

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) 61/14

In the matter between:-

‘MAPONTS’O NCHABENG

APPELLANT

and

**MOSESANYANE MORATEHI
TEBA (PTY) LTD
MASTER OF THE HIGH COURT
ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

CORAM: MAHASE, JA
CHINHENGGO, AJA
MONAPATHI, AJA

HEARD: 29 July 2015
DELIVERED: 7 August 2015

SUMMARY

Civil Procedure – Appeal against an order for costs – first respondent successful but court a quo ordered each party to bear its own costs. – Appeal not being opposed – Appellant insisting on costs of appeal – whether or not such costs of appeal to be awarded to the appellant. Held appeal succeeds and order of court a quo altered to award costs to appellant – No award of costs made on appeal.

JUDGMENT

MAHASE, JA

[1] The brief facts of this case are that the first respondent approached the court *a quo* seeking an order couched in the following terms:-

- a) That the applicant be declared as an heir of the late Edward Sekhoacha Mosesanyane.
 - b) That the second respondent be directed to release to the applicant the monies it kept on behalf of Edward Sekhoacha Mosesanyane.
 - c) That the first respondent be directed to release the passport and all the documents in her possession which belonged to the deceased Edward Sekhoacha Mosesanyane.
 - d) That the first respondent be directed to pay the costs of this application in the event of opposing the application.
- [2] The appellant had opposed this application due to the adverse and prejudiced effect the case would have on her. The applicant's application was dismissed by the *court a quo* but it,

nevertheless, ordered that each party should bear its own costs. This is the order against which the appellant has launched this appeal.

[3] From the facts, the deceased, Edward Sekhoacha had two wives. They are 'Mamoratehi and 'Makopano; the first and the second wife respectively.

[4] The applicant was born of the relationship between his deceased father and his first wife 'Mamoratehi. The second wife and her only child Sebongile have both pre-deceased the deceased.

[5] According to the appellant's opposing affidavit; 'Mamoratehi was still alive and residing in the Republic of South Africa when the applicant launched this application against her.

[6] The first respondent denies that she is in anyway a relative of the Mosesanyane family and that she was ever employed as a domestic helper in the Mosesanyane family. She has said that

she was a sister to 'Makopano Mosesanyane because 'Makopano was born Nchabeng and was married to the Mosesanyane family. In other words the appellant and 'Makopano Mosesanyane were sisters-in-law.

- [7] The only role which the appellant played in the Mosesanyane family was that she and her husband took part in 'Makopano's burial as the Mosesanyane family were not prepared to bury her. Even then, the Nchabengs did not get any assistance of any kind in the burial of 'Makopano from the Mosesanyane family. This is a matter of common cause.
- [8] There is no doubt in my mind that, throughout her opposing affidavit, the appellant has consistently distanced herself from the affairs of the Mosesanyane family, in particular her lack of any standing to deal with issues, subject-matter in prayers 1, 2 and 3 of the notice of motion.

[9] Ultimately, the first respondent's application as against the appellant was dismissed, rightly so in my view, and the learned Judge *a quo* made an order that:

"... the application is dismissed. This being an intrinsically family matter under the circumstances explained, each party will bear its own costs".

[10] The above order as to costs was made even though in the judgment the learned Judge in the *court a quo* had found that the appellant is not a member of the Mosesanyane family. This is in addition to his other finding that the first respondent has not satisfactorily proven that the appellant had in her possession the documents in question.

[11] In my view, and regard being had to the surrounding circumstances of this case, particularly that the appellant is not a family member of the Mosesanyane, she should have been awarded costs once the application which had been launched against her in the *court a quo* was dismissed.

[12] Counsel for the appellant asked this court to award the costs of the appeal to the appellant. This appeal was not opposed at any stage. I do not see any reason why the respondents should be ordered to pay the costs of the appeal.

ORDER

- There will be no order as to costs of appeal.
- The order of the *court a quo* is altered to read “The application is dismissed with costs”.

**M. MAHASE
JUSTICE OF APPEAL**

I agree:

**M.H. CHINHENGGO
ACTING JUSTICE OF APPEAL**

I agree:

**T. MONAPATHI
JUSTICE OF APPEAL**

For Appellant: Adv. Potsane
For Respondent: No appearance