

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

In the matter between:

NTSUKUNYANE ROSEMARY PALESA N.O.

FIRST APPLICANT

NTSUKUNYANE ROSEMARY PALESA

SECOND APPLICANT

and

NINI MAEMA MOLEKO

FIRST RESPONDENT

(ID NO.)

SECOND RESPONDENT

MILLICCENT GUGU MNGOMEZULU

THABO PAULOS MOSIA

THIRD RESPONDENT

THE MASTER OF THE HIGH COURT,

SOUTH GAUTENG

FOURTH RESPONDENT

DEPARTMENT OF TRANSPORT: TRANSPORT

FIFTH RESPONDENT

LEGAL SUMMARY

The applicants brought an urgent application for an order declaring that the first to third respondents should deliver the vehicles that belonged to the estate of the deceased to the administrator of his estate and that they should re-register those vehicles in the deceased name. Alternatively, that the sheriff be authorised to attach and remove those vehicles from first to third respondents. Also directing the fourth and fifth respondent to note and give effect to the order sought.

The deceased owned a number of taxis that operated between Johannesburg and Lesotho. The second applicant was appointed executrix of the estate of the deceased. She further argued that she was married in terms of civil law to the deceased and they shared a child together.

The second respondent and third respondent denied the existence of a civil marriage between the second applicant and the deceased and alleged that they were both the lawful wives of the deceased in terms of customary law and that they were entitled to keep the taxis left to them by the deceased for maintenance of themselves and that of the children that they shared with him.

Having set out the law on administration of deceased estates the Court said there were two issues that were central to this application. First, whether or not the letters of executorship issued by the fourth respondent in favour of the second applicant should be allowed to stand. Secondly, whether or not the first and second respondents had valid and/or subsisting customary marriages or unions with the deceased at the time of his death.

The second applicant produced a marriage certificate as a proof of a civil union between her and the deceased. The court held that the certificate was *prima facie* regular and valid. However the parties were allowed to bring evidence to the contrary within a specified period, failure to do that the marriage certificate annexed by the second applicant would then become a permanent memorial of the existence of a civil marriage between her and the deceased. It was held that the second applicant was married to the deceased in terms of civil rights in community of property. Furthermore, that presupposes that any customary union purportedly entered into after the date of that marriage was invalid and of no consequences. The second applicant was declared a duly appointed executrix of the estate.

On the licences of the taxis and the taxis the Court held that in term of the law those assets could not be transferred without letters of executorship and none of the respondents produced such letters. Therefore such transferred were held to be without authority and invalid. Consequently the transfer of the taxis and their registrations were set aside. The court made an order that the vehicles and the permits should be transferred back into the names of the first applicant, pending the finalisation of the estate of the deceased.