

Case No 266/94
/MC

**IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)**

In the matter between

JACQUELINE COLLEEN BENNETT

APPELLANT

and

**THE MASTER OF
THE SUPREME COURT**

FIRST RESPONDENT

CHARLES CURTIS RUBEN DE VOS

SECOND RESPONDENT

CORAM: JOUBERT, HEFER, VIVIER, F H GROSSKOPF
JJA et VAN COLLER AJA.

HEARD: 18 September 1995

DELIVERED: 18 September 1995

**TRANSCRIPT OF REASONS GIVEN ORALLY IN OPEN COURT ON
18 SEPTEMBER 1995 BY VIVIER JA WITH WHICH JOUBERT JA,
HEFER JA, F H GROSSKOPF JA et VAN COLLER AJA AGREED.**

VIVIER JA:

The appellant in this matter brought an application in the Eastern Cape Division for an order declaring that a certain document which does not comply with the formalities for the execution of wills as set out in the Wills Act 7 of 1953 ("the Act"), as amended, should be accepted as a will by the Master in terms of sec 2(3) of the Act. The application was dismissed by the Court *a quo* which granted the appellant leave to appeal to this Court.

The document in question is headed "Request to draft a will" and was clearly intended to be no more than a request to a certain financial institution to draft a will. It contains detailed instructions for the drafting of the proposed will, but was clearly not intended to be a will itself, as is required by sec 2(3) of the Act. This much was conceded by counsel for the appellant.

The Court *a quo* was correct to dismiss the application on this ground alone and it is accordingly not necessary to consider the other matters raised in the heads of argument of counsel for the appellant.

Appellant's counsel asked that the costs of the appeal be ordered to come out of the estate in the event of the appeal being dismissed. I can see no good reason for depriving the second respondent of his costs of appeal.

The appeal is dismissed with costs.

W. VIVIER JA.

Joubert JA)
Hefer JA)
F H Grosskopf JA)
Van Coller AJA)

Concurred.