IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case no.: 9121/2023

In the matter between:

JAMES ROBERT TAYLOR TURNER N.O.
(in his capacity as the Executor of Estate Late C.P. Arnot) Applicant

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED First respondent

THE MASTER OF THE HIGH COURT CAPE TOWN Second respondent

JUDGMENT ELECTRONICALLY DELIVERED ON 3 APRIL 2025

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] The applicant, as executor of the estate of the late Constance Pamela Catherine Arnot seeks declaratory orders that: firstly, the first respondent's

(*"Standard Bank" or "the Bank"*) purported closure of the deceased's two bank accounts and its distribution of the amounts standing to the credit of the accounts be declared unlawful; and secondly, that the Bank be declared liable to the applicant for the amounts which stood to the credit of the deceased at the time of her death, with interest accrued thereafter. The applicant also seeks an order directing the Bank to pay the amounts held in the bank accounts to him. In the alternative to all the above, and in any event, the applicant seeks delivery of a range of specified documents.

[2] The late Mrs Arnot (*"the deceased"*) died on 1 August 2021, and her estate was reported to and lies in the hands of the second respondent (*"the Master"*) in accordance with the provisions of the Administration of Estates Act, 66 of 1965 (*"the Act"*). In terms of the deceased's last will and testament dated 16 November 2013 (*"the Will"*), the applicant, who was the deceased's son in law, was nominated as executor.

[3] At the time of her death, the deceased held two accounts with Standard Bank, namely a current account, number 2[...], containing an amount of R38,815.76, and a money market account, number 1[...], containing R2,152,850.48 million, with a combined total credit amount of R2,191,666.24.

[4] To begin at the end of the story, the Bank paid the monies into the account of one Johan Botha who is not the nominated executor in terms of the Will, and who is unknown to the applicant.

B. <u>THE CHRONOLOGY</u>

[5] On 21 September 2021 the applicant's attorneys reported the estate to the Master, attaching the Will, together with deceased's death certificate, the death notice and the Acceptance of Trust as Executor, and also requested the Master to issue letters of executorship to the applicant. After some delays, including complaints by the applicant's attorneys, the Master eventually issued letters of executorship to the applicant a year later, on 2 September 2022.

[6] In the meantime, the Master had also issued letters of executorship in the same estate to one Johan Botha on 17 February 2022, although the letters could not be located on the date on which the Master delivered this news to the applicant's attorneys on 15 August 2022. At the time, the applicant was still awaiting issue of his letters of executorship, as the duly nominated executor in terms of the Will. The Master was constrained to issue fresh letters of executorship to the applicant on 2 September 2022.

[7] According to Standard Bank, on 11 March 2022, Botha contacted Standard Bank's deceased estate department *via* email, stating that he was the executor of the estate. Ms Cindy Camp, a Standard Bank Administration Officer: Deceased Estates, requested certified copies of the death certificate, the deceased's and Botha's identity documents, letters of executorship and proof of the estate late account.

[8] On 14 March 2022 Botha attached some documents to an email addressed to Ms Camp, which appeared to be letters of executorship issued by the Master, a copy of his identity document, and a copy of the identity document of the deceased. On 15 March 2022 the documents supplied by Botha were rejected on account of not being certified.

[9] On 17 March 2022 Botha again submitted documents *via* e-mail. Again, the documents were rejected with Ms Camp requesting clear certified documents. On 24 March 2022 Botha emailed a further set of documents, which appeared to be certified copies of a letter of executorship, the identity document of the deceased and an identity document of Johan Botha. The Bank states that Botha also produced a copy of the deceased's will in which he is named the executor, which is attached to the answering affidavit. The will attached by Botha represents, by means of stamps, that it was accepted and registered in the Master's office on 28 September 2021 and is '*certified a true copy of the original document*' by the Master's office.

[10] On 5 April 2022, Ms Camp transferred the credit balances which stood to the deceased's current and money market accounts to an account which was opened by Botha on 3 March 2022. Between 5 April 2022 and 13 April 2022, all the funds were

transferred out of the accounts linked to Johan Botha and one Katherine Smuts, and by 13 April 2022, reflected zero balances.

[11] The facts set out above regarding the events between March 2022 and August 2022 appear from the answering affidavit of Standard Bank. On 18 August 2022 the applicant's attorney contacted Standard Bank recording her interactions with the Master's office, including her discovery that the letters of executorship were dated 17 February 2022 and authorised Botha instead of the applicant.

[12] From the moment the applicant's attorney contacted the Bank, she requested information regarding who the money was paid out to, and on presentation of what documents. Several emails ensued between various employees of Standard Bank and the applicant's attorney, with the different employees requesting information and documentation related to the deceased's estate. Eventually, on 24 August 2022 Ms Roodman of Standard Bank notified the applicant's attorney that she could not release the requested documentation or information without an official letter from the Master's office because the Master's portal was still indicating that Johan Botha was the executor of the estate.

