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IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBERS: 2020/18376

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: 19/08/2020

In the matter between:

PHOMOLO JUSTICE LETHO

Applicant

DINTLE MOEKETSI JR NTOOELE

Intervening Applicant

and

SHANTELL DHLAMINI

First Respondent

AVBOB

Second Respondent

NTEBALENG NCHUPETSANG N.O.

Third Respondent

Coram: Wepener J

Heard: 19 August 2020

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Delivered: 19 August 2020

JUDGMENT

Wepener, J:

[1] The applicant seeks an order declaring that the deceased was not married and consequential relief in relation to the burial and other issues regarding the deceased.

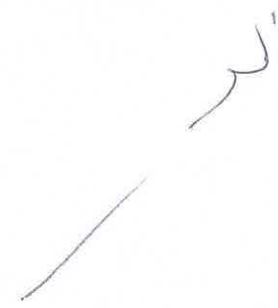
[2] At the outset of the hearing I permitted the son of the deceased to join as a co-applicant. There is no dispute that the intervening party is the son of the deceased. He joins in the proceedings seeking the same relief sought by the applicant.

[3] The first respondent is Shantell Dhlamini, an adult person, who lived with the deceased at the time of his demise. It is also alleged that the first respondent and the deceased had a daughter born from their relationship.

[3] At the heart of the matter is a disputed right to bury the deceased. There is no dispute that the deceased's son does have such a right.

[4] The first respondent alleges that she is the wife of the deceased by customary marriage and that she has the right to bury the deceased. She furnishes some evidence which is disputed and controverted by the applicants. The applicants did not make any issue regarding the status of the first respondent as wife in the founding papers because, as they say, they had no knowledge of such a claim by the first respondent.

[5] When they learnt of this claim the applicants embarked on some research. They found that the first respondent had completed certain forms after the death of the deceased. The first was a declaration made by the first respondent under oath in which she said that she knows 'that the deceased was a single person and that the deceased did not enter into any Customary Union'.





[6] The second is a document wherein the first respondent reported the death of the deceased and at the space where it is required to insert the particulars of a surviving spouse, the first respondent indicated that the information is 'not applicable'.

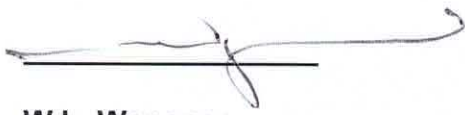
[7] The third is a death's notice. At para 13 the question is 'if married, place where married.' The answer is 'not applicable'. At the para 14 of the same document the question reads 'Full names of surviving spouse'. The first respondent filled in that it is 'not applicable'.

[8] These documents were completed by the first respondent after the death of the deceased and wholly contradicts the version that she now proffered that she had married the deceased by customary law and her version of a customary marriage in 2019 should be rejected out of hand.

[9] The document so completed by the first respondent completely supports the evidence of the applicant as supported by the intervening applicant that no such customary union was ever entered into. However, this matter comes before me as a matter of urgency and I will decide it on these papers only.

[10] I am of the view that the son of the deceased has the right to determine the burial process of the deceased and I issue the following order:

1. For the purposes of the burial of the deceased, it is declared that the deceased, Russel Moeketsi Moletsane, was not married to the first respondent.
 2. The Respondents or any other person are interdicted from removing the corpse of the deceased Moeketsi Russell Moeketsane from any mortuary where it is currently placed without the consent of the applicant and the intervening applicant.
 3. It is declared that the burial of the deceased is to be held by his son, the intervening applicant
 4. The First Respondent is ordered to pay the costs of both the applications by the applicant and the intervening applicant.
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W.L. Wepener

Judge of the High Court of South Africa

APPEARANCES

Counsel for the Applicants: S.T. Mosomane

Attorney for the Applicants: Mosomane Incorporated

Counsel for First Respondent: M. Mkhathshwa

Attorney for First Respondent: M.D. Pheeha Incorporated Attorneys