REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

(1) REPORTABLE: ~~YES~~/NO (2) OF INTEREST TO THE JUDGES: ~~YES~~/NO (3) REVISED. Signature ……. Date…11/08/2023…….	APPEAL CASE NO: HCAA 23/2023 CASE NO: 5602/2023

In the matter between:

LEAH NEMAVHOLA	**1ST APPELLANT**
THANYANI RAMBAULI	**2ND APPELLANT**
RAMBAULI TSHIMANGADZO ELVIS	**3RD APPELLANT**
MBULUNGENI RAMBAULI	**4TH APPELLANT**
FHUMULANI RAMBAULI	**5TH APPELLANT**
PATRICK RAMBAULI	**6TH APPELLANT**

and

SIKELELO JUNIOR RAMBAULI	**1ST RESPONDENT**

AVBOB **2ND RESPONDENT**

MTG FUNERAL UNDERTAKERS **3RD RESPONDENT**

JUDGMENT

BRESLER AJ:

Introduction

[1] This appeal came before us after MG Phatudi J granted leave to appeal to the full bench of this Division on the 30th June 2023.

[2] The order appealed against was delivered by MG Phatudi J on the 27th of June 2023. This order *inter alia* provided that the order granted by Muller J on 23 June 2023 is reconsidered and set aside in its entirety and that the Appellants are ordered to restore and return possession of the remains of the late Thivhalemi James Rambauli (the 'Deceased') to the Appellants by returning it to the premises of the Second Respondent.

[3] The judgment and order of Muller J provided in return *inter alia* that the First Respondent is interdicted from burying the deceased and ordered him to hand over the remains of the Deceased to the Third Respondent (MTG Funeral Undertakers). More specifically, the order provided a right to the Appellants to bury the remains of the Deceased at Mavunde Village at the designated burial place of the Rambauli Family Members.

[4] Suffice to state that the Appeal was enrolled for a special hearing due to the urgent and sensitive nature thereof. Prior to the hearing of the matter, the parties were once again urged to consider an amicable settlement of the matter. This endeavor proved unsuccessful, and the matter was consequently argued.

[5] This matter is of a vexing nature. It is understandable. The Appellants as well as the First Respondent displayed a clear desire to put their loved one to rest in a dignified manner, and at a place that is fitting and representative of their love and respect for the Deceased. It is indeed unfortunate that they could not align their goals. This case continuing defeats the expressed desires by accord respect to the Deceased. Weeks have passed since his departure from this earth.

The Grounds of Appeal

[6] The Appellants raised the following in support of the Appeal against the order of MG Phatudi J:

6.1. The First Respondent did not make out a case for reconsideration of the order granted by Muller J;

6.2. The First Respondent made extravagant claims that the Appellants misled the court without adducing evidence of facts which it has pleaded;

6.3. The order of MG Phatudi J does not resolve the question of where the deceased should be buried; and

6.4. In reconsidering the order, MG Phatudi J refused to permit the Appellants an opportunity to consult and prepare a replying affidavit in circumstances where the decision amounted to violation of the Appellants rights to access to courts as enshrined in the Constitution.

[7] It stands to be noted that, at the time this matter came before court, no Heads of Argument was present in the court file for the First Respondent, nor did the counsel endeavor to hand same up during argument.

The importance of Heads of Argument cannot be over-emphasized as they are necessitated for the proper administration of justice.

[8] In ***S v Ntuli***[1] the following was stated:

> *"Heads of argument serve a critical purpose. They ought to articulate the best argument available to the appellant. They ought to engage fairly with the evidence and to advance submissions in relation thereto. They ought to deal with the case law. Where this is not done and work is left to the Judges, justice cannot be done. Accordingly, it is essential that those who have the privilege of appearing in Superior Courts do their duty scrupulously in this regard."*

[9] Counsel for the First Respondent would be well advised to ensure compliance with the formalities in future. Be that as it may, having regard to the nature of the relief and the importance of this matter, it is in the interest of justice for a final determination to be made in this matter and counsel was therefore allowed to address court in the absence of Heads of Argument.

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[1] 2003 (4) SA 258 (W) at 265B – D.

[10] Section 19 of the **Superior Courts Act 10 of 2013** sets out the powers of a court on hearing an appeal. This includes the power to:

> "*confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require".*[2]

[11] This Court must therefore decide if the reconsideration of the order should be confirmed, amended or set aside. This court also has the power to render any decision which the circumstances may require.

