

IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 1924/95

In the matter between:

ESTHER FUNANI DLAMINI                               Plaintiff

and

TOZI THWALA                                              Defendant

CORAM:                                                     S.W. Sapire A.C.J.

FOR THE PLAINTIFF                                    Ms. N. Gwiji

FOR THE DEFENDANT                                 Mr. D. Lukhele

Judgment

(2/2/96)

The applicant is Esther Funani Nkambule, widow of the late Albert Msuthu Nkambule whom she was married by civil rights.

She seeks an order against Tozi Thwala to whom Albert contracted a subsequent marriage apparently by customary law restraining the respondent from unlawfully directly or indirectly interfering in the estate of the late Albert Msuthu Nkambule - E445/95 and further from interfering with the rights and powers of the Executor dative (as and when he or she is appointed by the Master of the High Court) in connection with the liquidation and administration of the Estate and also the performance of the Executor dative's duties.

There can be no complaint that an Executor's duties are being interfered with until such time as an executor has been appointed- In her founding affidavit in support of the relief claimed, after

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reciting the history of the deceased's marriages first to the applicant and later to the respondent, the applicant recounts that when the deceased died she reported his death to the Master. The Master called a meeting of the next of kin on the 18/10/95. On that date the meeting was adjourned to a later date to be announced. There is no evidence that a further meeting was called and what the Master has done about the appointment of an Executor for the Estate.

The respondent apparently attended the meeting on the 18/10/95. Nothing she did there can be categorised as interference, wrongful or otherwise in the affairs of the estate. She has a right to be heard at the meeting and it is for the Master to decide whether her relationship to the deceased entitles her to participate in the administration of the Estate and the assets thereof. There is no evidence as I have said that she has done anything wrongful which requires an interdict to be granted against her.

In view of this, the application is groundless and it is dismissed with costs.

S.W. SAPIRE

ACTING CHIEF JUSTICE