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REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 15078/2012

M R L

Applicant

and

K M G

Defendant

SUMMARY OF THE J U D G M E N T

THULARE AJ:

The applicant brought an application against the respondent for maintenance *pende lite* which includes maintenance of her children not born of the respondent. In the main application, the applicant seeks a decree of divorce, a division of the joint estate, maintenance and costs. The respondent disputes the existence of the customary marriage.

A party to a disputed customary marriage must set out facts with sufficient particularity as to the requirements for validity of the customary marriage. In determining the existence of the customary union, the court was satisfied with the

facts pleaded by the applicant, that if proved, would sustain a finding that the parties were customarily married pursuant to section 2(2) of the Recognition of Customary Marriages Act 1998. The pleaded facts were: the parties agreed to marry each other customarily, their elders met and negotiated a customary marriage, an amount which all agreed was lobolo was paid to the applicant's elders, the negotiations and payment was followed by a celebration. The applicant was then handed over to the elders of the respondent.

As regards whether the respondent was liable to maintain the applicant's child, the court found that he did. Customs, practices and traditions did not preclude the respondent during the negotiations from expressing the view that he was not intending on assuming the role of fatherhood. It was common cause that the child was disclosed to the respondent, after the negotiations she moved from her maternal home to the respondent's home and the respondent assumed responsibility for all her basic needs.

The court was satisfied that the applicant had proved her claim for maintenance and was awarded same and costs in the matrimonial dispute.