

IN THE HIGH COURT OF LESOTHO

In the Matter of

MATHIAS MOJALEFA RAMOHANOE Applicant

and

'MATHABANG RAMOHANOE	1st Respondent
LESOTHO BANK	2nd Respondent
BARCLAYS BANK	3rd Respondent
STANDARD BANK	4th Respondent
METROPOLITAN HOMES TRUST LIFE LIMITED	5th Respondent

J U D G M E N T

Delivered by the Hon Mr Justice B.K. Molai
on the 14th day of April, 1986.

On 26th February, 1986, the applicant herein filed with the Registrar of this Court an ex parte application in which he moved the court for an order framed in the following terms -

- "1. A rule nisi be issued returnable on a date and time to be determined by the above Hon. Court calling upon the Respondents to do the following
- (a) Calling upon the First Respondent to show cause why
 - (i) Applicant shall not be declared the heir by Basotho custom of the estate of the late Lucas Ramohanoé.
 - (ii) First Respondent shall not be restrained from holding herself out as the haïress of the estate of the late Lucas Ramohanoé.
 - (iii) First Respondent shall not account to this Hon Court for any portion of the estate which has come into her hands up to now.
 - (iv) Now 1st Respondent shall not be restrained from receiving or disposing of any property belonging to the late Lucas Ramohanoé until this

2/ Hon.

Hon. Court has disposed of this application.

- (v) The Deputy Sheriff shall not close the Trading Station and keep the keys until the finalisation of this application.
- (b) Calling the second, third, fourth and fifth Respondents to do the following
 - (i) Disclose to the Deputy Sheriff in writing the amounts deposited by the late Lucas Ramohanoë with them and which are in their possession.
 - (ii) An order restraining the second, third, fourth and fifth Respondents from handing the moneys to the first Respondent until this Hon. Court shall have declared who the Heir is
- 1. That prayers 1(a)(iii) (iv) and (v) and prayers 1(b)(i) and (ii) to have immediate effect pending the finalisation of this application."

I granted the application as prayed in terms of prayers 1 but as regards prayer 2 in terms of 1(a)(iv)(v) and 1(b)(ii) only on the same day, 26th February, 1986.

On 17th March, 1986, 1st Respondent intimated her intention to oppose confirmation of the order and duly filed the opposing affidavits. Second, third, fourth and fifth Respondents did not oppose the application and it is presumed they intent to abide by the decision of this Court. There was also a replying affidavit filed by the Applicant on 24th March, 1986.

In as far as it is material, the evidence disclosed by the affidavits is that Lucas Ramohanoë was originally married to one Clementina 'Manthabiseng Ramohanoë by civil rites. They, however, divorced in 1973. The applicant is one of the children and the eldest son born out of the marriage, in 1962.

3/ After his

After his marriage to Clementina 'Manthabiseng was dissolved, Lucas Ramohanoë got married to the present 1st Respondent, in 1974, according to Sesotho Law and Custom.

There is some uncertainty about this marriage. Although 1st Respondent avers that she got married for the first time to Lucas Ramohanoë who paid ten(10) head of cattle as "bohali" to her father, Majoro Mthobi, in 1976, this is disputed by Motsoabane Makhanya who in his affidavit deposes that 1st Respondent was previously married to the late Motsamai Lintsa, the son of his father's elder brother, and 8 head of cattle were paid as "bohali". She was given the name of 'Mathabang because her first child was named Thabang. 1st Respondent does not seem to deny that she has a child by the name of Thabang. She says, however, that she got the child as a result of the late Motsamai Lintsa impregnating her but they never got married to each other.

Well if 1st Respondent and Lintsa never got married to each other the child was clearly 1st Respondent's illegitimate child and according to Sesotho Customs, it belonged to her parents. She could not, therefore be named by that child. It seems to me, therefore, there is some sense in the evidence for the applicant that before she got married to Lucas Ramohanoë 1st Respondent was married to Motsamai Lintsa. Whether after the death of Lintsa, 1st Respondent could not lawfully get married to Lucas Ramohanoë without the approval of the family of Lintsa is not clear to me. I however, consider it unnecessary to decide this point for the decision in this case.

Be that as it may, it is common cause that on 27th December, 1985, Lucas Ramohanoë died leaving behind an estate the value of which is estimated to be approximately M60,000 or over. According to applicant, the estate comprises a trading station, over 200 sheep, 7 cattle, 3 motor vehicles and money in the custody of various financial institutions. This is confirmed by 1st Respondent who, however, disputes the inclusion of one of the motor vehicles Registration No. 7795, the trading station and moneys accruing therefrom in

4/ the estate.

the estate. She contents that the trading station and the motor vehicle were donated to her by the late Lucas Ramohanoë long before his death. They cannot, therefore, form part of his estate. On this contention, 1st Respondet invoked the support of Piet Mosoka and Chief Mohale who respectively, claimed to be the late Lucas Ramohanoë's father and chief. In their affidavits Mosoka and Mohale averred that they were aware that Lucas Ramohanoë donated the trading store to 1st Respondent. They did not, however, say whether or not this was done in the presence of the Applicant or he was notified of it at some later stage. No mention is made in their affidavits about the donation of the motor vehicle to 1st Respondent by the late Lucas Ramohanoë.

