

IN THE HIGH COURT OF LESOTHO

In the matter between:-

‘MAPALESA SOFONIA

APPLICANT

AND

LESOTHO DEFENCE FORCE

1ST RESPONDENT

‘MAPUSELETSO SOFONIA

2ND RESPONDENT

BOOMO SOFONIA

3RD RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs. Justice K.J. Guni
on the 8th day of February 2000

The subject matter of this application has been dealt with by this court, in CIV/APN/282/97 which was finally decided in May 1998. The facts as gleaned from the papers filed of record in this matter, show this court that after the death of one ‘MUSO ELLIOT SOFONIA, who was a member of LESOTHO DEFENCE FORCE, there were a few women claiming portions of his estate as intestate heiresses, on the ground that they were legally married to the late ‘MUSO ELLIOT SOFONIA during his lifetime.

The dispute between the male relative of the deceased and all those women who claimed to have been married to the deceased, was finally resolved by this court, in the determination of their respective rights in CIV/APN/282/97. The applicant herein describes the applicant in CIV/APN/282/97 as the deceased's concubine. She alleges that she married MUSO ELLIOT SOFONIA on or about 1997 by Sesotho customary rites. She perhaps presumes to be the only wife or at least the only woman legally married to the deceased as she further alleges an agreement with the 2nd Respondent herein [who was the 1st respondent in CIV/APN/282/97] to the effect that she is the deceased's widow. This alleged agreement is denied in the Answering Affidavit in whose reply this applicant averred that evidence to establish the said agreement, would be led. There was no such evidence led. The 2nd respondent has no authority to decide the issue of who is the legal wife and therefore widow of the deceased.

The applicant in this matter must have known, and in fact knew, that there were proceedings before this court to determine the heir and finally distribute the estate of late 'MUSO ELLIOT SOFONIA. [see Paragraph 5.3 Founding Affidavit].

She appears to have elected to rely on the alleged agreement between herself and one of those women who claimed portions or perhaps the whole of the estate of

the deceased. That alleged agreement (which is denied in the answering affidavit) is between this applicant and the woman who was the 1st respondent in CIV/APN/282/97 now 2nd respondent herein.

The applicant in this matter, is directly challenging the terms and portions of the court order made in CIV/APN/282/97. This applicant, being aware, that there was a dispute as regards the rightful heiress to the estate of the late 'MUSO ELLIOT SOFONIA, sat back and watched the other claimants fight for their rights. She now seeks to upset the decision made by the court in determining those rights. She approached this court by way of an ex-parte application, hoping to most unpleasantly surprise those beneficiaries behind whose backs she had intended to have that court order granting them those benefits reversed.

This applicant claims to have been shocked by the said court order in CIV/APN/282/97. She was not a party in those proceedings. Why? May be because she claims to be the only woman who was lawfully married to the deceased. This is not clear especially because the alleged agreement that she is the deceased's widow and therefore entitled to his death benefits was between her and one of the various claimants. It is not clear whether or not the agreement was made on behalf of the SOFONIA family. On whose authority was the agreement made when a male relative of the deceased is now being sued. Now that the court

had once and for all decided those claims of various women, this applicant behind their backs seeks an order which is in direct conflict with the court order made in CIV/APN/282/97. That court order is still in force. The issuing of yet another court order, will bring about the situation where there will be two court orders which are both valid and in full force but directly in conflict with each other.

There are decent and appropriate methods of dealing with valid court orders without covertly undermining the authority of the court. By issuing a court order which has the effect of reversing the existing valid court order, this court will be in conflict with itself. It is improper to approach this court by way of an ex-parte application which seeks to overturn the court order made by one of the judges in this unconventional fashion - not being reviewed or on appeal. The increase in the numbers of the judges is truly for expeditious handling of cases and resolution of disputes between parties. In this matter these judges seem to have been set up on a direct collision course. One judge has made out this court order which is being sought to be changed without being reviewed or appealed against in a normal way.

The High Court cannot sit as a court of appeal overtly or otherwise to change its own decisions. This applicant knew that there were legal proceedings before this court, concerning the distribution of the estate of the late 'MUSO ELLIOT

SOFONIA. This applicant, claiming to be the wife of the deceased, must have been in no doubt, that the decision to be made in those proceedings, was definitely going to affect her interests. The averment that she had made an agreement with at least one of the claimants, leaves me absolutely certain that she foresaw the likelihood of the challenge to her claim of right to be the widow of the deceased and therefore heiress to his estate. In those circumstances, she was obliged in terms of Section 8 (5) High Court Rules [Legal Notice No.9 of 1980] to deliver, notice of application by herself for court's leave to oppose that application. She cannot be heard now to approach this court in this fashion, and to ask the court to make yet another court order reversing directly or indirectly its previous valid order which is still in force. This court cannot make an order in conflict with that court order in CIV/APN/282/97. That Court Order must be respected. **FAKO GRIFFITHS and the COMMISSIONER of POLICE C of A (CIV) No. 9/91** (unreported). The complaint, by the deponent of the answering affidavit, that this applicant should not have approached this court in this fashion, but that she should have joined in CIV/APN/282/97 is a valid one. The arrogant reply by this applicant to the effect that this applicant is free to choose any method that pleases her and seek any relief of her own choice is also correct. The difference will be in the result. The method chosen by this applicant did not help her own case. She chose to go the wrong way in the exercise of her

freedom of choice to adopt her own style which requires this court to undermine its own authority. That is improper. This court cannot succumb to that. The application is therefore dismissed with costs.



K. J. GUNI
JUDGE

9th February 2000

For Applicant : Mr. Mafantiri

For 2nd & 3rd Respondents : Mr. Nathane