[12] Having regard to the grounds of appeal raised by the Appellant, it is apposite to revisit the merits of the matter briefly. As stated before, the *crux* of this matter revolves around the decision as to <u>where</u> the Deceased should be buried rather than who should attend to the arrangements.

[13] The Appellants submitted that it is their custom to bury their family members in one location so that when they perform their family rituals, they do not 'struggle'. They furthermore submit that the First Respondent has no appreciation for their culture or customs. Burying the Deceased in Gauteng will be tantamount to a breach of their culture and customs.

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[2] Section 19(d).

[14] Muller J granted the first order having considered the evidence presented by the Applicants only and in the absence of the First Respondent. The First Respondent was given such truncated time that it was impossible for him to attend court.

[15] In the reconsideration application, the First Respondent raised the following issues:

15.1 The High Court of South Africa, Limpopo Division does not have the required jurisdiction to entertain the matter.

15.2 The service of the application was defective since the First Respondent was only allowed 1 hour 30 minutes to respond. This did not allow the First Respondent sufficient time to deliver opposing papers.

15.3 As to the merits, the First Respondent submitted that he is the only child of the Deceased. He confirmed the allegation that he was brought up by the Deceased in Midrand, Gauteng and that the Deceased resided there prior to his passing and that they have built a life in Midrand, Gauteng. According to the First Respondent, the Deceased had ‘cut

ties' with Mavunde Village. Most importantly, he indicated that the Deceased expressly indicated his wish to be buried at Fourways Memorial Park, Gauteng.

[16] It is important to note that neither the Appellants' initial application, nor the First Respondent's reconsideration application alleges that a close familial bond existed between the Appellants and the Deceased, save for the allegation that they assisted him when his health deteriorated.
What is glaringly absent is any reference to the Deceased's alleged familial homestead in Mavunde Village.

The Appellants simply stated in their affidavit that the Deceased is a resident of Mavunde Village without elaborating on this allegation or providing any corroborating evidence of his alleged residence in the said Mavunde Village. This is not correct. His origins are in Mavunde. But he was a resident in Johannesburg, Midrand, for more than 30 years.

More specifically, their papers do not show any appreciation that the Deceased held for their alleged 'culture and customs'.

[17] The First Respondent raised the point *in limine* that the Limpopo Division of the High Court did not have the required jurisdiction to entertain the matter.

This court is of the view that there is merit in this contention.

[18] In terms of the provisions of Section 21 of the **Superior Courts Act 10 of 2013**, a Provincial or Local Division of the High Court will have jurisdiction over all persons residing or being in its area of jurisdiction, in relation to all causes arising within the area of its jurisdiction and / or in relation to all matters of which it, according to law, may take cognizance.

Specifically, with regards to a company, the principal place of business determines jurisdiction and this is deemed to be where the central control and management of the company is situated.

[19] It is common cause that the First Respondent does not reside in Limpopo Province. It does not appear from the Appellants affidavit that the Second or Third Respondent's principal place of business is situated in Limpopo Province. An allegation is made that the Second Respondent 'conducts business' in Limpopo Province and that the Third Respondent has 'its place of business'. Both these respondents are cited as companies.

[20] This is not sufficient to substantiate jurisdiction over their person as it does not appear that this is, indeed, their registered addresses.[3]

[21] As to the allegation that the Deceased resided in the Village, which was evidently not so, that did not in any event bestow the Limpopo Division of the High Court with jurisdiction in this matter.

[22] The Appellants furthermore misleadingly submitted in their affidavit that the cause of action arose within the jurisdiction of the court. In this court's view, the cause of action is the passing of the deceased and the consequential right to burial.

It is common cause that he was residing in Gauteng prior to his demise and that his remains were kept at the Second Respondent's premises in Gauteng. This court therefore cannot fathom on what basis the possible cause of action arose in Limpopo save for the fact that the Deceased had family that resided in Limpopo. This, however, is not a ground to justify jurisdiction.

[23] In addition to what was alleged in the Appellants founding affidavit, Mr. Ledwaba, appearing on behalf of the Appellants in the reconsideration application, conceded during the hearing[4] that:

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[3] See in this regard the decision in *Sibhakhulu Construction (Pty) Ltd v Wedgewood Village Golf Country Estate (Pty) Ltd (Nedbank Limited Intervening)* 2013 (1) SA 191 (WCC) at 197B to 200B.
[4] Vide appeal bundle 4 on paginated page 28 at 10.

