

IN THE HIGH COURT OF LESOTHO

In the Application of .

JOSAE SECHOCHA MOTJOTJI

Applicant

MATHOLANG AXNIA MOTJOTJI

1st Respondent

BOARD OF LIQUIDATORS OF THE
TEACHER'S PROVIDENT FUND.

2nd Respondent

J U D G M E N T

Delivered by the Hon., Chief Justice, Mr. Justice
T S. Cotran on the 30th day of May,
1984

It is common cause that the applicant Josae Sechocha Motjotji is the customary law heir to the estate of his father Nathaniel Sechocha Motjotji, who died in January 1983. Josae is the eldest son of his father's first wife. The deceased Nathaniel married the 1st respondent, his second wife, by civil rights on the 11th January 1955. We do not know if the first wife was dead or not at the time but she is now dead. The estate of the deceased Nathaniel stands to benefit some M2,000, being his entitlement from the Teacher's Provident Fund

This is an application by the heir Josae in which he seeks (1) an order restraining his father's second wife (1st respondent) from "holding out" that she was the heir and (2) an order directing the Board of Liquidators of the Teacher's Provident Fund (2nd

/respondent)

respondent) to pay the deceased's entitlement to him for the benefit of the deceased's family including the 1st respondent if she is entitled to anything.

The deceased's second wife opposes the application on the ground that she is heir "under the common law as the marriage was civil"

The fact that the deceased's second marriage was by civil rights does not per se make the wife of the second marriage heir. The deceased's estate falls to be administered under the customary law unless it is alleged and proved by action that the deceased had abandoned Sesotho custom and adopted a European way of life - s.3(b) of Administration of Estates Proclamation No.19 of 1935. There are no such averments in the opposing affidavits.

It follows that the application must be granted as prayed with costs awarded against 1st respondent. The 2nd respondent did not oppose the application. This application succeeds but without prejudice to the 1st respondent to sue the heir, if so advised, for a share of her husband's estate, or for maintenance, or for refund of expenses she claims to have spent on the funeral

CHIEF JUSTICE
30th May 1984

For Applicant Mr. Pitso
For Respondent Mr. Kambule