[13] More communication ensued between the applicant's attorneys and various staff members of Standard Bank, with the former requesting access to documents justifying the distribution of the money to Johan Botha, and the latter effectively declining to disclose such documents, on the basis that it was third party information.

[14] It was on 7 September 2022 that the Bank informed the applicant's attorneys that the two bank accounts had been closed on 5 April 2022, and the funds transferred to Johan Botha. Despite repeated requests, little further information was forthcoming from Standard Bank. Pointedly, no documents were provided to the applicant which were provided to the Bank by Botha for closure of the accounts and transfer of the funds to him, and that remains the position to date.

[15] On 13 October 2022 the applicant demanded payment into the estate account of the funds which had stood to the credit of the deceased's accounts. Standard

Bank refused on the basis that it had already made payment into the account of Johan Botha, and informed the applicant to liaise with Botha for the funds.

C. THE FURTHER AFFIDAVIT

[16] A week before the hearing of the matter which was set down on 3 February 2025, the Bank applied for admission of a further affidavit, and alternatively, the striking out of those paragraphs of the replying affidavit which allege negligence on its part, namely paragraphs 8.2.1- 8.2.5, 15, 16 and 32. Both applications are opposed by the applicant.

[17] The further affidavit explains that it was on 13 January 2025 that Standard Bank's counsel requested a consultation with her clients for purposes of drafting the heads of argument. At that consultation, which was held on 21 January 2025, questions arose emanating from the applicant's heads of argument which had been delivered by then. Eventually, and it is not clear when exactly, a consultation was held with the business banker who also deals with estate late accounts, Mr Simphiwo Mbande.

[18] It is then stated that the purpose of the further affidavit is to explain how the estate late account was opened by Johan Botha, an issue which was not properly addressed in the answering affidavit because, according to the deponent, the founding affidavit centered on Johan Botha's lack of authority to act as executor, the closing of the deceased account and the transfer of the funds from the deceased account to the estate late account. By contrast, it is said the applicant relies on an entirely new case in reply, claiming that Standard Bank was negligent in failing to follow proper procedure and was complicit in, not only closing the accounts of the deceased but also in opening the estate late account. The Bank also states that the late delivery of the further affidavit is not *mala fide* or wilful or prejudicial to the applicant and is aimed at ensuring the proper ventilation of the dispute between the parties.

[19] The new information supplied in the further affidavit is that Johan Botha attended at the Bank's Brackenfell branch to open an estate late account on 18

February 2022, where he presented *"the original letters of executorship and the death certificate, a copy of the deceased's identity document and his identity document, and original proof of residence in the form of a lease agreement"*. According to the deponent, copies of these documents were made and verified in terms of "*Standard Bank's processes at the time as well as the prevailing legislation, including FICA"*. On 1 March 2022 Johan Botha again attended at the Brackenfell branch to complete the requisite forms for opening the estate late account, which was so opened on 3 March 2022. The remainder of the further affidavit relies on what is stated in the answering affidavit concerning the events that took place from 11 March 2022, and upon the documents annexed to the answering affidavit.

[20] On the basis of the averments made in the further affidavit, the Bank submits that in opening the estate late account and transferring the funds from the deceased's accounts into the estate late account, proper procedures and verifications were followed, and the Bank acted with due diligence and was in no way negligent.

[21] In order to understand the basis for the applicant's opposition to the further affidavit, it is necessary to have regard to the history of the pleadings. At paragraph 3 of the notice of motion, the applicant seeks an order directing the Bank to furnish a full and detailed account, duly supported by vouchers, documents, instructions, mandates, account opening forms and other documents. The basis for this relief is set out in the founding affidavit by way of the chronology of events, which is not disputed, in which the applicant sought, and continues to seek, documents justifying the Bank's closure of the two bank accounts and its transfer of the funds to John Botha. The Bank consistently deflected those requests, and even in the answering affidavit relies on the contents of the Protection of Private Information Act (POPI Act), stating that the information sought pertains to a third party.

[22] In the answering affidavit the Bank, set out the chronology which was brought to light by its internal investigations, and attaches documents that were furnished to it by Johan Botha in its interactions with him between 11 March 2022 and 24 March 2022. It was confirmed during the proceedings by counsel that this was the first time these documents were made available to the applicant. On the basis of these

documents, the Bank argued that it was entitled to close the accounts and transfer the funds to Johan Botha because he provided the requisite documents requested of him.

