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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case Number: **053314/2022**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 7 January 2025

SIGNATURE:

In the matter between:

**PERTUNIA PHINA MALATJIE**

Applicant

and

**ZANALE UNICE SEKGOBELA**

1<sup>st</sup> Respondent

**THE MINISTER OF HOME AFFAIRS**

2<sup>nd</sup> Respondent

**THE DIRECTOR GENERAL: HOME AFFAIRS**

3<sup>rd</sup> Respondent

**THE MASTER OF THE HIGH COURT PRETORIA**

4<sup>th</sup> Respondent

**THE GOVERNMENT EMPLOYEES PENSION FUND**

5<sup>th</sup> Respondent

**EMPLOYEE OF SOUTH AFRICAN POLICE**

**SERVICES PUBLIC ORDER POLICE UNIT (POPU)**

6<sup>th</sup> Respondent

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**JUDGMENT**

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## **JANSE VAN NIEUWENHUIZEN J:**

### *Introduction*

- [1] This application concerns the validity of two marriages concluded by Hlakong Jacob Malatjie (“the deceased”). The applicant maintains that she entered into a civil marriage with the deceased on 19 October 2011 and requests an order declaring the marriage to be valid.
- [2] In support of the relief claimed by the applicant, the applicant attached a marriage certificate issued by the Department of Home Affairs confirming the aforesaid civil marriage. As a result, the fact that a civil marriage was concluded between the applicant and the deceased is not in dispute.
- [3] The validity of the marriage is, however, challenged by the first respondent, who claims that she and the deceased concluded a customary marriage on 6 December 2004. Should the first respondent be correct, it follows that the civil marriage concluded between the deceased and the applicant is invalid.

### *Background*

- [4] The applicant provided a detailed account of her customary and civil marriage to the deceased. The applicant stated that she met the deceased during late 2009 and that their relationship blossomed into a romantic affair. On 30 July 2011 the deceased sent his family to negotiate lobola and the parties agreed on an amount of R 28 000, 00, of which R 15 000,00 was paid.
- [5] The applicant mentions the names of the persons who respectively represented the deceased and herself during the negotiations. A copy of the lobola agreement confirming the agreed amount and the gifts to be handed over is attached to the applicant’s affidavit.
- [6] Their civil marriage was concluded on 18 October 2011 and on 3 December 2011 the families of the deceased and the applicant met to finalise the lobola negotiations and to conclude the marriage in terms of customs. In terms of the

negotiations, the deceased's family had to pay the outstanding R 13 000,00 and had to hand over the following items:

- 6.1 a coat and a walking stick to the father of the applicant;
- 6.2 three blankets to be given to the applicant, her mother and her aunt;
- 6.3 four head wraps to be given to the applicant, her mother and two of her aunts;
- 6.4 a tub of snuff, a knife and an axe.

- [7] The applicant was handed over to the deceased's family as part of the custom of the Bapedi culture and the applicant's family slaughtered a sheep for the deceased's family as a symbol of becoming one family and as a sign that the applicant had been handed over to the deceased's family. As part of the handover of their daughter, the applicant's family handed a case of beer, a bottle of whisky, tea bags, sugar and powered milk to the deceased's family.
- [8] On 4 December 2011, the marriage was celebrated at the family house of the deceased and community members were invited to celebrate the welcoming of the new bride. A goat was slaughtered, and half of the goat was given to the applicant's family as a token of accepting the bride. The applicant received new bridal traditional clothes to signify the fact that she was accepted as the daughter of the deceased's family. The applicant attached photographs of the ceremony to her affidavit and mentioned the names of the persons that formed part of the respective delegations of the two families.
- [9] In completion of the welcoming of the new bride, the applicant was taken by her family members to the house of her mother-in-law. Thereafter the applicant and the deceased celebrated the ceremony in Eenzaam Village in Limpopo province.
- [10] The applicant explained that the deceased passed away on 15 March 2014 and that she was called to the police station to complete the Government Employees Pension Fund (GEPF) forms. On her arrival at the police station, she was met by a certain captain Thobakgale and the first respondent. Captain Thobakgale informed the applicant that the first respondent will also

complete the pension forms as she had a lobola letter evidencing a customary marriage between herself and the deceased.

- [11] Subsequent to the payment of the lumpsum of the pension fund, the applicant approached the offices of the GEPF regarding spousal maintenance. The applicant was informed that the GEPF has decided that she is not eligible to receive spousal maintenance because the marriage between the deceased and the first respondent was still valid.
- [12] The applicant stated that she was never made aware by the deceased that he was in a valid marriage with the first respondent and challenged the first respondent to provide proof of the marriage.
- [13] In response to the aforesaid challenge, the first respondent stated that she met the deceased during 2003 and that they got romantically involved. On 7 May 2004 a child, M[...] H[...], was born from their relationship.
- [14] The first respondent avers that she and the deceased entered into a customary marriage on 6 December 2004. The first respondent's version of the manner in which the marriage was concluded is contentious and for the sake of completeness, I paraphrase her version:

*“2.2 On or about the 6<sup>th</sup> of December 2004, the deceased sent his family to my home to pay Lobola and the Marriage was celebrated at my parental home and then it proceeded to Eenzaam the home of the deceased as is self-explanatory on the Lobola Letter and even the first sentence on the Lobola letter written in isiSepedi alluding to the Witnessing of the marriage between myself and the Deceased, for easy reference I refer the Honourable Court to the Lobola Letter attached hereto marked as **Annexure S1**.*

