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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 123653/2024

DATE: 29-07-2025

(1) **REPORTABLE:** YES / NO.

(2) **OF INTEREST TO OTHER JUDGES:** YES / NO.

(3) **REVISED.**

DATE 29 July 2025

In the matter between

G[...] M[...]

Applicant

and

N[...] T[...] AND ANOTHER

Respondents

JUDGMENT *EX TEMPORE*

WILSON, J: The applicant, Ms M[...], approaches the court seeking a declaration that her marriage to G[...] E[...] B[...], who is now deceased, is valid at customary law. The first respondent, Nomasonto T[...], was, she says, married to Mr B[...] at the time Mr. B[...] died. She meets Ms M[...]'s claim with the allegation that Ms M[...] and Mr B[...] divorced each other at customary law before Ms T[...] married Mr B[...].

At the time the marriage between Ms M[...] and Mr B[...] took place Ms M[...] was 12 years old. Mr B[...] would have been 20 years old. It is alleged that Ms M[...]’s parents agreed to the marriage and that by virtue of that agreement the marriage was valid at customary law. Both of Ms M[...]’s parents are now deceased.

There is an insufficiency of evidence on the papers in relation to almost every material fact that I would have to determine in order to decide this application. I do not know what customs governed the marriage that allegedly took place in the 1970s between Ms M[...] and Mr B[...], when Ms M[...] was 12. I do not know whether those customs would have tolerated a marriage between a 20-year-old and a 12-year-old, even with the consent of the 12-year-old’s parents. I do not know what customs would have been necessary in order to conclude an ordinary marriage between two adults under the applicable customary law. I do not know whether it is possible to divorce in terms of the customary law that applied to the parties at the time. Nor do I know, if it was not possible to divorce, how customary law would treat the marriage that allegedly took place between Ms T[...] and Mr B[...]. In their papers, neither of the parties dealt with the form of customary law applicable, or the content of that law.

Much in these papers is done by way of bare assertion. It is starkly asserted that Ms M[...] married Mr B[...] with her parents’ consent. It is starkly asserted by her relatives that that marriage took place. It is equally starkly asserted by Ms T[...] that the marriage was dissolved by the traditional leader with jurisdiction over Ms M[...]’s ancestral home. The traditional leader’s own evidence on affidavit is itself unsatisfactory, since it is common cause that he is blind, and yet he alleges in his affidavit that he has read the papers in this case. I do not say that a blind person cannot read legal papers. I say only that where a blind person

claims to have done so, it is necessary to state the form in which the papers was made available to them.

I do not suggest that anybody involved in this matter is lying or is in bad faith. What I do suggest is that the facts that have been placed before me are wholly insufficient for me to decide a matter as important to the parties as this.

This is plainly a matter that ought to be referred to trial. Before the parties get to trial, they may well wish to avail themselves of this court's compulsory mediation directive, which may assist them to determine the ambit of the real disputes between them, and perhaps allow them to settle on an equitable division of Mr B[...]’s estate. If that does not happen the parties may at least be able to define their real disputes to the extent necessary to curtail the amount of time needed to hear the trial.

In a case like this I would always be inclined to direct each party to pay their own costs. However, given that the matter will have to go to trial it is wisest to reserve costs. For all those reasons I make the following order –

- 1 The application is referred to trial.
- 2 Part B of the applicant’s notice of motion dated the 28th of October 2024 will stand as a simple summons.
- 3 The applicant as plaintiff must deliver her particulars of claim within 20 court days of today’s date.
- 4 Thereafter the rules of court applicable to trial actions will apply.
- 5 The costs of the application are reserved for determination by the trial court.

WILSON, J
JUDGE OF THE HIGH COURT
29 July 2029

CASE NUMBER-initials
YEAR-MONTH-DAY

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JUDGMENT