

IN THE HIGH COURT OF LESOTHO

In the Application of :

LITSITSO CHOKOBANE

Applicant

V

JOSHUA Noabambi  
LESOTHO FUNERAL SERVICES

1st Respondent  
2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 6th day of October, 1989.

This application was originally brought before court ex parte. In other words only one side was represented before court when the matter came to it. The applicant purported on the ex parte application to bring this application on the basis of being a successor and heir to his father. It was on that basis that a rule nisi was then issued, whereas the proper approach is for a party which is moving an application ex parte to disclose everything, in other words show the bona fides to the court.

One such fact should have been - as shown and exposed by the respondent - that actually applicant is not the heir, the heir is his elder brother who is late, and this is common cause. And we have also been told that the applicant's deceased's brother has sons, male twins, in fact those are the people who ought to have brought this application for they are the heirs of the applicant's father in the absence of their late father. And if the family had appointed the applicant to appear here it should have been made clear that he is appearing in a

/representative

representative capacity on behalf of those twins or one of them. But as it is, he told me that he is the successor and heir as was pointed out in so many words by counsel for the 1st Respondent. The court was perfectly entitled to dismiss the application on that score. However applicant's counsel has referred me to what I find ~~irresistible~~, namely Annexure A and JDL that in fact the payments which were affected by the 1st Respondent to applicant's family were in respect of elopement. Nothing shows that there was marriage in the matter. But at the same time it is untenable to say, in fact that the applicant had any locus standi to bring this application before this Court.

What I do find is - and I make a finding, a positive finding which is not what I have been requested to do but still a positive finding - that there was no marriage between the first respondent and the deceased. This I arrived at on the basis of the evidence that is available before me. In the same breath I find that the applicant was not entitled to come to this Court, he has got no locus standi.

Consequently with the exception of the technical prayers which preface the application as to urgency the rule nisi is discharged with costs.

J U D G E.

6th October, 1989.

For Applicant : Mr. Mafisa

For respondents : Mr. Pheko.