"…it is purely based on the fact that the deceased was born and bred in Mavunde Village".

[24] Being born and bred in a certain jurisdictional area is not a ground for the court to exercise its jurisdiction over the person of an individual – especially not after his passing.

[25] In as far as the Limpopo Division of the High Court did not have the required jurisdiction to entertain the urgent application, the order granted by Muller J should therefore have been reconsidered and set aside.

[26] Unfortunately the order of MG Phatudi J does not explicitly state that the order is reconsidered and set aside on this ground. It follows, however, that his order was then correctly granted even in the absence of expressly raising the issue of jurisdiction. An appeal lies against orders not the reasons therefor.

[27] Having regard to the second ground of appeal, to wit the submission by the Appellants that the First Respondent made extravagant claims that the Appellants misled the court without adducing evidence of the alleged facts, this ground therefore must fail. I have already pointed out two incidences which were misleading. One concerns the allegation of residence and the other being that the cause of action arose in Limpopo.

The record clearly indicates that MG Phatudi J considered the allegations of the Appellants as set out in their affidavit and the allegations set out by the First Respondent, duly applied the well-known **Plascon Evans** – rule and correctly ruled that the order granted by Muller J should be reconsidered and set aside.

This Court could not find fault with the manner in which MG Phatudi J considered the evidence.

[28] The Appellants also submitted in their Heads of Argument and during oral argument, that MG Phatudi J had failed to appreciate the jurisdictional requirements for a reconsideration of an order as specifically reiterated in the matter of ***ISDN Solutions (Pty) Ltd v CSDN Solutions CC and others*****.**[5]

[29] It is this Court's view that, although excerpts from the case were correctly cited by the Appellants, the interpretation thereof is incorrect. First and foremost, it must be noted that Rule 6(12)(c) does not prescribe that the setting down of the matter must be accompanied by an affidavit. If the

[5] [1996] 4 All SA 58 (W).

Appellants are correct in their interpretation of the **ISDN Solutions** case *supra,* this would contradict the trite provisions of the Rule.

[30] The learned Farber AJ also specifically remarked:[6]

> *"The rule has been widely formulated. It permits an aggrieved person against whom an order was granted in an urgent application to have the order reconsidered, provided only that it was granted in his absence. The underlying pivot to which the exercise of the power is coupled is the absence of the aggrieved party at the time of the granting of the order."*

This interpretation resonates with the principle that court orders should not, in general, be granted in the absence of an affected party. The importance of this principle was illuminated in ***South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others***[7].

[31] It is therefore evident upon a proper interpretation of the said judgment, that Farber AJ only raised the issues of imbalance, oppression or injustice as part and parcel of the factors that may impact on the discretion of the court as opposed to 'jurisdictional requirements' as alluded to by the Appellants.

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[6] At 60J.
[7] (CCT172/16) [2017] ZACC 4; 2017 (8) BCLR 1053 (CC); 2017 (5) SA 1 (CC) (23 February 2017).

[32] In ***Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkers A/S (in liquidation)***[8] the Supreme Court of Appeal summarized the position regarding this subrule as follows:

> *"[12] Rule 6(12)(c) does not prescribe how an application for reconsideration is to be pursued. The absence of prescription was intentional and the procedure will vary depending upon the basis on which the party applying for reconsideration seeks relief against the order granted ex parte and in its absence. A party wishing to have the order set aside, on the ground that the papers did not make a case for that relief, may deliver a notice to this effect and set the matter down, for argument and reconsideration, on those papers. It may do the same if it merely wishes certain provisions in the order to be amended, or qualified, or supplemented. The matter is then argued on the original papers. It is not open to the original applicant, save possibly in the most exceptional circumstances, or where the need to do this has been foreshadowed in the original founding affidavit, to bolster its original application by filing a supplementary founding affidavit.*
>
> *[13] The party seeking reconsideration is not confined to this route. It may file an answering affidavit, either traversing the entire case against*

[8] [2019] 3 All SA (SCA).

it, or restricted to certain issues relevant to the reconsideration. In many instances such an affidavit will be desirable. Even if an affidavit is filed, however, it does not preclude the party seeking reconsideration arguing at the outset, on the basis of the application papers alone, that the applicant has not made out a case for relief. That is a well-established entitlement in application proceedings and there is no reason why it should not be adopted in reconsideration applications."

