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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 3018/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 06/08/2025

SIGNATURE

In the matter between:

B[...] C[...] B[...]

Plaintiff

And

M[...] J[...] S[...]

Defendant

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **06 AUGUST 2025**.

JUDGMENT

Makoti AJ

Introduction

- [1] This is yet another case where the existence or otherwise of a marriage in terms of customary rites was placed in issue. It proceeded entirely on the basis of the Plaintiff's pleaded case, though I allowed the Defendant who had not filed a plea to participate in the proceedings as he was unrepresented. The case at hand started when the Plaintiff, B[...] C[...] B[...], instituted divorce proceedings against the Defendant, M[...] J[...] S[...].
- [2] According to the case pleaded by the Plaintiff the parties concluded their customary marriage on 30 April 2016, at Sekgapaneng Village, Mokopane. Apart from disputing that a customary marriage came into existence, the Defendant does not actually dispute the events that took place on the day in question.
- [3] My task is to determine the important question whether a marriage relationship between the parties came into place. Prior to answering the question I have to take a look into the facts.

Summary of facts

- [4] The relationship between the parties prior to the events giving rise to the dispute is common cause. Having been in a romantic relationship which started

in December 2013, the Defendant had a letter sent to the Plaintiff's family to propose the opening of lobola talks. The letter in question was dated 26 April 2016. The Defendant challenges the authenticity of the letter. However, apart from the fact that a letter was sent initiating the talks, it has no real bearing on whether a valid marriage was ultimately concluded.

[5] On 30 April 2016 the Defendant's family visited the Plaintiff's family for the purpose of asking for her hand in marriage. An amount of **R10 000-00** (Ten Thousand Rand) was paid to the Plaintiff's family. That was part of the lobola amount which the two families had agreed about, of **R25 000-00** (Twenty-Five Thousand Rand) With the amount handed over, the Defendant's family representatives also presented the following items to the Plaintiff's family:

[5.1] tow blankets;

[5.2] two cloths;

[5.3] tobacco container.

[6] The gifts to the Plaintiff's family were not disputed. The Plaintiff also testified that the letter that was taken to her family was delivered by the Defendant's mother. On the date of 30 April 2016 the families were represented by the following witnesses, amongst others: Jim Kekana, who is married to the Defendant's sister and another person with the surname of Baloyi. After the discussions, the Defendant's family requested to be allowed to leave with their *makoti*, which her family agreed to.

[7] Following the lobola talks, on 02 October 2016 the parties went to church for the blessing of their union. Both families were represented and they exchanged wedding bands or rings. Their union was confirmed and blessed on the day as a marriage. From church the families went to the Defendant's family for lunch.

- [8] What transpired on 30 April 2016 was also explained by the Defendant's witness, Mr Lesiba Pitjeng. He is the brother in law of the Defendant. He testified that they went to the Plaintiff's family to ask for her hand in marriage. The amount of **R10 000-00** was given to the Defendant's emissaries to use towards the lobola. After the talks, they left with their *ngwetši* (bride), who was not on the day accompanied by anyone from the B[...] family.
- [9] The parties have one child who was born late in 2016. Defendant testified to the effect that the Plaintiff fell pregnant during or around March 2016. The child bears the Defendant's last name.

The law on customary marriages

- [10] Since the promulgation of the Recognition of Customary Marriages Act,¹ the requirements for a valid customary marriage have been codified. Section 3 of the Act provide for the following:

- (1) For a customary marriage entered into after the commencement of this Act to be valid-**
 - (a) the prospective spouses-**
 - (i) must both be above the age of 18 years; and**
 - (ii) must both consent to be married to each other under customary law; and**
 - (b) the marriage must be negotiated and entered into or celebrated in accordance with customary law.**

- [11] There is no controversy in respect of the first two requirements. The parties were both of the appropriate age of 18 years and they both agreed to be married. It is with respect to the third requirement that the present dispute is

¹ Act No. 120 of 1998.

centered. The Defendant contending that the marriage did not come into existence because it was not celebrated in accordance with customs.

[12] Both the families of the parties negotiated the marriage. The talks were initiated by the Defendant. He sent emissaries to the Plaintiff's family to negotiate with her family to hand her in marriage to him. Her family agreed with his for the two to become a married couple. As I have indicated, they came to an agreement in relation to the lobola of R25 000-00. The Plaintiff's family then paid a portion of the said lobola amount, being R10 000-00.

[13] As regards the requirements, the Court recently held in *N C M v M J M and Others*² that:

“[18] The RCMA added further requirements which address formal and customary law requirements. Both prospective spouses must have consented to getting married in terms of customary law. These requirements are peremptory. The customary law requirements relate to the negotiation and celebration of such a marriage.”

[14] Handing the bride over is part of customary processes for evidencing the conclusion of a marriage. It is not the only one. This is demonstrated by the decision of this Court in *Sengadi v Tsambo*³ where the families met and reached an agreement on the lobola, partial payment was made. In that case Mokgoathleng J found that there was a valid customary marriage. In reaching this conclusion the Court held that the handing over of the bride is not an "indispensable sacrosanct essentialia" for a lawful customary marriage.

[15] On appeal the Court held in *Tsambo v Sengadi*⁴ that:

² N C M v M J M and Others (799/2023) [2025] ZASCA 10 (10 February 2025).

³ *Sengadi v Tsambo* (40344/2018) [2018] ZAGPJHC 613; 2019 (4) SA 50 (GJ) (3 November 2018).

⁴ *Tsambo v Sengadi* (244/19) [2020] ZASCA 46 (30 April 2020).

“[26] The clearest indication of her acceptance as the deceased’s wife is evidenced by the actual utterances that were made: the respondent was formally introduced as the deceased’s wife and welcomed to the Tsambo family. Thereafter, the appellant embraced her and congratulated her on her marriage to the deceased. Bearing in mind that the purpose of the ceremony of the handing over of a bride is simply to mark the beginning of a couple’s customary marriage and introduce the bride to the bridegroom’s family, I am inclined to agree with the respondent’s assertion that a handing over, in the form of a declared acceptance of her as a *makoti* (daughter-in-law), satisfied the requirement of the handing over of the bride.”

[16] In this case the Defendant’s family referred to the Plaintiff as a *ngwetši* or their *makoti*. This is a clear indication of how they perceived what had transpired on 30 April 2016, that they had acquired a bride. This was further reflected by what took place on 02 October 2016 when their union was blessed as a marriage, with the exchange of wedding bands. If it was merely an engagement, there would have been no reason for both parties to wear wedding bands.

[17] I am in no doubt that there is a valid marriage relationship between the parties as pleaded by the Plaintiff. The divorce proceedings may proceed to the next stages.

Order

[18] The following order is made:

- [a] The customary marriage between the parties is conformed.
- [b] Divorce action may proceed.

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

APPEARANCES

FOR PLAINTIFF : MARY-JANE MPHAHLELE ATTORNEYS
60 LANDDROS MARE STREET
POLOKWANE

FOR DEFENDANT : SELF-REPRESENTING

HEARD ON : 17 FEBRUARY 2025

DELIVERED ON : 06 AUGUST 2025