

IN THE HIGH COURT OF LESOTHO

In the application of :

MATHABISO MAQALA

Applicant

vs

MANKATSE MAQALA & ONE

1<sup>st</sup> Respondent

THE EMPLOYMENT BUREAU OF AFRICA LTD

2<sup>nd</sup> Respondent

JUDGMENT

Delivered by the Honourable Mrs Justice K J Guni  
on the 20<sup>th</sup> day of December, 2000

The applicant herein, is MATHABISO MAQALA. The 1<sup>st</sup> respondent is MANKATSE MAQALA. These two parties are related to each other. Applicant is the daughter-in-law of the 1<sup>st</sup> respondent. There is the dispute between these two parties, with regard to their claims as beneficiaries to certain moneys of the deceased estate.

The applicant is the widow of the deceased - NKATSE MAQALA. The parties

were married by civil rites and in community of property at MAFETENG DISTRICT ADMINISTRATOR'S office, on 19<sup>th</sup> July 1986. That marriage subsisted until the death of the applicant's husband on 14<sup>th</sup> August 1999.

There is no claim nor any papers filed, on behalf of 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent is THE EMPLOYMENT BUREAU OF AFRICA LIMITED. 2<sup>nd</sup> respondent is sued here as the employer of the deceased NKATSE MAQALA, whose death benefits are the subject matter of this dispute. Having filed no opposing papers, the 2<sup>nd</sup> respondent is going to abide by the judgment of this court because it has not declared its own interest in this matter.

The deceased, NKATSE MAQALA, has, in writing, indicated the death beneficiaries in MM1, MM2, and MM3 attached to the founding affidavit. In MM1, the deceased has indicated in no uncertain terms, that his wife, MATHABISO MAQALA, the applicant herein, as the death beneficiary. In MM2, the deceased has put as the death beneficiary his own son, MALI MAQALA who presently is still a minor. In MM3, the deceased has put his own mother, the 1<sup>st</sup> respondent herein, as the death beneficiary.

On the face of all the three documents, there seems to be nothing irregular. There is no law, which was indicated by on behalf of the applicant to me, which in

anyway restricts the deceased to distribute the death benefit to more than one or two beneficiaries. There is also no law which entitles the applicant to claim a share of any of the two other beneficiaries indicated by the deceased.

The applicant approached this court on an urgent and ex-parte basis and obtained an interim court order in the following terms:-

### **INTERIM ORDER OF COURT**

#### **IT IS ORDERED THAT:**

1. The periods of notice and forms of service as provided for in the rules of court, are hereby dispensed with as the matter is of urgent relief
2. A Rule Nisi, be and is hereby issued returnable of the 6<sup>th</sup> day of December 1999 when this matter can be heard calling upon the respondents to show cause why.
  - a. First respondent shall not be, restrained and interdicted from holding herself out as the beneficiary to the deceased estate of Nkatse Esaih Maqala.
  - b. Second respondent shall not be ordered to stop forthwith, from paying out to the first respondent any monies accruing from the

benefit funds of deceased Nkatse Esiah Maqala, pending the outcome of this application.

- c. Second respondent shall not be ordered to pay all such benefits, to applicant in her capacity as the widow of the deceased Nkatse Esiah Maqala, and in her capacity as legal guardian to the heir, Mali Maqala at present a minor of eleven years of age.
3. That respondents pay the cost of this application in the event that they oppose the application.
4. Applicant be granted such further and or alternative relief.
5. And that prayer 2 (b) operate with immediate effect as an interim order.

Dated at Maseru on this 4<sup>th</sup> day of November 1999.

Sgd: L. Khiba  
By order of Court

The applicant seeks apparently to restrict the application of the death benefit only to herself and her son to the exclusion of the deceased person's mother. The applicant has no grounds at all for claiming that the 1<sup>st</sup> respondent should not be

paid the death benefit or if she is paid in accordance with her deceased's son's wishes, it should not be an equal share to that of other death beneficiaries such as herself and her son. She is clearly motivated by no other reason but sheer greed. There is nothing unusual about the document which appoints the 1<sup>st</sup> respondent as the beneficiary. It is the official document of the 2<sup>nd</sup> respondent. As I have already mentioned earlier on, that no opposing papers have been filed on behalf of the 2<sup>nd</sup> respondent, it is clear that the said document, emanating from the 2<sup>nd</sup> respondent, is its official document and it is recognised as such by the 2<sup>nd</sup> respondent. The applicant is not entitled to claim exclusion of other beneficiaries. She must respect the wishes of her late husband in the same manner as everyone else concerned.

This application must therefore fail and it is dismissed with costs.

  
K.J. Guni  
JUDGE

20<sup>th</sup> December, 2000

For Applicant:	Mr. Mpopo
For 1 <sup>st</sup> Respondent:	Mr. Sekake
For 2 <sup>nd</sup> Respondent:	Mr. Malebanye