Court case: Aneurysm or old age does not invalidate a Will

The case of *Genlloud and others v Van Der Merwe N.O and others [2024] JOL 65688 (GJ)* concerns a person's mental capacity to make a will. There was a dispute about whether the will was valid or not. The court had to decide whether the testatrix still had the mental capacity to understand what she was doing when she signed the will.

The plaintiffs wanted the will to be declared invalid and the deceased estate reopened and settled from a fresh.

The plaintiffs called no less than ten witnesses, including the paramedics who worked with the testatrix. On the other side, the defendant called five witnesses, including one of the domestic workers who looked after the deceased.

The plaintiffs argued that the deceased, because of the aneurysm, no longer had the ability to understand what she was doing when she signed a will. One witness said that since she had the aneurysm in 2007, the deceased could not understand more than a toddler.

The defendants, on the other hand, argued that there was no question of an inability to execute the will.

The court refers to the case of *Levin and Another v Levin and Others [2011] ZASCA 114*. In the case, a will signed by a deceased person aged 107 was declared valid. So, there is no maximum age for someone to draft a will.

The court also mentions *Lipchik and Others v Master of the High Court [2011] ZAGPJHC 49*, in which the court points out that a will is not always in accordance with what the beneficiaries and the family would hope it says. This alone does not mean that the will is invalid.

The judge also refers to the testimony of the domestic worker who took care of the deceased. The domestic worker mentioned they would go shopping and eat at a Wimpy. The deceased would then choose her food from the menu.

The court says that the plaintiffs' claim was speculative and emphasizes the fact

that the they had not called any expert medical testimony. As the relevant witness admitted, paramedics are not experts in the field.

An aneurysm can occur in any part of the body, writes the judge. There was no expert medical evidence before the court that it was a brain aneurysm.

On a balance of probabilities based on the evidence, the court finds that the deceased indeed still had the mental capacity to make a will. Put another way, the judge says that the plaintiffs did not discharge their burden of proof to rebut the presumption that the deceased had the necessary mental capacity.

The case makes it clear that it is not so easy to challenge the validity of a will. The fact that someone is old and/or perhaps no longer has such a sharp mental capacity as before does not mean that the person does not understand the nature and effects of his or her actions when he or she signs a will. There must be sound medical expert evidence about a lack of mental capacity for a court to conclude that someone can no longer execute a valid will.

Volker Krüger