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Limits of Testamentary Freedom

The Case of Gerntholtz and Others v Pieterse S.O. and Others

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INTRODUCTION

On 18 February 2025, the Western Cape High Court ruled that a paragraph of the last will and testament, read with the Codicil, of Grant Michael Bray (the "**Will**"), is invalid on the basis that the bequest is void for vagueness and is contrary to public policy. The judge decided that the assets bequeathed in terms of that paragraph were to devolve by intestate succession.

BACKGROUND FACTS OF THE CASE

The testator, Grant Bray, passed away on 05 March 2022. The applicants, his two sisters and two brothers, approached the court on application to declare paragraph 3 of his last will and testament read with the Codicil as invalid and unenforceable. The Will and the Codicil read as follows:

> *"I appoint as heir to the whole of the balance of my estate the Boerelegioen with specific instruction that the bulk a portion of the inheritance be utilised for the Pathfinder Bushcraft and Survival Training Camps or any other training by the Boerelegioen..."*

Before passing away, Grant was diagnosed with Borderline Personality Disorder and had a prescription for medication known as Arizofy. Grant had allegedly become obsessed with the idea of an impending genocide of white people in South Africa, which led to him becoming paranoid about the issue, which was further fueled by the racist and far-right content he was consuming online.

On 03 December 2020, the testator met with Mr. Steytler and Mr. Jonck, where a bag of Krugerrands worth R6 000 000.00 (six million rand) was handed to Steytler and Jonck, although they deny having ever received it. In 2021, Steytler visited Grant again and issued him with a Boerelegioen ("BL") flag and beret and told him he was now a member of the BL, allegedly issuing him with a fake membership number. The applicants allege that this is not possible as the Manifest of the BL only allows members who are of "Boer-blood", as confirmed by Van Zyl, who is the alleged founder of the BL.

In May 2022, Van Zyl came to inspect the testator's property where he was confronted about the fact that the testator had to pay a monthly membership fee, despite having paid R6 million in gold coins. Van Zyl discovered that Steytler and Jonck had resigned after receiving the gold coins and never disclosed them to him.

Mr Steytler is the sole director of Pathfinder Bushcraft and Survival (Pty) Ltd, which the applicants believe the training arm of the BL is housed in. The applicants allege that the Will is vague on which portion must be given to Pathfinder Bushcraft and Survival (Pty) Ltd and which Boerelegioen organization or entity is the intended beneficiary, as there are three possibilities. The respondents contend that they are the intended beneficiaries, although they do not explain how they intend to carry out the testators' motivations behind the bequest. The fact that the testator met with Steytler and expressed his desire to make a bequest to BL, who had resigned from the BL following the Krugerrand donation, further accounts for the vagueness of the bequest.

The applicants also allege that a portion of the Will is against public policy as the fundamental purpose of the BL is rooted in white supremacy and seeks to undermine the prescripts of the Constitution of the RSA. The BL is, for all purposes, a paramilitary civil defence force, although they are not registered with the PSIRA, which is unlawful.

THE COURT FINDINGS

The void for vagueness issue:

The court examined the judgement of Settlers 1820 National Monument Foundation v Van Aardt and Others, as well as Ex Parte Essery and Vial NNO: In Re Estate Birkett, to determine what the testators' intentions were. After considering the extrinsic evidence, it was determined that the only intention that was evident, is the intention for the funds to be used for "training", as well as funding an organisation, that the testator deemed to be one which will "exterminate every black person in South Africa".

The portion, as well as the intended Boerelegioen entity, is unable to be determined.

The contravention of public policy issue:

The court found that the "official" flag of the BL, namely the old Apartheid South African flag, which cannot be displayed publicly, as found in the AfriForum NPC v Nelson Mandela Foundation Trust and others case, as well as the Apartheid governments motto "Ex Unitate Vires", amounted to racist conduct.

The court cited a variety of case law that dealt with public policy and racially restrictive clauses, the most notable being Harvey N.O. v Crawford N.O. which confirmed that a private bequest may be challenged on the basis of discrimination.

CONCLUSION

The Western Cape High Court ruled that paragraph 3 of the last will and testament of Grant Bray, read with the Codicil, is void as the bequest is vague. The court also ruled that the bequest is contrary to public policy, further expanding on the principle that freedom of testation is not absolute when it comes to discriminatory action or action contrary to public policy.

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