



Law matters for farmers

The appointment and removal of an executor

From the comments I have received from the public recently, there are two points that I would like to address.

Firstly, I believe the following set of facts are familiar to most readers:

When the farmer dies without leaving a will and his surviving spouse is appointed as the executrix. If they were married in community of property and after his death she continues the farming operations for the benefit of herself and her children only, she does not fulfil her duties as the executrix of the estate. This means that the older children of the late farmer struggle to receive their intestate share of their late father's estate.

An executor who does not fulfil his duties as executor can be removed by the court or by the Master. The Administration of Estates Act sets out the circumstances under which an executor can be removed. In the scenario outlined above, the test is basically to determine whether the executrix is performing the duties as imposed

on her by the act properly, and more importantly, whether her behaviour will have a negative effect on the future welfare of the estate.

A beneficiary may approach the Master's office directly with his or her concerns regarding the administration of an estate, but it may be more effective to instruct a legal practitioner to represent you. This legal representative will approach the Master or apply to court on your behalf for the removal of the executor. On the website of the Law Society of Namibia (www.lawsociety-namibia.org) you will find the names, contact details and areas of specialisation of the Legal Practitioners of Namibia. Secondly, I want to deal with the appointment of an executor by the Master, as well as the beneficiary's role in the appointment.

In an intestate estate the executor is usually the surviving spouse, or a child of the deceased. The deceased's father or mother may also be appointed as the execu-

tor. As the family members of the deceased are exempted from having to find security for the proper fulfilment of their duties, one of them usually receives the appointment from the Master. As a rule the Master will give preference to appointing the surviving spouse as the executor. However, given what I see and hear about the surviving spouses and their management of the farm and the cattle, I suggest that the beneficiaries make their concerns clear to the Master. They should try to convince the Master to appoint a family member as executor who is not directly involved in the farming activities, together with an estate practitioner who should take control of the farm and the cattle. Remember, the Master will require the written consent of each of the intestate beneficiaries to the appointment of the family member as executor. So you as beneficiary actually have a say in who is appointed as the executor. Please use this right to the best advantage of



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the estate and its assets and ensure that the right persons are appointed to administer the estate.