



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE: 69708/2014

(1)	REPORTABLE: NO/ YES
(2)	OF INTEREST TO OTHER JUDGES: NO/ YES
(3)	REVISED. NO/ YES
20	APRIL 2022
DATE	SIGNATURE

In the matter between:

BEVERLY NKHENSANI RAMASODI

Plaintiff

And

THE ROAD ACCIDENT FUND

Defendant

LINK NUMBER: 3485973

JUDGMENT

MAKHOB A J

1. This is a claim for the loss of support. The plaintiff claims damages against the defendant as a result of a motor vehicle collision which killed her alleged spouse Mr. Rui Miguel Chemane.
2. After interlocutory hearings, the defendant was found to be liable for the plaintiff's proven damages.
3. The defendant was unrepresented on the date of trial and the attempt to settle the matter did not yield any results. On behalf of the plaintiff, counsel asked for the matter to proceed on a default judgement basis via a virtual platform. Counsel addressed the court and referred the court to his heads of argument. Oral evidence was not led and the court was asked to decide the matter on the basis of the papers which were submitted *via* caselines.
4. The only issue to be decided by the court is loss of support for the plaintiff and her daughter. The amount claimed is two million rands (R2 000 000).
5. The pertinent question to be asked is well-phrased by counsel for the plaintiff in his heads of argument, and it is put as follows on paragraph 2.4.1 to 2.4.3: (caselines H3)

“2.4.1 Was the deceased Mr. Chemane Rui Miguel (who was a spouse to the Plaintiff at the time of the accident) legally obliged to maintain the Plaintiff?

2.4.2 What are the postulated damages suffered by the Plaintiff as a result of the foregoing accident?

2.4.3 Should the Plaintiff be compensated accordingly for the aforesaid damages?”

6. The deceased met the plaintiff in the year 2011 and he died in the year 2013. There is no marriage certificate submitted and it is alleged that they were engaged to be married. The plaintiff came into the relationship with a daughter who was 15 years old at the time of the death of the deceased. There is no evidence of lobola paid or any marriage taking place.
7. It is submitted that the deceased supported the plaintiff's daughter even though she was not his daughter. It is further submitted that if the deceased was alive, he would have paid for the child's university fees. All these submissions are contained in the counsel's heads of argument.
8. On paragraph 4.3 of counsel for the plaintiff's heads of argument, it is postulated that the plaintiff and the deceased intended to enter into a customary marriage.
9. In *MG v BM and others* 2012 (2) SA 253, paragraph [10] and [11], the court said:

"The starting point in the line of some applicable legal principles is the trite requirement that the applicant bears the onus of proving on a balance of probabilities that a customary marriage existed..."

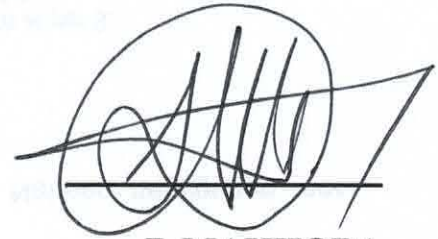
'It is equally a notorious fact that prior to the new political democratic dispensation since 1994, the registration of customary unions or marriages was almost non-existent due to the negative attitude towards customary law' [11]

However, the advent of the Constitution followed by the recognition of the Customary Marriages Act, improved matters."
10. The authors Maithufi I. P. and Bekker J. C., *Recognition of Customary Marriages Act 1998 and its Impact on Family Law in South Africa CILSA* 182 (2002) a customary marriage in true African tradition is not an event

but a process that comprises a chain of events. Furthermore, it is not about the bride and the groom. It involves two families. The basic formalities which lead to a customary marriage are: emissaries are sent by the man's family to the woman's family to indicate interest in the possible marriage (this of course presupposes that the two parties i.e. the man and the woman have agreed to marry each other); a meeting of the parties' relatives will be convened where lobolo is negotiated and the negotiated lobolo or part thereof is handed over to the woman's family and the two families will agree on the formalities and the date on which the woman will then be handed over to the man's family which handing over may include but not necessarily be accompanied by celebration (wedding)."

11. In this matter before me, the plaintiff did not file any affidavits or lead oral evidence to prove that the deceased was obliged or had a legal duty to maintain her and her daughter. Residing together for two years only does not create a legal duty to support each other.
12. There is no proof of customary marriage or an intention to get married. There is no proof of lobola negotiations between the deceased and the plaintiff.
13. Having considered all of the factual matrix, in my view, the plaintiff failed to discharge the onus of proving on a balance of probabilities that a customary marriage existed between the deceased and herself. She also failed to prove that there was a duty on the deceased to support her.
14. Furthermore, the plaintiff failed to prove that there was a duty on the deceased to support the plaintiff and her daughter.
15. In the result, the following order is made:

- i. Plaintiff's claim is dismissed
- ii. No order as to costs



D MAKHOB

Judge of the High Court, Gauteng Division, Pretoria.

APPEARANCES:

For the plaintiff: Advocate H. Legoabe

Instructed by: Godi Attorneys

For the defendant: Non- appearance

Instructed by:

Date heard: 16 March 2022

Date of Judgment: 20 April 2022