

IN THE HIGH COURT OF LESOTHO

In the matter between:-

PUSELETSO 'MATSELANE RAMALEBO

Applicant

and

LESOTHO BANK
PUSELETSO RAMALEBO (MABEKE LECHOKO)
T.E.B.A. (MAFETENG) (THE EMPLOYMENT
BUREAU OF AFRICAN LIMITED)

1st Respondent
2nd Respondent
3rd Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 4th day of September, 1989

On the 14th July, 1988 the applicant applied for and obtained an interdict against the respondents couched in the following terms:-

- "1. That a Rule Nisi be issued calling upon the Respondents to show cause, if any, on a date to be fixed by the above Honourable Court, why:
 - (a) The 1st Respondent shall not be restrained forthwith from paying to the 2nd Respondent or any of 2nd Respondent's payees an amount of M24,812.64 in the 2nd Respondent's account with the Lesotho Bank Branch/agency at Mafeteng and keep the said amount in a suspense account until the finalisation of this application.

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- (b) The 3rd Respondent shall not be directed to pay the amount of M24,812.64 to the applicant as the Lawful wife and beneficiary of the late Motlatsi Ramalebo.
- (c) The 2nd Respondent shall not pay the costs of this application; and the 1st and 3rd Respondents ONLY in the event of opposition.
- (d) The applicant may not be granted such further and/or alternative relief that the Honourable Court may deem fit;

- 2. That Prayer 1 (a) above should operate as an interim relief with immediate effect."

On the return day it was found that there is a dispute of fact as to which Puseletso the deceased was referring to when he signed a contract of employment with the third respondent. In the contract form the deceased appointed Puseletso as his death beneficiary. This Court must decide which Puseletso he had in mind because both the applicant and the second respondent claim that they are Puseletso.

In her founding affidavit and in her oral evidence before this Court the applicant deposed that she was lawfully married in accordance with Sesotho custom to Motlatsi Ramalebo (hereinafter called the deceased) in Mafeteng Urban Area in February, 1973. The deceased died on the 2nd March, 1988 at Deelgral Mines, Carletonville where he was employed as a mineworker. At the time of his death their marriage still subsisted. In 1979 the applicant came to Maseru and lived here because she is employed at Bright Garments Factory in the Maseru Industrial Area. Their two children are still living with her mother-in-law at Ha Kutoanyane in the Mafeteng urban area.

The applicant deposed that the deceased used to visit her here in Maseru during weekends and leave. They sometimes went to their home at Ha Kutoanyane and spent a few days there.

It is common cause that in August, 1987 the deceased cohabited with the 2nd respondent at the marital home of the 2nd respondent when the deceased was on leave. When he returned to work he left her there. The 2nd respondent has deposed that the deceased had abducted her and married her according to Sesotho customary law.

I do not propose to deal with the question of marriage in any detail because it is not relevant except to the extent it shows what connection existed between the deceased and the applicant as well as the 2nd respondent.

The evidence before court proves that the deceased and the 2nd respondent cohabited but that there was no formal marriage. He intended to formalise their relationship as soon as possible but he died before he could do so.

The real issues before this Court are:

- (a) Is the name Puseletso shared by the applicant and the 2nd respondent?
- (b) which Puseletso did the deceased appoint as his death beneficiary on the 12th August, 1987 when he signed a contract with the 3rd respondent?

The applicant called as witnesses her mother and her maternal grandfather who testified that when the applicant was born she was

named Puseletso. When she got married to the deceased she was given the name of 'Matselane. I have accepted their evidence and have come to the conclusion that applicant's maiden name is Puseletso.

The 2nd respondent called as a witness her mother who testified that the 2nd respondent's maiden names are Puseletso and 'Mabeke. She handed in a health booklet which shows that in July, 1986 when she went to the Government Dispensary at Mafeteng she registered by the name of Puseletso Lecheko (See Exhibit C). She also handed into Court an application form for a passport and a copy of the first page of her passport (Exhibit B) which shows her names as Puseletso 'Malefu Ramalebo. Exhibit B does not carry her case any further because the affidavit about her date of birth was sworn to by her mother who has already given evidence before this Court. I am convinced that the 2nd respondent's names were Puseletso and 'Mabeke.

To answer the question (b) posed above the applicant called as a witness one Kikine Kikine who is the assistant representative of the 3rd respondent at Mafeteng. His evidence related to the manner in which a contract form (Annexure "C" to the founding affidavit) is filled by the recruiting clerk and then brought to the senior or assistant representative for checking. In the present case Annexure "C" was filled by one Sam Mosala. The particulars of the employee are supplied by the employee himself. If the employee has two wives this must be recorded under the personal particulars of the employee. The particulars which appear in the contract form must tally with the particulars in the employment record card (Exhibit "A").

