

IN THE HIGH COURT OF LESOTHO

In the Application of

MAMABELA MOLAPO Applicant

v

MASUPHA MOLAPO Respondent

JUDGMENT ON COSTS

Delivered by the Hon. the Chief Justice, Mr. Justice
T.S. Cotran on the 23rd day of May 1984

The applicant sought urgent relief as follows

- "(a) Respondent shall not be restrained from ejecting Applicant from the seven roomed house and out-buildings at Upper Thamae Mejametalana Maseru or disposal of the property pending the finalisation of the problems of the property amassed by Applicant or both parties during the period they believed themselves married
- (b) Respondent shall not be interdicted from going to the seven roomed house and out-buildings at Upper Thamae Mejametalana until it has been awarded to him by order of a competent Court.
- (c) Respondent shall not be interdicted from going to the seven roomed house and out-buildings at Upper Thamae Mejametalana Maseru until the question of property that both or either party claims has been resolved.
- (d) Respondent shall not be restrained from claiming the entire property that was bought, developed or accumulated by

/Applicant

Applicant or both parties

- (e) Respondent shall not be directed to negotiate with Applicant on
 - (i) The ways of letting Applicant have property that she bought,
 - (ii) The ways of dividing any joint property that the parties have
- (f) A liquidator should not be appointed to deal with the matter of division of any property that is joint property in the event of the parties failing to reach an amicable settlement on ways of dividing joint property as directed by the Court
- (g) Respondent shall not be directed to reap the six arable lands at Ha Nkokana, keep a record of the yield so that it can be divided in the near future.
- (h) Respondent shall not be restrained from disposing or selling the Toyota Landcruiser registration No A 4510 and the Datsun Van registration No C 0650 which Applicant claims
- (i) Why Respondent shall not pay the costs of this application."

A rule nisi was issued giving the applicant interim relief pending the return date which was extended from time to time. Affidavits ran to over a hundred pages but at the end of the day the parties agreed to frame points of law for adjudication by the Court. These were duly answered in a judgment delivered on the 24th June 1983. I gave an opportunity for either party to appeal. Neither of them did so and the result is that the parties, who failed to reach an agreement on how to share property accumulated by the

/joint

joint effort during a "marriage" which the law does not recognise as such are now proceeding by way of action (CIV/T/76/84) to determine the dispute as dictated by the tenets of customary law

The question of costs of the application was reserved

The Court was moved on the 9th March "to revive and extend the rule nisi"

On 17th April 1984 I heard argument Mr Maqutu sought an order that the rule nisi "be confirmed" He submitted that since he was substantially successful on all the points submitted for adjudication, the applicant should be awarded costs of the application Mr Mofolo resisted the award of costs against his client on the grounds that customary law may after all award the applicant little or nothing

I regret to say that the attorneys of both parties have made it a point to include unnecessary and irrelevant matters and arguments in the voluminous affidavits Costs would not have escalated to such an extent if the application had been for an interim interdict pending the institution and eventual determination of proceedings. In fact the whole action would probably have been completed by now This is as much the fault of applicant as it is the respondent's since the latter thought, unreasonably though understandably, that the consent order of the proceedings for divorce and nullity determined the issues between the parties for good He was of course at fault for attempting to take the law into his own hands but this could have been stopped without so much

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I order the respondent to pay only one tenth of applicant's costs



CHIEF JUSTICE
23rd May 1984

For Applicant Mr Maqutu

For Respondent Mr G N Mofolo