[33] It is evident that the applicant for reconsideration must only prove absence to be entitled to a reconsideration. The court then has a wide discretion to grant appropriate relief.

[34] Having regard to the record of the proceedings, this court cannot fault the reasoning of MG Phatudi J in concluding that the order of Muller J was granted in the absence of the First Respondent and as such severe hardship and injustice has resulted. More so since the First Respondent is the son and only heir of the Deceased.

[35] The first ground of appeal can therefore not succeed.

[36] The Appellants furthermore raised the issue in their Notice of Appeal that MG Phatudi J refused to permit the Appellants an opportunity to consult and prepare a replying affidavit where the decision amounted to a violation of the Appellants rights to access to courts enshrined in the Constitution. The anomaly is that the Appellant had obtained the order from Muller J without affording the First Respondent time to answer their case. I, however, do not make any finding out of this.

[37] The record of the proceedings on 26 June 2023 however does not show any request for indulgence or postponement being presented by the Appellants. It does not show any refusal in this regard by MG Phatudi J as no such request was raised. A postponement is an indulgence granted to a party.

The court has no responsibility to raise the issue *mero motu.* This court is bound by the parameters of the record. This ground of appeal therefore cannot succeed.

[38] The final ground of appeal is premised on the consequences of the order granted by MG Phatudi J. The Appellants submit that the said order does not resolve the question before court as to where the Deceased should be buried.

[39] Section 17(1)(c) of the Superior Courts Act 10 of 2013 proved that leave to appeal may be granted where the decision sought to be appealed does not dispose of all the issues in the case and the appeal would lead to a just and prompt resolution of the real issues between the parties.

[40] In granting leave to appeal MG Phatudi J specifically ordered that:

> *"The Applicants in the leave to appeal, are directed to approach the office of the ACTING JUDGE PRESIDENT to constitute the full bench court, so as to see if whether that court can arrive to a just conclusion, which is that who must bury the deceased, where and when."*

[41] On this ground at least, the Appellants are substantially successful as the order of MG Phatudi J did not dispose of this critical aspect. This is evident from the order made in respect of the Application for Leave to Appeal.

The right to bury the Deceased

[42] As stated herein before, this court has the required authority and jurisdiction to *inter alia* render any decision that the circumstances require. This includes a decision specifically as to where the Deceased must be buried.

[43] The question of who may bury a deceased or choose his final resting place in the absence of instructions from the deceased, is often contentious.

The point of departure is normally the wishes of the deceased himself. Any directions by the deceased must therefore be carried out provided they are lawful and possible.[9]

[44] *In casu,* the First Respondent has indicated that the Deceased has often expressed his wish to be buried in Memorial Park, Fourways. Having regard to the earlier finding by this Court that the Deceased resided in Midrand and has made his life in that area whilst cutting ties with his heritage in Mavundle Village, the evidence by the First Respondent is not improbable or impossible even in the absence of corroborating evidence with further witnesses.

It cannot be denied that the Deceased and the First Respondent enjoyed a close relationship and that a potential burial site would have been discussed given the Deceased deteriorating health.

[45] It must also be noted that the Appellants did not submit that the Deceased wishes were to the effect that he wanted to be buried in Mavundle Village.

It rather appears that the basis of their application to have the Deceased buried in Mavundle Village is their own 'customs and traditions'. Moreover, it

[9] C Rautenbach, *Introduction to Legal Pluralism in South Africa*, Sixth Edition, Lexis Nexis at 214.

appears that the burial of the Deceased in Midrand will be inconvenient for them.

[46] The following was stated in ***Mjuza / Kamile v Ntshibilili***:[10]

> *"Locke J in Gabavana and Another v Mbete and Others collected together a number of relevant authorities. These decisions state the principle that in the absence of some special direction in the Will, it is the heir of the deceased estate who shall be the person who decides on the arrangements relating to the burial of the deceased body.*
>
> *Heath J usefully summarized the principles involved as follows:*
>
> *(a) If someone is appointed in a Will by the deceased, then that person is entitled and obliged to attend to his burial and that person is entitled to give effect to his wishes.*
> *(b) The deceased person can appoint somebody to attend to his burial in his Will or in any other document or verbally, formally or informally, and in all these instances effect should be given thereto in so far as it is otherwise legally possible and permissible.*
> *(c) A deceased can, in the third instance, die intestate, but can appoint someone to attend to his burial in a document or verbally.*

[10] 2013 JDR 1692 (ECB) at [7].

