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

CASE NO: 8159/2023

(1) REPORTABLE: YES/NO

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

(3) REVISED.

DATE: 26/1/2026

SIGNATURE:

In the matter between:

ELSIE MOLOKO LELAGANE

Applicant

And

MINISTER OF HOME AFFAIRS

First Respondent

JULIA GAVAZA SENWANA

Second Respondent

MASTER OF THE HIGH COURT

Third Respondent

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 **26 January 2026**.

JUDGMENT

Makoti AJ

Introduction

[1] Applicant wants posthumous recognition as valid an alleged marriage with the deceased, Mr Walter Cedric Mashele. She alleged in her application that she and the deceased were married by customary rites on 26 September 2009. The allegation is disputed by the second respondent, Ms Julia Gavaza Senwana, who was also allegedly married through customary law to the deceased on 21 June 2014.

[2] The deceased live with the second respondent as husband and wife from the said date of 21 June 2014 until he departed from life on 24 May 2013. It seems that they lived so peacefully, in their minds as a married couple. The applicant stated in her affidavit that she has been aware of the relationship between the deceased and the second respondent during the course of the year in 2014.

[3] What this court has to determine is whether there existed a valid marriage between the applicant and the deceased. If it did, it would have implications for the relationship of the second respondent and the deceased. A finding to the contrary would not disturb the latter relationship.

Principles for marriages in terms of customary law

[4] It is by now well established that customary marriages are regulated and must comply with the provisions of the Recognition of Customary Marriages Act¹ (the Act). The statute defines customary marriage as a marriage that was concluded in terms of customary law.² Section 2³ of the Act makes it known that a customary marriage is recognised when it complies with its requirements.

[5] The requirements for a valid customary marriage are that:

¹ Act No. 120 of 1998.

² Ibid section 1.

³ Subsection (2) of the Act.

- [a] the prospective spouses must be above the age of 18 years;⁴
- [b] they must have consented to be married to each other in terms of customary rites;⁵
- [c] the marriage must have been negotiated and entered into or celebrated according to customary law.⁶

[6] In *Tsambo v Sengadi*⁷ the SCA said inter alia the following:

“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.”

[7] As it has been seen above, the statute requires compliance with three requirements with regard to age, consent and the entering into of a marriage or celebration. While the first two requirements are fairly easy to address, the third is not that easy. A marriage has to be entered into or celebrated in terms of customary law, which practices are not homogenous as they vary from one community to another. This will be a subject of probe in this application.

A summary of the case presented by the applicant

[8] Being unsatisfied with the respective cases on the papers before me, I ordered oral evidence to be led on the aspect of the entering into of the customary marriage, or the celebration. This was partly because the applicant could not produce evidence in the form of lobola agreement. Instead, she relied on a photograph which had captioned the celebration as an engagement.

⁴ Section 3(1)(a)(i).

⁵ Section 3(1)(a)(ii).

⁶ Section 3(2).

⁷ *Tsambo v Sengadi* (244/19) [2020] ZASCA 46 (30 April 2020) par 26.

[9] She alleged that the respective families met on 26 September 2009 to negotiate lobola. Also that upon conclusion of the negotiations the deceased's family paid an amount of **R18 000-00** towards her lobola. To evince this she attached a letter from the Moletjie Traditional Authority which read:

“Moletjie Traditional Authority under His Majesty Kgoshi Kgabo Moloto III hereby confirms that Lelagane Elsie Moloko ID NO: 7[...] was married through customary marriage to the late Walter Cedric Mashele IN NO: 6[...] on the 26 September 2009.”

[10] The confirmation was signed by one A M Seroka, Senior Admin Officer, who did not indicate what his source of information was. The other signature appearing on the letter is unidentified and merely marked as Senior Traditional Council. What it does not confirm is the amount of lobola paid, nor that it was in full and final settlement of the agreed value. From evidence point of view, the letter is patently deficient and palpably hearsay. I cannot rely on it.

[11] Also, the applicant attached a photograph that was taken on the day in question which captioned the celebration as engagement. This was followed by the replying affidavit deposed to by the applicant in which she said *inter alia* the following:

“21. The day that the deceased paid lobola in full, and there was an engagement and wearing of rings as a celebration and hand over, the annexure termed engagement celebration does not neutralize that all the requirements of a valid customary marriage has been met, the wording is not material but the focus should be placed on the events of the day that completed a customary marriage.”

[12] From her own mouth lobola was paid and thereafter the families celebrated an engagement with the exchange of rings. Nothing is unusual about that, especially if parties intend to formalise their marriage on a later date. She later sought to gainsay that they celebrated an engagement by stating that it was a wedding celebration.

[13] Mrs P P Mnisi is a sister to the deceased. She testified that she was part of the Mashele emissaries to pay lobola for her late brother. This was one of the people who deposed to confirmatory affidavits to confirm averments made by the applicant. In court she testified that she had not had sight of the founding affidavit when she appended her signature to the confirmatory affidavit.