There is some authority that a man may, during his life time, donate his property to members of his family, including his wife. vide s.14(1) of Part I of the Laws of Lerotholi and Poulter in his work Family Law and Litigation in Basotho Society p. 311. However, this seems to be subject to certain conditions one of which is that the heir or some responsible members of the family who would be able to notify him of the donation at some later stage must be present at the time of its making - see Poulter op. cit. p.311 et seq.

In the present case the applicant knows nothing about the donations nor is there evidence that he was ever appraised of them by some responsible members of the family who were present at the time of their making. I am, therefore, not convinced that the late Lucas Ramohanoë donated the trading station and the motor vehicle to 1st Respondent as the latter expects this Court, to believe.

It is common cause that following the death of Lucas Ramohanoë, a family meeting was held by some of the members of his family. According to the Applicant, a decision was taken at that meeting that 1st Respondent would be the heiress to the estate of the late Lucas Ramohanoë. Following that decision a letter was addressed to the chief of the area by some members of the family of Ramohanoë

advising him of the family decision. In consequence of that letter, the chief also wrote to the Local Administrative Officer for the district of Mophale's Hoek advising him that in accordance with the decision of the family of Ramohanoe 1st Respondent was the heiress to the estate of the late Lucas Ramohanoe. As soon as she became aware that steps were being taken to have 1st Respondent declared the heiress to the estate of the late Lucas Ramohanoe, the applicant raised his objection by addressing annexure "B", the letter dated 5th February, 1986, to the Local Administrative Office.

1st Respondent denies that at the family meeting she was nominated heiress to the estate of the late Lucas Ramohanoe. She avers that she was nominated a guardian and not heiress. She is again supported by Piet Mosoka and Chief Mophale both of whom filed affidavits in this regard.

However, applicant's averment that 1st Respondent was nominated as heiress and not guardian by the family decision finds support in annexures "A1" and "A", letters addressed to Chief Mophale and the Local Administrative office by the family of Ramohanoe and Chief Mophale himself respectively.

After reading both the Sesotho and the English versions of these letters, there is no doubt whatsoever in my mind that in annexure "A1" the family of Ramohanoe advised Chief Mophale that 1st Respondent (in her own right and not as guardian) was the person entitled to exercise all rights in the estate of the late Lucas Ramohanoe. Likewise in annexure "A" Chief Mophale unequivocally advised the Local Administrative Office that in terms of Annexure "A1" 1st Respondent was the heiress to the estate of the late Lucas Ramohanoe.

On a balance of probabilities, I am satisfied, therefore, that applicant's averment that 1st Respondent was, by the decision of the family of Ramohanoe, nominated heiress and not guardian to the estate of the late Lucas Ramohanoe is correct. Its denial by 1st Respondent, Mosoka

6/ and Mophale

and Mohale in their opposing affidavits is, therefore, nothing but an after-thought which I have no hesitation to reject as false.

It is trite law that according to Sesotho Law and Custom the heir is the first male child of the first married wife - vide Section 11(1) of Part I of the Laws of Lerotholi. By and large, I am satisfied that on the evidence, the applicant is the first male issue born out of the marriage between the late Lucas Ramohano and his first wife Clementina 'Manthabiseng Ramohano. Whether or not Lucas Ramohano lawfully got married to the 1st Respondent at a later stage is not material in as much as it cannot change the position of the Applicant as the first male issue of Lucas Ramohano and therefore his rightful heir.

The family decision nominating 1st Respondent to be the heiress to the estate of the late Lucas Ramohano was clearly a perversion of the accepted Sesotho law and custom. This court will, therefore, consider itself not bound by the decision and declare Applicant the rightful heir to the estate of his father, the late Lucas Ramohano.

I have already found that there is no convincing evidence that 1st Respondent was donated the trading station and the motor vehicle registration No.7795 both of which form, in my opinion, part of the estate of the late Lucas Ramohano. The Applicant is, therefore, the heir to the whole estate.

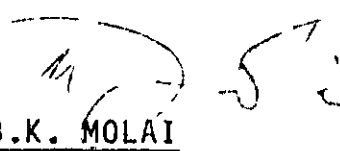
The difficulty in this case is that although he is 24 years of age, the Applicant is still unmarried and therefore a customary law minor. It is argued that as such the applicant has no locus standi in judicio i.e. he has no right to bring this matter before a court of law. It is to be observed, however, that as he is 24 years old, the Applicant has, in terms of the provisions of Ordinance No. 62 of 1829, attained the age of majority and,

7/therefore

therefore, an adult. As an adult the Applicant can surely sue and be sued before this Court.

It seems to me there is here a question of conflict between a rule of customary law and statute. That being so, the principle is, as Poulter puts it at page 59 of his work Family Law and Litigation in Basotho Society, that "Rules of Customary law have to give way in face of conflicting statutory provisions." For this reason I am unable to agree with the argument.

It is obvious from the foregoing that the view that I take is that this application ought to succeed. The rule is accordingly confirmed in terms of prayers 1(a) and (b) of the notice of motion.


B.K. MOLAI
JUDGE

14th April, 1986.

For Applicant • Mr. Pitso,
For Respondent Mr. Mda.