

The Office of the Master of the High Court for South Gauteng

Context, as written up in Bolt, M. and T. Masha. 2018. 'The family house: a position paper', pp.12-13. Policy paper presented at the University of the Witwatersrand, Johannesburg, 23 July.

Reporting estates in South Africa means going to a Master's Office, each attached to one of the regional High Courts. In Johannesburg, this is the Office of the Master of the High Court for South Gauteng, a 'creature of statute' staffed by officials often with law degrees, who make decisions specifically in terms of legal regulation. According to statute, the Master, the supervisory Deputy Masters, and the much larger number of Assistant Masters who make the bulk of day- to-day decisions are all equivalent in terms of the law. Decisions may be taken on review to the High Court. But this must contend with the fact that many South Africans cannot afford the money or time to take their matters to court, and a number of postponements may be necessary to prepare a matter for hearing. People are also aware that court judgments may be hard to enforce where non-state forms of coercion are central to struggles over family houses.

Johannesburg's is the biggest and busiest Master's Office, processing 32,000 to 33,000 files a year, around double the next largest office in Pretoria. Its building is routinely teeming with people: queues on the ground floor, where estates without wills can be reported on the spot; rows of chairs in upper-level corridors, where clients wait to report to supervisory officials about the distribution of inheritance, or to fight out a dispute in an organised mediation.

The actual work of estates in the Masters Office requires extraordinary flexibility, even though the whole process is sharply defined by law. For officials, making the system work involves interacting with relatives of the deceased, lawyers, and messengers shuttling paperwork to and from banks and trust companies. It involves paperwork, but also maintaining goodwill among stakeholders in the ecosystem of inheritance, and trying to explain to the aggrieved why 'fair' does not always mean 'legal'. The flexibility impresses on officials that what is at stake is always simultaneously bureaucratic process, the law, the future of property, and the realities of death. As one Assistant Master put it, 'You know, these legal issues, they transgress into other areas. Everything gets brought into the estate'.

With limited staff and resources, this is all undertaken under considerable time pressure. Offering more space to kin to express their grievances generally means a radically eroded lunchbreak, or longer hours in the office. Allowing direct access to officials has the important benefit of making government available to the public, but it also presents challenges when it comes to controlling an environment where people and files rush around the building. ...

Last reviewed in the apartheid 1960s, the system is exacting. But it is also sharply stratified, with de facto class and racial implications. Intestate estates under a threshold of R250,000 – 18(3)s – have a simplified administrative track. After a meeting to determine next of kin, and whether there is agreement about what will happen to the property, someone is given a letter as 'Master's Representative'. Yet, to members of the public, that all-critical 'Letter of Authority' equates to ownership. While this is legally wrong, in practice these pieces of paper

enable their holders to transfer any assets as they deem fit, with no further oversight. Indeed, people may simply move into the house on the strength of the letter rather than formally transferring it. Unsurprisingly, the most bitter fights revolve around whose name will be on the letter.

The system, defined by the half-century-old Administration of Estates Act, is onerous. And intestate estates under a threshold of R250,000 have a simplified administrative track under s 18(3). This is important, given that the mainstream process is prohibitively complicated and requires an attorney. But official oversight is limited to awarding a 'Letter of Authority' to a 'Master's Representative', who is responsible for distributing assets in the estate without supervision. Unsurprisingly, the most bitter fights revolve around whose name will be on the letter, and many people see it as tantamount to acknowledgment of ownership. Assistant Masters are aware of this, and they attempt to catch the cases of fraud, the non-reporting of inconvenient heirs, or attempts to bully or disinherit the vulnerable. But they lack investigative powers.

Within the Master's Office, the largest body data was gathered by shadowing Assistant Masters as they engaged with the public. Assistant Masters attempt to ameliorate fights and misunderstandings by offering more space to kin to express their grievances, and to themselves to understand complex family situations. This generally means a radically eroded lunchbreak, or longer hours in the office. Files are rushed up and down, or often sit in enormous piles on the floors and desks of overworked employees, and some go missing.

