

CIVAPN\210\97

IN THE HIGH COURT OF LESOTHO

**In the application of :**

**‘MALERATO RALEFIFI**

**Applicant**

**vs**

**THOMAS RALEFIFI  
TEBA LTD LESOTHO(MAFETENG)**

**1st Respondent  
2nd Respondent**

**(‘MATHABISO RALEFIFI.....INTERVENING Applicant)**

**J U D G M E N T**

**Filed by the Hon. M L Lehohla on the 9th day of October, 1997**

---

On 8th July, 1997 this Court immediately after hearing evidence, perusing the papers and being addressed in arguments made the following order :

“Application and orders prayed for by ‘Malerato Ralefifi granted and confirmed with costs. The intervening applicant’s (‘Mathabiso Ralefifi’s) contentions are dismissed with costs. Fuller reasons to follow “.

Here do now those reasons follow below :

According to founding papers filed on 19th June, 1997 an *ex-parte* application was urgently moved on behalf of 'Malerato Ralefifi against the 2 respondents before my brother Monaphathi J who granted the *rule nisi* in terms of prayer 1(a) (b) © and (h). The rule was ordered returnable on 28th June, 1997. By further extension of the return date the matter came to finally be argued on 7th and 8th July, 1997. This was before me this time.

In terms of the skeletal outline of facts reflected in paragraph 1 of the Notice of Motion the respondents are ordered to show cause on the return date why

- (a) the 1st respondent shall not be restrained and interdicted from burying the late David Tsehla Ralefifi pending finalisation (of this application).
- (b) the 1st respondent shall not be restrained from claiming any money whatsoever from the 2nd respondent arising out of or in relation to the death of the late David Ralefifi pending finalisation hereof.
- © the 2nd respondent shall not be restrained from releasing moneys arising out of or in relation to the death of the late David Ralefifi to the applicant.
- (f) the 1st respondent shall not be ordered to hand over to the applicant money in the sum of M3000-00 which he received from 2nd respondent arising out of the death of the late David Ralefifi.

- (g) the 1st respondent shall not be ordered to pay costs hereof, and 2nd respondent only in the event of its opposing this application.
  - (h) the Rules as to service and notice shall not be dispensed with on account of urgency.
  - (I) the applicant shall not be granted further and/or alternative relief.
2. That prayers 1(a) (b) © and (h) shall not (*sic*) operate with immediate effect as an Interim Order.

The important features of her averments relied on by the applicant are that (see paragraph 5 of her founding affidavit) she is the widow of the late David Ralefifi who died on or about 4th June, 1997 at his place of work at Lebanon G.M.C. Ltd Western Areas, Republic of South Africa. Further that at all material times till her husband's death she was lawfully married to him by civil rites and in community of property - their marriage having been contracted on 18th August, 1993; and that the marriage has been in subsistence till termination by death of the husband. The Court has before it at page 9 a certified copy of the original Marriage Certificate attached to the applicant's papers and marked "MR1". See paragraph 6.

The applicant avers further at paragraph 7 that her deceased husband was in

the employ of Lebanon G.M.C. Ltd in terms of a contract of employment entered into between him and the 2nd respondent acting for his and the deceased's employer named *loco citato*. Proof of this contract is annexed and marked "MN2".

The applicant avers further that on 7th June, 1997, her father-in-law i.e. the 1st respondent came to the joint home of the deceased and applicant whereupon the latter informed him that she intended burying her husband in Mafeteng on 21st June, 1997. The 1st respondent responded by saying he wanted to have the deceased buried at Taung. Thus the question of the burial place was left unresolved when the 1st respondent left the applicant. See paragraph 8.

It was on 16th June, 1997 when awakening to the fact that truth is stranger than fiction, the applicant was shocked to learn from officers of 2nd respondent that the 1st respondent had been to their offices to tell them that she had disappeared and was nowhere to be found. Further that 1st respondent had claimed from 2nd respondent and was given by it money in the sum of M3000-00, following his false claim that since the applicant had disappeared, he was the one entitled and thus was going to bury the deceased using this money. The applicant avers she verily believed this information from the 2nd respondent's officers.

