

IN THE HIGH COURT OF LESOTHO

In the Application of :

ELIZA 'MAKJEKEBOLA ZUMA Applicant

V

LOUISA 'M/NDHLOVU ZUMA Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 9th day of March, 1988

This is an application in which the applicant has moved, against the respondent, for an order framed in the following terms.

- "(a) That a rule nisi be issued calling upon the respondent to show cause why she should not be interdicted from making any further arrangements for the burial of Charles Siphon Zuma
- (b) That the respondent be ordered to release the corpse of the said Zuma to applicant for burial in Mazenod together with his personal belongings and documents
- (c) That the respondent pay the costs of this application in the event of opposition
- (d) That prayer (a) above operate as a temporary interdict preventing the respondent from further arranging or proceeding with the burial of the said Zuma on the 27th February 1988 as arranged, until the determination hereof
- (e) That applicant be granted further and/or alternative relief."

The application was placed before me as a matter of urgency on 26th February 1988 when I granted it in terms of the prayers in the notice of motion. The respondent

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intimated her intention to oppose confirmation of the rule. Affidavits were duly filed by either of the parties.

It is common cause that Siphso Zuma originally came from Maputsoe, in the district of Leribe. He had a brother who was married to the respondent. The brother is now late. He also had a sister by the name of 'Mampho' who is now married to the family of Khaloma. Both parents of Siphso Zuma have passed away.

On 11th December 1981 Siphso Zuma got married to the applicant by civil rites in community of property. Before she got married to Siphso Zuma the applicant already owned a site at Mazenod. She had built a one roomed house on the site. Following their marriage Siphso Zuma and the applicant stayed at the home of the Respondent and her husband at T.Y. for about 7 months after which they moved to the applicant's house at Mazenod. They occupied the house which the applicant had previously built on her site at Mazenod. Siphso Zuma acquired another residential site at Mazenod as evidenced by a copy of Form C which is annexed to the Replying affidavit.

According to the applicant it was the intention of Siphso Zuma and herself to build a permanent matrimonial house on the second site acquired by Siphso Zuma. This is not disputed by the respondent and I find no good reason to doubt that Siphso Zuma and the applicant had a settled mind to live permanently at Mazenod. To hold the contrary would leave no justification why Siphso Zuma had to acquire a residential site at Mazenod.

It is also common cause that during December, 1987 Siphso Zuma was at his home at Mazenod following his return from his place of work at the mines in the Republic of South Africa. In February, 1988 he went to Maputsoe to have his contract renewed before proceeding to his place of work in the Republic of South Africa. However, on 12th February 1988 the applicant received news from the respondent that Siphso Zuma had passed away at the mines in the Republic of South Africa. On 14th February 1988 she was informed, again by the respondent, that the family

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had decided that the burial of Siphso Zuma was to take place at Maputsoe. Applicant objected to the family's decision that her late husband, Siphso Zuma, should be buried at Maputsoe. She expressed her wish that the deceased should be buried at Mazenod where he and herself had established their matrimonial home.

Notwithstanding her expressed wish regarding the place where her late husband should be buried the applicant was, on 24th February 1988 informed by the respondent and one Makhubu that the body of the late Siphso Zuma was to be buried at Maputsoe on Saturday 27th February, 1988 in accordance with the family decision. Consequently the applicant approached this Court for an order as aforementioned.

There can be no doubt, on the papers before me that the late Siphso Zuma was legally married to the applicant who is, therefore, his lawful widow. There is no suggestion that when he passed away the deceased left a male issue who is his heir. We can safely assume, therefore, that the deceased, Siphso Zuma, died leaving the applicant, his widow and no male issue who is the heir.

This court has, in numerous decisions, pointed out that where a married man dies leaving no male heir, the wish of his widow as to how and where the remains of her deceased husband are to be put to rest must be given preference - vide Mathibeli vs Chabalala CIV/APN/76/85 (unreported) Mabona vs Mabona CIV/APN/280/86 (unreported). In the instant case the family decision to bury the late Siphso Zuma at Maputsoe completely disregards the wish of his widow, the applicant, that the deceased should be buried at Mazenod where the matrimonial home has been established. On the authority of the abovementioned decisions it is the wish of the applicant, as the lawful widow of the late Siphso Zuma, that must prevail.

I would accordingly confirm the rule nisi granted on 26th February, 1988 save that, this being a family dispute,

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no order is made as to costs

J U D G E.

9th March, 1988

For Applicant : Mr Molete
For Respondent : Mr Moorosi