[23] It was as a result of the disclosure of the attached documents to the answering affidavit that the applicant conducted an analysis in its replying affidavit, to demonstrate what it alleged was a failure by the Bank to notice inconsistencies, deficiencies and abnormalities in the emails and documents emanating from Johan Botha. The applicant states that the documents indicated a raised risk of fraud, as well as Standard Bank's failure to follow necessary verification procedures as well as its own publicly-stated requirements and security processes. Further, that the Bank was extraordinarily negligent, and its employees so grossly negligent as to appear complicit. In addition, that the Bank had no rational or reasonable basis to be satisfied by the documents supplied by Botha to close the two bank accounts, and to transfer the funds to the account nominated by Johan Botha.

[24] At the same time, the applicant makes clear in the replying affidavit that its main case does not rely on negligence or wrongdoing on the part of Standard Bank. His main case rests squarely on his entitlement, as legal successor to the deceased accountholder, to receive payment of the deceased's claim in respect of credit balances held on her bank accounts. To the extent that any disputes of fact may arise with regards to the negligence of Standard Bank, the applicant states that such disputes are not determinative of the matter since that is not its primary case.

[25] Reverting to the applicant's opposition to the admission of the further affidavit, the first basis concerns its timing. Whilst the replying affidavit was served upon the Bank's attorneys on 5 December 2023, it was only on 27 January 2025, the week before the matter was set down, that the Bank delivered its application.

[26] I am in agreement that, in light of the timeframes involved in this matter, Standard Bank has woefully failed to provide an explanation for its somnambulance with regards to the filing of this further affidavit. As I have already mentioned, the reasons given for the delay and for the delivery of the further affidavit are diffuse. Whilst the deponent states that the need for the affidavit arose in the context of

preparing the heads of argument - though this in itself not explained - it is also stated in the same breath, that the need arose from issues raised by the applicant's heads of argument. It is never explained why all of this occurred in January 2025 in the week before the hearing of the matter, instead of December 2023 upon receipt of the replying affidavit.

[27] Another reason given for the filing of the affidavit is that there arose a need to consult with the business banker who deals with the opening of the estate late accounts. There is no explanation given for why this was not done for purposes of the answering affidavit given that the matter concerns such an account, and given that, by the time the answering affidavit was delivered, according to the Bank it had already conducted internal investigations. It is not unreasonable to conclude that such investigations would have, and should have, included the contributions of the estate late accounts banker.

[28] The late delivery of this affidavit is very serious when seen in the light of the fact that the main application was launched on 6 June 2023, citing amongst other things, Standard Bank's refusal to disclose documents and information regarding its disbursement of funds out of the deceased's accounts to Johan Botha, as well as its failure to act reasonably or to take proper precautions before making such payments. The Bank's refusal to provide the requested documents to the applicant is well-documented in the founding papers, forming the subject of the prayer contained at paragraph 3 of the notice of motion. For the Bank to not have anticipated that the applicant would respond to documents made available for the first time in the answering affidavit, was not only unlikely, but was to its own peril.

[29] As I have already indicated, in the replying affidavit the applicant analyzed these documents, setting out the Bank's negligence in failing to observe inconsistencies, inaccuracies, and in failing to follow its own security and verification processes. This was in response to the documents supplied by the Bank for the first time in the answering affidavit. It is that analysis that the Bank now wishes to respond to by means of a further affidavit, or to have struck out. This makes it clear that the Bank the clear purpose of the further affidavit is to try and relieve the pinch of the shoe, as argued by the applicant.

[30] Regrettably, the application is even more self-serving than that. Whilst the further affidavit seeks to introduce further documents regarding interactions with Botha between 18 February and 11 March 2022, it also makes clear that the Bank continues to withhold some of the documents and information sought by the applicant, especially regarding Botha. As a result, the applicant seeks an order that, if the further affidavit is admitted, the Bank should be ordered to disclose the certain specified documents. I asked Ms Long who represents the Bank about this demand from the applicant, and no willingness was forthcoming from the Bank regarding the provision of any further the documents, on the basis of the alleged confidentiality based on POPI.

[31] This means that, if this Court were inclined to admit the further affidavit, it would unnecessarily prolong these proceedings, with firstly a postponement to grant an opportunity to the applicant to properly respond to the further affidavit, which is a request he made in the short answering affidavit that was prepared in undue haste due to the late hour of the delivery of the further affidavit. There is also a likelihood of further legal proceedings in which the applicant will continue to seek further documents, whose disclosure the Bank continues to refuse. This, in circumstances where the relief relating to the disclosure of the further documents is only sought in the alternative to the main relief in paragraphs 1 and 2 of the notice of motion. The considerations of the proper and prompt administration of justice militate against such extended proceedings, which are more than a probability given both parties' stance on the issue.