Thus she accordingly sums up her averment in paragraph 10 by stating that the 1st respondent had fraudulently claimed and received the money to which he was not entitled as this money was only to be released to the person who has the right to bury the deceased. The applicant says she is such a person.

Armed with this startling information, the applicant confronted the 1st respondent who confirmed that he had received the money under the circumstances spelt out above and went further to tell the applicant that he was in fact going to bury the deceased at a place of his choice on Saturday 21st June, 1997.

The applicant has made out a case for urgent treatment of her application as she averred that the body of the deceased was due to arrive from South Africa on the 19th June, 1997, and feared that unless restrained the 1st respondent was most likely to carry out his intention to bury the deceased without regard to the wishes of the applicant. It is important to indicate that at paragraph 5 the applicant averred that she and the deceased have no children; so no natural heir through wedlock.

On 26th June, 1997 the 1st respondent filed a notice of intention to oppose this application. A few days later Mathabiso Ralefifi the intervening applicant filed a Notice of Motion on 1st July, 1997 seeking permission which was granted her to

intervene in this proceeding.

‘Mathabiso sought an order directing that she is the one who is entitled to bury the deceased and that the body of the deceased should be released to her as the marriage between her and the deceased was never terminated after a separation between her and the deceased occasioned by a quarrel that caused her to leave the deceased in 1990. This she avers in her supporting affidavit in the main application moved by ‘Malerato.

‘Mathabiso further asks Court to direct that all entitlements and benefits arising out of the deceased’s employment other than those arising out of the insurance of the deceased with Teba Ltd Lesotho (Mafeteng) in which any other person is beneficiary other than ‘Mathabiso and her minor child be released to her(‘Mathabiso). She also claims costs.

It is significant that in her so-called supporting affidavit, ‘Mathabiso makes no averment whatsoever as to the kind of marriage regime she and the deceased had entered into. It appears she left that aspect of the matter to the realm of guesswork by the Court or indeed the prolific imagination of the 1st respondent. I may right away indicate that her claim to be the lawfully wedded wife of the deceased is

agonisingly lacking of proof and therefore cannot stand the necessary test.

Furthermore even though she was present in Court she didn't dare come forward to give substance to her claim and stand the likely cross-examination that would ensure.

In his answering affidavit the 1st respondent denies that the applicant is his son's widow. He denies that applicant was married to the late David Ralefifi. He on the contrary avers that David Ralefifi was married to 'Mathabiso Ralefifi the intervening applicant (born Likhapha Masilo). He further avers that the marriage between the deceased and 'Mathabiso took place in 1987. He has attached a marriage agreement marked "TR1". The document purports to be an agreement between the mother of 'Mathabiso and 1st respondent on the number of cattle paid as 'bohali' in the marriage between an 'unnamed' daughter of 'Mapolo and an "unnamed" son of Thomas. This agreement purports to have been entered into on 31-12-87.

The 1st respondent avers in paragraph 5 of his answering affidavit that he has been advised and consequently he believes that in law once there is a previous subsisting marriage as established by "TR1", there is no way in which a party to

such a marriage can enter into a civil marriage during the subsistence of the customary marriage. That may well be so. See **Contemporary Family Law of Lesotho** at page 364. But this contention is not what this Court is called upon to determine.

In an attempt to persuade this Court that marriage existed between Likhapha otherwise known as 'Mathabiso and the deceased, the 1st respondent made so bold as to aver that ...." There was never any indication that my late son and the said Likhapha had not agreed to get married." In this averment one senses lack of certainty as to one of the three requirements to be satisfied for there to be a Sesotho Customary marriage i.e. *consent between the parties*; the other two being consent between the parents or those standing in parents' stead and agreement as to the amount of 'bohali' or part thereof.

