out of wedlock namely Sesi, Tekatakho and Ncaba. Although the paternity of Ncaba was disputed at some point, it would appear that the matter was eventually settled amicably and he was accepted by the family. The three cars were reportedly in the possession of the Executor Phumaphi, at her homestead.

The complainants told the commission that, whilst the deceased had three wives, only one of them was being maintained as she was the mother of the Executor, Phumaphi Magagula. The alleged further that cattle, belonging to the deceased estate had been sold and proceeds unaccounted whilst some had gone missing and had not been accounted for, it was suspected that Phumaphi transferred the cattle into her mother's name. At one point, Phumaphi tried to remove ten cattle claiming a customer wanted the same. A trust was to be formed in terms of the Will, however some of the children of the deceased were kept in the dark

concerning how it should benefit each of them. The three vehicles owned by the deceased are being used by the Executor/Phumaphi and her husband. The authenticity of the Will was doubtful to some of the deceases family members. The Executor, Ms. Phumaphi was said to be abusing the estate funds obtained through numerous court orders, which money was paid directly to her account. Another court application was pending when complainants appeared before the Commission.

Observation

The implementation of the Trust, is a matter falling outside the duties of the Master once all the deceased property has been donated/transferred to the trust.

Recommendation

There is a need to strengthen the mechanisms for the monitoring of executor's handling of estate money and other property.

Spousal maintenance legislation upon the demise of another is also vital.

Control of Trust Property legislation is recommended.

Conclusion

The matter is finalised before the Master. The Trust dispute is pending in Court.

157. ESTATE LATE DUMISANI TSELA EM 65/2019

The deceased Dumisani Tsela died in 2019. The Complainant, Siyabonga Tsela, is the son of the deceased. The death of the deceased was reported to the office of the Master by his brother. The mother of the deceased was appointed Executor of the deceased estate. Deceased had five children. An inventory was prepared and reflected that the deceased had; a Kombi, and E8,000 at bank.

The complaint was that the deceased's family confiscated a bus upon his demise. Public permits for the mini buses were reportedly being rented out by the mother of the deceased. This was not acceptable to the son of the deceased Siyabonga Tsela, who is the complainant in this matter. He testified before the commission that his grandmother was not accounting for the proceeds from renting out the public permits. A family member claimed that the deceased owed him E40 000, so he claimed ownership of the Kombi owned by the deceased.

Observation

An allegedly fraudulent affidavit was shown to the complainant alleging that he confirmed the ownership of the Kombi by his uncle. The Master advised the Commission that the estate had been wound-up and that there was nothing left of the assets deceased allegedly owned. The Kombi which was registered in his name belonged to a certain Maphevu. Affidavits attesting to the same were filed with the Master. The public permits were not part of the assets of the deceased.

Recommendation

The Road Transportation Board should provide proper guidance on what should happen to a public permit upon the demise of the holder, especially where the public transport business is continuing.

Alternatively, public permits should be issued to companies and not individuals.

Conclusion

The matter is finalised.

158. ESTATE LATE MFANUFIKILE KINGSLEY MASHABA ELS 39/2023

Mashaba died intestate on 10 August 2023, his estate was reported to the office of the Master at Simunye by his wife Sandra Mashaba on 21 August 2023. The deceased was married to Sandra Mashaba in terms of civil rites and in community

of property. In terms of the death notice filed, deceased had five children. He had three children with Sandra. The deceased had two other children born of different mothers.

The inventory indicated that the deceased owned the following properties:-A home at Siteki, a home at Matsetsa, Three mini buses, an Isuzu Van, a Corolla Sedan, a Mercedes Benz, a trailer. The deceased owned shares in a construction company along with two of his children Nosipho Mashaba and Samkelo Mashaba. It is not clear how much of the shares each one of them held in the company.

The matter first appeared before the commission on 3 March 2024, wherein the complainants, who were the children of the deceased. They told the commission that their step mother Sandra Mashaba opened the estate file at Simunye instead of Siteki where the family resided. This, to them signalled that she had close ties with the Assistant Master at Simunye. An allegation that was vehemently denied by Xolile Nkambule, the Assistant Master based at Simunye. The Assistant Master was reported to have allegedly refused to appoint a co-executor to represent their interests.

