IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, BHISHO

CASE NO. 547/2020

In the matter between:

THANDEKA PETER	**First applicant**
SIYASANGA BLAYI	**Second applicant**
UNATHI MINI	**Third applicant**
SIYASAMKELA BLAYI	**Fourth applicant**
LIBONGE PIETERS	**Fifth applicant**

and

MASTER OF THE HIGH COURT: BHISHO	**First respondent**
THOBEKA JOE	**Second respondent**

JUDGMENT

LAING J:

[1] This is an application for an order directing the first respondent, *inter alia*, to issue letters of executorship to the first applicant with regard to the estate of the late Mr Clifford Blayi. At the heart of the dispute is the question of whether there had been a customary marriage between Mr Blayi and the second respondent.

Applicants' submissions

[2] The first applicant is the eldest daughter of the deceased. She states that her father, the late Mr Blayi, had been married twice before; both of his previous wives had predeceased him. The first applicant alleges that her father had been in a relationship with the second respondent at the time of his death but emphatically denies that they had been married. Mr Blayi had apparently resided with the first applicant's brother, cited as the fourth applicant in these proceedings. Whereas the second respondent would sometimes visit the deceased, spending a night or more at his home, she would return to her own home afterwards; they never co-habited. None of the applicants was aware of any marriage between the two individuals in question.

[3] Consequent to the passing of Mr Blayi on 23 June 2019, the applicants instructed their attorneys to report the death to the first respondent and for letters of executorship to be issued accordingly. The first respondent, however, informed the applicants that the death had already been reported by the second respondent's attorneys on 12 August 2019 and that the deceased had allegedly been married in terms of customary law; however, no letters of executorship could be issued until the marriage had been registered with the Department of Home Affairs ('DHA'). The applicants' attorneys invited the second respondent's attorneys to submit proof that a customary marriage had been concluded but received no response.

[4] The first applicant's affidavit is confirmed by her brothers, cited as the second and fourth applicants respectively; the latter asserts that his father, the late Mr Blayi, had resided with him until the date of his passing. The third applicant also confirms the first applicant's allegations; she states that her son is the grandchild of the late Mr Blayi and that they used to visit him at his home.

Second respondent's submissions

[5] The second respondent has opposed the application on the basis that she is indeed the surviving spouse of the deceased and ought to be appointed as executor. She avers that she and the late Mr Blayi grew up together in the same village and led separate lives until they met again in 2013, eventually entering into a

relationship. The second respondent would visit the deceased at his homestead, situated at 1371 NU 9, Mdantsane, where she would spend a few days before returning to her own home. They did not co-habit because this would have been contrary to the second respondent's religious beliefs.

[6] The deceased and the second respondent allegedly discussed, extensively, when and how they would marry, ultimately agreeing to do so on 10 December 2016 in terms of customary law. By reason of the dilapidated condition of the late Mr Blayi's homestead, the couple arranged to become married at the house of a Mr Kututu Joseph, whom the deceased considered as a brother. On the day in question, the couple proceeded to his house where the second respondent was welcomed as the late Mr Blayi's wife-to-be. Customary rites were performed; the second respondent was adorned as a bride and given a bridal name ('Nokhuselo') by the sister of the deceased. The ceremony was witnessed by family on both sides of the union. Subsequently, contends the second respondent, the couple lived together as man and wife at the deceased's homestead, which they renovated and refurbished during the course of 2017.

[7] The late Mr Blayi was diabetic and became increasingly ill as time went by. The second respondent alleges that she would care for him constantly, ensuring that he took his medication, administering his insulin, bathing him, and assisting him with his ablutions. During the late Mr Blayi's illness, states the second respondent, only the fourth and fifth applicant ever visited him.

[8] The second respondent alleges that, subsequent to the passing of the deceased, she grieved and wore black for a period of six months before marking the end of the mourning period at a cultural ceremony (*ukukhululula izila*) held at the homestead and attended by family, neighbours and members of the church. None of the applicants was present on the occasion.

[9] The first applicant assisted the second respondent with preparations for the funeral, at which the latter was recognised as the surviving spouse. To that effect, the second respondent points out that she had been seated in the place reserved for

a widow at the church and that her union with the late Mr Blayi was acknowledged in the funeral programme and also in the obituaries delivered by various speakers.

