

CIV\APN\231\92IN THE HIGH COURT OF LESOTHO

In the matter between:

BERNICE MAKOETLANE

Applicant

and

COMMISSIONER OF POLICE
'MAPULA PAULINA MOKETE
ATTORNEY-GENERAL (N.O.)1st Respondent
2nd Respondent
3rd RespondentJUDGEMENTDelivered by the Honourable Mr Justice J.L. Kheola
on the 14th day of March, 1994

The applicant seeks an order that the first respondent pay to her the sum of M25,000-00, as the death beneficiary of the late Francis P. Makoetlane; that the said monies should not be paid to the second respondent That the second respondent be ordered to pay to the applicant the sum of money amounting to M4,837-51 and costs of suit

In her founding affidavit the applicant deposes that the late Francis Pitiki Makoetlane was the son of her sister-in-law, one 'Mapitiki Jeanette Makoetlane who was unmarried She deposes that she was appointed the guardian of the late Francis Pitiki

Makoetlane He brought him up and looked after his interests. When he joined the Police Force he appointed her as his death beneficiary. To the best of her knowledge Francis never married.

One day she was informed of the sudden and untimely death of Francis P. Makoetlane who was stationed at Teyateyaneng She came to Teyateyaneng and took the dead body to Quthing where the burial took place. No one was introduced to her as the wife of the deceased and she alone wore the mourning cloth.

The applicant deposes that she was later informed that the second respondent purporting to be the wife of the late Francis P Makoetlane was paid and received the sum of M3,900-00 being gratuity and also the sum of M937-51 being compulsory savings in respect of the late Francis. The sum of M25,000-00 is still being held by the first respondent awaiting the finalization of the matter as to the rightful claimant She deposes that the second respondent is not entitled to the sum of money paid to her

In her opposing affidavit the second respondent avers that she married the late Francis P Makoetlane by customary law The applicant and the mother of Francis, Mapitiki Jeanette Makoetlane were present when payment of "bohali" was negotiated. Thereafter she (the applicant) lived with Francis as man and wife until he

died She deposes that after the death of the late Francis Makoetlane the members of Makoetlane family did not come to TY immediately It was only after three weeks that the two brothers of the deceased, Lira and Khotso came to TY The police authorities provided transport for the dead body to Quthing where it was buried.

The second respondent avers that she and her mother 'Mampane Mokete attended the burial of her husband. After the burial she was made to wear a mourning cloth which was removed after six (6) months according to Sesotho custom. She avers that she and her late husband have a child named Bolaoana Makoetlane.

'Mapitiki Jeanette Makoetlane has deposed that the deceased is her son She denies that the applicant was appointed as the guardian of his late son. She never abandoned her late son and was always catering for his needs She went to work in the Republic of South Africa for the purpose of maintaining his son. She has confirmed that her late son was married to the second respondent and that they have a child.

'Mampane Mokete has deposed that the applicant accompanied 'Mapitiki Jeanette Makoetlane to her home at Teyateyaneng where "bohali" was negotiated and agreed upon as ten head of cattle and they actually paid three head of cattle as part of "bohali" She

received the three head of cattle as the mother of the second respondent. She confirms that she and the second respondent accompanied the dead body of the deceased to Quthing where the burial took place. The second respondent was made to wear the mourning cloth by the Makoetlane family. After six (6) months she was brought to her home for the removal of the mourning cloth. The deceased and the second respondent have a child born of their marriage.

I have considered the evidence of the parties in the present application. The applicant has made a bare allegation that she was appointed as the death beneficiary of the late Francis P Makoetlane by the deceased himself. She has not supported her allegation with any evidence from either the police who keep the records of the deceased or from any member of Makoetlane family. The appointment of a death beneficiary is a formal act which is usually documented. In the many cases that have been decided by this Court there is usually a document filled by the deceased in which he appoints a certain person as his or her death beneficiary.

In *Ramahata v. Ramahata*, C. of A (CIV) No 8 of 1986 (unreported) Schutz, P said at p.4:

"This case is a simple one. The Appellant has established a stipulation alteri

(contract for the benefit of a third party) between the son and the insurance company: See e.g. Grace v. Crace 1940 TPD 251. The institution of stipulation alteri, by virtue of being part of the Roman Dutch Law, also forms part of the law of Lesotho. The contract is to the effect that she is entitled to accept the benefit of this contract, and the evidence is that she has in fact done so. Her rights therefore flow from contract and the M6,000 has nothing to do with the deceased estate. For these reasons the appeal succeeded."

In that case there was convincing evidence that the appellant had been nominated as the death beneficiary. There was a document which the deceased had completed in the presence of TEBA officials. In the present case there is no such document indicating that when he joined the Police Force he nominated the applicant as his death beneficiary. Even if the applicant was unable to lay her hands on such a document she ought to have obtained affidavits from people who know that she was nominated as the death beneficiary of the deceased. Her affidavit alone is not enough to prove this fact.

The applicant alleges that she was appointed by Makoetlane family as the guardian of the late Francis P. Makoetlane. Again there is not a single member of Makoetlane family who confirms her story. The mother of the late Francis P. Makoetlane states that it is improbable that she could be appointed as such while she was still alive and maintaining his child adequately. Under Sesotho custom the applicant's husband could have been appointed

the guardian of her sister's illegitimate child In fact by our customary law there would have been no need to appoint a guardian because the children of an unmarried girl automatically become the ward of the father of the girl. If the father is already dead the heir becomes the ward

I have come to the conclusion that the applicant has failed to prove that she was appointed the death beneficiary of the late Francis P Makoetlane.

In the result the application is dismissed.


J.L. KHEOLA
JUDGE

14th March, 1994.

For Applicant - Mr. Monyako
For Second Respondent - Mr. Hlaoli