Another aspect which causes one's eyebrows to rise is the meaning of the 1st respondent's averment that "I performed all Sesotho Customary rites pertaining to Likhapha and I informed her maiden family that they should come to my place if they are looking for her" in the light of his insistence that the 3 cattle he is said to have paid in response to a suit for his son's abduction of Likhapha were for settlement of marriage for which he paid a balance totting up to 11 head of cattle



and not for “chobeliso” or (abduction). In Sesotho Custom once the “groom’s” father or family say to the “bride’s” family look my way or my direction it means that should the bride’s family be hunting for and wondering where their daughter is they should cast their eyes in the direction of the groom’s family, which is where the girl would be. Nohow could all that be necessary or the girl’s family be unaware of their daughter’s whereabouts unless she had either eloped or been abducted into the family of the groom.

For all the garbled averments in his attempt in paragraph 5 to explain away what happened the record of Rothe Local Court case CC 75\91 *Malitaba Masilo vs Thomas Ralefifi* puts it beyond dispute that the subject matter for determination by that Local Court was “3 cattle of (*sic*) M300-00 per head which is the remainder in the elopement (abduction) of Likhapha (*sic*) by Tsehla Ralefifi”. Thus there was no question of 3 cattle having been paid for any other purpose than abduction. To equate payment for abduction to payment of ‘bohali’ is an absurdity of the highest magnitude.

Much as the 1st respondent is adamant that the deceased was not married to ‘Malerato, he was clearly in a cleft stick when shown “MR1” - a marriage certificate pertaining to the marriage of the deceased to ‘Malerato - wherein the deceased

David Tsehla's status is reflected at that time as a bachelor and the applicant's status was of a spinster aged 28 and 27 respectively. The parties to this marriage who were above the age (21 years) of consent any way are shown to have married with "parents' and own consent". I shall take it then that Tsehla didn't seek his parents' consent because his father is not aware that his son got married to someone he thought was his son's concubine at the time of the son's death. This should be looked upon as a very charitable concession to the ignorance of 1st respondent about the marriage because his initial stand under cross-examination was that he did not know the applicant at all and had not seen her before the day of the hearing of this matter. But when confronted with contents of his own affidavit to the effect that the applicant was the son's concubine and that he knew her as well as where she lives he made a pitiable spectacle of himself trying to wiggle out of a web of lies he seemed so convinced would somehow be of help to him. Apparently he had forgotten the contents of his affidavit when just over a fortnight later he found himself having to give oral evidence. To his credit however he conceded that his two versions were irreconcilable.

Annexure "MR1" shows that the marriage between the parties concerned was solemnised on 18th August, 1993.

Concerning his attempt to show that there had been marriage between 'Mathabiso and his son the 1st respondent failed hopelessly to give the Court an idea of the identities of Mapolo's witnesses. Having started with saying those were all women, he was shown the names on "TR1" upon the perceiving of which he realised those were males' names. These were Mputana and Lepekola. See page 26 of my notes.

On realising that the glib manner in which he had spouted his assertion in his evidence-in-chief that those were all women he again sought to seek refuge in the favoured expression namely "it seems I was confused".

I have no doubt following on PW1 Beleme Damane's evidence that "TR1" was a faked document. PW1 indicated that just days before he heard of the death of the deceased who was already dead then, the 1st respondent and 'Mathabiso placed before him a blank paper on which he was asked by 1st respondent to give a date-stamp impression. The stamp was back-dated by 'Mathabiso. The pretext was that some renewal of a displaced "letter of the cattle he had paid Likhapha with. This was in connection with the abduction of Ralefifi's daughter". See page 3 of my notes.

Of course the 1st respondent denies that he was accompanied by 'Mathabiso when he went to see PW1. Asked why PW1 should falsely claim this the disarming answer of the 1st respondent was "I don't know" see page 29 of my notes. However he accepts it is extremely strange that the chief should say that. He doesn't know why the chief should also say the 1st respondent came to him with a blank paper.

