

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

fabese
04/07/2019
~~02/0/2019~~

DATE

Jabesele
SIGNATURE

Case Number: 23299/19

In the matter between:

ULRIKE MANSE

APPLICANT

And

FORENSIC DEPARTMENT OF HEALTH GERMISTON
GLADNESS MAKHOSAZANA LEBOGO

1ST RESPONDENT
2ND RESPONDENT

LEGAL SUMMARY

MABESELE J.

Customary Law- Recognition of Customary Marriages Act 120 of 1998, s 3 (1) b – Customary Marriage- Declaration of Validity – No hand over of the bride

The applicant was married to the deceased in terms of customary law. The deceased's mother disapproved of the applicant and as a result did not participate in the lobolo negotiations. Lobolo was negotiated by the groom's uncles and aunt. The lobolo amount was agreed upon, between the two families and paid by the deceased. However, the bride was not handed over to the groom's family, even though the groom and applicant were given permission to live together as husband and wife. The deceased tragically died when he was shot during the hijacking of his car.

The second respondent, the mother of the deceased denied the existence of the marriage between her son and the applicant. She alleged that the applicant was never handed over to her family as it is required in terms of section 3 (1) b of the Customary marriages Act 120 of 1998. The applicant brought an urgent application to court for an order to declare herself to be the customary wife of the deceased and to give her the right to bury the deceased in the manner she deems appropriate.

Held, that the marriage between the applicant and the deceased was validly concluded when the two families negotiated and agreed on a lobola amount, which the deceased paid, hence they were given permission to live as husband and wife. The court found in her favour.

Held, that the requirement of hand over of the bride, although it was lawful, it should be understood in context of the origins and development of customary law itself. In the past or in other circumstances it could have been necessary for the bride to be handed over e.g when the parents were the ones paying lobola for their son and recognised the bride as she was likely to have been chosen by them. However, in the present day youngmen chose their wives and paid lobola on their own. Therefore, in such circumstances the need for the parents to recognise the bride and physically hand her over to the new family was less important. This did not invalidate the marriage.

The court further held that strict application of the requirement to hand over of the bride in terms of section 3 (1) b, in the circumstances where the family was not willing to recognise the bride as their daughter in law, would result in an abuse of section 3 (1) b and 'deny them their right to establish families.'