

**IN THE HIGH COURT OF LESOTHO**

**CIV/APN/344/2013**

In the matter between:

**MAMAKARA RAKHOROMENG  
(Born Rantuba)**

**APPLICANT**

**And**

**RAKHOROMENG NCHEME RAKHOROMENG  
LESOTHO FUNERAL SERVICES  
(HLOTSE BRANCH)**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Coram** : Honourable Acting Justice E.F.M. Makara  
**Dates of Hearing** : 9 August, 2013  
**Date of Judgment** : 9 August, 2013

**Summary**

*Application restraining the 1<sup>st</sup> Respondent from burying the deceased – The latter being the applicant’s husband and for the 2<sup>nd</sup> Respondent to be directed not to release the body to the 1<sup>st</sup> Respondent for its burial and seeking for the postponement of the burial date for the accommodation of her chosen date – The applicant having left her matrimonial home for 3 years – Arrangements for the burial already advanced and the grave dug – Her rights balanced with those of the family and on the practical way forward – Application refused – The deceased to be accorded a descent burial in line with his religious and customary way of*

*life – The applicant to be given her rightful place and role in the burial.*

## **MAKARA A.J**

[1] This Court is seized with the motion proceedings which were brought on the 7 August, 2013 on urgent basis by the applicant seeking for an order in terms of which it is being directed that:

- (1) Ordinary modes and periods of service be dispensed with on account of urgency.
- (2) A **Rule Nisi** be issued returnable on the 14<sup>th</sup> day of August 2013 calling upon the Respondents to come and show cause, if any, why:-
  - (a) 2<sup>nd</sup> Respondent shall not release the dead body of **Teboho Rakhoromeng** to 1<sup>st</sup> Respondent and/or person authorized by him pending the outcome of this application.
  - (b) Applicant shall not be declared the rightful person to bury the dead body of the late **Teboho Rakhoromeng**.
  - (c) 2<sup>nd</sup> Respondents shall not be directed to release the dead body of the late **Teboho Rakhoromeng** to applicant herein for purposes of burial.
  - (d) Applicant shall not be declared the rightful heir of the late **Teboho Rakhoromeng**.
  - (e) Costs of Suit.
  - (f) Further and/or alternative relief.
- (3) Prayers 1 and 2 (a) operate with immediate effect as an interim court order.

[2] The Court granted prayers 1 and 2 (a) of the application and scheduled the return date to the 14 August 2013. The 1<sup>st</sup> Respondent through the services of Adv. Tlapana anticipated the return date by simultaneously filing the notice of intention to

oppose and the answering affidavit and declared their preparedness to have the matter argued to its conclusion. Thus, the case was set down for hearing on the 9 August 2013.

[3] The date was fixed against the appreciation of the urgency involved in the matter particularly in recognition of the standing arrangements for the deceased's body to be buried on the 10 August, 2013.

[4] At the commencement of the hearing day, the Counsel for the parties advised the Court that the material facts pertaining to the background of the case were common cause. These were exhibited in the Deed of Settlement concluded by the parties.

[5] The only material point of divergence which was projected by the parties hinged on the date of the burial. Adv. Molefi for the applicant presented the applicant's case from the key premise that she as the wife of the deceased has a right to determine the date of the burial. He contended that the identified date of the burial had been unilaterally chosen by 1<sup>st</sup> Respondent and the family without having consulted her. He maintained that the applicant ought to have been consulted about the date of the burial since she commands the right and the duty to bury the deceased.

[6] It was further argued for the applicant that at the time of the death of the deceased she had since 2010 *ngalaed* to her

matrimonial home due to the estranged relations between herself and her husband. The paradox in these developments is that on the basis of papers before the Court there is no indication whatsoever that the 1<sup>st</sup> Respondent and or any member of the Rakhoromeng family had taken measures to reconcile the two as a way of restoring their family relationship as husband and wife. This is an indication of a dereliction of a Customary Law calling on the part of the 1<sup>st</sup> Respondent and his family.

[7] The thrust of the foregoing arguments was to persuade the Court to make an order postponing the burial date to the 24 May 2013. The postponement sought for was justified on the basis that it would extend the opportunity to the Applicant for her to financially and otherwise contribute in the burial of her husband.

[8] An important point which was advanced for the Applicant was that she had not been properly informed about the death of her husband since the news had been disclosed to her by her sister in law in the Rakhoromeng family instead of by the 1<sup>st</sup> Respondent. She has, nevertheless, conceded that she was informed about the developments. This obtains so regardless of the fact that the information coincided with the time when her biological mother happened to have just passed away.

[9] Adv. Tlapana counter-argued on behalf of the 1<sup>st</sup> Respondent that much as he subscribes to the principle legal position that the

heir including the widow has a right and duty to bury, it must be recognized that this right is not absolute. He emphasized that the right is circumscribed by the peculiarity of the material facts antecedent to each situation. In this connection, he drew the attention of the Court the position that on account of the existing estranged relations between the applicant and her late husband and which had adversely transcended into both families, it was not practically easy to communicate the obituary through the normal channels. Nonetheless, he maintained that the applicant had timeously been alerted about the passing away of her husband.

[10] The picture presented to the Court by Counsel for 1<sup>st</sup> Respondent, was that the arrangements for the burial of the deceased have reached an irreversible stage. He warned that as this Court is sitting over the matter, the relatives of the family within an abroad the jurisdiction, have already been appraised of the burial date. The ox, the coffin, the tombstone and the groceries have been secured. Most significantly, the ground for the grave has been allocated and that the grave itself has been dug and constructed accordingly. And, is ready to accommodate the deceased.

[11] The Court finds that this is a typical case which warrants for a practical oriented judgment. This is dictated by the advancement of the developments made by the family towards the burial of the deceased.

[12] Whilst the Court recognizes the right and the duty of the applicant to bury her husband, it should, nevertheless, balance that with a corresponding reality that among the Basotho the burial of the deceased is largely an extended family affair even though its heavier burden rests upon the deceased's core family relatives.

[13] In the instance case, the Court is not dealing with a normal case. This is attested to by the fact that the Applicant had at the time of her husband's death *ngalaed* from her matrimonial home for almost three (3) years, there were no cordial relationships between her and the late and even between their respective families. This holds true regardless of who had authored the situation. It had as a result been difficult for the Applicant to have been normally informed about the death.

[14] The unhealthy relational impasse between the families had militated against the use of the normal communication channels between the families. In that unpleasant environment, however, the deceased's sister had emerged as a God send messenger in that she conveyed the news to the Applicant. The scenario, was rendered more complex by the Applicant's failure to have timeously asserted her rights and perhaps, if need be, to have timeously resorted to the Court for its timeous intervention. This rendered the already confused and difficult situation to become complex.

[15] The Court finds that the developments towards the burial of the deceased have reached an irreversibly development. Be that as it may, it directs that what is of significance would be that he should be accorded a decent burial conducted in accordance with the customary and the religious rites which the man deserves.

[16] It is resultantly decided that the *rule nisi* is discharged albeit without prejudice to the status of the Applicant and her commensurate rights as the heir by operation of law. Thus, the family would have to be accord her a rightful place and role in the burial of her husband.

**E.F.M. MAKARA  
ACTING JUDGE**

**For the Applicant** : Adv. Molefi  
**For the Respondent** : Adv. Tlapana