

CIV/APN/421/93

IN THE HIGH COURT OF LESOTHO

In the matter between:

KUCZYNSKI MARILYN DENISE	Applicant
and	
DANZIGER YEHUDA	Respondent

JUDGMENT

Delivered by the Honourable Acting Mr. Justice T. Monapathi
On the 8th day of February, 1994

On the 8th October, 1993 a rule nisi was issued by my brother Justice J. L. Kheola as more clearly shown below, that is:

- 1) that normal rules required for service be dispensed with.
- 2) that the Respondent be restrained from interfering with the affairs, in any way, of the Estate of the Applicant's late husband, viz. Felix (otherwise known as Fishel) Kuczynski, and/or in any of the Company's, where the deceased had a major interest, share-holding or control, as presently known to the Applicant:-
 - 1) International Sports (Pty.) Ltd LNDC Building, Kingsway, Maseru

- ii) Fishel (Pty.) Ltd First Floor, LNDC Building, Kingsway, Maseru
 - iii) Khotsong Townhouses No 14, Maseru (formerly known as 'the Arrival Centre')
- 4) Restraining him from holding himself or purporting to represent the beneficiaries, in any way, in the deceased's estate, or that he be officially charged with the total Administration costs of the aforesaid, deceased estate of the late Kuczynski.
 - 5) Restraining him from threatening, ordering, or interfering, in any manner, or way, whatsoever, with the Applicant.
 - 6) Directing the Respondent to hand over to the Deputy Sheriff of this Honourable Court, all documental and every document regarding the above-mentioned estate, that is in his possession, or under his control, and to hand this/these on service of the Order of this Honourable Court, to the Deputy Sheriff.
 - 7) Directing the Deputy Sheriff to hand the document/documents referred to in paragraph 6 as aforementioned (on page 2), to the Executors or Curators Bonis, as appointed by the Master of this Honourable Court, to administer the estate of the deceased.
 - 8) That a rule nisi be issued, calling upon the Respondent to show cause on a date to be determined by this Honourable Court why this order should not be made final and why the Respondent should not be made to pay costs of this Application.
 - 9) Further or alternative relief.
 - 10) Wherefore an Order is sought directing that paragraphs 2 - 7, as above, operate with immediate effect.

This was in terms of Rule 8, 22 (c) as stated in the notice of motion. After a few extensions the matter was placed before me for argument on the 13th December 1993. It will be observed that Respondent filed his Answering Affidavit and Applicant filed

her Replying Affidavit.

The Respondent is a man of Jewish extraction or custom. He comes originally from Israel but is a resident of Lesotho for over 10 years now. As to particulars of his sojourn in Lesotho that has not come out in Court. He was a friend of the late FELIX FISHEL KUCZYNSKI (Felix) who died of a violent death in about the beginning of October 1993 here in Maseru. Felix was during his lifetime a businessman in Maseru. He was also Jewish. He also originally come from Israel. He had stayed in Johannesburg before he came to Lesotho where he run a well known Sports Shop known as International Sports at the LNDC Centre in town. Felix was buried in Israel.

Respondent had participated to a great extent in seeing that the wishes of his dead friend were satisfied, namely that his remains be buried in Israel. It is this involvement of the Respondent which seem to have been the precursor to this application. We were not informed as to how Felix's estate was going to be settled. I wish it is done peacefully.

Having introduced the Respondent and what appears to be the main theme of the application it remains to describe the Applicant, partially, at this stage. It appears that for over ten, (10) years ago Applicant and Felix either separated or

divorced. Their marriage was a marriage according to Jewish custom. Their divorce should have been one by Jewish custom. It remained unclear as to what the correct position was in the absence of documents or other evidence to show as to what the marital status of the Applicant was vis-a vis Felix during his lifetime. All arguments were equally inconclusive. Applicant said her marriage to Felix was still subsisting until Felix's death but the Respondent says that Applicant had been divorced by Felix. Somewhat thinly it comes out that Applicant had a previous marriage to that of Felix. This comes out of the mouth of Applicant herself. We are not told how the marriage ended. The probability is not lost that Applicant and Felix's marriage could have been yet another bout of staying together as man and wife. All in all it shows how extremely difficult it was to resolve some issues without the assistance of legal representatives. It however became clear that Applicant was not fully accepted as Felix's wife.

When Felix came to Lesotho he stayed as man and wife with one Chinese lady by the name of Moning Tu (Moning). As to the involvement of this Moning in Felix's businesses it was not clear. This was not even alleged. But there is absolutely no doubt that Moning was part of Felix's life. Respondent even arranged that Moning should accompany Felix's body to Israel where it was buried. It is during Moning's absence, that flat

got broken into and valuable goods stolen. It was Respondent's involvement with repairs of the flat that again angered Applicant. It is most probable that after Felix's death Moning continued to occupy the Khotsong Township House No.14, Maseru (formerly known as Arrival Centre).

