

## BUSINESS LAW &amp; TAX

# Vital for executors to get ducks in a row

● Case of an applicant applying to the incorrect forum highlights this

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The administration of a deceased estate is not for the faint-hearted. In some cases, it may become necessary for an executor or executrix of an estate to apply for a warrant via section 26(3) read with section 102 of the Administration of Estates Act 66 of 1965 for search and seizure of all assets registered in the name of the deceased as of the date of his or her death.

There could be numerous reasons for this, for instance if it is believed that property is being unreasonably withheld, or that unknown people are collecting income that is not being declared.

The recent case of *Ex Parte Ncamiso NO* (16488/2024) [2024] ZAWCHC 304 (October 10 2024) highlights the process and underscores a critical point – it is important to follow the letter of the law when

trying to invoke this important, but complex, section of the act.

In this case, which includes a set of tragic facts, the applicant's father operated a taxi business during his lifetime and was affiliated with the Cape Amalgamated Taxi Association. On November 29 2023 the deceased

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was shot by unidentified assailants in Gugulethu. His assailants are still at large. Subsequent thereto, the deceased's estate was reported to the office of the master of the high court.

On February 10 2024 the

deceased's wife was also gunned down in the Nyanga location by unknown assailants. The murders are still under police investigation.

As of the date of death, the deceased had about 18 taxis. According to the applicant, the taxi business, on average, generated an approximate income of R40,000 per week collected by the deceased and his wife during their lifetime.

The applicant asserts that unknown individuals are currently collecting this amount to the prejudice of the deceased estate. The applicant further averred that the taxi business continues to operate, whereas the late estate defaulted on monthly instalments for some of the taxis in the amount of R250,776.25.

The applicant expressed a reasonable suspicion that the deceased's vehicles remain in the possession or control of unknown individuals related to the deceased who

are conducting business for their selfish gain.

The applicant brought this application on an ex parte basis and contended that should the possessors be alerted of this application prior to the hearing, there is a reasonable apprehension that they would hide away the vehicles and defeat the object of the seizure and search application.

The applicant implored the court to issue an order for the authorisation of the warrant in terms of section 26(3) of the Administration of Estates Act directing the sheriff of this court to search and seize vehicles and place them in her possession from wherever and or whomever they may be found.

The law seems to be perfectly in line with the need for a warrant. Section 26(1) of the Administration of Estates Act enjoins an executor, immediately after letters of executorship have been granted to

him, to take into his custody or control all movable property, books and documents belonging to the deceased estate.

In terms of section 26(2), if the executor, such as the applicant in the present matter, has reason to believe that any property, book or document is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned in section 26(3). Section 26(3) is, according to the court, particularly intended to strengthen the hand of an

**SECTION 26(3) IS PARTICULARLY INTENDED TO STRENGTHEN THE HAND OF AN EXECUTOR IN CARRYING OUT HIS OBLIGATIONS**

executor in carrying out his obligations to take charge of all the assets belonging to the deceased estate.

#### WHY DID IT FAIL?

Which begs the question – why did the application fail in this case? It all boils down the jurisdiction. Section 26 specifically refers to the "magistrate" and not the "court". It is evident from the aforementioned that the applicant mistakenly submitted her application to an incorrect forum – the high court. The application ought to have been filed in the magistrate's court possessing the requisite jurisdiction.

While it is hoped the criminals in this tragic case are found and punished and any shenanigans relating to the deceased's business rectified, the salutary lesson in this case is that executors must get their jurisdictional ducks in a row when seeking a warrant.



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