(d) In the absence of a testamentary direction, the duty of and the corresponding right to see to the burial of the deceased is that of the heirs. The heirs appointed as heirs in the Will of a deceased.

(e) The afore-mentioned principle that heirs (appointed as heirs), in the absence of any provision in the Will as to the burial of the deceased are entitled and obliged to attend to the burial of the deceased applies in my view similarly and equally to intestate heirs of a deceased. That would mean that, in the absence of any indication by a deceased as to his burial arrangements, the intestate heirs would be in the same position as testate heirs. I can see no reason why the position should be different in the case of intestate heirs.

(f) It also follows that persons obliged and entitled to see to the burial arrangements are entitled to arrange where and when the deceased is to be buried."

[47] Contrary hereto, in ***Trollop v Du Plessis***[11] the court held that fairness is decisive and that a claim could not be evaluated according to mathematical proportions of heirship. The Court further looked at the expenses incurred, the religion of the deceased and the wishes of the rest of the family, whose

[11] 2002 (2) SA 242 (W).

views differed from the applicant's in order to determine what would be regarded as fair.

[48] In ***Noqayi v Skeme***[12] the Court held that the wishes of the deceased were the paramount consideration to determine where the deceased should be buried.

[49] In ***Sengadi v Tsambo: In re Tsambo***[13] the court found that the customary wife had the right to bury the deceased but, based on the principle of *ubuntu* and competing interests such as the interest of the public in the funeral, fairness, equality and the costs and time incurred in planning the funeral, the deceased's family was allowed to continue with the funeral.

[50] It is evident that there is no correct solution, and the court has a wide discretion to make any order that is just and fair. In ***Ndlovu v Ramocoela***[14] the court stated:

> *"Now that I have reviewed the principle through juristic writings and case law, it is clear to me that I deciding disputes of this nature a judge has to be guided by a number of factors such as the rules of the general burial principle, the convictions of society, the public morality, the public policy, and the sense of what is right and equitable in the interest of*

[12] [2014] JOL 39576 (KZD) 7.
[13] [2019] JOL 40743 (GJ).
[14] [2003] JOL 10737 (O).

justice according to the circumstances of each particular case. The list of factors is not exhaustive."

[51] Having regard to the version of the Appellants and the version of the First Respondent, it is apparent that:

51.1. The Deceased expressed his wish to be buried in the Fourways Memorial Park. There is no indication that the Deceased ever wished to be buried in Mavundle Village.

51.2. The Appellants substantiate their case with reference to their 'customs and traditions'. Although it may be so that the Appellants followed these alleged 'customs and traditions', it is evident that for a considerable length of time the Deceased and the First Respondent did not follow these customs.

51.3. The Deceased and the First Respondent resided, worked, built their lives and presumably thrived in Gauteng resulting in their apparent estrangement from values presumably displayed by the residents of Mavundle Village.

51.4. It is therefore conceivable that the Deceased's circle of acquaintances (be it business or personal) will be from the Midrand area.

51.5. Having the Deceased buried in Fourways Memorial Park may be inconvenient to the Appellants, but it would not be impossible for them to still show their respects to the Deceased.

[52] Having due regard to the principles enunciated in the aforementioned authorities, and upon a careful consideration of fairness to all parties concerned, it would be in the interest of justice if the First Respondent, as the sole heir and the person that is privy to the wishes of the Deceased, be allowed to continue with the arrangements to have the Deceased buried at Fourways Memorial Park.

The cost order

[53] Under normal circumstances, the cost order should follow the outcome of the proceedings. The First Respondent was substantially successful in his opposition to this appeal.

[54] As stated before, this matter is vexing. Neither the Appellants nor the First Respondent displayed any malice in pursuing this matter.

They did not merely pursue a matter in the advancing of their own interests but rather to have a final determination on the burial of a loved one.

[55] The Court is therefore not inclined to penalize either party and it is considered appropriate in the circumstances to order that the costs of the appeal be borne by the deceased estate.

Order

[56] In the result, the following order is made:

56.1. The appeal is dismissed.

56.2. The First Respondent is authorized to attend to the burial of the Deceased, including but not limited, to making arrangements in respect of the funeral and electing the time and location when and where the deceased must be buried.

