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Court case: Handwritten document not intended to be a will – Osman and Others v Nana N.O and Another [2021] ZAGPJHC 47

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Osman and Others v Nana N.O and Another [2021] ZAGPJHC 47

The deceased (S) died in April 2018, apparently without a valid will. He was a medical doctor. The first respondent (N), one of the daughters of S, was appointed as executor of the deceased estate by the Master of the High Court at the end of June 2018. Under intestate succession N and her siblings would be the only heirs of the residue of the deceased estate. The eighth appellant, Y, is the son of one of S's sisters. On 1 August 2018 Y searched the former home of S and found a document entitled "Notes on will" dated 14 August 1990. The document was handwritten and unsigned.

The sisters of S brought an application to have the handwritten and unsigned document declared a valid will under the provisions of section 2(3) of the Wills Act, 7 of 1953. The section reads:

"If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act No. 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1)."

The court a quo (Matojane J) dismissed the application and ordered costs to be paid from the deceased estate. The court held that although it was not in dispute that S wrote the document in his own hand and therefore drafted the document, there is no evidence that he intended the document to be his will. Therefore the second requirement of section 2(3) was not fulfilled.

On appeal to a full bench of the Gauteng High Court, the court (Meyer J (Windell and Twala JJ concurring) dismissed the appeal with costs. The court was critical of the lack of evidence and failure to supply facts supporting the notion that S intended the document to be his will and the fact that the appeal was aimed against the whole of the court a quo's judgement and order. It stated that while the cost order in the court a quo may have been appropriate at that stage, the appellants had the benefit of the

court a quo’s full judgement and reasons and still elected to appeal against the whole of the judgement and order.