

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**In the matter between:**

MATLALI LEKHOTSA 1<sup>st</sup> Applicant

And

‘MANTAPA LEBOELA (nee Mpoi Lekhotsa) 1<sup>st</sup> Respondent

COMMISSIONER OF POLICE 2<sup>nd</sup> Respondent

O/C CID PITSO GROUND POLICE STATION 3<sup>rd</sup> Respondent

ATTORNEY GENERAL 4<sup>th</sup> Respondent

**JUDGMENT**

Coram : Hon. Monapathi J  
Date of Hearing : 26<sup>th</sup> October 2012  
Date of Judgement : 30<sup>th</sup> October 2012

**SUMMARY**

*Where a married woman has left an illegitimate child at her maiden home, who later dies, the estate of the unmarried child or the wealth amassed by the Deceased ordinarily belongs to the woman’s maiden family as an inheritance of the woman’s brothers. But it seems the*

*woman should have what can be called a child's share from the estate of the Deceased.*

[1] I have already made a decision in this matter.

[2] This is not a novel dispute since it is essentially a dispute over the right to bury one Hopolang Lekhotsa. The Deceased is an illegitimate child of the First Respondent who was born out of wedlock before the First Respondent was married to one Mpheteng Leboela. Respondent is still presently married to him.

[3] When the First Respondent got married, she left the Deceased at her maiden home where the latter became family member Applicant's family. The Applicant is the biological brother of the First Respondent. According to Sesotho custom, the Deceased is the younger brother of the Applicant and a brother of the First Respondent because he was illegitimate. Deceased belonged to the family of Applicant but not to the family of Leboela.

[4] It is the two factors namely that Applicant is heir and that Respondent was married off to Leboela that persuaded me towards orders that I made. I considered that in the special circumstances other factor accordingly become less significant.

Amongst this was that while married to Leboela's First Respondent remained attached to the Deceased. That Deceased may have been supporting First Respondent as Deceased had become a successful businessman.

[5] I concluded that the factors that I have mentioned are not always absolute as Mr. Molapo for First Respondent submitted. It is because authorities say that what is important is a sense of what is right and public policy

[6] On the issue of who is the heir to the estate of the deceased, there is no doubt that the Applicant is the heir. However, both Counsel for the parties agreed that the other beneficiaries are entitled to get something or portion out of the Deceased's estate. According to common law the First Respondent should be the heir, and it was conceded during argument that it is only equitable in the circumstances that she should also benefit out of the Deceased's estate. I agreed.

[7] It was agreed however that the Applicant, according to the customary law, should get a larger share from the Deceased's estate as the rightful heir. Counsel informed the Court that there was an agreement broached and agreed by parties, of course, with some minor differences here and there. If the

proposed agreement between the parties as to the sharing of the Deceased's estate is to the extent that the Applicant benefits and gets a greater share, then that would be consistent with the Court's judgment provided First Respondent gets some benefits.

[8] If on the other hand the arrangement is for the Applicant to voluntarily give away a certain part of his share that would also be in order, as long as he does that for the benefit of the other beneficiaries as well. Those details are contained in the proposed agreement which in the Court's view as correct.

[9] There was some other suggestions. Some were not tenable as the Court is not better placed to micro-manage issues of agreements over certain details about burial because those are issues which the family should in principle agree upon. The courts' role is to interpret the law and its correct application. I accordingly found that the Applicant was most suited to bury the Deceased.

[10] I concluded it would be unusual if the First Respondent would bury the Deceased. Policy considerations worked against that in the special circumstances of this case.

[11] It is difficult to imagine a situation where a married woman can have a right to bury a child of the Lekhotsa family (her maiden home) even if that child happened to be her biological child as it obtains in this case. The Applicant is an heir and therefore a “father” to the Deceased. The question that the First Respondent is the biological mother of the Deceased is neither here nor there in the circumstances of this case. The above two reasons in paragraph [3] are the strong reasons. The other prayers are not opposed substantially. For prayer (e) the Court decides for the Applicant. Prayer (b) is a matter of agreement but the Court finds in favour of the Applicant as well.

[12] It can, depending on the circumstances of each case, be possible that the person who has the right to bury be stripped of such a right. However the case at hand is not one of such circumstances. The right of Applicant to bury, goes hand in glove with the right to determine where the Deceased should be buried. In the circumstances of this case the person most well positioned to bury the Deceased is the Applicant as alluded earlier. It might be that the Deceased was more attached to his biological mother but looking at the facts and the law, the Court is satisfied that the Applicant should bury the Deceased. I repeat that, the Court cannot micro-manage issues of burials as those should be dealt with by the families concerned. The

courts cannot teach people nor force them to have warm relations if they are not willing to do so.

**Order:**

Other prayers belonging to issues of property were not substantially opposed, and the Court orders as follows:

1. Prayers (a), (b) and (e) are confirmed in favour of the Applicant.
2. There no order as to costs.

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**T.E. MONAPATHI  
JUDGE**

For Applicants : Mr. M. Khumalo  
For Respondents : Mr. L. Molapo