

**IN THE COURT OF APPEAL OF LESOTHO
HELD AT MASERU**

C OF A (CIV) 12/2021

In the Matter between:-

**MAFETENG PROPERTY (PTY) LTD.
APPELLANT**

And

ESTATE LATE-BEN RADIOPELO MAPHATHE	1ST RESPONDENT
MASTER OF THE HIGH COURT	2ND RESPONDENT
THE ATTORNEY GENERAL	3RD RESPONDENT
NKHATI LESOLI MAPHATHE MEMORIAL TRUST	4TH RESPONDENT
THE EXECUTORS ESTATE LATE KENNETH THULO MAPHATHE	5TH RESPONDENT

CORAM: P T DAMASEB AJA
P MUSONDA AJA
M H CHINHENGO AJA

HEARD: 10 OCTOBER 2022

DELIVERED: 11 NOVEMBER 2022

SUMMARY

Civil Procedure-Administration of Estates- Applicant not complying with Rule 8(19) of the High Court Rules 1980, is fatal-The provision is peremptory and in the absence of compliance-application to be struck off the Roll.

JUDGMENT

P MUSONDA AJA

Introduction

[1] This appeal is a sequel to an order granted by this Court in its last session¹, granting the appellant leave to appeal against an order by **Mahase J** in Commercial Court Application No.: CCA/0034/2020 in favour of the respondent since deceased.

[2] In the judgment that we delivered in that application for leave to appeal, we made it clear that there are good prospects of success of the appeal on several grounds, including the failure by the respondent in that matter to have complied with the peremptory provision of Rule 8(19).

[3] In the event, the appellant has now set down the appeal which we have considered against the backdrop of the observations we made in the application for leave to appeal. In order to burden this judgment unnecessarily, this judgment must be read with the Court of Appeal judgment previously referenced.

¹ In Mafeteng Property Group (Pty) Ltd v Radiopelo Maphathe (C OF A 12/2021) [2022] LSCA 06 (13 May 2022).

[4] Having obtained leave to appeal, the appellant filed nine (9) grounds of appeal including the fatal non-compliance with rule 8(19).

[5] In my view, the admitted non-compliance with Rule 8(19) is dispositive of this appeal, in any event, it is the basis on which the court would assume jurisdiction in the first place to be able to deal with the merits of the matter.

[6] It is common cause that in approaching the High Court in the matter that served before Mahase J, the respondent had not complied with Rule 8(19) of the High Court Rules.²³

[7] Rule 8(19) provides:

“When an application is made to Court, whether ex-parte or otherwise, in connection with the estate of any person deceased,, a copy of such application, must before the application is filed with the Registrar, be submitted to the Master for his consideration and reportThere must be an allegation in every such application that a copy has been forwarded to the Master.”

² Qocha v Nthongoa C of A (CIV)49 OF 2016, 2018 LSCA 19 (7TH December 2018).

³ Olympic Passenger Service (Pty) Ltd v Ramlagan (1957) (2) SA 382 (D) at 383 C-G.

[8] It was common cause that an application was not submitted with the Master and no such allegation was made therein. The non-compliance with the Rule is fatal.⁴

[9] The High Court's cavalier attitude in condoning the breach of Rule 8(19) conflicts with many decisions of this Court. For example, ***Makenete v Lekhanya***.⁵

[10] When this matter came up for hearing Adv Potsane who had previously appeared for the respondent who is since deceased indicated that the appeal was no longer being opposed. In the light of the posture taken by Adv Potsane that the appeal in son opposed, Adv Tau for the 1st and 3rd appellants who were intervenors, conceded that it was unnecessary for the intervenors to participate in the appeal.

Consideration of the appeal

[11] As I previously stated, the appeal stands to be disposed on the basis of the fatal; non-compliance with Rule 18(9).

The Law

[12] The applicant's father having left a Will and having abandoned customary law and adopted the European way of life,

⁴ Qocha v Nthongoa (supra)

⁵ (CIV/APN/74/90) [1990] LSHC 1 (o6 November 1990)

his estate fell to be administered under the Administration of Estate Proclamation No. 19 of 1935.

[13] The proclamation enacts in section 6 (2):

“From the date of taking effect of this proclamation all the property and estate of every deceased person, minor, lunatic person permanently absent from the territory without a lawful representative therein and whose whereabouts are unknown, r a person under curatorship, shall be administered under the supervision of the Master.

Under section 13(1), which is couched in these terms:

“Whenever any person dies within the territory leaving therein any property or will, the nearest relative connection of the deceased at or near the place of death, or in default of any such relative or connections in the control of the premises at which the death occurs shall within 14 days thereafter cause a notice of death to be framed in the form ‘A’ in the first schedule to this proclamation and shall cause the notice signed by himself to be delivered and transmitted to the Master.”

[14] And in terms of section 13(1) once the estate of the deceased has been reported in terms of section 13(1), the Master of the High Court is enjoined to issue Letters of Administration to whoever in law is entitled to administer the estate and for its distribution. It does not matter whether the deceased died testate or interstate. Administration of the deceased’s estate

must be done under Letters of Administration. Failure to comply with section 13(1), has been criminalized.

[15] Rule 8(19) supplements the above provisions. The Rule reposes in the Master of the High Court enormous powers in the administration of deceased estates.

[16] The observance of the above Rule is therefore mandatory, consequently the non-observance is fatal. That is the tenor of this Court's decisions in ***Maphunye Qocha and Others v Hope Nthongoa & Others***⁶, ***Matete v Matete***⁷, ***Leteka v Leteka***.⁸

[17] The Learned Judge ought to have followed these decisions as there were binding on her.

Order

[18] The appeal succeeds with costs and the judgment and order of **Mahase J** in Commercial Court Application No.:CCA/0034/2020 is set aside in its entirety and replaced with the following order:

‘The matter is struck off the Roll, with costs’.

⁶ (2018) LAC19 (01 December 2018).

⁷ C of A (CIV) 57/2018.

⁸ (2020)LAC 19 (29th May 2020).



P MUSONDA
ACTING JUSTICE OF APPEAL

I agree



P T DAMASEB
ACTING JUSTICE OF APPEAL

I agree



M H CHINHENGO
ACTING JUSTICE OF APPEAL

FOR APPELLANTS: ADV M KAO-THEOHA WITH ADV T MPAKA

FOR RESPONDENTS: ADV T POTSANE