A next of kin meeting was called by the Assistant Master for the 30th August 2023. Only the surviving spouse and one beneficiary, Samukelo Mashaba turned up for this meeting. The assistant master was forced to postpone its sitting to another date, being 13 September 2023, on which date the family still did not attend except for the two mentioned above. Another date was set, namely 11th October 2023.Present in this meeting were the following: Sandra Mashaba (surviving spouse), Samkelo Mashaba (son), Lomthantazo Mashaba (sister), Sindi Mashaba (sister), Sibongile Gamedze (cousin), Betty Vilakati (cousin) and Thulisile Dlamini (sister- in- law). The Master records that, four children of the deceased who are also beneficiaries did not attend this meeting.

The Master is said to have explained to the family that the purpose of the meeting was to appoint an executor for the family in line with section 25 of the Administration of estates Act.[64] Sandra Mashaba, the surviving spouse was appointed as executrix of the estate in this meeting.[65] Shortly after ending the next of kin meeting, the master records that three children of the deceased arrived at the Simunye offices of the Master, namely, Celimphilo, Nonduduzo and Nosipho Mashaba. They were attended to by the Assistant Master and given a brief in a subsequent meeting convened the same day on what had transpired in the earlier meeting. The three beneficiaries are said to have complained about the holding and reporting of their father's estate at Simunye instead of Siteki as they opined, Siteki would have been preferred as it was closer to the family residence. The Master reported that the three beneficiaries made a huge spectacle and made unpleasant utterances voicing their dissatisfaction with the jurisdiction of the Simunye office as they stormed out of the meeting.

Nonetheless the executrix continued with her duties undeterred, she duly advertised the estate in terms of section 42(1) of the Administration of estates Act. It is reported that on the 8th December 2023 the Masters office was served with an interim order in respect of this estate, returnable on the 15 December 2023. Celimphilo and Nosipho Mashaba filed complainants with the Master regarding their maintenance with the executor who was said to be uncooperative. They also wanted the master to cause the executor to give an account concerning the transport business as some kombis were said to be operating.

In a meeting called by the Master to address these matters, scheduled for 5 February 2024, the Executor advised the meeting that a certain Nkuna was managing the kombi business. The Executor was also asked about a sum of E25, 000 paid to the estate by the Elections and Boundaries Commission (EBC). At

[64] Section 25 of the Administration of Estates Act.
[65] The surviving spouses are typically given priority to be appointed as the executor of an estate.

the time of the deceased's passing, the Elections and Boundaries Commission owed the Mashaba business E25, 000 which was due to be paid. This amount was cleared after the demise of Mr Mashaba. She explained how the money was distributed. Mrs Mashaba told the commission that there were claims against the estate including a cow that was owed to her family for *insulamnyembeti* in the sum of E8, 000 (eight thousand emalangeni). A further sum of E7, 000 was owed to a certain Mr Dludlu for permit rentals. A mechanic was owed E700.

After payment of all the claims only a sum of E15, 000 remained which was then shared by the beneficiaries in the amount of E2, 500 each. The beneficiaries did not dispute the fact that they got E2, 500 each from this distribution, which happened outside the Masters office. The Master scheduled another meeting with Mr Nkuna and the beneficiaries of the estate for 14 February 2024, which was chaired by the Assistant Master during this meeting a number of matters were discussed including the running of the transport business by Nkuna. He reported that some of the beneficiaries would come and collect maintenance money from him including the executor, this hindered the business operations. Celimphilo and Nosipho are the two beneficiaries who collected maintenance and they did not dispute this fact. A co-executor in Sikhatsi Dlamini was also introduced to represent Celimphilo, Nosipho and Nonduduzo.

The executor, appeared before the Commission on 21 March 2024, she was with Samkelo Mashaba and Sikhatsi Dlamini on this day. She told the Commission that she was co-executor with Sikhatsi, representing some of the children of the deceased as a relative.

Observations

1. She complained that some vehicles that were purchased by the deceased were registered in the name of one of the children of the deceased who had taken these vehicles to Mozambique. This was making the winding up of

the estate difficult. The said child alleged that the deceased bought the vehicles for him, to wit a Mercedes Benz and a Toyota corolla.

2. The transport business did not continue much after the death of Mr Mashaba as no one could run the Mini buses effectively and efficiently without interference from the beneficiaries. There is also a court case pending in the High court under case No.2884/2023. Master's updated report is outstanding, to explain the status of the case mainly and whether the estate has been finalised.