[32] It is self-evident that the timing of delivery of this affidavit is prejudicial to the applicant, not least because of the severe delay. But given the circumstances of not furnishing information requested for some years, and then selectively seeking an indulgence in that regard at the last minute, whilst still withholding some of the information requested, I consider the request to file the further affidavit to be *mala fide.*

[33] In any event, the new evidence that is sought to be introduced raises more questions than answers. It is alleged that Johan Botha provided documents,

including some originals, when he first visited the Brackenfell Branch on 18 February 2022, which were copied and verified in terms of "*Standard Bank's processes at the time as well as the prevailing legislation, including FICA"*.

[34] Why then was it necessary to request these documents again between 14 and 24 March 2022 by Ms Camp? And why did she reject them twice after Johan Botha e-mailed them to her, on the basis that they were not certified? This suggests, as the applicant states, that Standard Bank never had original or certified copies of the originals of any of these documents. Even after this last criticism was levelled against it in the replying affidavit, the Bank has not cured it by producing such documents with its further affidavit. Instead, it relies on the documents already attached to the answering affidavit.

[35] Furthermore, as the applicant points out, the further affidavit is replete with hearsay evidence, which is presented *via* Mr Mpande who did not himself deal with Johan Botha, and does not purport to have been based at the Brackenfell branch on the days in question. The same observation may be made with regard to the averments made by the main deponent, Ms Wall, who claims enigmatically and without any proof, that the documents supplied by Botha in February 2022 included original documents. As a result, the probity of the averments is not established, and the averments made in the further affidavit do not add much contribution by way of evidence.

[36] Having considered the contents of the affidavit, it is apparent that there were no material events that occurred after the exchange of the normal three sets of affidavits which justify delivery of the further affidavit. Rather, the Bank belatedly wants to 'plug the holes' resulting from its obstructive conduct of refusing to disclose information, which led the applicant to approach this Court in the first place. As was famously stated over a century ago, although in a different context, the administration of justice is not a game.[1] Furthermore, the explanation furnished for delivery of the further affidavit is very poor. The application to introduce the further affidavit and the striking out application must accordingly be dismissed, with costs.

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[1] *Whittaker v Roos and Another; Morant v Roos and Another* 1911 TPD 1092 at 1102 - 1103.

D. THE LAW

[37] The relation between banker and client is based on contract. It involves a debtor and creditor relationship in terms of which the banker becomes owner of money deposited on the client's account subject to its obligation to its client to pay cheques drawn on it.[2]

[38] Inasmuch as the client instructs the bank to render certain banking services when required, and the bank agrees to carry out such instructions, their consensus must needs emanate from a contract of mandate, in terms of which the client is the mandator and the bank the mandatary.[3]

[39] In *Malan on Bills of Exchange, Cheques and Promissory Notes in South African Law*[4] this relationship was described as follows:

"[I]n essence the contract between bank and customer obliges the bank to render certain services, the so-called services *de caisse*, to the customer on his instructions and for this reason it can be classified as a contract of *mandatum*. The bank and customer relationship is based on a comprehensive mandate in terms of which the customer lends money to the bank on current account, the bank undertakes to repay it on demand by honouring cheques drawn on it and to perform certain other services for the customer, such as the collection of cheques and other instruments, and the keeping and accounting of his current account…."

[40] In *Firstrand Bank Ltd v Spar Group Ltd*[5] the Supreme Court of Appeal (SCA) stated it as a durable proposition of our law that -

"…when the customer of a bank deposits money into their account, the money becomes the property of the bank. The bank enjoys a real right of ownership. In the

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[2] *Joint Stock Co Varvarinskoye v Absa Bank Ltd And Others* 2008 (4) SA 287 (SCA) para [37].
[3] *Di Giulio v First National Bank of South Africa Limited* (A1080/2001) [2002] ZAWCHC 33; 2002 (6) SA 281 (C) (19 June 2002) para [20].
[4] *Malan on Bills of Exchange, Cheques and Promissory Notes in South African Law* (3rd ed by F R Malan and J T Pretorius, 1997) par 203 (at p 334).
[5] *Firstrand Bank Ltd v Spar Group Ltd* 2021 (5) SA 511 (SCA) para [37].

usual case, the deposit gives rise to a credit balance in the account of the customer and a personal obligation owed by the bank to its customer to pay the credit balance, together with interest, if agreed."

