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REPUBLIC OF SOUTH AFRICA



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

Case Number: 2024/013110

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE 26/02/2026
SIGNATURE

In the matter between:

NKOMO: SARAH MBOKASE

Plaintiff

and

ROAD ACCIDENT FUND

Defendant

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 26 February 2026.

JUDGMENT

VELE, AJ

Introduction

- [1] The plaintiff issued summons against the Defendant for the recovery of the sum of R 2 500 000. 00, for loss of support suffered as a result of death of one Mr Ntala Paulus Moloi, whom she was customarily married to. This was as a result of the motor vehicle accident that occurred on the 26th of February 2023 along the R57 Road between Sasolburg and Heilbron between the motor vehicle with registration number H[...] and F[...]. Mr Moloi, as a passenger, who just alighted from motor vehicle with registration H[...], when motor vehicle with registration F[...], struck him prior to colliding with the former's left door, resulting in him sustaining fatal bodily injuries.

Factual Background

- [2] The defendant did not defend the matter. The plaintiff enrolled it in the default judgment roll. When considering the matter, the court raised a query in relation to the marital status between the plaintiff and the deceased, as there was no proof of existence of marriage in any form. The plaintiff alleged that the parties were married customarily but she did not file the marriage certificate issued in terms of section 4 of the Recognition of Customary Marriages Act.¹ She only provided the "Lobola letter" and filed the affidavits of the witnesses who were present when the marriage was concluded and attended the lobola celebrations.
- [3] A marriage certificate issued in terms of section 4 of the Act,² is prima facie proof of the marriage, as set out in sub – section 4 (8).³ The plaintiff confirmed that the marriage was not registered in line with the provision of section 4 and relied on the provisions of sub – section 4 (9),⁴ which reads as follows:

"Failure to register a customary marriage does not affect the validity of that marriage".

The subsection places the onus on a party alleging the existence of the customary marriage to prove same. Plaintiff in compliance with subsection (9), filed the

¹ Act 120 of 1998.

² Recognition of Customary Marriages Act.

³ Recognition of Customary Marriages Act, supra.

⁴ Recognition of Customary Marriages Act, supra.

affidavits by members of both families and further led the evidence of some, to prove the marriage's existence.

- [4] NKOMO SARAH MBOKASE, she is the plaintiff and instituted legal action against the defendant, in her personal capacity, as well as on behalf of her minor child K[...] G[...] N[...] for loss of support, following the death of Mr Ntala Paulus Moloi, whom she was customarily married to. Her husband passed on as a result of a motor vehicle accident that took place in the Sasolburg area on 26 February 2023. Mr Moloi was a passenger at the time of the collision. She further stated that they were married customarily, but their marriage was not registered. She produced the lobola letter in support of her claim. She further testified that she met the deceased in 2004 and later moved in with him. Her family did not oppose their cohabitation, which resulted in the birth of their daughter on 16 August 2009.
- [5] They were customarily married on 09 March 2019, when the deceased's family approached her family and asked for her hand in marriage and paid the amount of R11 200, 00 as part of the lobola. Her family was represented by her mother, brother and uncles, whilst the deceased's family was represented by their elders. Following the payment of the lobola, a sheep was slaughtered as a sign of her integration into the deceased's family, followed by the celebrations. She was later accompanied to his family home. The outstanding balance was not paid, due to his untimely death. In this regard the lobola letter was handed in, in support thereof.
- [6] She further testified that witnesses from both families were available to confirm that indeed there were lobola negotiations that took place, followed by the celebrations, where she was given traditional attire and a blanket to wear, by the senior women in the deceased's family. Her husband was the sole breadwinner for the family, who made sure that his family was provided for and covered their daughter's educational needs, as she was unemployed. Her daughter is a recipient of the child support grant in the sum of R560, 00 from the Department of Social Development. The grant is insufficient to cover the child's educational expense. When the deceased passed on, her family

contributed towards the acquisition of the beast, that was slaughtered for the funeral, in line with their custom.

- [7] She called witness from both sides of the families to confirm that indeed there was a customary marriage followed by the celebrations, and also relied on the affidavits of others.
- [8] MR HANS NKOMO's evidence could be summarised as follows: He is the plaintiff's paternal uncle. He confirmed that the plaintiff was married to one, Paulus Moloi. He confirmed that he was present during the marriage celebrations in 2019, though not part of the negotiations. He was not informed of the amount that was paid, as that was dealt with by the family elders. He was informed of the outstanding balance that was still to be paid, but not the amount. It is acceptable in his culture for their daughter to stay with a man, when there is outstanding amount, especially when they already have a child. He was content with the developments as the person who impregnated their daughter, made good of his actions and paid lobola.
- [9] MATSHIDISO MARIA TSHABALALA, was the plaintiff's next witness whose evidence could summarised as follows: The plaintiff was married to Paulus Moloi, who was also known by the surname Tshabalala. She confirmed that he passed on following a motor vehicle accident. Though present at the lobola negotiations, she too was not part of the delegation, as their family was represented by Mr Joseph Tshabalala and Ms Anna Tshabalala, who were unable to attend the court proceedings due to their advanced ages. She was not privy of the amount paid as lobola but heard that it was indeed paid. She witnessed when the elderly ladies in their family dressed up the plaintiff, as a sign that she was now part of their family, prior to the celebrations. She paid her condolences to the family following the death of Mr Paulus Moloi, but did not attend the funeral, as she was attending the funeral of her mother-in-law on the same day. She further confirmed that following the deceased's death, the plaintiff wore a headgear as a symbol of mourning, as his wife. She considered the parties to be married customarily. This was her evidence in a nutshell and concluded the plaintiff's case.

