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

CASE NO: 2025-009348

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: **NO**

(3) REVISED: **NO**

(4) Date: 06 May 2025

Signature:

In the matter between:

PETER PETEKE

Applicant

And

TSHIAMO ROBIN KHUMALO

First Respondent

TEBATSO THEOD KHUMALO

Second Respondent

BABY THABITHA KHUMALO

Third Respondent

ABSA BANK TRUST LIMITED

Fourth Respondent

MASTER OF THE HIGH COURT; PRETORIA

Fifth Respondent

JUDGMENT

NYATHI J

A. INTRODUCTION

- [1] This is an urgent application brought in terms of Rule 6(12) of Uniform Rules of Court, the applicant seeks an order to preserve the *status quo* of the deceased estate of his customary law wife ('the deceased'), to ensure that there is compliance with Section 13 of Administration of Estate Act 66 of 1965.
- [2] The respondents oppose this application.
- [3] In terms of the applicant's marital regime with the deceased, his patrimonial rights are at stake, should the administration of this Estate not be paused at this stage, pending the appointment of an Executor who will ensure accountability and fairness.
- [4] The relief sought is temporary, pending the finalisation of his application in this court relating to the declaration of validity of his marriage to the deceased which is disputed by the respondents.
- [5] The applicant finds himself in a conundrum because he was married to the deceased in terms of customary law and as a result have a joint estate with the deceased. He submits that the effect of such is, the deceased's last will and testament, could not be implemented as such, because it has the potential prejudice to his proprietary rights. In short, the deceased cannot bequeath more than she could.
- [6] What compounds matters is that the respondents have arrogated to themselves the possession and administration of the estate in the absence of letters of executorship, which is unlawful.

B. REQUIREMENTS FOR AN INTERIM INTERDICT

- [7] For the purposes of this application, I will restate the requisites for the right to claim an interim interdict as they obtain in our law. These are:
1. a *prima facie* right.
 2. Irreparable harm;
 3. balance of convenience;
 4. no other satisfactory remedy;
- [8] Both the applicants' and the respondents' counsel spent considerable time arguing and making submissions before me, regarding the mechanics of how the marriage was negotiated, how lobola was paid as well as the provisions of section 3 of the Recognition of Customary Marriages Act 120 of 1998 ("the RCMA") and that the outcome of all this was a valid marriage in the case of the applicant, or an invalid marriage in the case of the respondents.
- [9] The issue of whether the deceased and the applicant were in a valid customary marriage is relevant to whether the applicant has a *prima facie* right to claim the temporary interdict that he seeks.
- [10] I refer to this fact for context only and without determining this point judicially; it is due for determination before another court shortly, as the applicant's papers state. This point will become relevant again when the balance of convenience is dealt with hereunder.
- [11] In his founding affidavit, the applicant stated that at the lobola negotiations the emissaries for both families concluded that he would pay a total amount of R26 000.00 and that he would pay an amount of R14 000.00 and the balance later. The initial amount of R14 000.00 was indeed paid. The applicant attaches as proof the lobola letter.¹ A translation of the letter from Setswana/Sepedi to English is embodied in the founding affidavit.²

¹ Founding affidavit paragraph 4 and Annexure P1.

² Ibid para 4.9.

Prima facie right

- [12] According to the applicant, the deceased's family then handed her over to his family for them to live together as husband and wife. They stayed together for 11 years before the deceased demised.
- [13] The applicant provides proof of the nature of his relationship with the deceased by attaching *i.a.* an ABSA Bank Life insurance taken out by the deceased in which he is listed as "Spouse" in the description.³
- [14] The most contentious issue in customary marriages is around the interpretation of section 3(1)(b) of the RCMA. This has been exhaustively dealt with by our courts already, suffice to say that for purposes of this application, I find that a *prima facie* right, which is a right that can be *prima facie* established even if it is open to some doubt, has been established.⁴ This is primarily in terms of the customary marriage and testamentary provisions.

Irreparable harm

- [15] The dissipation of the deceased estate is a very real harm facing any claimant or beneficiary of the estate.

Balance of convenience

- [16] In the event that the applicant's right is proven to be a clear right, this requirement fades into the background. The respondents are disputing the applicant's version of the marriage and all its *sequelae*. The applicant has shown that he stands to suffer much greater prejudice if the interdict is not granted, in comparison to the respondents if it is granted.

³ Annexure P6.

⁴ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189 qualified by *Gool v Minister of Justice* 1955 (2) SA 682 (C).

[17] The exercise of the court's discretion is guided by whether the applicant has any prospects of success in the pending litigation or not as well as the balance of convenience: the stronger the prospects of success, the less the need for such balance to favour the applicant, and vice versa.⁵

No alternative remedy

[18] The applicant has established that he has no alternative remedy to cure the malady that he is facing but to approach the court as he did.

C. CONCLUSION

[19] In full consideration of the foregoing, the application succeeds. The applicant is entitled to his costs as is the established principle that costs follow the event.

[20] I make the following order:

1. The matter was heard as one of urgency in terms of Rule 6 (12) of the Uniform Rules of Court.
2. *Pendete lite* the finalization of application for recognition and registration of customary marriage between the applicant and the deceased (**the late: Choice Raesibe Khumalo**) and until appointment of Executor of deceased Estate of the Late Choice Raesibe Khumalo, the administration of the deceased **Estate Late Choice Raesibe Khumalo** should be put on hold.
3. That, the First, Second and Third Respondents are ordered to return all deceased assets including but not limited a **Mercedes Benz Sedan** with Registration number **C[...]**, which they have assumed possession thereof within 10 (ten) days of this order.
4. The first and second respondents are ordered to pay the applicant's costs of this application on an attorney and client scale.

J.S. NYATHI

⁵ *Olympic Passenger Services (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D).

Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 18/02/2025

Date of Judgment: 06 May 2025

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 06 May 2025.