*2.3 After the celebration of our Customary marriage, the deceased took our Lobola Letter to the Tribal Chief in Eenzaam Community Trust to certify it or put a tribal stamp on it..”*

- [15] The lobola letter loosely translated reads as follows:

*“Proof of marriage between Mr Hlakong Jacob Malatjie and Mrs Zanale Sekgobela*

*The Malatjie family paid lobola money to the Sekgobela family in the amount of four thousand and five hundred rand (R 4 500,00). The Sekgobela family agreed and accepted it. The Malatjie family have an outstanding balance of four thousand rand (R 4000, 00) to settle their debt as well as cattle for slaughtering. The Malatjie family asked for a hand in the marriage and they were granted.*

*The wedding celebration started at Middelburg (Mdluzi) on 6/12/2004 and proceeded at Eenzaam Trust in the district of Nebo on 7/12/2004 and that is where it ended.”*

- [16] The letter is signed by four persons, two of which bears the surname of Sekgobela and Malatjie. An endorsement bearing the words “Headman” and “Eenzaam Trust Community” is affixed to the letter.
  
- [17] The first respondent stated that the deceased was unfaithful during the subsistence of their marriage and that he had various extra-marital affairs. During 2008 the deceased and the first respondent separated because the deceased had impregnated another woman. During March 2009 the deceased sent his uncles to the first respondent’s parental home to ask for forgiveness. Thereafter, they got back together and a second child, Naledi Masechaba was born on 11 March 2010.
  
- [18] During 2011 the deceased and the first respondent moved to a rented place in Tokologo in Mhluzi. The deceased informed the first respondent that he did not like the rented place and they agreed that the deceased will temporarily move to Chromville Flats. The first respondent stated that the deceased resumed his old ways of cheating and visited the first respondent and their children if and when it pleased him.
  
- [19] The minor children visited the deceased at Chromville Flats and after one of their visits they informed the first respondent that there was a lady who

cleaned and cooked for them the whole weekend. When the first respondent asked the deceased about the lady, he stated that she was a helper/cleaner.

- [20] It was only at the time of the deceased's demise that the first respondent became aware that the deceased was also married to the applicant.
- [21] The first respondent reiterated that she was the deceased's legal wife and referred the court to a "*National Treasury: Pensions Administration: NOMINATION OF BENEFICIARIES*" form that was completed and signed by the deceased on the 3<sup>rd</sup> of May 2010. His signature is attested by the signatures of two witnesses.
- [22] The first respondent is the first beneficiary nominated by the deceased in her capacity as his wife.
- [23] In reply, the applicant denied that the first respondent entered into a customary marriage with the deceased on 6 December 2004. The applicant maintained that the lobola letter in itself did not proof the marriage. The applicant stated that the lobola negotiations, the marriage must be entered into and celebrated in accordance with custom. Something that, according to the applicant, did not happen.
- [24] The applicant baldly denied that the first respondent and deceased ever lived together as husband and wife and stated that they never cohabited at any stage prior to the deceased's passing.
- [25] In respect of the first respondent's version pertaining to the deceased's unfaithfulness, his impregnation of another woman and that the uncles of the deceased begging forgiveness from the first respondent's family, the applicant stated that she has no knowledge of the events described by the first respondent.

### *Legal Framework*

[26] The requirements for a valid customary marriage is contained in section 3 (1) of the Recognition of Customary Marriages Act, Act 120 of 1998 and reads as follows:

*3. (1) For a customary marriage entered into after the commencement of this Act to be valid-*

*(a) the prospective spouses-*

*(i) must both be above the age of 18 years; and*

*(ii) must both consent to be married to each other under customary law: and*

*(b) the marriage must be negotiated and entered into or celebrated in accordance with customary law.”*

[27] The applicant did not dispute that the first respondent and the deceased were above 18 years of age at the time, that they both consented to be married to each other under customary law and that the marriage was negotiated. The issue in dispute is, therefore, whether the first respondent and the deceased “*entered into or celebrated their marriage in accordance with customary law*”.

[28] In the event that a factual dispute arises and there is no request by any of the parties for the hearing of oral evidence, the test formulated in *Stellenbosch Farmers’ Winery v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235 E-G applies, to wit:

*“..... where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order.”*

[29] In *Plascon -Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 235C, the court confirmed the aforesaid general rule, but added that there may be exceptions to the rule, “*as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers..*”

[30] Applying the aforesaid test to the facts in *casu*, the facts stated by the first respondent should be accepted.

[31] In the result, the applicant has failed to make out a case for the relief contained in the Notice of Motion and the application stands to be dismissed.

#### *Costs*

[32] The first respondent was successful in her opposition to the relief claimed by the applicant and costs should follow the cause.

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#### **ORDER**

The application is dismissed with costs.

**N. JANSE VAN NIEUWENHUIZEN  
JUDGE OF THE HIGH COURT  
DIVISION, PRETORIA**

#### **DATE HEARD:**

13 November 2024

#### **DATE DELIVERED:**

7 January 2025

#### **APPEARANCES**

For the Applicant: Ms S Kamfer

Instructed by: Kamfer Attorneys Incorporated



For the 1<sup>st</sup> Respondent: Advocate L Mnqandi

Instructed by: Rapatla Rue Attorneys