[10] Advocate Zwane, on behalf of the plaintiff argued that the sacrosanct essentialia of a valid customary marriage, was when the parties comply with the provisions of section 3 (1) of the Act,⁵ which reads as follows:

“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] The uncontested evidence, is that the parties cohabited from 2004 until 09 March 2019, a period of about 14 years before the customary marriage was entered into. A child was born in 2009. There is no evidence that there was any protestation by the plaintiff’s family. The events that took place on 09 March 2019, reflect the intention of the parties and their families, there was negotiations between the family elders, an amount was paid over in accordance with the parties custom and tradition. The husband’s family gave her traditional attire and a blanket, that she was dressed up by the elderly women, followed by slaughtering of a sheep, bringing the families together. There was a celebration thereafter, before she was formally taken to her groom’s family home. There is no requirement that the full lobola must be paid prior to the conclusion of the marriage, what section 3 (1) (b)⁶ provides is:

“(b) the marriage must be negotiated and entered into or celebrated in accordance with the customary law.”

[12] Sub section (4)⁷ requires that the parties entering into a customary law marriage, register such a marriage within three months of the conclusion thereof. The Registering – Officer if satisfied that the parties have complied with

⁵ Recognition of Customary Marriages Act, supra.

⁶ Recognition of Customary Marriages Act, supra.

⁷ Recognition of Customary Marriages Act, supra.

the all requirement, must register the marriage and issue the parties with a registration certificate.

- [13] Sub section (5)⁸ – Provides for the late registration of the customary marriage, if any interested party applies and satisfies the registering – officer that a customary marriage exists or existed between the parties, it will be registered and a certificate issued as set out in subsection (4).
- [14] Subsection (6) – Gives the registration – officer, right to refuse registration of the marriage if he or she is not satisfied. Once registration is refused, then such party can apply to court for an order for such registration.
- [15] In terms of sub-section (7),⁹ the court must investigate the matter before making an order for either the registration, cancellation or rectification of any customary marriage.
- [16] The plaintiff did not address the issue as to why section 4 of the Act was not complied with. When given an opportunity to address this aspect, the plaintiff's Counsel referred the court to subsection (9),¹⁰ which reads as follows:

“(9) – Failure to register a customary marriage does not affect the validity of that marriage.” It was advanced on plaintiff's behalf that registration is not a requirement of a valid marriage as set out in section 3, therefore non – compliance with section 4 will not render the marriage invalid, but puts the onus on whoever is alleging that customary marriage exists or existed to prove the existence of such a marriage

- [17] In the current case, the plaintiff proceeded to prove this by calling witnesses who testified to the effect that part of the lobola was paid, followed by the rituals in line with the Basotho culture and tradition, under which both parties are. Celebration was conducted as a sign that the two families recognised the marriage between the plaintiff and her deceased husband. One must also take into consideration that the parties at the time were in cohabitation for a period of almost 15 years and a child was already born. In the circumstances, if one

⁸ Recognition of Customary Marriages Act, supra.

⁹ Recognition of Customary Marriages Act, supra.

¹⁰ Recognition of Customary Marriages Act, supra.

follows the cases in this regard, it is clear that culture is not static but evolving, as such new developments must be accommodated as well, in line with modern society and the Constitution.¹¹

[18] The plaintiff has discharged the onus placed on her under section 3, that a valid customary marriage was entered into, which gives rise to the deceased's duty to maintain her and her minor child born out of the marriage. It is trite that the overall onus to prove is on the plaintiff, on the balance of probabilities, as to which of the insured drivers was driving negligently at the time of the collision.

[19] It is trite that as a passenger in the motor vehicle that was involved in an accident, a person cannot have his damages apportioned, as he is regarded as the proverbial "one percenter". Meaning that all such a plaintiff needs to prove will be just 1% negligence on either of the drivers in order to succeed 100% on the merits. The above find reliance in the dictum by Mavundla J in *Groenewald v Road Accident Fund*¹² at para 3 that: "It is trite that the plaintiff, as a passenger claimant, need to prove only 1% negligence on the part of the driver in order to succeed with her claim against the defendant ... "

[20] Therefore, in terms of section 17(1) of the Road Accident Fund Act,¹³ the defendant is therefore liable to compensate the children for the proven loss of support, reasonably anticipated, that the deceased would have supplied had he remained alive.