Recommendation

The Master should keep close supervision on executors and should not remove the surviving spouse for minor transgressions, instead the surviving spouse should be properly guided.

Conclusion

The matter is finalised.

159. ESTATE LATE PRINCE MATHANZIMA ZACHARIA DLAMINI EM 271/2014

The deceased died on the 27th November 2014, his estate was reported to the Master by his wife Zanele Esther Dlamini (LaNhlabatsi) on the 5th December 2014. The marriage of the deceased to Zanele was in terms of Eswatini Law and Custom. The deceased had twelve Children namely; Mandla, Samukeliso, Lomakhosi, Ntokozo, Khetsiwe, Sipho, Temalangeni, Sakhie, Nhlanhla, Hlengiwe, Bakhombisile, Linda and Lungile Dlamini.

The family met on the 12th February 2015, to nominate an Executor for the estate, Ms Zanele Dlamini (LaNhlabatsi) and Duduzile Magagula were nominated as Executrixes for the estate. The family met again on the 23rd March 2015 wherein the will of the deceased was read. It was learnt on this reading that the deceased

had nominated his own Executor (Mr.G.Bertram). However, Mr Bertram predeceased the testator so the Master approved the nomination of the surviving spouse Zanele Dlamini (LaNhlabatsi) as the Executrix of the estate. After the liquidation and distribution account had been prepared by the Master some objections were raised. The first complaint was filed by Sitani Josephine Nkosi on the 28th October 2015. Another complaint dated 18th November 2015 was filed by Ntokozo Dlamini. The last was filed by Motsa Mavuso Attorneys on 13th November 2015. The Executrix responded to each of these objections.

The complainant Ms. Rosemary Kenny of Mafutseni appeared before the Commission on the 8th February 2024 and complained that her child with the deceased was left out of the estate for purposes of inheritance and maintenance. Kenny had a child with the deceased out of wedlock. The Master excluded the child because her birth certificate, allegedly did not have the father's particulars. LaNhlabatsi is said to have disputed paternity of the child. Cattle were allegedly distributed excluding Kenny's child. At some point the Master directed that DNA tests be conducted, however deceased's family would not cooperate. The child could not be assisted with her schooling by the Master. The complainant's child, was eventually able to inherit after the birth was registered indicating the deceased as her father. This matter has been amicably settled.

Observation

A child of the deceased was caused to endure untold suffering when she should not have. The child's certificate did not indicate that she was a child of the deceased, instead her mother's surname was reflected. As such the Master's office could not accept it as proof that she was a child of the deceased.

Recommendation

A birth certificate should not be the only thing the Master uses to support a minor's claim for maintenance against a deceased estate, especially where no one

disputes paternity, pending DNA tests. It is suggested that evidence by family members that the child is of the deceased should be considered by the office of the Master. There is a need for the Masters Office and Home Affairs to address the registration of birth certificates of children where the particulars of one parent appear.

Conclusion

The matter is finalised.

160. ESTATE LATE CALVIN NDLOVU: EH144/2001

The deceased died testate on 17 February 2001 in Piggs Peak according to the death notice filed at the Masters office. The estate was reported to the Masters office on 5 March 2001 by Mrs Nellie Siphiwe Ndlovu. Deceased was married to more than one wife during his lifetime, some of whom had been separated from him at the time of his death. He appointed his executor testamentary as Knox Mshumayeli Nxumalo. The estate was engulfed by a lot of disputes and controversies which resulted in a lot of litigation. It was finally settled by the family amicably by resolving to distribute the estate intestate. The matter was finalised through a family settlement around 2024, several years after the deceased had died. The Master was appreciated by the beneficiaries for her assistance in finalising the distribution of the estate.

Observation

The office of the Master was commended for the assistance rendered to the beneficiaries of this estate after many years of fighting amongst themselves and third parties who had been roped into wound up the estate looting it in more ways than one.

Recommendation

The Master should monitor estates closely and provide guidance to beneficiaries in terms of law whilst encouraging them to settle internal squabbles timely, it should not take over 20 years to settle disputes even where there are in-house disagreements.

Conclusion

The matter is finalised.