Below are two example meetings. The first is aggregated from many instances because of the similarity of cases; the second, where there are fewer matters and greater idiosyncrasy, is a single observed case with identifying details removed to ensure anonymity. While, where possible, an informed consent form was used, while shadowing officials it was often impossible and inappropriate to intrude on official process. Instead, the official – who had always confirmed informed consent in writing – explained my presence and initiated verbal consent.

Example meeting with ground-floor Assistant Master (aggregation of typical cases)

A meeting to determine next of kin is called. Squeezed into an Assistant Master's office, chairs brought in from the waiting space outside, an assortment of spouse, children, parents and siblings debate what will happen. This culminates when someone is given a letter as 'Master's Representative'. To members of the public, that all-critical 'Letter of Authority' equates to ownership. While this conviction has no legal backing, in practice these Microsoft Word-template pieces of paper enable their holders to transfer any assets, as they deem fit, with no further oversight. So revered are they that a holder may simply move into the house on the strength of the letter rather than formally transferring it. Unsurprisingly, the most bitter fights revolve around whose name will be on it.

The status of formal documentation, here, is vehemently upheld, although for reasons that differ from those of officials. And the officials know it. It is their job to catch the cases of fraud, the non-reporting of inconvenient heirs, or attempts to bully or disinherit the vulnerable. But they lack information: about the dynamics underlying the performances of kinship; about what Master's Representatives do with those Letters of Authority. Documents do build on other documents, in chains. Relatives reporting an estate must complete a 'next of kin affidavit', a template formalising a narrative about family connections. But only in 2013 were the computer systems of different Master's Offices linked up and integrated with the Department of Home Affairs database. The capacity to check older information remains especially unreliable. Moreover, morgues and the police reportedly do not pass on information about deaths, and such non-reporting goes unpunished. Conversely, even death certificates can be procured fraudulently – there have been cases of officially deceased people making complaints. Faced with all this, Master's officials have no choice but to assume, until convinced otherwise, that people are lying about their struggles to meet unwieldy requirements – claims that relatives have lost touch, are too far to come in person, or even died long ago.

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Example meeting with Assistant Master dealing with higher-value estates. Key details have been removed, and the example was selected because in this case it has been possible to completely anonymise without losing the narrative.

The office was on a corridor lined with seated waiting clients. A middle-aged member of the public came in for a consultation with an Assistant Master. Chic attire, fluency in legalese, and a preference for English all spoke of her educated middle-class background. She wanted the Assistant Master to waive the need for consent from all heirs to sell the house out of her deceased husband's estate. She had already been appointed the Executor, but wanted to buy the house as it was in his name. An executor selling the house to herself, she was aware, raised particular legal issues requiring tight administrative oversight. But there were further problems. Her husband had minor children with other women from before they were married, on top of the minor child they had together. Those children were heirs, and their guardians were refusing to consent to her selling the house. The Assistant Master immediately said that he would definitely refuse such an application for waiver – it is unheard of to grant one when there are minors involved, he said. Nevertheless, he was prepared to continue listening to her story and to offer advice.

The woman reiterated that she should have a waiver of consent to sell. After all, she put money into the house, even into building it. She also had to sell things of her own to service debts in her husband's estate, such as for his car. Moreover, he was unemployed for his last few months and she was the one bringing in the income. Matters had come to a head. The bank was sending her daily messages threatening repossession and auction, because the bond was not being paid – the outstanding debt was two thirds of the current value of the house. She emphasised that, whereas the house was her and her child's family home, the other children

live elsewhere. And, although not registered in her name, the house was actually matrimonial property because it was bought since they were married.

The Assistant Master listened, and then described how best to proceed. He insisted that the only way is to draft a Liquidation and Distribution account – the formal process of chronicling assets and debts in the estate. It would need to list the mortgage and any other debt, and specify that the house is matrimonial property under their marital regime. The ‘L and D’, he explained, is the document through which the Master’s Office actually gets a sense of what the situation is – for now, he had only words spoken in a consultation, and he could not know if what she was saying was true. Furthermore, paying off her husband’s debts on her own account could only be factored into the estate and its distribution if it could be chronicled appropriately in the L and D.

This example appeared in Bolt, M. 2017. ‘Administered futures: inheritance and the formal processes of middle-Class reproduction in Johannesburg, South Africa’, paper presented at the European Conference of African Studies, Basel, 29 June – 1 July.