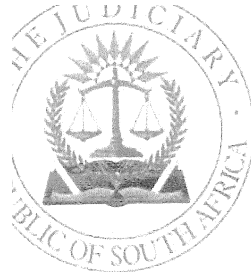


**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, PRETORIA**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED  
DATE: 6/4/2021

**CASE NUMBER: A230/2020**

In the matter between

**N[...] M[...]**

**Appellant**

and

**RONNY SHISUKA  
MASTER OF THE HIGH COURT, PRETORIA  
LUCET SHISUKA  
PATRICIA MOLOBA**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT  
4<sup>th</sup> RESPONDENT**

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## JUDGMENT

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### **RAMLAL AJ:**

- [1] This is an appeal against a ruling by the Magistrate Pretoria wherein the Appellant sought an order against the First respondent for the return of a motor vehicle and an order restraining the Second Respondent from issuing Letters of Executorship in the estate of the late N.S., pending the finalisation of action proceedings in terms of which the Applicant would seek an order to be declared the surviving spouse of the deceased. The court a quo dismissed the application.
- [2] It is common cause that the Appellant and the deceased were in a relationship with each other. They have one minor child who was born on the [...] 2014. Lobola negotiations in relation to the proposed marriage between the Appellant and the deceased began in 2016 but these negotiations were not concluded as a result of the death of the deceased's mother. The requirements for the registration of a valid customary union in terms of the Recognition of Customary Marriages Act (Act 120 of 1998) were not met and the marriage was therefore not registered. The Appellant and the deceased were, however, cohabiting with each other since 2018 until the demise of the deceased on 11 July 2020.
- [3] During the week of the preparation of the burial of the deceased, a co-Director of the deceased's company (Machabele and Associates), lent a Ford Ranger motor vehicle, with registration number [...], which was registered in the name

of the deceased, to the First Respondent. This was to enable the First Respondent to run errands in a convenient manner. The arrangement was that the First Respondent would return the vehicle to the company after the funeral. Despite repeated verbal and written requests from the Appellant, the Appellant's attorneys and the Co-Director, the First Respondent has refused to return the vehicle to the company.

[4] The Appellant lodged an urgent application in the following terms:

- 4.1 That the court dispense with the forms and service provided for in terms of the Rules of Court and to dispose of the matter on an urgent basis;
- 4.2 That the First Respondent be ordered and directed to return/deliver and/or surrender the motor vehicle with registration number [...] with chassis/VN number [...] to the Applicant, pending the finalisation of action proceedings in terms of which the Applicant would seek an order to be declared the surviving spouse of the late N.S. (ID No [...]) for the purposes of the administration of the deceased estate; and
- 4.3 That the Office of the Second Respondent be restrained and interdicted to register the estate, to issue a letter of authority and/or executorship and to authorise anyone to be appointed as executor in the names of the late N.S. (ID No [...]), pending the action proceedings mentioned above.

[5] The First Respondent raised three points *in limine*:

- 5.1 The non-joinder of a private company where the deceased was a co-owner or Director in whose benefit the vehicle is alleged to have been purchased;
- 5.2 The *locus standi in indicio* of the Appellant as to her marriage to the deceased was disputed and
- 5.3 Lack of urgency of the matter

[6] The court a quo dismissed the Application on the basis that the Appellant lacked *locus standi in indicio* without the validity of her marriage to the deceased being clarified and declared that the court could in the circumstances not order the First Respondent to return the vehicle to the Appellant. The court a quo further found that there was no indication that an appointment of an Executor was imminent therefore it was not necessary to grant an order against the Second Respondent.

[7] The Appeal is premised on the following grounds:

- 7.1 That the Magistrate was not called upon and cannot determine the validity of the marriage;
- 7.2 That the Magistrate's findings that the validity of the marriage is of paramount importance to determine the status of the Appellant to launch the application for an interdict;
- 7.3 That the Magistrate erred in finding that the *locus standi* of the Appellant could not be established without the validity of her marriage to the

deceased being clarified;

7.4 That the Magistrate erred in finding that the court cannot order the First Respondent to return the vehicle to the Appellant;

7.5 That the magistrate erred in finding that there was no evidence that the Second Respondent intended to appoint an Executor to the estate of the deceased and

7.6 that the Magistrate erred in finding that there was a lack of urgency in the application.

[8] The relief being sought by the Appellant is as contained in 4.2 and 4.3 above.

[9] At the hearing of this appeal it was submitted that action proceedings had already been instituted at the Regional Court, Pretoria North, to have the marriage of the Appellant and the deceased registered in terms of the Recognition of Customary Marriages Act. The appeal relating to the validity of the marriage and the locus standi of the Appellant was thus moot.

[10] The only matter for consideration by this court is in relation to the return of the motor vehicle. The Appellant seeks the order for the return/delivery/surrender of the vehicle from the First Respondent in a bid to protect the asset of the estate.

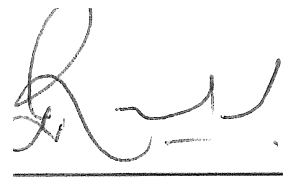
[11] The court a quo found that the Appellant lacked locus standi to institute such proceedings in that the Appellant is not the lawful owner of the vehicle. The vehicle was handed over to the First Respondent by a Co-owner and/or Co-Director of a private company in whose benefit the vehicle is alleged to have

been purchased. Neither the company nor the Director/Co-Director were joined in the proceedings before the court a quo.

[12] I cannot find that the court a quo misdirected itself when it arrived at the decision to dismiss the application of the Appellant.

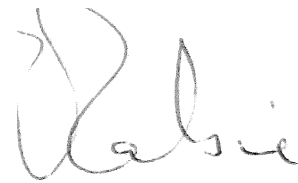
[13] In the circumstances, I propose the following order be made:

1. The appeal is dismissed.
2. Each Party is to pay its own costs, including all reserved costs.



**A.K. RAMLAL AJ**

I agree and it is so ordered



**P. RABIE J**

***This judgment was handed down electronically by circulation to the parties; and/or parties' representatives by email. The date and time for hand-down is deemed to be 09h00 on 6<sup>th</sup> APRIL 2021.***

Matter heard on: 18 January 2021  
Judgment granted on: 6<sup>th</sup> April 2021

**Appearances:**

On behalf of the Appellant      F.S Kabini and Associates

Instructed by:

On behalf of the Respondent      Abel Moeketsane Attorneys Inc