161. ESTATE LATE CHRISTINAH DLAMINI EH 1/2010

Christinah Shabangu (born Dlamini) died intestate in January 2010. Her husband Mr Shabangu, had predeceased her. The deceased had two children Christopher Shabangu and Busisiwe Dlamini. Christopher reported the estate. The Commission heard the matter on the 12th June 2024.

Busisiwe Dlamini appeared before the commission as the complainant. The deceased had rental flats in her compound. She had two compounds/homes within the same area and close to each other. Deceased also had cash at bank. Only one of the plots encompassed the rental rooms. There were seven rooms. The other homestead had four flats for rental. The Master allegedly directed Christopher Shabangu, one of the two beneficiaries to deposit the rentals into an estate account so as to enable the sharing of same between him and his sister, but he failed to do so. Busisiwe alleged that this instruction was given in 2010. Her brother Christopher did not oblige. He continued to collect rentals from all the flats in their mother's yard from 2010 to date and did not share or account to his sister for the same. There were rentals which according to Busisiwe were due to one of her late sister's children, which were collected by Christopher from the same compound as well. She alleged that she tried to reason with him to give the children the money but he refused. Busisiwe told the

Commission that she then filed a court application to try and compel Christopher to account for the rentals to no avail. The court issued an order directing that Christopher should account for the rentals collected, however Christopher defies this order. The complainant indicated to the Commission that she was not able to fund any further litigation for contempt in this matter.

Busisiwe told the Commission that in the year 2023, she was summoned by Christopher to their mother's place to discuss their mother's estate. He suggested that Busisiwe should table a proposed settlement for the matter concerning the rentals collected and the homes. Busisiwe said she then told him to account for all the rentals he had collected in the past and then give her one of the homesteads, which proposal was rejected by Shabangu. The impasse then continued. Busisiwe then asked the Commission to help them settle this estate dispute which even the Master could not settle. Christopher even refused to obey court orders, although he could not provide any substantial reasons why he felt entitled to benefit alone from his mother's estate apart from the fact that his late mother was married to Shabangu his father.

Christopher did not want his sister to have any say or even a share in their mother's estate alleging that as their late mother had been married to his father the homesteads belonged to his family as his sister had a different father. The chief's headman did not agree with Shabangu as he told the Commission that Shabangu was not known in their area and that the deceased, Christina Dlamini had acquired the land through *Khonta* system alone. She was the only person registered in their Chiefs Kraal.

What is at play hear is a clash of customs. Mrs Shabangu is a widowed woman who is survived by two of her children, one from her marriage to Shabangu the other, a daughter was born out of wedlock. She *khontaed* and built herself a homestead. Her heirs are all her children post the 2005 constitution. Boys and girls alike can now inherit a home. Mr Shabangu wants to try and grab his sister's

home/share. Shabangu is holding on to what he thinks and believes should prevail as happened in the past. It was very difficult for the Commission to get Mr. Shabangu's attendance, the Commission eventually solicited the assistance of the police to get him to appear before it. When he eventually did, he was not cooperative still. He indicated that his sister was not entitled to any part of his mother's estate, being the two homesteads.

Ms. Dlamini appeared with Sikhatsi Dlamini her son. The Master's report on what finally happened to the rentals and distribution is still pending.

Observation

The Master's orders were not being adhered to by Shabangu.Shabangu was also alleged not to be a child of the husband of the deceased, he could not have any better claim to the homestead even in terms of customary law.[66] There are rentals which are also in issue as Shabangu was accused of having collected rentals from their mothers flats and did not account to the Master for the same. The Master has always been aware of the happenings in this estate but could not do anything.

Recommendations

1. The Masters office should have a legal officer to assist the office with the enforcement of the law.
2. The administration of estates Act should be amended to give the office of the Master power/authority over those who disregard their rulings.
3. Better monitoring could have assisted the beneficiaries of this estate.
4. Contempt of court charges should be preferred against the executor who is refusing to remit the rentals.

[66] The practice of male primogeniture entails that only the senior male persons or sons inherit the family home.in Zodwa Kunene &WLSA Swaziland v Chief Jabhane Dlamini and The Ministry of Justice and constitutional Affairs and the Attorney General case 1592/17; this practice was being challenged. Although the matter was not decided as it was withdrawn, this was an indication according to WLSA that such practices still occur in constitutional Eswatini.

Conclusion

The matter is pending.

