

**IN THE HIGH COURT OF LESOTHO**

## In the matter between:

**MOLIEHI ‘MANEO NTENE ( NEE RAMAKAU)   Applicant**

**and**

# SELLO RAMAKAU

## Respondent

## JUDGMENT

**Coram:** **Hon. Hlajoane J**

**Date of Hearing: 20<sup>th</sup> March, 2014.**

**Date of Judgment: 1<sup>st</sup> April, 2014.**

## Summary

*The son born out of wedlock claiming to be the heir by virtue of having been taken to his father's home long after the death of his biological father – Whether the ritual of having slaughtered a sheep to accept him to his biological father's house made him legitimate though not substantiated - The family having met and nominating*

*applicant as heir to her parents estate – The rule declaring applicant as heir is confirmed and there will be no order for costs.*

### **Annotations**

### **Statutes**

- 1. Administration of Estate Proclamation 19 of 1935**
- 2. Intestate Succession Proclamation 2 of 1953**
- 3. Children's Protection and Welfare Act 7 of 2011**
- 4. The Land Act No.8 of 2010**

### **Books**

### **Case**

- 1. Moteane v Moteane and Another C of A (CIV) No.14 of 1994**

[1] This is an application for an interdict pending finalization of this case. In her papers the applicant has shown that she is the daughter of her late parents Mamosele and Makhema Ramakau of Lithabaneng Ha Keeiso, Maseru. Her parents had eight children who all predeceased their parents save herself and her sister Mosele 'Mamajara Rantoa.

[2] Applicant further showed that all of her brothers died before they married. But that her brother Khojane had a son out of wedlock,

That child lived with its maternal grandparents at Morija and the mother not known to the applicant. The son was named Sello Ntšonyana.

- [3] That in 2000 when that son the respondent was 20 years old applicant's father decided to fetch Sello from his home in Morija. But before anything else was done applicant's father died in 2001 followed by her mother in 2012 leaving the respondent at their home.
- [4] Applicant described the respondent to have been a delinquent as he used to trouble applicant's mother by stealing her money, coming home late at night drunk and also being disrespectful towards applicant's mother. That was the reason why applicant took her mother to go and live with her at her place till her death.
- [5] She further explained that her mother was even buried from her place and that the respondent did not even attend the funeral. She has attached to her papers Annexure "A" being a letter by the Ramakau family appointing her as the heir to her parents' estate. Family members have appended their signatures to the letter and it has the Chief's date stamp of the 3<sup>rd</sup> May, 2012. Applicant's case has been supported by an affidavit from her sister Mosele and their cousin Sello Ramakau.

- [6] The respondent has however denied that he is illegitimate as he was later legitimized, but most of his sayings are hearsay. His maternal grandmother has deposed to the supporting affidavit. She confirmed what applicant had said in her papers. Namely that the respondent was born out of wedlock. That there had been no marriage between her daughter, mother to the respondent, and the brother to the applicant, Khojane. Respondent's mother is even married to Ketsi's family.
- [7] Khojane died a bachelor since his parents had only made a promise to marry respondent's mother. Applicant's father only years later after the death of his son Khojane gave respondent's grandparents some M600.00 as token for having brought up the respondent.
- [8] Now applying the law to the facts in this case, it becomes clear that there had been no marriage between respondent's biological parents, either in terms of custom or civil law marriage.
- [9] If the Court were to consider that indeed applicant's father slaughtered some sheep to accept the respondent into the Ramakau family, would that be considered as an act which legitimized the respondent? Surely not. A child born out of

wedlock would only be legitimized by subsequent marriage of its parents.

[10] Respondent's counsel has not filed any heads despite service of the notice of date of hearing. The applicant has referred to **the Laws of Lerotholi Part II sections 11 to 14** dealing with the law of succession and allocation of property after death and the role of the family in such matters where deceased died intestate.

[11] He also referred to the **Administration of Estate Proclamation**<sup>1</sup> but there we have not been told anything to prove that applicant's parents had abandoned, customary way of life and adopted European way of life. But the fact of the matter is that they died intestate.

[12] Respondent wanted to claim that he is the heir per the wishes of applicant's father that he respondent should inherit everything after his death. As rightly pointed out by the applicant such instructions have not been documented anywhere and none of the Ramakau family got involved. For the respondent to have said he was introduced as heir by applicant's mother to Chief of Likotopong does not make sense as applicant's mother was staying here in Maseru not Likotopong.

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<sup>1</sup> Administration of Estate Proclamation 19 of 1935

- [13] Even the **Intestate Succession Proclamation**<sup>2</sup> still dictates that where a person dies intestate it is the family that has to convene and appoint the heir.
- [14] Applicant has further referred to the **Children Protection and Welfare Act**<sup>3</sup> **Section 19** thereof which clearly stipulates that a child born out of wedlock had no right whatsoever of inheritance over the property of his biological father, but such right only extends to succession on its mother's property.
- [15] Also the **Land Act**<sup>4</sup> stipulates that on the death of an allottee to land interest shall pass to surviving spouse, and in the absence of surviving spouse such interest passes to person designated by deceased. But its **section 3 (b)** stipulates that in the absence of the two above, then such rights would pass to the person nominated as heir by the family.
- [16] Applicant referred to the case of **Moteane v Moteane and Another**<sup>5</sup> which reiterated that it is indeed the family with the authority of nominating the heir where deceased died intestate.
- [17] In *casu* parties are agreed that respondent was born out of wedlock and there never had been any marriage between his

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<sup>2</sup> Intestate Succession Proclamation 2 of 1953

<sup>3</sup> Children's Protection and Welfare Act 7 of 2011

<sup>4</sup> The Land Act No.8 of 2010

<sup>5</sup> Moteane v Moteane and Another C of A (CIV) No.14 of 1994

biological parents. Even if the Court were to consider that the ritual of introducing or accepting him to the family was made, though not proved that would be taken as being repugnant to justice and morality.

[18] Applicant has attached to her papers a letter from the Ramakau family nominating her as the heir. The Court is thus convinced that applicant is the one that has been appointed by the family as the heir to her parents' estate. The rule is therefore confirmed, but there will be no order as to costs as parties are somehow related.

**A. M. HLAJOANE**  
**JUDGE**

For Applicant: Ms Mohasi

For Respondent: Mr Mphakoanyane