

IN THE HIGH COURT OF LESOTHO

In matter between:

MATSELISO THAI

Applicant

and

STANDARD CHARTERED BANK AFRICA P.L.C.
'MAREFILOE SEMPE (Alias Thai)

1st Respondent
2nd Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 25th day of November, 1991

This is an application for an interdict against both respondents. The applicant avers that he was married to his late husband in December, 1958 in accordance with Sesotho law and custom. In June, 1981 his late husband started living with the second respondent as his mistress at Thabaneng in Mohale's Hoek in her second house till on the 4th February, 1990 when her late husband passed away.

The applicant avers that during his lifetime her late husband and herself had a butchery and a general dealers shop at Thabaneng in Mohale's Hoek. The house and the businesses are not in the same yard. With the proceeds from the businesses her late husband bought three vehicles named in

paragraph 8 of her affidavit. He also operated a current account No 0670-461-04371 at the Mohale's Hoek branch of the first respondent as well as account No. 0670-176-99831 with the same branch.

It is common cause that before and after the death of applicant's late husband the second respondent has been operating the accounts mentioned above. It is again common cause that one of the vehicles mentioned above is registered in the name of the second respondent and the other two vehicles are registered in the name of the child of the second respondent with her late husband. It is the applicant's contention that the second respondent and her child have no right to the vehicles which were bought with the proceeds from the business which the second respondent found when she first lived with her late husband.

The applicant is presently running the businesses at Thabaneng. The second respondent refuses to give her her late husband's bank books and other savings accounts book which her late husband left in the second house. The second respondent alleges that she has given such bank books to her lawyers. The second respondent uses the three vehicles mentioned above and denies her the use of those vehicles.

The second respondent avers that she was married to the

late Samuel Kekeletso Thai by customary rites in 1978 and she lived with him as husband and wife until he died on the 4th February, 1990. On the 12th June, 1981 about eight (8) head of cattle were paid as part of bohali in respect of her said marriage (See Annexure "A"). Three children were born of that marriage. She denies that the house in which she lived with her late husband was ever the property of the applicant. She avers that the butchery and shop which her late husband had prior to their marriage had closed down as he was ill and unable to run the same. After their marriage they put together the funds they had and opened the shop and butchery at Thabaneng and she personally ran these businesses herself as her husband was still not very well.

The second respondent avers that the vehicles were bought out of the proceeds from her own shop situate at Ha 'Mapotsane, which was doing very well compared to the one at Thabaneng. She was personally involved in the purchase of these vehicles. The licence of the shop at ha 'Mapotsane is in her name. It belonged exclusively to her house. The motor vehicles also belong to her house exclusively because they were purchased with the proceeds from her shop. The accounts mentioned above contained her money accruing from her shop at ha 'Mapotsane.

With regard to the two businesses at Thabaneng there

seems to be no dispute that when the second respondent got married to the late Samuel Thai they were already in existence but had closed down because of the poor health of the late Samuel Thai. The second respondent avers that she and her late husband had opened the shop and butchery at Thabaneng. She personally ran those businesses herself as her late husband was still not very well. I understand the second respondent to mean that the buildings were already there and that they merely reopened them and bought stock. I am of the view that as far as the two businesses are concerned the second respondent has no right to them. She and her late husband used those premises and put in their own stock and traded. It seems to me that the applicant cannot claim any right to the proceeds from the sale of the stock not bought with her own money or money from her own house.

It is quite clear that the late Samuel Thai was a polygamist. He had three wives. The applicant was the second wife and the second respondent was the third wife. Annexure "A" to the opposing affidavit shows that part of "bohali" was paid on the 12th June, 1981. In her affidavit (paragraph 5.2) the second respondent avers that she was married by customary rites to her late husband during 1978 and she lived with him as husband and wife until his death last year. She has not annexed any document or affidavit by a member of her family to confirm that the late Samuel Thai married her in 1978. It

seems that they lived as man and wife without a formal marriage until 1981 when they lawfully entered into a valid marriage. The applicant was completely unaware of this marriage until she instituted these proceedings and she was all along under the impression that her late husband was living with the second respondent as his mistress. I am convinced that the second respondent was lawfully married to the late Samuel Thai as his third wife.

Now under the customary law principle of "mala ha a jane" (houses do not eat each other) when a polygamist dies, the property of each house devolves upon the eldest son of the house, but the widow and the children are entitled to maintenance out of it. As I have already found the deceased had three houses. The applicant's house cannot be allowed to eat the other houses. The proceeds from the sale of stock which the deceased and the second respondent bought with their own funds, cannot go to the second house of the applicant.

It follows that even the motor vehicles which the deceased and the second respondent bought with the proceeds from the sale of the stock they bought with their own funds cannot be inherited by the second house. Moreover, all the vehicles in question are not registered in the name of the deceased. During his lifetime he made it quite clear that the vehicles belong to his third house by registering them in the

names of the second respondent and her daughter.

With regard to the house in which the deceased and the second respondent lived, the applicant has failed to prove that long before the second respondent started cohabiting with the deceased the house was already built as her second house. All what she alleges is that it is her house. To make things more difficult it is on a different site from that of the businesses. I come to the conclusion that the applicant has failed to prove that the deceased built that house for her. The second respondent and her late husband were living in that house when the latter died. The applicant never complained during the lifetime of the deceased that he must build a house for his mistress. They occupied the house openly and without any complaint by her. What was important in the present proceedings was for her to prove that the house was built for her own house.

The money which was withdrawn by the second respondent does not belong to the house of the applicant. Again she has not proved that before the deceased and the second respondent got married to each other the bank books and the money were already there and belonged to herself and the deceased. The evidence before the Court adduced by the second respondent is that she and the deceased joined forces and amassed all the money found in the accounts kept by the first respondent. The

applicant never took any part in the accumulation of the money in question. The second respondent amassed the wealth for her own house and not for the applicant's house. She can remain in occupation of the business' premises at Thabaneng but not the house.

In the result the application is dismissed with costs.

J.L. KHEOLA

JUDGE

25th November, 1991.

For Applicant - Mr. Nathane

For Respondent - Mr. Phafane.