162. ESTATE LATE INKHOSI MAJA II OF THE MAMBA CLAN SES15/2015

The Mamba king passed away in 2009, and the Commission heard the matter on the 12thJune 2024. Ncamsile Mamba and Sehlephi Mamba-Mngometulu appeared before the Commission. The estate was reported to the Masters office by Prince Phinda Mamba. The deceased king had four wives. Before the Commission was Inkhosikati LaShongwe a daughter to an Indvuna. The other wives are LaSibandze, LaShongwe, LaNkhosi (LaBafana) and LaNkhosi (LaShiya). The complainant's issue was partly that of a lack of communication concerning the distribution of the assets of the deceased and maintenance of the widows.

It was reported that on the 2nd April 2009 a next of kin meeting was scheduled at the master's office and nobody turned up. Again, on the 1st February 2021 the next of kin were called in this meeting Qiniso Mamba was appointed Executor. The under listed persons were listed as the king's relatives; Bonisile Sime Mamba, Mhlangana Mamba, Condzani Mamba, Simon Matsebula, Tjege Mamba, Bambitje Mamba, Zibizezwe Mamba. Qiniso Mamba, a brother to the King stated that he was the executor of the Kings estate and had not done anything yet. Prior to Qiniso's appointment Nomaswazi Simelane the assistant master reported that Phinda Petros Mamba was appointed executor for a while and in his short stint had deposed of an Isuzu van belonging to the late King for E30, 000. Maintenance of the king's wives was at stake. There is a need to legislate for the provision of maintenance for the surviving spouse and minor children of the deceased even in a customary law set up.

In Eswatini the Constitution, provides that succession to the office of king shall be regulated by eSwatini Law and Custom, Swazi courts have jurisdiction to deal with any dispute arising from any deceased estates where the spouses were married in terms of eSwatini laws and custom.

Observation

The matter concerning maintenance of surviving spouses in Eswatini is a yawning problem that needs urgent rectification by way of legislation.

Recommendation

There is need for a uniform way of handling Chiefs estates and maintenance of their surviving wives. Ideally Chiefs' spouses should have their assets registered in their own names so that the new Chief should not be burdened with separating the estates.

Conclusion

The complainant was referred to traditional authorities.

163. ESTATE LATE SIBONANGAYE MATHAMBO SIHLONGONYANE EM271/2007

The deceased was married to three wives in terms of Siswati Customs. Esther Ntombi Sihlongonyane, Marcella Sihlongonyane La-Motsa and Minah Sihlongonyane. He had twenty-six children namely; Marcella, Thulile, Alpheus, Donald, Philip, Sabelo, Clement, Dumsane, Ncane, Zanele, Mbongiseni, Vincent, Lungile, Celiwe, Thandi, William, Thembisile, Njabulo, Ntombifuthi, Xolile, Lomgidvo, Sikulwenkhosi, Phindile, Ngabisa, Thembeni. His inventory reflected the following assets: five (5) farms, Seven vehicles, and a herd of 123 cattle, goats and sheep.

Deceased had prepared a Will, which was challenged by some of his children and wives in High court case number 4005/07. The basis for challenging the Will was

that, inter alia, it was unconstitutional as it had breached sections 27(3), 29(4) and 34(1) of the constitution. The plaintiffs contended this was so because some of the children of the deceased were not provided for in the Will, as well as its failure to equate the allocation for all the three wives. These were the same complaints brought before the commission by some of the children of the deceased.

The Court rejected their contentions, namely that they had not been allocated a reasonable provision in the Will of the deceased, Agyemang J said the following *"What a spouse is entitled to constitutionally is a reasonable provision, section 34(1).A complaint regarding such lack is to be made by a spouse: she must allege that she has been left little to sustain him/her in a reasonable life style. If such, having regard to the estate is found to be so, the case is made out for the Will to be disturbed. The plaintiff herself made no such case in her evidence, nor was evidence in that behalf adduced."*

The court also rejected the claim by some of the children of the deceased that the Will the deceased sinned against Section 29(4) of the Constitution in leaving some of them out. The court found that despite the fact that insufficient evidence was adduced to prove these assertions, it was not unconstitutional leave out adult children from a bequest in a Will. The court stated the following:

"It cannot be gainsaid that the requirement for a reasonable provision, see: S.29 (7) (b) .It is doubtful if a Will of a testator which is a solemn declaration of how he wants to deal with his self-acquired properties may be declared invalid by reason of a lack of a bequest to adult children not found to be incapable of supporting themselves by reason of physical or mental disability."