[14] She confirmed payment of **R18 000-00** lobola on 26 September 2009. She said that the picture which described the celebration as engagement was incorrect as they had celebrated marriage on the day. In a rather broad way she said that the families were allowed to perform their traditions, but without describing them.

[15] Then, Mrs Martha Sepuru testified to confirm that the Mashele family arrived at Moletjie on 26 September 2009 to negotiate lobola. She confirmed that an amount of **R18 000-00** was paid in lieu of lobola. She testified that there was handing over of gifts from the Mashele family. About the lobola letter the witness testified that the applicant's mother has lost it. There was no confirmation of this.

[16] Mrs Sepuru also testified, as the aunt to the applicant, that the amount of **R18 000-00** had already been agreed on by the parents of both the deceased and the applicant. This was on a different date prior to 26 September 2009. She further testified that things were done in an unusual way, not in accordance with Bapedi culture. Taking into account the definition of customary marriage above, it references that such marriage has to be concluded in accordance of customary practices of the community or communities concerned. The implications of the failure to do things according to customs or culture are in my view dire.

[17] No one amongst the applicant's witnesses sought to testify as to what the customary practices are for the conclusion of a valid marriage, and whether they were actually observed.

Summary of the second respondent's case

[18] This respondent did not call any witnesses, clearly unimpressed with the applicant's evidence. Nonetheless, she filed an answering affidavit in which she

showed that she was married to the deceased in a customary union. The fact of her marriage was confirmed by Mrs Mnisi, being the sister to the deceased. The applicant herself admitted to have been away of the fact of the second respondent's marriage to the deceased. She did nothing to challenge its validity while the deceased was still alive.

[19] Unlike the applicant, she attached a copy of the lobola agreement, which reflected the amount and the gifts which are taken to her family on 21 June 2014. The lobola document was signed by representatives from both their respective families. On the occasion of the funeral, she mentioned, it was her family who were recognised as the in-laws which is contrary to the allegations made by the applicant.

Discussion

[20] The applicant lodged this application contending that she is the lawful customary wife to the deceased. The documentary evidence that she relied upon was glaringly deficient. Oral evidence that was adduced by her witnesses did not abet her course. In *Moropane v Southon*,⁸ which both parties made reference to, it was held amongst others that:

“... both experts were agreed that the current customary requirements for a valid customary marriage among the Bapedi people include amongst others, negotiations between families in respect of lobola; a token for opening the negotiations (...); followed by asking for the bride (...); an agreement on the number of beast payable as lobola (...); payment of the agreed lobola; exchange of gifts between the families; the slaughtering of beasts; a feast and counselling (...) of the makoti followed by the formal handing over of the makoti to her in-laws by her elders.”

[21] The dearth of objective evidence to prove the allegations of the applicant is quite palpable. For instance, with regard to the celebration after the lobola payment,

⁸ (755/12) [2014] ZASCA 76.

she called it an engagement. But she also called it marriage celebration. Contemporaneous evidence in the form of the only photograph that she attached confirms that they celebrated an engagement.

[22] The exchange of rings is not on without more a confirmation of marriage. In the context of the facts before me that may very well confirm engagement. I am mindful that the applicant alleges that she was handed over to the deceased's family, which her witness Mrs Mnisi confirmed. Her handing over to the deceased's family is not on its own a sign of marriage.⁹ As I have pointed out, that would not be unusual.

[23] No one testified about the gifts that were exchanged. Bold statements were simply made to the effect that the families exchanged gifts. A valid customary marriage is sealed by exchange of specific gifts. The slaughtering of a beast can also be an indication of the conclusion of a customary marriage, as *Moropane* indicated. Also worryingly, Mrs Mnisi simply told the court that both families were allowed to observe their customs. No evidence was provided as to what those customs were that the families were allowed to observe.

[24] I needed to have been provided with evidence showing how the marriage was entered into. A lobola letter or agreement is commonly the best proof of such fact. Alternatively, confirmation that the marriage was celebrated according to the communities' cultures or customs could have sufficed. From what I have already pointed out, such evidence is conspicuously missing. It should be recalled that the applicant's own witness, her aunt, testified in court that things were done in an unusual way.

[25] On the balance of the facts, the evidence before me, and the applicable legal principles, I am not satisfied that the applicant has discharged the duty resting upon her to prove that she was indeed in a validly concluded customary marriage with the deceased. The application must therefore fail.

Order of court

⁹ *Mbungela v Mkabi and Others* 2020 1 All SA 42 (SCA) par 30.

[26] I make the following order:

[a] The application is dismissed with costs on normal party and party scale A.

M. Z. MAKOTI
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION

APPEARANCES:

FOR APPLICANT : ADV S MOHLAKA
MULAUDZI RN ATTORNEYS
POLOKWANE

FOR FIRST RESPONDENT: ADV P MALULEKE
MOHLABA & MOSHOANA ATTORNEYS
C/O TM MONGWE ATTORNEYS INC
POLOKWANE

DATE HEARD: 05 MAY 2025

JUDGMENT DELIVERED: 26 JANUARY 2025