

IN THE HIGH COURT OF LESOTHO

In the Application of

THABISO RAMAHATA

Applicant

v.

NTHABISENG PHEPHETH & OTHERS

Respondent

J U D G M E N T

Delivered by the Hon. Mr Justice J.L. Kheola
on the 24th day of February, 1986

It is common cause that the Applicant is the father of the late Thabo Ramahata who died on the 13th May, 1985 at E.R.P. Mine in Boksburg. It is also common cause that an amount of R6,000-00 in the form of death benefits is to be paid by the Rand Mutual Insurance Company of Johannesburg. It is this sum of money which forms the subject matter of this dispute.

The Applicant claims the money on the basis that as his son was not married when he died, he is the sole heir and or the beneficiary of the estate of the late Thabo Ramahata. The First Respondent is opposing this application on the ground that she was legally married to the late Thabo Ramahata and that the late Thabo appointed her as his beneficiary.

In his founding affidavit the applicant avers that as father of the late Thabo Ramahata he would have known if he married the First Respondent. He says that he personally applied for a residential site for his late son at Ha Ratsosane and has annexed a Form C (Annexure "B") as proof that his late son had his home at Ha Ratsosane. He deposes that he met the First Respondent at the residence of his late son who introduced her as a servant he had employed to look after his premises. He says that the

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First Respondent wrongfully and unlawfully represented that she is the lawful wife of the late Thabo Ramahata well knowing that such representation is false.

The applicant is also basing his claim on the fact that he was nominated by the family council to be the heir and beneficiary of the late Thabo Ramahat (See Annexure C).

It is common cause that the sum of R1,000-00 has already been paid to the First Respondent by the Second Respondent who according to its records the late Thabo Ramahata had appointed the First Respondent as his beneficiary, (See Annexure "A" to Second Respondent's affidavit). It will be noticed that Annexure "A" is a contract of service entered into between the late Thabo Ramahata and the Second Respondent in which the former gave the name of the First Respondent as his wife and nominated her as his death beneficiary.

The supporting affidavit has been made by one Letsabile Ramahata who states that he is the younger brother of the late Thabo and knows that his late brother was still a bachelor when he died. He says that to the best of his knowledge the First Respondent was a caretaker of the residence of his brother. He goes on to say that at best she (First Respondent) was the girl friend of his late brother.

The First Respondent deposes that she entered into a civil marriage with the late Thabo Ramahata on the 22nd March, 1980 at the administration offices of Boksburg in the Republic of South Africa. She is unable to annex their marriage certificate because shortly before her husband died, he took with him their marriage certificate to his place of work intending to have it framed. After his death, all his personal belongings were collected by the Applicant and that it is her genuine and bona fide belief that the said certificate was amongst her late husband's belongings. She, however, telephoned the administration offices of Boksburg in an attempt to secure a copy of their marriage certificate but was informed that such offices and

documents therein were destroyed by fire as a result of the present social disturbances in the Republic of South Africa.

She further avers that out of their marriage a boy named Albert Tseliso Ramahata was born on the 20th November, 1981. She also refers to an incident on the 13th March, 1983 when she and the First Respondent appeared before the Chief of Ha Ratsosane. She was complaining that she went to her maiden home and when she returned to her house she found that the Applicant had expelled the caretaker and locked her house. He refused to give her the keys alleging that she was not his daughter-in-law but a whore. Eventually the late Thabo was called from his place of work and confirmed that the First Respondent was his wife (See Annexure "D").

Regarding the existence of a valid marriage the onus is on the First Respondent to prove on a balance of probabilities that she was legally married to the late Thabo Ramahata. A marriage certificate or an extract from the marriage register is usually taken as prima facie evidence of a marriage. However, this does not mean that where a marriage certificate has been destroyed and a copy of such marriage cannot be found after a diligent search, a marriage cannot be proved by other available evidence. People who were present when the marriage was solemnized can give evidence and such evidence is even more reliable than a marriage certificate where identity of the parties is involved (Rex v Mbonambe and another, 1949 (3) S.A. 558 at p. 561).

In the instant case the First Respondent has explained why she is unable to produce a marriage certificate, but has failed to call as witnesses any of the people who were present at the solemnization of the alleged marriage. At least there must have been two people who appeared as their witnesses at the marriage ceremony, and one of them must have been well known to the First Respondent. It was also necessary that the First Respondent should have obtained an affidavit from some officer who is now in charge of the Boksburg administration offices to confirm that

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offices and the documents therein were destroyed by fire during the social disturbances in that town.

The evidence of the chief of Ha Ratsosane that he once saw the marriage certificate does not carry the First Respondent's case any further because he does not even know whether it was a certified copy of such a marriage. Furthermore he does not even explain under what circumstances he saw the certificate. If it had been framed he would probably have seen it on the wall where Basotho usually hang them. The Applicant has always challenged the First Respondent that she was not lawfully married to his late son and called her a whore (See Annexure "D" to First Respondent's opposing affidavit). That the late Thabo Ramahata declared that the First Respondent was his wife is not evidence that there was a valid marriage between them.

I have come to the conclusion that the First Respondent has failed to prove that she was legally married to the late Thabo Ramahata.

The Second Respondent has not formally opposed the application but has filed an affidavit in which he tries to clarify the status of the First Respondent in the contract of employment entered into between the late Thabo Ramahata and the Second Respondent. In that contract the late Thabo stated that his wife was the First Respondent and appointed her as his death beneficiary. The money will be paid by the Rand Mutual Insurance Company which had insured the life of the late Thabo. The important question of law raised by the Second Respondent's manager in his affidavit is that the proceeds from a life insurance policy do not form portion of the estate of the late Ramahata because he had clearly appointed a separate beneficiary to receive any death benefits. In other words, he is saying that even if the First Respondent is not legally married to the late Thabo Ramahata she is entitled to receive the proceeds from the insurance because she was properly appointed as a beneficiary. In the Republic of South Africa the insurance business is governed by the Insurance Act, No. 27 of 1943. I do

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not have access to that statute. It may be that it excludes the proceeds of life insurance policy from forming part of the estate of the deceased. We do not have a similar statute in this country and it must follow that in the event of death or insolvency incorporeal rights, like other property, pass by operation of law to the executor or trustee, as the case may be, of the person entitled.

The other problem facing this Court is that I do not have the copy of the actual insurance policy contract between the late Thabo Ramahata and the Rand Mutual Insurance Company, what I have before me is a contract of service in which the First Respondent was appointed as the beneficiary. I have stated above that as the First Respondent has failed to prove a valid marriage between herself and the late Thabo Ramahata she is not entitled to receive any proceeds from the estate of the late Thabo Ramahata. The proceeds must be received by the heir. According to Sesotho law and custom the father of an unmarried son is the heir of his estate.

There is evidence that a boy named Albert Tseliso Ramahata was born out of the relationship of the late Thabo Ramahata and the First Respondent As the illegitimate child of Thabo, that child is entitled to maintenance from the estate of his late father.

The application is granted as prayed There will be no order as to costs

J. L. Kheola
J. L. KHEOLA
J U D G E .

24th February, 1986.

For Applicant - Mr. Kolisang
For Respondents - Mr. Nthethe