It was also contended that the Will of the deceased was invalid as when he is alleged to have signed it, he was not *compos mentis* as a result of an illness. This allegation was also rejected by the court.

An allegation was also made that the original Will had gone missing in the Master's office.

The estate was eventually wound-up in terms of the Will. However certain properties are being kept or used by the children of the deceased unlawfully, delaying the wounding up. Such as a plot that was occupied by one of the children of the deceased.

Observation

Allegations of threats of violence against the officials at the Masters office were made by some of the beneficiaries in this estate.

The original Will Document allegedly went missing in the Master's office hence a duplicate was used to wind-up the estate.

Recommendations

1. Security at the Master's offices should be up scaled by the provision of security companies to guard the premises and the installation of security cameras.
2. There is a need to safeguard Wills deposited with the Master's office. Better methods of ensuring the safety of wills should be pursued immediately. Such as the installation of safes in all establishments. The Master's report is outstanding.

Conclusion

The matter was finalised.

164. ESTATE LATE JOMO KHUMALO: EH17/2021

There is not much of an issue in this estate matter as all that the complainant sought was acceptance and maintenance for a child she claimed was a child of

the deceased. The deceased suffered a very terrible death as he was assassinated or at shot in broad day light in the company of his family in Manzini.

The passing of the deceased was reported to the Master's office. This matter came before the commission on the 27th March 2024 and again on the 24th April 2024, wherein Anna Mgabhi was the complainant and gave evidence as such. She told the Commission that she had two children with the deceased, named Phumlangezwi and Luyanda Khumalo aged 10 and 14 years old respectively. She told the Commission that she was called to the social welfare offices where she was advised that it was necessary to conduct DNA tests, in order to prove the paternity of her children with deceased. She agreed to do the tests. The tests confirmed one of the children as being that of the deceased and in respect of the other child the tests came out negative.

The mother of these two children, Anna Mgabhi, refused to take the money offered as maintenance for her one child by the executor of the deceased estate. She did so in protestation of the exclusion of her other son. The Master's final update concerning the payment of maintenance to the one child of the deceased with Mgabhi. Whether she had accepted the payment as she had intimated that she would not accept it unless both her children were maintained.

Observation

The complainant could have been assisted with a second DNA test at her own expense as she clearly was not satisfied with the DNA tests conducted.

Recommendations

1. The complainant needed a Lawyer to assist and advise her through the process so as to avoid disadvantaging the children.
2. Legal aid facilities for such people is very important and is suggested.
3. Free DNA tests should be made available by the state in deserving cases.

Conclusion

The matter is finalised.

165. ESTATE LATE ESTHER TSELA EM349/2021 AND SABELO TSELA EM287/2022

The deceased Ester, died in 2020, her husband predeceased her. The estate was reported to the Master. The family transferred the assets to the wife, Esther. The inventory reflected the following items; two shops one shop at Holneck (Nhlangano), the other shop was at Mathendele and cash at bank.

Only two children of the deceased remain, Venessa and Marwick Tsela. The complainant Marwick, wanted the Commission assist them get the shop in Nhlangano registered in his and Venessa's names. Marwick further wanted the Commission to attend to the finalisation of their parent's estates by returning some cattle to their homestead, distribution of a plot and house at two-sticks and distributing the cash in the guardian fund.

The Master's office advised that the two sticks home was not part of the properties reported to the Master, hence it was not part of the inventory.

Vanessa one of the surviving siblings did not see eye to eye with the complainant, her brother. The complainant and his sister Vanessa did not seem to see eye to eye as they accused each other of retaining properties of the estate. The complainant told the Commission that Vanessa had kept some cattle paid by her in laws to the family at her homestead instead of transferring these cattle to their home. Vanessa on the other hand accused the complainant of not accounting for rentals collected from the shop at Mathendele and in their other late sibling's house.

Observation

This estate was not being supervised by the Master's office at all, nothing was done by this office to ensure the smooth distribution of assets by the executor.

Recommendations

1. There is a need for the Master's office to be equipped with an automated system to follow up on estates progress.
2. The Master should put in place a mechanism for monitoring and supervision of executors.