[10] With regard to her unsuccessful application for letters of executorship, the second respondent explains that she and the deceased had never registered their marriage because of the late Mr Blayi's illness and the difficulties posed by having to travel to and queue at the offices of the DHA. After his passing, the onset of the COVID-19 pandemic and ensuing restrictions on movement hampered the second respondent's further efforts.

[11] The confirmatory affidavit of Mr Mkhokheli Joseph accompanied the answering papers. In terms thereof, he states that he and the deceased grew up together and were both of the Mkhuma clan. They viewed each other as brothers. He was present at the marriage of the second respondent and the late Mr Blayi, held at the house of his older brother, Mr Kututu Joseph. The marriage was conducted in accordance with customary rites and the couple resided together as man and wife at the homestead of the deceased.

[12] The confirmatory affidavit of Mr Petros Meti is also attached. In that regard, he confirms that he is the son of the first applicant and grandson of the late Mr Blayi. He states that he met the second respondent at the deceased's homestead and observed that the couple lived together as man and wife. On a visit to the homestead in 2018, he noticed that renovations were being carried out and heard his grandfather (the deceased) acknowledge the second respondent as his wife when he spoke to the first applicant. The second respondent, avers Mr Meti, nursed and took care of the late Mr Blayi and had been present at his death. Mr Meti moved into the homestead afterwards and observed how the second respondent had dressed in black and grieved the passing of the late Mr Blayi. He had not attended the cultural ceremony to mark the end of the mourning period because he had been with his mother, the first applicant, who had refused to go.

[13] Furthermore, the second respondent has attached the confirmatory affidavit of Mr Libonge Pieters, who is the son of the late Mr Blayi and sibling of the first, second and fourth applicants. Although he is cited as the fifth applicant, he disputes that the

first applicant was authorised to bring the application on his behalf and distances himself from the proceedings. In 2014 and 2015, Mr Pieters stayed with his father (the deceased) at the homestead, where he came to know the second respondent during her visits. He subsequently left the homestead to stay with his aunt at Gonubie, after which he would return to visit his father during the school holidays. The second respondent, avers Mr Pieters, lived with the late Mr Blayi at his homestead since December 2016. They carried out substantial renovations and refurbishments on the property. He alleges that he had been present together with the second respondent and Mr Meti when the deceased passed away and confirms that the second respondent had dressed in black and grieved. None of the applicants attended the subsequent cultural ceremony.

[14] The second respondent attached, finally, the supporting affidavit of Ms Nosikhumbuzo Rubu, who resides at 1370 NU 9, Mdantsane. She supports the allegations of the second respondent, alleging that her neighbour, the late Mr Blayi, had informed her of his marriage to the second respondent, who in turn had confirmed this at the time. They renovated their home together and the second respondent conducted herself as a married woman. She nursed the deceased until his passing. Ms Rubu attended his funeral and witnessed how the second respondent had been recognised as the deceased's widow. She sewed the mourning clothes for the second respondent and assisted at the cultural ceremony, where the second respondent had been counselled on how to conduct herself as a widow.

Issues to be decided

[15] The deceased died intestate, without having nominated any person to be his executor. In terms of section 18(1)(a) of the Administration of Estates Act 66 of 1965, the first respondent is obligated to appoint and grant letters of executorship to anyone deemed 'fit and proper' to be executor of the estate. However, where more than one person has been nominated for recommendation, section 19(a) stipulates that the first respondent must give preference to 'the surviving spouse'.

[16] Consequently, the court is required to determine whether the second respondent is indeed the surviving spouse. This must be premised upon a decision as to whether there was a customary marriage between the late Mr Blayi and the second respondent, in accordance with the requirements of section 3(1) of the Recognition of Customary Marriages Act 120 of 1998 ('the Act'). The provisions thereof state as follows:

> '**3 Requirements for validity of customary marriages**
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> (1) For a customary marriage entered into after the commencement of this Act to be valid—
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> (a) the prospective spouses—
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> (i) must both be above the age of 18 years; and
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> (ii) must both consent to be married to each other under customary law; and
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> (b) the marriage must be negotiated and entered into or celebrated in accordance with customary law.'

[17] There is no dispute about the consent of either the deceased or the second respondent to have become married. The focus of the court's enquiry is, rather, on sub-section (b). The first applicant's main contentions are that no delegation was sent by the deceased's family to that of the second respondent, no *lobolo* was negotiated, and there was no handing over of the second respondent by her family to that of the late Mr Blayi.