56.3. The costs of the Appeal shall be borne by the Deceased estate.

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M BRESLER
ACTING JUDGE OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

MAKOTI AJ (concurring)

[57] I have had the benefit of reading the compelling judgement penned by my sister Bresler AJ. I agree with the orders that she has made, however, I wish to add grounds for agreeing with the orders as granted. I agree with the view shared by the first judgment that the First Respondent and the Deceased had a close relationship, and away from the rest of the family members in Mavunde Village.

[58] The Appellants have, in addition to the grounds dealt with in the first judgment, and especially in oral submissions before us, raised the issues of culture and traditions that their family follows. They raised the contention that if the court was to allow the first respondent to bury the deceased, it wouldn't deny them the right to enjoy their rights in terms of their established culture and traditions. The contention was that such a court order would impinge their rights in terms of s 30 of the Constitution.

[59] Section 30 of the Constitution reads:

> *"Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights."*

[60] Similarly, s 31 of the Constitution recognises the right of cultural and religious communities to enjoy their culture and practice their religion in a manner consistent with the Bill of Rights. There is no doubt that the enjoyment of one's culture and traditions are constitutionally entrenched.

[61] The substratum of the Appellants constitutional contentions is that the family has a grave site where the Deceased's father and pre-deceased siblings were buried. They add that in terms of their culture and traditions, the Deceased must be buried alongside his father and his departed siblings. As compelling an argument as it is, I am minded of what the courts said in ***Shilubana and Others v Nwamitwa***[15] the court held inter alia that:

> *"[86] Accordingly, Mr Nwamitwa has no vested right to the chieftainship of the Valoyi. He has, at most, an expectation that as the eldest son of Hosi Richard, he would have been heir. However, the <u>past practice of the Valoyi community is not determinative</u> and does not itself guarantee that Mr Nwamitwa's possible expectation must be fulfilled. The contemporary practice of the Valoyi reflects a valid legal change, resulting in the succession of Ms Shilubana to the chieftainship. Mr Nwamitwa does not have a right to the chieftainship under this altered position. He cannot be declared the Chief in terms*

[15] ***Shilubana and Others v Nwamitwa*** (CCT 03/07) [2008] ZACC 9; 2008 (9) BCLR 914 (CC); 2009 (2) SA 66 (CC) (4 June 2008).

of the current customary law of the Valoyi traditional community." (Emphasis added)

[62] By parity of reasoning, therefore, it is not determinative of the Deceased's final resting place the fact that his father and other family members were buried at a place that is considered as the family's grave site.

[63] If we are to follow culture and traditions of black people in South Africa, then one has to consider the role of the First Respondent as the first, and only son, of the Deceased. The status of the first born carries significance in African cultures. Brandel-Syrier[16] wrote some years ago that the first-born son enjoys certain privileges. He is consulted on family matters, has direct contact with the father and, importantly, he is regarded as the future leader of the family. When the father dies, the first-born son assumes his responsibilities for the well-being of the entire family.

[64] Umoren[17] confirms the view that Africans have appreciation for the first-borns.

He wrote that:

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16 Mia Brandel-Syrier (1979). *First-borns and younger sons: Culture change and sibling relations* SALJ of African Affairs Vol. 9 No. 1 1979.

17 Gerald Emem Umoren (2018). *The Plight of the Firstborn in Genesis: Implications for Africa, International Journal on Humanities and Social Sciences* Vol. 8 No. 8 August 2018.

"… In Africa, as a cultural value, a first born is seen as an 'institution'."

[65] One of the important first-born rights that he pointed out is in relation to decision-making. He stated that the first-born male plans the future of the family in case of the death of the parent. The Appellants cannot, in my view, and for merely being elders ignore the role of the First Respondent as the first-born son of the Deceased. They cannot be accorded the right to take decisions as to the final resting place of the Deceased above the rights enjoyed by the First Respondent.

[66] The Appellants have argued that the right of the First Respondent as an heir of the Deceased to bury him is not absolute. That much is correct, and the first judgment has dealt with this.

I concur,

M MAKOTI
ACTING JUDGE OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

I concur,

M MASHILE
ACTING JUDGE OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on	:	**28 July 2023**
Judgment delivered on	:	**11 August 2023**
For the Appellants	:	**Adv M.R. Maphutha** **Adv V.T. Moyo**
Instructed by	:	**Mvundlela and Associates**
For the First Respondent	:	**N.S Sekhu**
Instructed by	:	**Sam Sekhu Attorneys**