Sam Mosala testified that on the 12th August, 1987 he filled Exhibit "C". The information came from the deceased. He (deceased) told him that his first wife, 'Matselane was dead and that his present wife was Puseletso and appointed her as his death beneficiary. Sam said that according to their procedures the name of the deceased wife must appear in the contract form and it must be shown next to her name that she is deceased. The name of the present wife must follow immediately after that of the deceased wife. He had nothing to do with the transfer of the information in Exhibit "C" to Exhibit "A". The word "deceased" appearing in front of 'Matselane was written on the day the contract form was filled.

The second respondent handed into Court two other contract forms which were signed by the deceased on two previous occasions when he went to the mines. The first one is dated the 24th April, 1985. In that contract form the deceased said the name of his wife was 'Matselane. He appointed his mother, 'Matsotang as his death beneficiary.

The second contract form is dated the 17th June, 1986. In it he said the name of his wife was 'Matselane and appointed her as his death beneficiary.

In the contract form now in question he is alleged to have said 'Matselane was deceased and that his present wife was Puseletso whom he appointed as his death beneficiary.

I have no doubt that Sam Mosala was telling the truth that the information of the personal particulars in Annexure "C" came from the

deceased. He gave his evidence in a very straightforward manner and he impressed me as a truthful witness. He said the word "deceased" in Annexure "C" was written by him. I have no reason to doubt him on this point.

Mr. Matsau, applicant's attorney, submitted that Sam Mosala testified that he did not know who made the additions and erasures on the employment record card. However, there is a great similarity between the word "deceased" in Exhibit "A" and on Annexure "C". If Mr. Matsau wanted to show the similarity of the handwriting I think the applicant ought to have called a handwriting expert.

He submitted further that Sam Mosala was merely trying to explain the contents of a document that was seemingly filled up by him. Sam Mosala even said that deceased did not sign or thumb sign the form. However the form bore the thumbprint of the recruit. He concludes by saying that it is therefore doubtful whether Sam Mosala wrote the word "deceased" on the employment contract form. I do not agree with this submission because Sam Mosala testified that the signing of the form is done before the attesting officer at Labour Office. It is true that when the form left his office the thumbprint of the recruit was not yet affixed to it.

The employment contract form has four carbon copies when it is signed. The original copy goes to Labour Office; one copy is given to the miner; One copy is sent to Teba Liason Office outside Lesotho; one copy is sent to the mine; one copy is sent to Manpower Data Centre and the last copy is kept by local Teba office. If the applicant

wanted to prove that the word "deceased" was not written by Sam Mosala at the time the form was filled up, she ought to have obtained a copy from any of the offices which have copies. It would be impossible for any one person to have gone to all those offices and changed the forms. The form before Court is the original copy which obviously comes from the Labour Office.

Mr. Mda, counsel for the 2nd respondent, submitted that it is most unlikely that the deceased could have decided to refer to the applicant as Puseletso in the employment contract form, a name he was not used to using in his lifetime. He submitted that the documents were exhibited in Court showing that the deceased used to refer to the applicant as "'Matselane" and not "Puseletso". The applicant admitted that she was not used to calling herself Puseletso and that the deceased used to refer to her as 'Matselane and not Puseletso. The names appearing in her passport which she obtained in 1975 are 'Matselane Mary Ramalebo. Puseletso does not appear in her passport.

It seems to me that although the applicant has established that her maiden ^{name} is Puseletso she has failed to prove on a balance of probabilities that the deceased was appointing her as his death beneficiary on the 12th August, 1987 when he signed Annexure "C" because it is common cause that he was not used to calling her Puseletso. On the previous occasion, i.e. on the 17th June, 1986 when he signed a similar contract form, he referred to the applicant by the name of 'Matselane as his death beneficiary.

The second reason why I am of the opinion that the deceased was not referring to the applicant in Annexure "C" is that he actually

lied to the recruiting clerk, Sam Mosala, that the applicant was dead. He could not have nominated a person he alleged to be dead as his death beneficiary. It is very clear he deceived Sam Mosala that the applicant was dead with the sole purpose of making it easy for him to appoint the 2nd respondent as his death beneficiary.

It will be noticed that on the 24th April, 1985 when the deceased signed an employment contract form, he appointed his mother, Matsotang, as his death beneficiary. He did not appoint the applicant despite the fact that at that time their marriage was already in subsistence. This is proof of the fact that the deceased was of the opinion that he was under no obligation to nominate his wife as his death beneficiary whenever he entered into a contract with the 3rd respondent.

Much was made of the fact that at the time of his death there was no valid marriage between deceased and the 2nd respondent. I have already said that marriage is irrelevant as far as the nomination of a death beneficiary is concerned. An employer is free to nominate any person he likes (see Malimakatso Ramahata v. Thabiso Ramahata C. of A. (CIV) No.8 of 1986). In the present case the 2nd respondent has proved a relationship between herself and the deceased. They lived together as man and wife before he went to the mines for the last time where he died.

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I come to the conclusion that there is overwhelming evidence that the deceased appointed the 2nd respondent as his death beneficiary.

In the result the application is dismissed with costs.

J. L. Kheola
J. L. KHEOLA
JUDGE

4th September, 1989.

For the Applicant - Mr. Matsau.
For 2nd Respondent - Mr. Z. Mda.