Conclusion

The matter is finalised.

166. ESTATE LATE RICHARD DICK BENNETT EM 66/2022

This matter came before the Commission on various dates. The deceased died testate on the 23rd June 1996, and his estate was reported to the Master. He was married and had three wives, Feleni Phumaphi Dlamini, Irene Gamedze and Joyce Dlamini.

The deceased had nominated Messrs Moses Oswin and Douglas Lukhele as Executors testamentary. After the death of both Executors the family of the deceased met with the Master on the 5th September 1997 in order to and nominate another person to take up the office of Executor. Solomon Bennett nominated Attorney Patrick Zwane as Executor. The family of the deceased present in the meeting of the next of kin when Zwane was nominated were Solomon Mdwayimba Bennett, Irene Bennett (LaGamedze) and Joyce Bennett (LaDlamini). The meeting was chaired by Isaac Dlamini, deputy Master at the time. There was no objection to Zwane's nomination hence the Master appointed him as Executor. On the 13th March 2003 another next of kin meeting was held, chaired by Mr Isaac as deputy Master with only two family members present,

namely Joyce and Solomon Bennett. It was reported in this meeting that Zwane had left the kingdom and had done nothing to liquidate and distribute the estate. Joyce and Solomon replaced him as Executor's of the deceased estate. The Master accepted this suggestion by the two and issued letters of administration in their favour on the same day.

The inventory prepared by Mr Oswin reflected that the deceased had the following immovable assets; Farm Peebles block No.9, Manzini valued at E90.000; Farm Peebles block 11, Manzini valued at E150,000 and a portion of farm 1213 Manzini valued at E40,000.

He also had a Massey Fergusson Tractor, two ploughs and several farm implements; over 200 cattle; cash at bank E92 608.39. Joyce Mansoor and Jacob Mansoor had a claim of E60,000 against the estate.

The complainants before the Commission were Miss Bennett and Stephnee Snyders, who submitted that they were the daughter and grandchild of the late Dick Bennett respectively had become homeless. Their family home had been on the Hhelehhele farm which now belongs to Tommy Kirk. Tommy Kirk, it was reported allegedly bought the Bennett farm for one million and got three million as compensation from the Government of Eswatini when the farm was expropriated. The will of the deceased was challenged in court, however the applicants challenging the will were not successful. Joyce and her son were the major beneficiaries of the estate.

In terms of his will the deceased bequeathed farm Peebles block 9-Manzini and farm Peebles block 11- Manzini to his son Solomon Ndwayimba Bennett. He bequeathed Portion 1 of farm 1213 –Manzini. He also gave Solomon 100 cows and two bulls. He bequeathed 50 heifers and a bull. He bequeathed all his money to Solomon and his daughter Jennet Bennett. He gave a life usufruct to Mary Bennett and Sophie Bennett of undisturbed occupation and use during their

lifetime of the premises they occupied at the time. He also bequeathed a life usufruct over farm Peebles block 11 to his wife Joyce Bennett.

The matter appears to be finalised. On the 23rd September 2024, Counsel Sipho Gumedze appeared before the Commission and advised that the Bennett Estate Matter was not pending in any court of law as the court had ruled that the matter had been filed late as distribution had already been done. Gumedze advised that nothing more could be done as the court had made a final ruling on the issues that had been the subject of contestation.

The Supreme Court's decision in this matter is clear. The court had to consider the question whether a grandchild could inherit from its grandfather in intestacy. The deceased in this matter Dick Bennett was the father of Patrick Bennett who had predeceased his father and was the father of the first appellant, Ms Stephnee. The question was whether Patrick stood to benefit from his father Dick Bennett's intestate estate nor in terms of the will. Bennett left a will which did not provide anything for Patrick's daughter Stephnee and Dick's daughter the second Appellant. The second Appellant had not been part of the first application in the court a quo. The court a quo observed that the estate was wound up in 2004. That there was a delay in instituting the proceedings. Hence there was no estate to challenge on the 17th September 2020.

The High court, held that the grandchild was not a beneficiary as her father Patrick, had predeceased her grandfather. The court a quo was said to have followed the *"Aasdomsrecht*" a system of Roman Dutch Law that was followed and was prevalent in North Holland and Friesland, which did not become part of our system of intestate succession.