There is a lady by the name of Fidelia Bowen Brenna (Fidelia) as the parties did reveal in their debate. This lady is probably an American. It is common cause that Fidelia is the manager of International Sports (Pty) Ltd. It is not clear who appointed Fidelia to that position. What is surprising is that there is no reference to Fidelia in the proceedings nor has she been joined.

This Court has an arduous and unenviable task of having to listen to arguments from the parties themselves. Despite the thinness in substance and absolutely no support for the prayers to be found in Applicant's founding Affidavit, both the Answering and Replying Affidavit were well prepared by people of legal training and practice. The language in the papers told it all. As to why these legal practitioners did not persist and have argument made by themselves in Court is a mystery. Suffice it to say that the parties themselves persisted in their wish to argue the matter themselves. They could not be persuaded otherwise.

The Applicant has made the following admissions. Firstly, she does not know who owns and controls International Sports (Pty) Ltd. As to the amount of shareholding and as to who the directors are she is ignorant. Applicant was not able to tell the Court, how, if so Respondent became involved in the said Company. Applicant was at a loss to explain why the Respondent had to be interdicted or be ordered in any of the ways shown in the notice of motion and in the different prayers. I found that the Respondent has been unfairly victimized.

Secondly, while having informed that Fishel (Pty) Ltd dealt with diamonds, bags and farm machinery, Applicant did not know who controlled the Company. She stated quite clearly that Respondent was not in anyway involved in any aspect of the Company. It became very clear that there was no basis upon which Applicant sought relief against Respondent as far as Fishel (Pty) Ltd was concerned.

As said hereinbefore, it does not appear that Respondent is in anyway involved in the Khotsoeng Town House No. 14. Except to contact the police about the burglary and theft of goods and repairs of the house which were paid for by one Mrs Levanon, Respondent was not involved in anything to do with premises and the property. Applicant conceded that she was not even claiming for production of documents of title to this property.

Felix had never spoken to Respondent about Applicant. They were complete strangers. It was apparent that as regards the preparations for burial of Felix Applicant and Respondent did not see eye to eye. I need not go into details. In the preparations Respondent says he worked with Felix's children namely Ivan, a boy and Kayla a girl. These preparations for the burial of Felix, the acquisition of death certificate and the whole incidents of attending to the police and Senior Hospital Supervisor have no relationship nor are they a basis for relief claimed in the notice of motion. Applicant was not able to justify having her come to Court for the relief claimed. She herself conceded that she has not been successful to found a basis for the relief sought. For that reason amongst others the Application ought to be dismissed.

I have asked the Respondent as to the reason Applicant should drag him to Court the way she has done. This was out of desperation. Respondent replied repeatedly that this was a mystery to him. I agree. My suspicions that the parties were hiding the existence of a vendetta were dispelled. But, however "*ars est celare artem.*" Surely, this application bordered on an intemperate mischief.

Everything seemed to revolve upon the personality of the Applicant herself. She appeared on the surface a woman of polish,

experience and erudition. She was so articulate that I was bound to ask her if she had any legal training. All she was prepared to admit or divulge was that her former husband was an Attorney. Enough said on the positive side. On the other hand I have this observation to make I have rarely come across a person of Applicant's behaviour in Court before a judge of the High Court. It required a lot of patience to see this proceedings get on to a decent end, as it were. I do not have words to describe the Applicant. I am forced to borrow the words in Respondents Answering Affidavit at paragraph 8.3.

"It is true that I had to talk very firmly to the Applicant. This was inevitable because of Applicant's aggressive, rude and disrespectful attitude threatened to turn the burial of my friend Felix into an undignified spectacle". Except for Applicant's overwhelming singlemindedness, which unfortunately seemed most misplaced in this proceedings, I cannot say more.

I also concluded that in absence of proof of marriage and any basis whatsoever of such alleged marriage between Applicant and Felix the application foundered and could not succeed by reason of absence of capacity and entitlement to relief. The onus of proof had been all along been with Applicant. She failed to discharge it.

After argument I extended the rule nisi to the 8th February, 1994. In the meantime I ordered Applicant to file security for costs of Applicant in the sum of M2,500.00. Applicant has indicated in open Court that she had offered this sum for the mentioned purpose without success. I was not convinced as to why she failed if ever she had made a serious attempt to do so. I ordered Applicant to contact the Registrar of the High Court in that regard.

In the premises this Application should fail and the Rule Nisi be discharged with costs to Respondent.



T. MONAPATHI
ACTING JUDGE

8th February, 1994

For the Applicant : In Person

For the Respondent : In Person