[41] The personal obligation of the bank to pay the balance standing to the credit of the customer may be discharged by, *inter alia*, payment to the customer or payment to persons designated by the customer.[6]

[42] It is an incident of the contract between the bank and its customer that the bank has an obligation to pay its customer, who enjoys a personal right to payment from the bank, the credit balance arising from the deposit made.[7] The nature of the personal right against the bank was described as follows:

"… In the standard case, the customer deposits money into their account and has a personal right against the bank to be paid the credit reflected on the account (with interest, if agreed) or otherwise to direct the bank as to who should be paid. The personal right is an incident of the contract that subsists between the customer and the bank."[8]

[43] The principal duty of the bank effecting a credit transfer is to perform its mandate timeously, in good faith and without negligence;[9] or, as stated in *Mccarthy Ltd v Absa Bank Ltd*[10], *"the bank must adhere strictly to the customer's instructions, and must perform its duties with the required degree of care, generally, in good faith and without negligence"*.

[44] In a case from this Division, *Liebenberg v Absa Bank Limited t/a Volkskas Bank*[11] it was held as following:

"it is clear that the relationship between a banker and a client who operates a current account is that of debtor and creditor. The bank becomes the owner of the money

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[6] *Firstrand Bank Ltd v Spar Group Ltd para [39].*
[7] *Ibid* paras 41 & 55.
[8] *Ibid* para 56.
[9] *Absa Bank Ltd v Hanley* 2014 (2) SA 448 (SCA) para [25].
[10] *Mccarthy Ltd v Absa Bank Ltd* 2010 (2) SA 321 (SCA) para 22.
[11] *Liebenberg v Absa Bank Limited t/a Volkskas Bank* [1998] 1 All SA 303 (C) at 309I – 310F.

and becomes the debtor of its customer. If a bank pays a cheque with a signature that has been forged, it is the bank, and not the customer who can sue the person to whom the payment is made for the restitution of the amount for the money with which the payment was made with the money of the bank." […]

the only sanction if the bank does not conform to the customer's mandate is that it cannot debit his account with the amount paid away. This is because the amount paid is money which belongs to the bank, not to the customer, and so the customer *cannot sue the bank or the person to whom the payment is made for breach of contract or wrongful conversion of the customer's property*." (Emphasis original) […]

Accordingly the only claim which the plaintiff can have against the Bank on the facts pleaded is that his account should be rectified and that the plaintiff's account should be credited with the amount paid contrary to the mandate given to it."

[45] In *Holzman v Standard Bank*[12] it was accepted that "merely being careless in controlling access to a cheque book does not render the customer liable to bear the loss"; nor does a failure to verify bank statements *per se* lead to such liability. The same principle was stated as follows in *Big Dutchman (South Africa) (Pty) Ltd v Barclays National Bank Ltd*[13]:

"A customer's duty to his banker is a limited one. Save in respect of drawing documents to be presented to the bank and in warning of known or suspected forgeries he has no duty to the bank to supervise his employees, to run his business carefully, or to detect frauds."

E. DISCUSSION

[46] At the heart of this matter is the responsibility of Standard Bank towards the applicant. The law set out above makes it clear that the nature of the relationship between them is contractual, as between debtor and creditor, and that the Bank may not act outside the authority and mandate of its client or the latter's mandated representative.

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[12] *Holzman v Standard Bank Ltd* 1985 (1) SA 360 (W) at p24.

[13] *Big Dutchman (South Africa) (Pty) Ltd v Barclays National Bank Ltd* See 1979 (3) SA 267 (W) at 283A.

[47] There is no dispute that the applicant is a duly authorised representative of the deceased's estate. In fact, it is admitted by the Bank that *"there had ever only been one executor nominative of the deceased's will, namely [the applicant]. There is also only one executor in respect of whom authentic letters of executorship were granted or signed and sealed under the Act were validly issued by the Master, namely [the applicant]."*

[48] The Bank has also not disputed the averment made in the founding affidavit that *"Johan Botha is not nominated or referred to as an executor in the deceased's will, has never been entitled to appointment as Executor and has never been validly appointed as such; that any documents which suggest otherwise are fabricated or fraudulent"*.

[49] That should be the end of the case, since it is also common cause that the funds were not transferred to the applicant and were instead paid to (an) account(s) held by Johan Botha, contrary to the provisions of section 13(1) of the Act, which provides that *"[n]o person shall liquidate or distribute the estate of any deceased person, except under letters of executorship granted or signed and sealed under this Act…or in pursuance of a direction by a Master".*

[50] Yet the Bank argues that it cannot be held liable for any alleged wrongdoing on the part of Botha and/or the Master. It denies knowledge of any alleged fraud, and states that it acted on the *bona fide* belief that Botha was the executor of the deceased estate. It denies that it knew that the applicant was the legitimate executor of the deceased estate at the date of transfer of the funds and states that it acted *"upon Letters of Executorship duly issued by [the Master] to Botha"*. In the answering affidavit, the Bank also denies that Botha's letters of executorship were falsified.