[21] The plaintiff and the minor child have a legally enforceable right to claim financial support from the deceased, as the deceased and the plaintiff were customarily married, whilst the minor child was born out of the said marriage. The deceased was gainfully employed and was indeed maintaining the plaintiff and the minor child without a maintenance order with the salary he received from his employer and he would have continued to do so had it not been for his untimely death.

¹¹ Act 108 of 1996.

¹² (74920/2014) [2017] ZAGPPHC 879(5 October 2017).

¹³ Recognition of Customary Marriages Act, *supra*.

- [22] The uncontested evidence before the court is supported by the Accident Report and the entire case docket contents that were discovered, show that the deceased was a passenger of a vehicle that was stationary in the middle of the roadway. Deceased had just disembarked from the vehicle, when the insured driver collided with their vehicle, hitting him against the open door in the process. As the results he sustained fatal injuries that he later succumbed to whilst receiving treatment in hospital. The merits of the case were not disputed as the Fund did not enter the appearance to defend, rendering it 100% liable for the plaintiff's claim.
- [23] The onus is on the plaintiff to prove that she suffered actual financial loss following the death of the deceased. In this end, she placed reliance on the actuarial calculations of Ekhaya Risk Services (Pty) Ltd in support of her claim. The Actuary's Report was based on the premise that the deceased was gainfully employed at the time of his death, as per the filed employer's affidavit, that reflects that he was earning a gross salary of R7 250. 00 per month x 12, amounting to R87 000. 00 per annum. In support of the plaintiff's case, an affidavit of one Mr G.J. Pieters, a director of Spectrum Panel-beaters and Spray-Painters, was filed as proof that indeed the late Ntala Paulus Moloï with identity number 7[...] was in their employment from 2017 until his death on the 5th of March 2023 earning a salary of R7 250, 00 per month.
- [24] Counsel for the plaintiff, further submitted that; had the accident not occurred, deceased would have continued working with salary inflationary increases until normal retirement age of 65 on 30 September 2040. The actuary's calculations, excluded certain benefits and focused only on the actual remunerations. Throughout their relationship up to time of the accident, the plaintiff was unemployed, which position has not changed. The deceased was the sole provider for both the Plaintiff and the minor child. The deceased would have supported the minor child until age 21, as she is currently still attending school. In support thereof, as per filed school report from K Nthlabathi Secondary School. The Actuarial report was worked on the second scenario, that the deceased would have supported the minor child, if she was still at school until she reached the age of 21 years, relied on the decision in *Marine and Trade*

*Insurance Co Ltd v Mariamah and Another*¹⁴ at page 489B, in support thereof, wherein the court stated as follows:

" ... At the time of the deceased's death, P[...] was 18 years old, and G[...] 17 years old. They were still at school, and the deceased was supporting them. The court a quo was, in my view, justified in acting on the assumption that the deceased would probably have continued to support his sons until they reached the age of 21."

[25] The above dictum is in support of the minor child's right to claim support until she is 21 years of age, if not financially independent. Ekhaya Risk Services illustrated two scenarios to display the minor child's position. Firstly, the minor child is supported until the age of 18 years with a contingency of 5% / 15%. Secondly, the minor child is supported until the age of 21 years with contingencies at 5% / 15%, considering that the deceased would have retired at the age of 65 years: Ekhaya Risk Services in their Actuarial Report at paragraphs 4 and 28 address the aspect of the minor child's support by the deceased.

[26] In the absence of the evidence to the contrary, the court is satisfied that the defendant is liable to compensate the plaintiff and the minor child, proven damages in the sum of R 567 732. 00, which is occasioned by in the deceased's premature death.

[27] In the circumstances, I make the following order:

1. It is declared that the plaintiff and the deceased Ntala Paulus Moloi entered into a valid customary marriage in terms of section 3 of the Recognition of the Customary Marriages Act.
2. The Defendant is liable for 100% of the Plaintiff's proven or agreed damages;
3. The Defendant shall pay the Plaintiff, Sarah Mbokase Nkomo in her personal capacity the sum of R 455 575. 00 as well, as in her

¹⁴ 1978 (3) SA 480 (AD).

representative capacity as the biological mother and natural guardian of her minor child, namely, K[...] G[...] N[...] the sum of R 112 157. 00 in respect of the claim of loss of support;

4. The Defendant shall pay to the Plaintiff the capital amount of R 567 732. 00 referred to paragraph 2 above directly into the trust account of the Plaintiff's attorney of record, Dube Lesley Attorneys;

5. The Defendant shall pay the Plaintiff's costs of suit on the High Court party and party scale B, up to date hereof, including the fees of the plaintiff's experts in the compilation of their reports and attendance or reservation fees, if any subject to the following conditions:

5.1 the plaintiff, in the event that costs are not agreed, serve the notice of taxation on the defendant's attorneys of record,

5.2 the plaintiff shall allow the defendant 7 court days to make payment of the taxed costs.

SO VELE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Plaintiffs : Advocate M Zwane

Instructed : Lesley Dube Attorneys

For the Defendant : No Appearance

Instructed : No Appearance

Date of hearing : 28 November 2025

Date of Judgment : 26 February 2026

