

IN THE HIGH COURT OF LESOTHO

In the matter between:

TEBOHO 'MATLI

Applicant

V

'MAMONYANE 'MATLI

1st Respondent

BOLIBA SAVINGS & CREDIT

2nd Respondent

MINISTRY OF EDUCATION & TRAINING

3rd Respondent

JUDGEMENT

Coram : Hon. Monapathi J.

Date of hearing : 20th September 2011

Date of Decision : 20th September 2011

Judgment Delivered : 25th April 2012

Summary:

A contract between a woman and people to whom she has delivered services does not make her husband a creditor nor do payments for which the wife is entitled part of the estate when she is still alive. The proceeds belong to her and are under her control. The dispute is governed by the law of contract.

CASES CITED:

Supreme Furnitures v Molapo 1995-96 LLR 377

Management Committee of Emanuel A.M.E and Others v The Eighteenth Episcopal, A.M.E 1995-96 LLR 190

[1] Following from a catering service agreement between the First Respondent and Third Respondent (wife of the Applicant) certain proceeds were due to be paid to the First Respondent (husband). On one or certain occasions the husband had funded the preparations for the catering services. The spouses were having a matrimonial dispute.

[2] In this application, the Applicant sought the certain interdicts essentially against First Respondent, and amongst others asked that payment of certain monies and benefits should not be paid to the First Respondent. There is no dispute that as a result and in terms of their agreements of annexure “A” and “B” would normally be paid to the First Respondent, but as it is now, there is a matrimonial dispute, and that caused a question to be asked whether the dispute was matrimonial or contractual.

[3] Following that there was a separation between the parties the minor child remained with the husband and following that there was a dispute in the Magistrate’s court in Berea. One would be inclined to view this matter as matrimonial. If it is, it is still no complete answer to the dispute before this court.

[4] What is important is that in the background, an account was maintained between First Respondent and the co-operative bank which is Second Respondent.

I do not see that arrangement as being between the husband and that bank. Perhaps it is so, but I did not see any of the agreements being between Applicant and that bank. Furthermore, I do not see the contract as being between the husband and the Ministry of Education.

[5] When Mr. Relekoala spoke about the arrangement having been with or having had the consent of the husband that might be true, but the difficulty is the denial in contents of paragraph 5 of answering affidavit which answers paragraph 5 of founding affidavit. Paragraph 4 lends weight, and most abundantly to the whole arrangement and agreement as being between First Respondent and other respondents. This did not involve the Applicant. We cannot therefore, for the purposes of resolving this dispute, elevate the payments due to the First Respondent for having delivered catering services, for which she must receive payments, as being a matter of deciding the proceeds of an estate. Despite that the parties are married in community of property, these payments remains personal benefits of the First Respondent. This application would consequently not succeed.

[6] This court's decision is fortified by the contents of paragraph 4 which has not been replied to. Then there is authority of *Supreme Furnitures v Molapo 1995-96 LLR 377*, that in the circumstances of two versions, even if they may be equally credible, the court must take the version of the First Respondent. See also *Management Committee of Emanuel, A.M.E and Others v The Eighteen Episcopal , A.M.E 1995-96 LLR 190*. If there was a reply to paragraph 4, the court would have had to exercise its discretion and to resort to a reasonable version to take.

[7] On principle alone, I would decide on and or follow the version of the First Respondent and in absence of replying affidavit or in the absence of Applicant giving *viva voce* evidence, I would follow that of the First Respondent.

[8] The application should fail and there is no order as to costs. Applicant should return the bank booklet of the First Respondent to her as claimed for the reasons stated above.

T. E. MONAPATHI
JUDGE

For Applicant : Miss Kolobe
For Respondent : Mr Ralekoala