However, the Supreme Court, held that the granddaughter would have been a beneficiary in the estate of the late Dick Richard Bennett *ab intestatio* in terms of

Roman Dutch Law. Also, but for the will, Dicks daughter the 2nd Appellant would have benefited from her father's estate *ab intestatio.*

Their Lordship were unanimous that a grandchild is entitled to inherit from its grandparents who die intestate, should the parent of such grandchild predecease his/her parents. The court stated that this is in terms of the Roman Dutch Law principle of representation or per stirpes which was prevalent in Holland and was received by South Africa. The court finally said the following; "setting aside the judgement when the assets of the estate in question have long been distributed to the legatees would only generate intractable issues to no one's benefit."

The estate of the deceased Dick Bennett was thus finalised in 2004 and could no longer be addressed in 2020 when there would be beneficiaries tried to challenge the will and the distribution.

Observation

The testator left nothing for his other wives in a polygamous union, nothing for his daughter and nothing for the daughter of his deceased son. Only one son and his mother benefitted from his Will.

Recommendations

1. Attorneys should advise their clients intending to draft a Will, of their obligation to comply with the Law. Bennett should not have been allowed to disinherit his wives of their homes.
2. Beneficiaries should be advised to challenge an unlawful Act such as in a will within a reasonable length of time.

Conclusion

The matter is finalised.

167. ESTATE LATE JABULANI PHINEAS MASUKU EM 65/2019

The deceased died in 2019. The Complainant, Sibongile Masuku, is the wife of the deceased. They were married by Civil rites. No children were born of the marriage. The death of the deceased was reported to the office of the Master on the 14th March 2019. Sibongile was appointed Executor.

An inventory was prepared and reflected that the deceased had;

Two plots, one at Sterkerstroom and the other at Fairview.

- Two cars
- 2 bank accounts

However, Sibongile also mentioned that another plot at Fairview (next to Mthunyelelwa was sold to Reverend Nyawo. Two children born out of wedlock. Sibongile denied that they were the children of the deceased.

Before his death, the deceased developed a mental disability and went to stay at Sikhunyane. In 2016 a child by the name of Samkelisiwe approached Sibongile alleging that she was the deceased's child.

Complaint

Sibongile complained that –

- The Fairview property was leased and Samkelisiwe collected the rentals. When the Liquidation and Distribution account was first shown to the beneficiaries, she was not there. She now wants all the monies that appear in the Liquidation and Distribution account to be paid to her;

  - She wants the Title Deed to the Fairview property to be restored to her;
  -The plot at Fairview next to Mthunyelelwa was sold by the husband's attorney, Mr Andreas Lukhele, to Reverend Nyawo. An inquiry should

therefore be carried out to determine the issue of the sale. If the sale went through, she is entitled to the proceeds of the sale.

- Samukelisiwe and the other child not the biological children of the deceased.

It is worth noting that this matter appeared before the Commission twice. It first appeared on the 20th February 2024 and 19th August 2024. On the second occasion, Samkelisiwe appeared following an invitation by the Commission. She said that she was the daughter of the deceased. When the deceased died, she was studying Nursing at Good Shepherd Hospital. She was owing school fees amounting to Five thousand Emalangeni (E5,000.00) and Sibongile refused to pay the fees alleging that she was not the child of the deceased.

Sibongile was staying at Sterkerstroom and she came to Fairview where Samukelisiwe was staying and took household belongings saying that they belonged to her. Samukelisiwe was collecting rent for the Fairview property. Sibongile and I agreed that we should share the Four thousand eight hundred Emalangeni (E4800.00) equally between the two of us. This was to happen for a period of thirty-six months (36) and that would liquidate her half share to the rentals Samukelisiwe collected previously. The parties agreed to settle the matter outside the Commission.

On the issue of the Fairview plot that was next to Mthunyelelwa, Mr Lukhele's representative advised that the property was sold during the lifetime of the deceased. The proceeds were paid to the deceased and the property was accordingly transferred to the new owner.

Observation

The Master advised that the Liquidation and Distribution account was finalised in 2012. As far as the office of the Master is concerned, there are no pending issues with regard to the matter.

Recommendation

There is a need to establish whether the matter was amicably settled between Sibongile and Samkelisiwe as per their undertaking of 19th August 2024.

Conclusion

The estate was finalised. All that remained was the refund due to the surviving spouse from the other beneficiary.