[18] The basic legal framework will be discussed in the paragraphs that follow, after which the above aspects will be assessed in relation thereto.

Legal framework

[19] It is useful, at the outset, to reiterate the organic nature of customary law, which is characterised by its continuous and natural development within a constantly changing socio-economic environment. The Supreme Court of Appeal emphasised this in *Mbungela and another v Mkabi and others* [2020] 1 All SA 42 (SCA), where Maya P held, at 17, with reference to the Act, that:

> '…section 3(1)(b) does not stipulate the requirements of customary law which must be met to validate a customary marriage. The reason for this is not far to seek. It is established that customary law is a dynamic, flexible system, which continuously evolves within the context of its values and norms, consistently with the Constitution, so as to meet the changing needs of the people who live by its norms…'

[20] The courts have recognised the need for flexibility when dealing with matters of customary law, notwithstanding the possible uncertainty that this can create. Overall, it appears from the case law that the courts have adopted a pragmatic approach, rooted in the practices and lived experiences of the community concerned.

[21] An example of such an approach can be found in *Mabena v Letsoalo* 1998 (2) SA 1068 (T), where Du Plessis J recognised, at 1072C-D, that customary marriage is not purely a matter between the bride and groom but is also 'a group concern, legalising a relationship between two groups of relatives'.[1] However, the court took heed of social realities and pointed out that many unmarried men live on their own and fend for themselves. There was no reason why an independent, adult man was not entitled to negotiate the payment of *lobolo* or that he needed the consent of his parents to marry.[2]

[22] What is necessary before a marriage can be said to have been negotiated, entered into or celebrated appears to depend on the existence or otherwise of a set

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[1] The learned judge quoted Mönnig *The Pedi*, at 129; reference was also made to Bekker *Seymour's Customary Law in Southern Africa*, 5ed, at 96.
[2] At 1073A-B.

of basic requirements. These were listed in *Fanti v Boto and others* [2008] 2 All SA 533 (C), where Dlodlo J held, at 19, that:

> 'It is actually relatively easy to prove the existence of a customary marriage in view of the fact that there are essential requirements that inescapably must be alleged and proved. These would be:
> (i) consent of the bride;
> (ii) consent of the bride's father or guardian;
> (iii) payment of *lobolo*;
> (iv) the handing over of the bride.'

[23] The payment of *lobolo* has been regarded as fundamental to a customary marriage. It was considered in *Maloba v Dube and others* [2010] JOL 25852 (GSJ), where Mokgoatlheng J observed, at 26, that the agreement to marry in customary law is predicated upon *lobolo* in its various manifestations; the agreement to pay it underpins the customary marriage.

[24] Similarly, the handing over of the bride has been accorded much significance. The following remarks were made by Matlapeng AJ in *Motsoatsoa v Roro and another* [2011] 2 All SA 324 (GSJ):

> '[19] One of the crucial elements of a customary marriage is the handing over of the bride by her family to her new family namely that of the groom. As the man's family gained a daughter through the marriage, from her family, the bride is invariably handed over to him at his family's residence. Handing over of the bride… is not only about celebration with the attendant feats and rituals. It encompasses the most important aspect associated with married state namely *go laya / ukuyala / ukulaya* in vernacular. There is no English equivalent of this word or process but loosely translated it implies "coaching" which includes the education and counselling of both the bride and the groom by the elders of their rights, duties and obligations which a married state imposes on them. This is the most important and final step in the chain of events that happens in the presence of both the bride and the groom's families. One can even describe this as the official seal in the African context of the customary marriage.

[20] The handing over of the bride is what distinguishes mere cohabitation from marriage. TW Bennett *Customary Law in South Africa* 18ed states at 217 that

> "Hence, when the Recognition of Customary Marriages Act provides that, in order to qualify as customary, a marriage must be 'negotiated and entered into or celebrated in accordance with customary law', the form of negotiations, the handing over of a bride and the wedding are all relevant to giving the union the character of a customary marriage. It may then be distinguished, on the one hand, from an informal partnership and, on the other, from a marriage according to other cultural or religious traditions."

In terms of practised or living customary law the bride cannot hand herself over to the groom's family. She has to be accompanied by relatives.'

[25] Whether or to what extent the basic requirements for a customary marriage were met in the present matter lies at the heart of the dispute. These will be assessed below.

