

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:**

**‘MATEBOHO MOLEJANE**

**APPLICANT**

**AND**

**‘MAKHOLU MOLEJANE  
RAMASIMONG MOLEJANE  
METROPOLITAN LESOTHO LTD  
MASTER OF THE HIGH COURT  
TEACHING SERVICE DEPARTMENT  
STANDARD LESOTHO BANK  
ATTORNEY-GENERAL**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT  
7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Coram : Hon. Moiloa AJ  
Date of Hearing : 15, 22 & 23 May, 2012  
Date of Judgment : 23<sup>rd</sup> May, 2012**

**Summary**

*Dispute by two “wives” over dead body of their “husband” - Where such body should be buried where “wives” do not agree on burial place - Burial place shall be where deceased had elected the family’s matrimonial home and built a house for his family. Deceased married his first wife by Sesotho custom and 10 years later solemnized their marriage at church in terms of Marriage Act 1974. Thereafter deceased left his first wife and child without annulling their marriage*

*and underwent a customary marriage with another woman without disclosing to her full facts - Second woman bona fide entering into second marriage with deceased as “wife”. Second wife living with deceased for several years as such and bearing 2 children - Nursing deceased until his death. Second wife’s marriage declared putative. First wife desiring body to be buried at matrimonial home of parties while second wife desiring burial to be at deceased’s parents’ home.*

[1] On 23<sup>rd</sup> May 2012 I gave judgment in the above matter and delivered the following orders promising that written reasons of my judgment would follow:

- (a) It is ordered that the body of the late Makalo Benedict Molejane shall be buried at Ha Moholisa, Maputsoe, the matrimonial home of deceased and the First Respondent.
- (b) Furthermore, it is declared that the “marriage” between deceased Makalo Benedict Molejane and ‘Mateboho ‘Mampinane Molejane (Applicant herein) is a putative marriage.
- (c) It is declared that proceeds of a Metropolitan Life Policy No.600015564 of Scheme Code 60013 is sole property of ‘Mateboho Molejane (Applicant herein).
- (d) It is ordered that the proceeds of Standard Lesotho Bank a/c 0140003392001 in the name of Makalo Benedict Molejane shall be property of ‘Mateboho ‘Mampinane Molejane (Applicant herein).
- (e) Terminal benefits of the late Makalo Benedict Molejane from the Teaching Service Commission, Department of the Ministry of Education & Training shall be equally divided between Applicant and First Respondent.

- (f) The undeveloped site acquired by Applicant and deceased at Mapoteng during their sojourn together shall remain the sole property of Applicant.
- (g) There will be no order as to costs and each party is to bear its own costs as this is a family dispute.

[2] I now proceed to give my written reasons for the above orders which I made earlier. Makalo Benedict Molejane died at Bethlehem Medic-Clinic in South Africa on 4<sup>th</sup> April 2012. Makalo had been sick for some time prior to his death. Before this death he had been nursed by Applicant at various health centres including Dr. Knights hospital at Maputsoe. He had been living with Applicant since 2005 as ‘man and wife’ and had had two children with her, a girl named Lerato (born 28 March 2008) and a boy named Teboho (born 27 November 2009). When he had been sick the late M.B. Molejane had been nursed and looked after by Applicant. Indeed it was Applicant who took her to Bethlehem Medic-Clinic, in South Africa where the deceased eventually passed away on 4<sup>th</sup> April 2012.

[3] Most material facts in this case are common cause except 3 which also became cleared up soon after these issues were referred to oral evidence by the court. The three issues were (a) the nature of the alleged marriage between deceased and First Respondent (b) the circumstance under which deceased and First Respondent separated and (c) the nature and circumstances under which the purported marriage between the deceased and Applicant had come about.