[51] Even without considering the Bank's defences which are summarised immediately above, the common cause facts already adverted to are sufficient to found the applicant's claim. The legal position traversed earlier makes clear that Standard Bank cannot exonerate itself from its obligations to the applicant by blaming the Master or Johan Botha who may have perpetrated fraud against it.

[52] It is no answer for the Bank to say it was not aware at the time of its dealing with Botha, that his documents were fraudulent and invalid. For purposes of considering its liability towards the deceased's estate, the case law makes it clear that the Bank, and not the applicant, is to be held liable for paying the wrong person. This is because, once the funds were deposited into the deceased's bank accounts, the money became the property of the Bank. As a result, the money transferred to Botha was the Bank's money, not the money of the deceased's estate. Only the Bank can claim the funds back from Botha, not the applicant. This is why the Bank's response to the applicant to rather liaise with Botha regarding the funds, when the latter demanded payment of the funds, was cynical to say the least. This, despite its refusal to give any information regarding Botha.

[53] As legal successor to the deceased accountholder, the applicant remains entitled to payment from Standard Bank of the deceased's claim in respect of credit balances held by the bank on her accounts.

[54] Turning to the Bank's defences, they are full of contradictions. Whilst the Bank admits that *"there is also only one executor in respect of whom authentic letters of executorship were granted or signed and sealed under the Act were validly issued by the Master, namely [the applicant]",* it also alleges that it acted on "duly issued" letters of executorship. The two propositions are incompatible with each other, and only one of them can be correct.

[55] There are several reasons for rejecting the Bank's version that Johan Botha presented duly issued letters of executorship to it. The first concerns Standard Bank's opaqueness regarding the details of Johan Botha, including whether he is or was its client. To date, the Bank has yet to substantiate its stance, or to show that it took any or adequate steps to ensure the probity of the transfers to Botha. Its refusal to produce relevant documents and explanations in this regard justify a conclusion that the Bank is not a position to give assurances that the letters of executorship presented to it by Johan Botha were 'duly issued'.

[56] Another concern regarding the Bank's contradiction relates to the problematic documents submitted by Johan Botha, which cannot be construed as anything other than fraudulent. They include a falsified copy of the Will. They also include copies of allegedly certified copies of original documents - in other words, copies of copies. There remain no indications that Botha ever submitted certified copies. As a result, there is still no evidence that the Bank conducted proper verification of documents when it opened Botha's account.

[57] Moreover, in contrast to the letters of executorship presented by Johan Botha to the Bank, no irregularities have been raised by anyone – whether the Master or the Bank - regarding the letters issued to the applicant. In fact, the fact that the Master later issued a second letter of executorship to the applicant, with the knowledge that a previous one had been issued with a different name, is in itself an acknowledgment that the applicant was the correct and lawful party to be issued with such letters. It is also not disputed that the copy of the true original Will of the deceased was submitted to the Master's office on behalf of the applicant, in terms of which the applicant was nominated by the deceased as executor of her estate. So too, all the necessary supporting documents were filed at the Master's office on behalf of the applicant, in furtherance of his application for letters of executorship.

[58] I accordingly do not consider Standard bank's version that Johan Botha presented duly issued letters of executorship as creating a genuine, *bona fide* dispute regarding which of the two – Johan Botha or the applicant – held duly issued letter of executorship. [14] The Bank's version lacks credibility, plausibility and tenability given its acceptance that the applicant is the only executor named in the Will, and the Court is justified in rejecting it.[15]

[59] The Bank denies that it knew that the applicant was the legitimate executor of the deceased estate when it transferred the funds to Botha, or that Botha's documents were fraudulent. This, however, does not change the legal duty to account to the lawful executor, whose authority the Bank does not dispute.

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[14] *Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd* 2017 (2) SA 1 (SCA); *National Director of Public Prosecutions v Zuma* [2009] 2 All SA 243; 2009 (2) SA 279 (SCA).
[15] *Airports Company South Africa Soc Ltd v Airports Bookshops (Pty) Ltd t/a Exclusive Books* [2016] 4 All SA 665 (SCA).

[60] It is common cause that the Bank advised the applicant's attorneys that it had paid the deceased's credit balances in the sum of R2,191,666.24 to Johan Botha and had closed the deceased's accounts on 5 April 2022. It is accordingly common cause that Standard Bank paid the funds held to the credit of the deceased's accounts to Johan Botha who was never entitled to the funds because he was not the lawfully and validly appointed executor.

[61] The heads of argument filed on behalf of Standard Bank effectively mount a charge of negligence or tardiness on the part of the applicant and his attorneys for allowing delays to elapse from the reporting of the estate on 21 September 2021, to discovering that fraud had been perpetrated against the estate and acquiring letters of executorship on 2 September 2022.