Application of the law to the facts

[26] The applicants' case rests on the assertion that the basic requirements were missing. No delegation was sent by the deceased's family, no *lobolo* was negotiated, and no handing over of the second respondent ever took place.

Handing over of the bride

[27] Beginning with the question of the handing over of the second respondent, she asserts that she was accompanied by her brother at the time of the marriage ceremony. She was welcomed into the deceased's family by, *inter alia*, Mr Kututu Joseph and the late Mr Blayi's sister. The first applicant does not take this further in her replying papers other than to contend that the above individuals were not her family.[3] At the very least, there can be no real dispute that the second respondent's

[3] See paragraph 13 of the replying affidavit, at 73 of the record.

brother was present as a representative of her surviving family. Furthermore, the first applicant does not seem to challenge the second respondent's contention that the deceased was from the same clan (Mkhuma) as Mr Kututu Joseph and Mr Mkhokheli Joseph.

[28] The concept of clanship is discussed by the learned writer, Jonas, who explains:

> 'Clanship is therefore an inherent quality, constituting a vital part of the individual's identity. Apart from one's personal names and surname, the latter frequently a lineage name, every individual also has a clan name which he shares with all his fellow-clansmen. To the question "*Ungumni na?*" (literally: What [person] are you?) someone will usually first reply with his clan name, for example *NdinguNgwevu* (I am Ngwevu) or *NdingumNgwevu* (I am a Ngwevu), before mentioning a personal name or surname.'[4]

[29] Jonas goes on to explain that:

> 'Clanship is immutable, being something to which an individual is ineluctably bound. Only where misfortune is ascribed to someone's bearing the wrong clan identity… a ritual is performed to formalize the adoption of the correct clan identity, in this case that of the genitor. The underlying reason for this change is that clan identity entails more than the clan name. A member of the Nkabane clan explained the significance of clanship as follows: '*Ndiphila ngaso, ndihleli phantsi kwaso. Impilo yam yonke ikuso. Ukuba ngaba ndinako ukungasazi ndinako ukulahla zonke izinto zakowethu*' (I live by it, I live under it. My whole well-being is in it. Should it be possible that I do not know it, I may lose everything that belongs to us) … From the above analysis it is clear that identity implies awareness of self within a particular context, that is, the context of the clan and everything associated with it, implying recognition of "corporate identity" beside individuality.'[5]

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[4] PJ Jonas, 'Clanship as a cognitive orientation in Xhosa world-view' (S. Afr. J. Ethnol, 1986, 9(2)), at 60.
[5] Ibid.

[30] From the above, it is apparent that the concept of clanship is integral to the practices and lived experiences of the isiXhosa community. The presence of members of the same clan at the marriage ceremony, especially individuals with whom the deceased had grown up and treated as his brothers, would have been akin to the deceased's having had close members of his direct family in attendance to have facilitated the handing over of the bride. This would have been all the more necessary where there were few if any surviving elders in the late Mr Blayi's family and where relations with his children were complicated, at best.

[31] The related, albeit not identical, requirement of *ukumekeza*[6] in siSwati customary law was dealt with in *Mabuza v Mbatha* [2003] 1 All SA 706 (C), where Hlophe JP made the following observations:

> '[25] In my judgment there is no doubt that *ukumekeza*, like so many other customs, has somehow evolved so much that it is probably practised differently than it was centuries ago. I got a firm impression that Mr Shongwe was not being truthful to the Court insofar as he attempted to elevate *ukumekeza* into something so indispensable that without it there could be no valid siSwati marriage. It is my view that his evidence in that regard cannot be safely relied upon. As Professor de Villiers testified, it is inconceivable that *ukumekeza* has not evolved and that it cannot be waived by agreement between the parties and/or their families in appropriate cases.
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> [26] Further support for the view that African Customary Law has evolved and was always flexible in application is to be found in TW Bennett *A Sourcebook of African Customary Law for Southern Africa*. Professor Bennett has quite forcefully argued that:
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> > "In contrast, customary law was always flexible and pragmatic. Strict adherence to ritual formulae was never absolutely essential in close-knit, rural communities, where certainty was neither a necessity nor a value. So, for instance, the ceremony to celebrate a man's second marriage would normally be simplified; similarly, the wedding might be

[6] The requirement was described in *Mabuza v Mbatha* as 'the formal integration of the bride into the bridegroom's family', which is distinct from the formal handing over of the bride to the groom's family (at 9).