[4] It is a common cause that First Respondent and deceased married by customary rites in 1988. She was formerly Miss Miriam Qathatsi. Her maiden home was at Peka. Makalo and 1<sup>st</sup> Respondent eloped to Tsikoane, home of Makalo in 1988 in the usual fashion that young men and women marry each other these days once they have agreed to get married. At the time of this elopement, First Respondent worked at Maputsoe while Makalo worked as a Teacher at Mapoteng High School in Mapoteng. Makalo took 1<sup>st</sup> Respondent to his home in Tsikoane where his family including his mother PW2 (‘Ma-Bernard Molejane) performed customary rites accepting 1<sup>st</sup> Respondent into the Molejane family by slaughtering a sheep in her honour and accepting her as a daughter-in-law. First Respondent in the usual customary way was given her marital name of “Makholu” in the Molejane family. A girl named Kholu was subsequently born to Makalo and ‘Makholu in 1988. She is a young woman now. ‘Makholu testified that from early on in their marriage, Makalo gave her a lot of problems. The problems centred primarily around Makalo’s propensity to infidelity. She described her husband as a “womanizer”. She kept reporting her problems of Makalo’s infidelity to his family, especially to ‘Ma-Bernard (Pw2) who was Makalo’s mother. ‘Ma-Bernard kept promising to intervene and reconcile them but she never did; neither did the male family members of her husband. She reported her marital problems also to her own family at Peka, who tried to urge the Molejane family to intervene and deal with the problem. Molejane family never did. Her marital problems persisted but she persevered.

[5] On 14<sup>th</sup> February 1998, ‘Makholu and Makalo underwent a civil marriage before a marriage officer (Father Sean Murphy) after banns at St. Luke’s

Catholic Church at Maputsoe. Thus by undergoing this process Makalo and First Respondent elected to convert their customary marriage into a civil marriage in terms of the Marriage Act, 1974. Her troubles with the behavior of Makalo continued. They obtained a site of their own at Ha Moholisa at Maputsoe where they eventually built their matrimonial house, a seven roomed structure. They continued to have marital squabbles which led to Makalo more and more frequently avoiding to go home to their marital home but instead preferring to go to his own home at Tsikoane. 'Makholu testified that in later years even when Makalo visited their matrimonial home at Maputsoe he no longer slept over at all. In the early part of these problems the woman at the centre of Makalo's amorous attention was a fellow teacher called Blandinah. Blandinah is a different woman to the Applicant. In fact 'Makholu became aware of Applicant only at the end of 2008. She had found a face photo of Applicant on her husband's cellphone. When she asked him about it, Makalo elected to become evasive about it and quarrelsome eventually leading to his unceremonious departure from home. 'Makholu further testified that in December 2008, she had heard her husband was unwell and was staying with his mother at Tsikoane. She went to Tsikoane to see him on 31 December 2008 intending to take him to see the doctors. On arrival in the room in which her husband was sleeping she found Applicant seated at the head of the bed next to her husband. She says she immediately recognized the woman's face as the same one whose photo was saved on Makalo's cellphone. She was shocked by this discovery at the Molejane family house. She says she lost her temper and attacked Applicant but the whole family of 'Ma-Bernard attacked her instead and expelled her from their home throwing her with stones and other missiles. She left unceremoniously. She went home to Peka to report to her own parents as to

what had befallen her in Tsikoane. She returned to Tsikoane with a letter from her parents addressed to the Chief of Tsikoane requesting the Chief to arrange a meeting of the two families at the Chief's place. This meeting never took place because the Molejane's did not oblige the Chief's request at the behest of the Qathatsi family. Contact between 'Makholu and Makalo became even less following this unfortunate episode of 31 December 2008.

[6] With regard to 'Mateboho (the Applicant) the following facts are established. 'Mateboho is a daughter of Rapapa. The Rapapa family resides at Ha 'Mamathe a considerable distance away from Tsikoane. She was a teacher at Kueneng when she first met Makalo. She learned from Makalo that he had previously been a married man with a daughter but that his marriage had ended. She did not know how but she understood from Makalo and his family that Makalo's previous wife had left and was married to someone in Ficksburg. All these allegations she had learned from Makalo and later from Makalo's mother, 'Ma-Bernard. She accepted and bona fide believed them as true that Makalo was once married to some woman but that he was no longer married to anyone.

[7] It was on the above basis that on 30 March 2005, Applicant had eloped with Makalo to become his wife. Makalo took Applicant to Tsikoane where his parents lived and had declared Applicant to them as his wife. The usual customary rites pertaining to marriage of a young woman to her husband's family were performed. A sheep was slaughtered in honour of Applicant and Applicant was given a marital name 'Mateboho by 'Ma-Bernard and Molejane family. Applicant was accepted by the Molejanes as a daughter-in-law and wife of their son Makalo. Clearly in her mind she believed all

