

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO:2991/2020

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
DATE.....	SIGNATURE:.....

In the matter between:

MANTI FRANCINAH PIPA

APPLICANT

And

THE GOVERNMENT EMPLOYEES PENSION FUND

FIRST RESPONDENT

DIKELEDI MACHABA REBECCA

SECOND RESPONDENT

DEPARTMENT OF PUBLIC WORKS, LIMPOPO

THIRD RESPONDENT

MOAGI MOYAHABO

FOURTH RESPONDENT

MASTER OF THE HIGH COURT, POLOKWANE

FIFTH RESPONDENT

JUDGEMENT

KGANYAGO J

[1] The applicant has brought an application seeking orders that the first respondent be interdicted from considering the second respondent as the legal spouse of the late Pholo Jackson Pipa (deceased) for the purposes of payment of deceased benefits held by the first respondent; that the first respondent be ordered to consider the applicant as the only legal surviving spouse of the deceased for the purposes of payment of the deceased pension benefits held by the first respondent; that the third respondent submit any forms or documents so required by the first respondent in processing the claim of the applicant in respect of benefits due to her by virtue of the deceased; that the fourth respondent be interdicted from compelling the applicant to include the second respondent as the second wife of deceased in her claim with first respondent; and that fourth respondent be interdicted from submitting any claim forms received from the second respondent whatsoever to the first respondent in this matter.

[2] The applicant in her founding affidavit has stated she and the deceased were married to each other by civil marriage on 16th March 1994. The deceased passed away on 16th March 2019. After the deceased death, the applicant was appointed as the executor of the deceased estate. During his lifetime the deceased was employed by the third respondent.

- [3] After the burial of the deceased, the applicant and her children went to third respondent and completed the necessary documents in order to claim the death benefits from the first respondent. The applicant waited for the first respondent to make payment and seeing that payment was not forth coming, she engaged the services of a legal representative. The applicant's legal representative advised the applicant to continue making enquiries with the respondents about the status of her claim. On 10th March 2020 she approached third respondent and was assisted by the fourth respondent. The fourth respondent told her that the first respondent has returned her claim alleging that another claimant who is the second respondent, has lodged a claim alleging that she is the deceased surviving spouse.
- [4] The fourth respondent tried to convince the applicant to consent that the second respondent was the deceased wife, and she refused. When she refused to give consent, the fourth respondent told her that her claim will take long to be finalized. The fourth respondent further advised her that no one will forward her claim forms to the first respondent unless she cooperate with them.

- [5] It is the applicant's contention that the deceased and the second respondent were not legally married to each other. According to the applicant, she is the only surviving spouse of the deceased.
- [6] First, fourth and fifth respondents did not file any opposing papers. The third respondent had filed a notice to abide. The second respondent in opposing the applicant's application has raised a point *in limine* of non-joinder of the executor of the estate of the deceased. On merits in her answering affidavit, the second respondent has stated that she and the deceased met during early 1980 wherein they had a love relationship. On 6th January 1981, she and the deceased married each other customarily. The customary marriage existed until the deceased passed away on 16th March 2019. She denied that the applicant was married to the deceased and that if they did, their marriage is null and void as she is the first wife, and had never consented to that marriage. She denied that the applicant is entitled to benefit from the estate of the deceased.
- [7] In her replying affidavit the applicant has raised a point *in limine* submitting that the second respondent's filing notice of the answering (opposing) affidavit is not clear as to the capacity of the person who had signed it. However, when the application was argued before the court, the applicant abandoned her point *in limine*.

- [8] In relation to the second respondent's point *in limine*, the applicant has stated that the issue in dispute relates to the death benefits at GEPPF and that such benefits did not form part of the deceased estate. With regard to the alleged customary union, the applicant, has stated that the second respondent has failed to submit proof of the existence of the alleged customary marriage, but only attached confirmatory affidavits. The applicant has further stated that the alleged letter confirming the customary union between the second respondent and the deceased was issued on 16th July 2019 after the deceased has passed away.
- [9] The applicant is seeking an order that the first respondent be interdicted from considering the second respondent as the legal spouse of the deceased. The applicant has lodged her claim for payment of the pension funds through the third respondent. The third respondent in turn submitted the applicant's claim forms to the first respondent for processing and payment. The first respondent received another claim from the second respondent who claimed to be the legal wife of the deceased. Based on the two competing claims lodged, the first respondent took a decision to return the file to the third respondent for clarification on the two competing claims.

- [10] The first respondent is an organ of State and its decision amounts to an administrative action. In **Oudekraal Estates (Pty) Ltd vs City of Cape Town and Others [2004] ZASCA 48; [2004] 3 All SA 1 (SCA) (28 May 2004))** at para 26 the court said:

“...Until the Administrators approval (and thus also the consequences of approval) is set aside by a court in proceedings for judicial review it exists in fact and has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.”

- [11] The decision of the first respondent to refer the applicants claim back to the third respondent will remain in existence and cannot simply be ignored without any justifiable reasons. The applicant did not advance any reasons why the decision of the first respondent should be ignored. In my view, the applicant has followed the wrong procedure in approaching this court. The proper procedure was for her was to bring a review application reviewing the decision of the first respondent. On that point alone the applicant's application stands to fail.

- [12] If I am wrong on this, the second problem which the applicant had to overcome is that this application raises material dispute of facts. The question as to who is the surviving spouse of the deceased cannot be decided on the papers as they stand. The applicant has attached a copy

of a certificate of the alleged civil marriage between her and the deceased which shows that the two were married to each on 16th March 1994. The second respondent on the other hand alleges that she and the deceased were married to each other by customary union on 6th January 1981 and she had never given consent to the deceased to marry the applicant. The second respondent had attached confirmatory affidavit of two witnesses who confirms the existence of the alleged customary union. The second respondent had also attached an alleged letter from the headman confirming the existence of the alleged customary union.

[13] In **National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA)** at para 25 Harms DP said:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of facts arise on the affidavits, a final order can only be granted only if the facts averred in the applicant’s (Mr Zuma) affidavits, which have been admitted by the respondent (NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent’s version consists of bold or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers.”

[14] The main reason why the applicant launched this application was that she disputed that the deceased and the second respondent were

married to each other. She was aware as at the time she launched her application that there was a dispute in relation to the marriage between the deceased and the second respondent. She was therefore aware that a material dispute of facts might arise, but yet proceeded on motion proceedings. It can only be ordered that she is the only surviving spouse of the deceased once all the evidence proving the existence of a valid marriage are presented. In this case, that cannot be achieved on the papers as presented by the applicant only, it will need to be supplemented by oral evidence. In my view, the existence of the dispute of facts in this matter is real, genuine and bona fide and an order as requested by the applicant will not be granted on the papers as they stand. The applicant was aware of the material dispute of facts when she launched her application and the appropriate remedy will therefore be to dismiss her application.

[15] In the result I make the following order

15.1 The applicant's application is dismissed with costs.

KGANYAGO J

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION,

POLOKWANE

APPEARANCES

Applicant's Attorneys : **Nethononda Attorneys**

Second Respondent's Attorneys : **Kovani Machete Attorneys**

Date of hearing : **18th January 2021**

Date of Judgment : **2nd March 2021**