> abbreviated by reason of poverty or the need to expedite matters" (at 194).'

[32] In the present matter, there does not seem to be any reason why the customary practice of the handing over of the bride could not be said to have evolved to accommodate a situation where the groom's family is represented by members of the same clan. This is all the more so where the circumstances at the time did not allow for the presence of any elders, simply because there were none or where the surviving elder lacked the capacity to represent the family meaningfully, and where the late Mr Blayi no longer enjoyed a close relationship with all of his surviving children.

Lobolo

[33] Turning to the question of *lobolo*, the second respondent makes no mention of this in her answering papers and it must be assumed that it was never paid. The legal effect thereof must be examined more closely.

[34] The term, *lobolo*, is defined in section 1 of the Act as:

> 'the property in cash or in kind… which a prospective husband or the head of his family undertakes to give to the head of the prospective wife's family in consideration of a customary marriage'.

[35] Generally, there is no consensus on the meaning and function of *lobolo*. The learned writer, NJJ Olivier (*et al*), remarks that:

> 'It is probably impossible and unwise to give a narrow description of the institution of *lobolo*. It serves to legalise the marriage, to legitimate the children born of the woman, to act as a form of compensation in a general sense, to place the responsibility upon her father to support her if it should become necessary, to stabilise the marriage, and to ensure proper treatment of the wife by the husband and his family. It is clear, however, that the primary function of the *lobolo* is to transfer the reproductive capacity of the woman to the family of her husband; in other words, there is a direct

correlation between (a) the transfer of the *lobolo*, and (b) the reproductive potential of the woman.'[7]

[36] It is evident from the papers that the late Mr Blayi was 68 years old when the marriage took place; the second respondent was 61. The possibility of having children would have been very remote, if even contemplated at all. Moreover, it is not disputed that the deceased was a diabetic, which seems to have hastened his passing some two-and-a-half years later. In the circumstances, the function of *lobolo* would have served little purpose and the couple would have been expected, instead, to have used any available resources to make their lives more comfortable in anticipation of old age; it is common cause that they did so, carrying out extensive renovations and refurbishments at the homestead.

[37] The decision of the court in *Mabuza v Mbatha (supra)* can be interpreted to mean that the requirement of *lobolo* is capable of waiver.[8] Whereas the second respondent does not expressly indicate this in her papers, there is sufficient evidence to deduce that there was indeed a tacit waiver by both parties. The payment or otherwise of *lobolo* appears never to have been an issue.

Sending of a delegation

[38] With regard to the question of a delegation from the deceased's family, both the late Mr Blayi and the second respondent were advanced in years when they married. This was certainly not the union of a young couple. By the first applicant's own admission, there were no remaining elders in the deceased's family except for a Mr Nantetho Blayi, who is described as being 'mentally ill'.[9] Quite who would have made up any delegation to have been sent to the second respondent's family is not clear.

[39] The court does not understand the determination of whether a customary marriage was concluded to entail the adoption of a tick-box approach with regard to

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[7] NJJ Olivier (et al), 'Indigenous Law', in *LAWSA* (Vol 32, 2ed, LexisNexis, 2009), at paragraph 113.
[8] See Hlope JP's remarks at 25.
[9] See the applicant's replying affidavit, paragraphs 12 and 32, at 73 and 79 of the record, respectively.

the identification or otherwise of the basic requirements. In other words, the absence of one or more should not automatically disqualify the union.

[40] To that effect, the remarks of the Supreme Court of Appeal in *Mbungela and another v Mkabi and others (supra)* bear repeating, Maya P held, at 27, that:

> 'The importance of the observance of traditional customs and usages that constitute and define the provenance of African culture cannot be understated. Neither can the value of the custom of bridal transfer be denied. But it must also be recognised that an inflexible rule that there is no valid customary marriage if just this one ritual has not been observed, even if the other requirements of section 3(1) of the Act, especially spousal consent, have been met, in circumstances such as the present ones, could yield untenable results.'

[41] The circumstances of the couple in the present matter need to be acknowledged. This was not a marriage of a young man and a young woman; for the deceased, it was his third marriage. There were no surviving elders who could have meaningfully represented the late Mr Blayi in any negotiations with the family of the second respondent. Moreover, the deceased's relationship with his children did not seem to have permitted their participation in any delegation. Such a situation, however, should not have thwarted or prevented the second respondent from marrying in accordance with customary law.