these things done to her were confirmation of what Makalo had told her that he was a free man to marry her. Thereafter Applicant and Makalo returned to their respective places of work at Mapoteng and Kueneng. It is worth noting that 'Ma-Bernard and the Molejane family went to the Rapapa family and asked for the hand of 'Mampinane Rapapa (Applicant herein) and their son in marriage. The Molejane family's request was granted and an agreement was reached by the families to become in-laws. The Chief of their village witnessed this agreement and stamped it. Four head of cattle was paid in bohali and the balance was to be paid at a later date. No mention was made by the Molejane family of the fact that their son was civilly married to First Respondent. No mention was ever made by Makalo that he was married to First Respondent by civil rites. In fact Applicant's reaction to First Respondent's production of a marriage certificate dated as February 1998 in these proceedings was one of shock and denial that such a marriage had genuinely taken place as alleged. In fact Applicant was quite clear that she was in marriage with someone who had previously been married to another woman but that such marriage no longer existed. I am satisfied that both Applicant and her family had been misled by Makalo and his family that she bona fide believed that she was marrying someone who had competency to marry her. In these circumstances, I have no hesitation whatsoever in accepting her and her family's bona fides that she married Makalo not knowing that Makalo had a valid civil marriage with 'Makholu. Throughout her association with Makalo, Applicant conducted herself as wife of the deceased Makalo. She nursed him to his death taking every possible step to see that Makalo received the best treatment in Lesotho and South Africa at private hospitals. I am satisfied that her "marriage" to

Makalo was a putative marriage and I have no hesitation in declaring that union with Makalo a putative marriage.

- [8] Both during viva voce evidence and during efforts to mediate their dispute concerning the burial of Makalo, First Respondent has said throughout that she has no problem participating in the burial of Makalo together with Applicant. She had no problem with assets acquired by Makalo and Applicant during their association. The one serious point of departure between these two women was the place of burial of the dead body of Makalo. First Respondent was adamant that “their husband” must be buried at their marital home at Ha Moholisa, Maputsoe. Deceased had not built a house of their own with ‘Mateboho at Tsikoane. When they visited Tsikoane they lived in his mother’s house there. Applicant and the Molejane family members desired the body of Makalo to be buried at Ha Bene, Tsikoane where other family members are buried. In my view this is not a good enough reason to divert the burial of Makalo from his matrimonial home and ignore the wishes of ‘Makholu, his first wife and their daughter Kholu. According to Sesotho custom, a man who has elected and taken up his own residence at a place different from where his family members reside cannot be buried at a place other than the one where he had elected to be his matrimonial home and where he had taken up independent residence unless all family members agree voluntarily that his body be laid to rest at his ancestral burial grounds: ‘Ke monna ea tsoileng motse’. On the admissible evidence before me, ‘Makholu continued to live in her matrimonial home with Kholu while Makalo elected to live away from their matrimonial home. It would be unjust in my view to ignore the wishes of his wife which to my



mind are quite reasonable in the circumstances of this case quarrels between 'Makholu and her husband notwithstanding.

- [9] First Respondent has made it plain that she does not seek to dispossess Applicant of any assets which she and the deceased acquired during their sojourn together including insurance policies which she acquired in her own right such as the Metropolitan Life Policy No.60001556 and Standard Lesotho Bank A/C 0140003392001. Indeed First Respondent exhibited her own policies to the Court and Applicant during cross examination and stated in clear terms that she regards her own policies as her property just as she regarded Applicant's Metropolitan policies her own property to which she does not lay any claim.
- [10] In regard to terminal benefits due to Makalo from the Ministry of Education as a result of his employment as a teacher at Mapoteng High School, I have decided that such proceeds be divided equally between the Applicant and the First Respondent to enable them look after the deceased's children with these two women. This I did because part of deceased life as a permanent teacher and therefore as entitled to earn benefits as such under Teaching Service Commission, he had spend with both women in roughly equal portions.
- [11] The undeveloped site in Mapoteng acquired by Applicant and Makalo shall remain property of Applicant. In fact First Respondent laid no claim to it but was clear that such site is the undisputed asset of Applicant. Equally the seven roomed home acquired and developed by Makalo and First Respondent shall remain property of First Respondent. Also in this regard

Applicant made it clear that she lays no claim to it in competition to 'Makholu. Accordingly, the Maputsoe homestead of Makalo and 'Makholu shall remain 'Makholu's property. This dispute being a family dispute I make no order as to costs.

[12] The above then are the basis on which the orders I made on 23<sup>rd</sup> May 2012 were made. I so confirm them in this judgment.

**J.T.M. MOILOA**  
**ACTING JUDGE**

For Applicant : Adv. C. Lephuthing  
For 1<sup>st</sup> Respondent : Adv. Nthontho