a *coup de grace* against the joint stand of the 1st respondent and the intervening applicant was effected by 'Malerato in her responses to the intervening applicant's affidavit where she indicated by substantiated proof that even though 'Mathabiso regarded herself as the deceased's wife for years and years before the death and that such marriage had not come to an end at any time during the life time of the deceased, in fact by 28th April, 1995 i.e. 2 years before the deceased died 'Mathabiso had contracted a civil marriage between herself as a spinster and reverend Molupe Thabane who was willing and ready to testify and confirm 'Malerato's averment to that effect. The Court has before it "Exhibit AA" attached to 'Malerato's replying affidavits. The question arises if, for argument's sake, this marriage between 'Mathabiso and the reverend Thabane was a fake or even voidable why didn't 'Mathabiso allude to it in her affidavit assuming she came before this Court in good faith. Why then does it appear she concealed it? And

with what hope and for what motives if not obviously sinister? Or even dishonest? Nohow could it be said she is unaware that she contracted a civil marriage with Rev. Thabane in 1995. Why should she let her “father-in-law” rely on her evidence and act in the belief then that he is serving his “daughter-in-law’s” interests when that daughter-in-law knows full well that when trying to do so the 1st respondent is going on pigeon’s milk?

If the 1st respondent was sincere in his assertion that at the time of the purported negotiation of terms of their children’s “marriage” with “Mapolo “there was no indication that ‘Mapolo’s daughter was not married to his son” then those words of his which indeed were pregnant with meaning are by some coincidence set in proper relief by the fact of the existence of “Exhibit AA” a Certificate of Marriage by civil rites between ‘Mapolo’s same daughter with reverend Thabane. To me no better indication than this exhibit shows that ‘Mathabiso was even as early as at the time of the conclusion of the purported negotiation of terms of her marriage to the deceased not married to him because throughout that period till marrying the Reverend Thabane of her free accord ‘Mathabiso or Likhapha told the marriage officer who solemnised that civil marriage that she was a spinster. ‘Mathabiso has not come forth to gainsay this damning information to her claim that the deceased was her husband. If the 1st respondent appreciated this state of affairs he would

have realised that relying on the support of 'Mathabiso would amount to nothing different from leaning on a broken reed.

I accept therefore that applicant's averment in paragraph 3.3 that in view of the record of proceedings in CC 75\1991 kept in the Rothe Local Court there was never any marriage between the deceased and the said Likhapha. This in turn is a matter the truth and substance of which the 1st respondent must have known; therefore he is wrong to come before this Court and pretend that this Court would fall for the web of lies that he has so clumsily woven about himself and his "purported" daughter-in-law who turns out to even be in the family way expecting Reverend Thabane her husband's child. See page 30 paragraph 3.2.

It makes no sense in customary law as the 1st respondent would have this Court believe that after he had entered into a marriage agreement with Likhapha's family the latter proceeded to sue him for "chobeliso" cattle. This suit occurred as late as in 1991. This gives a further lie to his claim that customary marriage was concluded in 1987. If there had been such marriage then there would have been no question of "abduction" cattle or suit after date of marriage because the act of marriage dissipates the act of abduction which gets subsumed under the act of marriage.

I reject the 1st respondent's and the intervening applicant's averments in so far as they tend to persuade this Court of the existence of any marriage between the deceased and the intervening applicant.

The 1st respondent indicated in his affidavit that he has no interest in the burial of the deceased and that he had not used the money received from the 2nd respondent. However when the Court expressed to him its appreciation of the fact that the money was still intact he said it was no longer there. Again he may have been untruthful to the Court. But be that as it may, he is held liable for that money to the applicant.


In the result Judgment is entered for the applicant 'Malerato Ralefifi for

1. The release of the dead body of the deceased David Tsehla Ralefifi to her for burial.
2. The restoration to the applicant of the full amount of the money i.e. M3000-00 that was handed over by 2nd respondent to the 1st respondent through the latter's artifice and contrivance.
3. The applicant is awarded costs of this application.
4. The claims of the intervening applicant 'Mathabiso *alias* Likhapha

otherwise presently surviving under the name Mrs Thabane as amply shown in the papers before this Court are dismissed with costs as well.

Further

5. *Rule Nisi* is confirmed in respect of prayers 1(b) © (e) and (h).



JUDGE  
9th October, 1997

For Applicant : Mr Phafane  
For Respondents: Mr Mosito