

IN THE HIGH COURT OF LESOTHO

(Commercial Division)

CIV/T/47/2009

In the matter between:-

**STEPHEN RAMAPHIKE
ADV. N.E. MAKHERA**

**1ST PLAINTIFF
2ND PLAINTIFF**

and

MOOKHO MAPHOTHOANE

DEFENDANT

Date of hearing : 21st September, 2010
Date of judgment : 21st September, 2010

CORAM : MR ACTING JUSTICE J.D. LYONS

Counsel:

Ms. L. D. Molapo for the Plaintiff

Mr. Teele K.C. for the Defendant

JUDGMENT

At the commencement of submissions Counsel for the Plaintiff conceded that the purported contractual arrangements that the plaintiffs seek to enforce were contra bonos mores. Such being the case, these illegal contracts are unenforceable.

Counsel's approach was commendable. The "contracts" or "agreements" were champertous. Whilst the law has evolved a little since times when champerty and maintenance were strictly

outlawed both the arrangements pleaded herein fall well-short of an acceptable arrangement. (for a recent decision on this point see *Massai Aviation Services & Anor vs. A.G. & Anor* P.C. 58 of 2005 26 February 2007).

Counsel for the plaintiffs argued that when the parties entered into the agreement, they did so in good faith. That may have been the case, but the agreement is contrary to law. Whether the parties knew that or not is beside the point.

Counsel also argued that the defendant, by subsequently commencing a lawsuit, had ratified the agreement. Whether or not she could be said to have ratified the agreement is also neither here nor there. The agreement is illegal and any supposed later ratification (which is denied) cannot change that and suddenly turn a wrong into an enforceable right.

The same point defeats the argument of unjust enrichment. The alleged agreement was that the first plaintiff would advance money to the lawyer to fund the Defendant's negligence/personal injury action. If the Defendant succeeded (as she did), then the 1st plaintiff would get 50% of the settlement. It was argued that the Defendant has been unjustly enriched at the 1st plaintiff's loss.

It gets back to the pleading and the concession that the 1st plaintiff's claim for 50 % is illegal and therefore unenforceable. The application of equity does not arise. The 1st plaintiff and his son entered into an illegal agreement centred on the Defendant's misfortune. There is no suggestion that the Defendant knew about it. The Defendant was simply pursuing a legal cause of action that accrued to her resulting from the negligence of an unrelated third party. The relationship between the Defendant and the 1st plaintiff's son was, it was conceded, a 'putative marriage'. The Doctrine of unjust enrichment is an equitable doctrine. The 'agreement' was illegal. In those circumstances the Plaintiffs have come to equity with unclean hands. Equity will not assist them.

The case is dismissed with costs. The contract was illegal (as has been conceded) and is unenforceable.

I thank Mr. Teele K.C. for his helpful submissions. Ms. Molapo is to be complemented on her handling of a very difficult brief.

J.D. LYONS
ACTING JUDGE