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REPUBLIC OF SOUTH AFRICA



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

Case Number: **2025-214300**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE: 2 September 2026

SIGNATURE: **JANSE VAN NIEUWENHUIZEN J**

In the matter between:

NOKUFA HENRIETTE MOROPA

Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

THE DIRECTOR-GENERAL OF HOME AFFAIRS
Respondent

Second

NURSE SOPHIA MOROPA-MABENA

Third Respondent

MASTER OF THE HIGH COURT (SOUTH GAUTENG)
Respondent

Fourth

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

- [1] The applicant prays for an order declaring that the marriage between the third respondent and Sello Aaron Moropa, who passed away on 15 August 2024 (“the deceased”), is null and void *ab initio* and for an order declaring that her marriage to the deceased is the sole valid marriage entered into by the deceased.
- [2] The relief is only opposed by the third respondent.

Issue in dispute

- [3] It is common cause between the parties that the deceased and the third respondent entered into a marriage on 7 June 2016 at Springs Home Affairs. It is, furthermore, common cause that, according to the records kept by Home Affairs, there was no legal impediment to the marriage between the third respondent and the applicant at the time.
- [4] The applicant, however, alleges that the marriage is null and void because she was validly married to the deceased at the time, an allegation that is denied by the third respondent. The onus is therefore on the applicant to prove the alleged marriage.

Applicant's case

- [5] The applicant alleges that she was lawfully married to the deceased in a civil marriage solemnised under the Marriage Act 25 of 1961 by Dr Tobias Masuku, a duly appointed marriage officer. In support of the aforesaid allegation, the applicant attached a letter written by one HV Msengi, from the Marriage Section: Head Office.

- [6] The letter is on a Home Affairs letterhead and displays a stamp from the Department of Home Affairs dated 2 September 2024. The letter reads as follows:

“
TO WHOM IT MAY CONCERN

NOFUKA HENRIETTA MOROPA

BORN MQOQO

Identity number 5[...]

This is to certify that according to the records of the National Population Register, the marital status of the above-named person is reflected as : MARRIED to Sello Aaron identity number 5[...] date of marriage 1991.09.20.”

- [7] The letter is not accompanied by a copy of the National Population Register evidencing the marriage, and HV Msengi did not depose to an affidavit confirming the contents of the letter.
- [8] The applicant states that the marriage was never dissolved by a decree of divorce and that she only discovered, subsequent to the deceased's death, that the records of the Department of Home Affairs did not reflect her marriage to the deceased.
- [9] The applicant reported the matter to the Department of Home Affairs, and received an email from Amanda van der Merwe, Deputy Director: Analysis, Counter-Corruption and Security Services, on 14 October 2024, informing her that Veerasamy Ponnan was appointed to investigate the matter. A copy of the email is attached to the founding affidavit.

[10] It appears that the marriage between the applicant and the deceased was solemnised at the Dutch Reformed Church in Delmas and during the investigation it was established that Dr Tobias Masuku, a researcher at Unisa, was the pastor at the church in 1991. A copy of a message from Dr Masuku confirming the aforesaid is attached to the founding affidavit.

[11] In an email dated 25 October 2024, Dr Masuku was requested to provide information in respect of the marriage between the applicant and the deceased. Dr Masuku's response is not attached to the founding affidavit, but an email dated 15 July 2025 sent by one Pulane Legotlo to three officials in the Department of Home Affairs is attached to the founding affidavit and reads as follows:

"Good morning,

Kindly be informed that a follow-up was made with the Marriage Unit, and both records of the marriages have been retrieved.

Please note that bigamous marriages now fall under the Criminal Procedure Act No. 37. As a result, you are required to approach the court in order for the second marriage to be nullified in the system.

Additionally, you are requested to visit the application office to register your inquiry in the system"

[12] In a letter dated 21 October 2025, the applicant's attorney of record informed the third respondent that this application will be issued and requested the third respondent to abide by the decision of the court. The applicant does not indicate what the third respondent's response was.

Third respondent's case

- [13] The third applicant raised two points *in limine*, but only persisted with the point that a factual dispute exists on the papers and that the application should either be dismissed or be referred for oral evidence. The applicant did not apply for the matter to be referred to oral evidence and insisted on proceeding on the papers.
- [14] Insofar as the merits of the matter is concerned, the third respondent explained that she met the deceased in July 2001 in Springs and a romantic relationship ensued shortly thereafter. Around Easter in 2002, the deceased asked the third respondent to move in with him and to help him raise his minor children. When the third respondent enquired about the mother of the children, she was informed by the deceased that the mother abandoned him in 1991 and left the children in his care.
- [15] According to the deceased, he paid lobola for the applicant, but the customary marriage was never finalised. The deceased assured the third respondent that he was not married, and upon receiving this assurance the third respondent moved in with the deceased.
- [16] Three years later and after the birth of their daughter, the deceased paid lobola for the third respondent and the marriage was celebrated according to custom. The lobola marriage was followed by a civil marriage on 7 June 2016 at the Department of Home Affairs in Springs.

- [17] During November 2023, the deceased was diagnosed with prostate cancer and became wheelchair bound. The third respondent became his primary caregiver. The third respondent fed, clothed, changed nappies and bathed the deceased until his death on 15 August 2024.
- [18] It appears that the third respondent, for the first time, became aware of the applicant and her claim to be the deceased's wife at his funeral. In view of the history of the matter, the third respondent deems the applicant's claim to be the lawful wife of the deceased as opportunistic and *mala fide*.
- [19] Notwithstanding an invitation by the third respondent, the applicant refused to divulge any information about her absence in the deceased's life for a period of 25 years. According to the applicant, such information is irrelevant as the matter only involves a legal issue.