[62] Yet the chronology set out by the applicant is not disputed regarding the many efforts undertaken by the applicant's attorney during the period from 21 September 2021 to 20 July 2022 to pursue the issue of letters of executorship, including following the prescribed complaints' procedure at the Master's office. There is otherwise no specific act of negligence that the Bank is able to level at the applicant in this regard, and at no point has it ever accused the applicant of any such negligence or tardiness.

[63] Nor would the Bank have legal ground to do so. The case law makes clear that a customer bears no duty to anticipate criminal activity[16]. It is not enough, for the purposes of escaping liability-

"… for the banker to show that the conduct of his customer, wilful, careless or wasteful, or all, enabled the fraud to be committed. He must show that the customer caused him to pay the money upon the forged cheque. It is not enough to show that the customer gave occasion for his so paying - that different conduct would have prevented the fraud and the payment by the banker: … The carelessness of the

[16] *Big Dutchman* para 64.

customer or neglect of the customer to take precautions unconnected with the act itself, cannot be put forward by the banker as justifying his own default"[17].

[64] In its heads of argument and at the hearing, the Bank complained that no cause of action is disclosed by the applicant. This is a surprising charge given that no prior complaint of this nature was raised in the answering affidavit. But in any event, the founding affidavit made very clear that the Bank's obligation which is relied upon in these proceedings arises as a contractual consequence of the creditor/debtor relationship, and as a term of the banking contracts, and as an independent legal obligation arising from Standard Bank holding monies on behalf of the deceased and her estate. There was no quibble with this summary of the legal basis for the case in the answering affidavit, and the summary is indeed a reflection of the case law summarised earlier.

[65] And it is common cause that the deceased in fact held two bank accounts with Standard Bank, in terms of agreements whose terms would have been recorded in writing, and kept by Standard Bank.[18] The contractual banking relationship is therefore common cause, and it must be held to the standards set by the case law summarised earlier, in terms of which a customer depositing money into their banking account acquires a personal right against the bank to be paid the credit reflected on the account (with interest, if agreed). It is furthermore cynical for the Bank to complain that there is no contract document in the record, given its refusal to provide it and other documents to the applicant, and which forms the subject-matter of prayer 3.1.1. I accordingly do not find the applicant's papers to be vague, or to lack a cause of action.

[66] None of the cases relied upon in argument on behalf of the Bank were directly relevant to the matter at hand or had the effect of changing the law summarised earlier. In particular, the case of *Hartog v Daly and Others*[19] which considered the responsibility of a conveyancer who had fallen victim to interception of communication by a fraudster, has no relevance to the facts of this case. That case

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[17] *Holzman v Standard Bank* at 364 F-G.
[18] See founding affidavit, para 19; answering affidavit, para 32.
[19] *Hartog v Daly and Others* [2023] 2 All SA 156 (GJ).

did not in any way deal with the factual or legal issues pertaining here. The case turned on whether an alleged tacit term formed part of the mandate agreement, and the court held that the appellant was responsible for the payment and that his case against the bank was not established.

[67] To summarise my findings, the applicant has established its claim and is entitled to payment from Standard Bank of the deceased's claim in respect of credit balances held by the bank on her accounts. It is accordingly not necessary to consider the case of wrongfulness or negligence, which the Bank relies upon.

[68] But even in that regard, the Bank has failed to exonerate itself. It is not disputed that the Standard Bank Deceased Estates department requires compliance with a standard list of requirements, involving a standard set of documents, before responding to any request from an executor, attorney or agent for information about a deceased person's accounts, or regarding the closure of accounts and payment of the funds to the executor. The required documents, which must be certified by *"[c]lear, independent certifications"* are listed as follows: Death certificate; ID Document/ID Card of the deceased; Letter of Executorship Notice of Death BI 1663; ID of the Executor and FICA document; Statement/confirmation of Estate late Account; Power of Attorney in favour of Agent/s (if applicable); ID of Agent and FICA document (if applicable); All Executor/sand Agent/s ID's, FICA document and proof of address/ess required.

[69] The Bank's request for Botha to provide certified copies was made twice, first on 15 March 2022, and after receipt of non-compliant documents, again on 23 March 2022. A consideration of the totality of the submissions by Botha indicates that the only certified copies he submitted were: police-certified copies of the Letters of Executorship, with no legible stamp for the Master's Office; an illegible copy of the deceased's ID card; Botha's ID card. The Bank neither requested nor received a certified copy of Mrs Arnot's death certificate. It also did not require proof of address for Botha at the relevant time. It failed to ask for the BI 1663 Notice of Death form which the undertakers provide to the family or executor, which would have provided verification for the legitimacy of the application. It also failed to ask for proof of the estate bank account.