Relief to be granted

[42] It cannot be said that a neat and clearly demarcated set of facts, unequivocally demonstrating compliance with the basic requirements for a customary marriage, has emerged from the proceedings. Whereas a compelling enough argument can be made to the effect that there was a handing over of the bride and that *lobolo* was waived, the ultimate question remains whether this was sufficient to indicate that the marriage was customary in nature. To answer that, it would be remiss of the court not to take into account the evidence in relation to how the union was viewed by the community itself, whose practices and lived experiences inform the content of customary law.

[43] The second respondent's answering papers describe the holding of the marriage ceremony, the couple's residence at the homestead (which they renovated and refurbished), the second respondent's nursing of the deceased prior to his death, the respect and recognition that were accorded to her at the funeral, and her wearing black and subsequent release from mourning at the cultural ceremony. She attaches a copy of the funeral programme, which indisputably refers to a marriage between her and the late Mr Blayi and which refers to her by her bridal name, Nokhuselo. The above averments were supported by a member of the clan, the first applicant's own son, the late Mr Blayi's son, and a neighbour.

[44] In contrast, the first applicant's replying papers amount to not much more than a bare denial. She merely asserts that if the second respondent and the deceased had been married, then the applicants would have known 'because we are the children of the deceased'.[10] This takes the matter no further. She also refutes the second respondent's allegations with regard to the period of mourning, the cultural ceremony and the funeral, without adequately advancing any further clarification or explanation to persuade the court that her version should be accepted. For example, the first applicant contends that the second respondent changed the text of the draft funeral programme without the applicants' knowledge, prior to submission of the programme to the printers. This is implausible; if that had indeed been so, then there would surely have been evidence of an outcry and recriminations at the funeral itself or afterwards.

[45] There are, admittedly, disputes of fact with regard to other issues. For example, the fourth applicant alleges that the late Mr Blayi resided with him; the second respondent asserts, to the contrary, that she resided with the deceased at the homestead and that the fourth applicant visited them regularly.[11] In such a situation the usual principles must be applied, viz. a final order will only be granted

[10] See paragraph 13 of the replying affidavit, at 73 of the record.
[11] See paragraph 15 of the answering affidavit, at 46 of the record.

where the facts as stated by the respondent, together with the facts alleged by the applicant that are admitted by the respondent, justify such an order.[12]

[46] Overall, what emerges from the papers is a picture of a simple union, mostly shorn of the events and customs that would usually mark the marriage of a young couple, but nevertheless retaining the essential features of a customary marriage. As the learned writer, Bennett, has remarked, customary law has always been flexible and pragmatic, and strict adherence to ritual formulae has never been absolutely essential in appropriate circumstances.[13] It would have been reasonable for the couple to have abbreviated the process where both were advanced in years and where it was the deceased's third marriage. How the community itself viewed the union has to be taken into consideration, it cannot be ignored; on the basis of the evidence, the first applicant has not demonstrated that the community refused to recognise the second respondent as the surviving spouse of the deceased, in accordance with the tenets of customary law. Quite the opposite appears in the second respondent's papers.

[47] With regard to the second respondent's failure to have registered the customary marriage, section 4(8) of the Act provides that a certificate of registration constitutes *prima facie* proof of the existence thereof. However, section 4(9) clearly stipulates that the failure to register does not affect the validity of the marriage. The second respondent has furnished an acceptable explanation and nothing more turns on this.

[48] The only remaining issue is that of costs. The usual principles apply and costs must follow the result. There is no basis for granting an order on anything other than a party-and-party scale.

Order

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[12] The principles were stated in *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C), at 235, and have become settled law after they were adopted in numerous other cases, including *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A), at 634.

[13] Quoted in *Mabuza v Mbatha*, at 26.

[49] In the circumstances, the following order is made:

(a) the application is dismissed; and

(b) the applicants (excluding the fifth applicant) are liable for the second respondent's costs.

JGA LAING
JUDGE OF THE HIGH COURT
APPEARANCE

For the applicants:	Adv Mhlanti, instructed by Badi Loliwe Attorneys, East London.
For the second respondent:	Adv Maqetuka, instructed by Nomjana Attorneys, East London.

Date of hearing: 12 May 2022.
Date of handing down of judgment: 02 August 2022.