Dispute of fact

- [20] The test whether a dispute of fact exists on the papers is trite and was encapsulated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) as follows at 634 H-I:

"It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order."

- [21] The facts in this matter raise a classic dispute of fact. The applicant's allegation that she entered into a marriage with the deceased on 20

September 1991 is denied by the third respondent. It is not a bare denial but is supported by the marriage certificate issued by the Department of Home Affairs evidencing the third respondent's marriage to the deceased on 7 June 2016. The dispute is, as a result, a *bona fide* dispute and the next question to be determined is whether the dispute can be resolved on the papers.

Legal framework and discussion

- [22] Section 29 (2) of the Marriage Act, 25 of 1961 ("the Marriage Act"), provides for the solemnization of marriages and reads as follows:

"A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection shall not be construed as prohibiting a marriage officer from solemnizing a marriage in any place other than a place mentioned therein if the marriage must be solemnized in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties."

- [23] Section 29A of the Marriage Act makes provision for the registration of marriages and reads as follows:

"29A. Registration of marriages

(1)The marriage officer solemnizing any marriage, the parties thereto and two competent witnesses shall sign the marriage register concerned immediately after such marriage has been solemnized.

(2)The marriage officer shall forthwith transmit the marriage register and records concerned, as the case may be, to a regional or district representative designated as such under section 21(1) of the Identification Act, 1986 ([Act No. 72 of 1986](#)).’

- [24] Section 8(e) of the Identification Act, 72 of 1986 (“the Identification Act”) provides that the particulars contained in a marriage register or other documents relating to the contracting of a marriage shall be included in the Population Register and, in terms of section 13(2) of the Identification Act, a marriage certificate issued by the Director-General of Home Affairs is *prima facie* evidence of the particulars set forth therein.
- [25] The applicant failed to produce a marriage certificate issued in terms of section 13(2) of the Identification Act.
- [26] The failure to produce a marriage certificate is, however, not the end of the matter and the existence of the applicant’s marriage to the deceased can still be proved by means of other evidence. [SEE: In *M.W v C.W* (2462/2019) [2025] ZANHC 34 (11 April 2025) at para [29]]
- [27] In order to prove the marriage, the applicant relied on the Msengi letter as well as the email correspondence from officials in the Department of Home Affairs. Mr Phihlela, the legal representative of the third respondent, submitted that the evidence relied upon by the applicant to prove the existence of the marriage between herself and the deceased is inadmissible hearsay evidence insofar as it is tendered to verify the existence of the marriage as envisaged in section 29(2) of the Marriage Act.
- [28] Faced with the aforesaid difficulty, Mr Masifane, the legal representative of the applicant, contended that the hearsay evidence should be admitted in terms

of the provisions of section 3(1)(c) of the Law of Evidence Amendment Act, 45 of 1988. Having had regard to the factors mentioned in section 3(1)(c)(i) to (vii) of the Act, I am of the opinion that it would not be in the interests of justice to admit the hearsay evidence. Should the evidence be admitted, the third respondent will be deprived of her procedural right to test the veracity of the evidence of the witnesses. The prejudice to the third respondent is manifest.

[29] Even if the evidence was admissible, it dismally fails to establish the requirements contained in section 29(2) of the Act.

[30] Regulation 5C of the regulations promulgated in terms of the Marriage Act provides for the rectification of a marriage register and reads as follows:

“Where a marriage has allegedly been solemnised in terms of the Marriage Act, but the marriage register referred to in Section 29A, has for some reasons or the other not been completed or cannot be found, the Director-General may, after consideration of such proof and after such inquiry as he may deem necessary, direct that the marriage register referred to in regulation 5A, with regard to such marriage be completed.”

[31] Although it appears that the Department of Home Affairs conducted some or other investigation, the facts established during the investigation are not before court.

[32] In a last attempt to save the applicant’s case, Mr Mashifane blamed the applicant’s predicament on the Minister of Home Affairs and the Director-General of Home Affairs, being the first and second respondents, for not providing the necessary information to the court.

- [33] In advancing the submission, Mr Mashifane, loses sight of the fundamental difference between action and motion proceedings. First of all, once there is a foreseeable dispute of fact, action proceedings should be initiated. Action proceedings have the advantage of obtaining documents by means of a request for discovery and summoning relevant witnesses to give *viva voce* evidence. It is also just and fair to the opposing party, who has an opportunity to examine and test the evidence produced during trial.
- [34] Secondly, once a litigant has chosen to utilise motion proceedings and a factual dispute arises on the papers, an applicant may request the court to refer the dispute to oral evidence. As stated *supra*, the applicant did not avail herself of this remedy and insisted on proceeding on the papers as they stand.
- [35] Lastly, motion proceedings do not provide an applicant with a procedural remedy to obtain evidence in the possession of respondents that might advance his/her case.

Conclusion and costs

- [36] Due to the dispute of fact, the court is unable to find in favour of the applicant, and the application stands to be dismissed with costs.
- [37] Although the applicant prayed for costs against the first and second respondents only in the event of opposition, Mr Mashifane submitted that the first and second respondents should bear the costs because the litigation emanates from the failure by the first and second respondents to keep proper records.

[38] The first and second respondents were not forewarned that a cost order would be sought against them, and I am, furthermore, unable to find on the facts before court that the first and second respondents are to be blamed for the applicant's failure to make out a case for the relief claimed herein.

[39] In the result, costs will follow the result, the costs of Mr Phihlela on scale C.

Order

1. The application is dismissed with costs. The costs of Mr Phihlela on scale C.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD: 28 July 2026

DATE DELIVERED: 2 September 2026

APPEARANCES

For the Applicant: Mr. K Mashifane

Instructed by: Budaza & Mashifane Incorporated

For the Respondent: Mr. TJ Phihlela

Instructed by: Legal-Aid SA Benoni LO