[70] After receipt of these inadequate documents, the Bank states that Ms Camp verified them on the Master's portal website. However, at the time in question, although the Master's portal reflected Johan Botha's name as executor, the contact and address details reflected for the executor were those of the applicant. In other words, had Ms Camp conducted a proper verification, she would have noticed that the contact number reflected for the executor was not the same as the one provided by Botha in his emails addressed to her. And the executor's address shown on the portal is that of the applicant's attorney, Mrs Curr, with her name indicated as attorney agent for the executor. Had Ms Camp called the telephone number shown on the portal page to confirm details she would have been in contact with the applicant, and the fraud may well have been exposed. Ms Camp would have had no reasonable or rational basis on which to regard Botha's scant details as adequately verified by checking it against the information shown on the Master's portal.

[71] Yet, immediately after this superficial verification process and without further ado, Ms Camp transferred the funds from the deceased's two accounts to Botha's bank account and closed the deceased's accounts.

[72] There is no indication that Botha ever requested the Bank to issue any certificate confirming account details and date of death balances, interest certificates for tax returns, copies of statements needed for preparing Liquidation and Distribution accounts – all of which is standard practice.

[73] Furthermore, from Botha's emails, it appears that he was only aware of one bank account belonging to the deceased, namely the money market account, which he expressly mentioned in his first email addressed to the Bank on 11 March 2022. There is no indication that he was aware of the current account. The evidence indicates that Ms Camp volunteered the funds in that account. In this regard, it is understandable that the applicant states that the Bank's employees were so grossly negligent as to appear complicit.

[74] For all the reasons discussed in this judgment, Standard Bank is liable to pay to the applicant the money which stood to the credit of the deceased's accounts, and

the liability persists regardless of whether Standard Bank fell victim to fraud, was innocent or guilty of wrongdoing in respect of the fraud perpetrated, or whether it was negligent. And, although it is not necessary to establish that Standard Bank was negligent or guilty of wrongdoing it was, in fact, negligent and appeared to do nothing to guard or protect itself against the fraud that was committed. The relative extent of such negligence, compared to that of the Master's office, is beyond the scope of this judgment.

[75] Since prayer 3 of the notice of motion was only sought in the alternative, it is not necessary to grant it, and I was informed, in any event, that the applicant no longer persists with it. As a result, is not necessary to traverse the lawfulness of the Bank's refusal to disclose the documents. However, given the fact that I am inclined to order payment of interest on the amounts reflected in the two bank accounts based on the deceased's contracts with the Bank which are common cause, I consider it prudent that the Bank should be ordered to deliver those contracts to the applicant, in order to avoid any consequential disputes regarding the interest amounts payable. The applicant is entitled to those documents in terms of section 26(1) of the Act since they belong to the deceased estate. There is otherwise no reason why costs should not follow the result.

F. ORDER

[76] In the circumstances the following order is made:

1. It is declared that the first respondent's purported closure of the late C.P.C. Arnot's Standard Bank current account number 2[...] and Standard Bank money market account number 1[...] (collectively "*the two accounts*"), and the first respondent's purported distribution of the amounts standing to the credit of the accounts, was unauthorised and unlawful.

2. It is declared that the first respondent is liable to the applicant for the amounts which stood to the credit of the two accounts at the time of the late C.P.C. Arnot's death, together with all subsequent interest on such amounts which accrued thereafter.

3. The first respondent is ordered to deliver to the applicant, within 7 days of this Order, documents setting out the terms and conditions of the relationship between the first respondent and the late C.P.C. Arnot which applied to the two bank accounts, namely current account number 2[...] and money market account number 1[...].

4. The first respondent is directed to pay to applicant, by transfer or payment into the account of the Estate Late C.P.C. Arnot, Absa Bank account number 4[...]:

4.1 The amount which stood to the credit of the late C.P.C. Arnot's Standard Bank current account number 2[...] at the time of her death, of R38,815.76; and

4.2 The amount which stood to the credit of the late C.P.C. Arnot's Standard Bank money market account number 1[...] at the time of her death, of R2,152,850.48 million;

4.3 Interest on the amounts mentioned in paragraphs 4.1 and 4.2 above, at the rate determined in accordance with the agreement(s) between late C.P.C. Arnot and first respondent.

5. The first respondent shall pay the costs of this application and of the interlocutory application, including the costs of two counsel in both applications, in terms of scale C.

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N. MANGCU-LOCKWOOD

Judge of the High Court

APPEARANCES

For the applicant : Adv J G Dickerson SC

		Adv C L Burke
Instructed by	:	Barry Jessop Dorrington Inc. B Jessop
For the respondent	:	Adv P Long
Instructed by	:	Van Hulsteyns Attorneys N de Ruiter