

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE NO. 1820/97

IN THE MATTER BETWEEN:

JOHANNES S. NKAMBULE N.O.

APPLICANT

AND

THE EMPLOYMENT BUREAU OF AFRICA LTD.

1ST RESPONDENT

THE MASTER OF THE HIGH COURT

2ND RESPONDENT

THE ATTORNEY GENERAL N.O.

3RD RESPONDENT

CORAM :

DUNN J.

FOR THE APPLICANT :

MR. MAZIYA

FOR THE 1ST RESPONDENT :

MR. FLYNN

JUDGMENT

28th NOVEMBER 1997.

The applicant is the Executor Dative in the estate of the late Simon Themba Shiba (the deceased) who died on the 26th July 1996. The deceased was prior to his death, employed by Randfontein Estates Goldmining Company Limited in the Republic of South Africa. He had been recruited for that employment by the 1st respondent.

It is common cause that there is in existence in the Republic of South Africa, a Mineworkers Assurance and Benefit Scheme (the Scheme) which is a contract between The Chamber of Mines of South Africa and The National Union of Mine Workers, acting jointly and South African Mutual Life

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Assurance Society. The deceased was a member of the scheme. Clause A.6.2 of the Scheme provides as follows –

The underwriter (South African Mutual Life Assurance Society) will pay the SUM ASSURED to the EMPLOYER who will be obliged to pay the SUM ASSURED to the person or persons nominated in writing by the MEMBER to benefit, or failing such nomination, to the person or persons advised in writing by the MEMBER to the EMPLOYER as being the dependants of the MEMBER and registered as such in the records of the EMPLOYER.

If the MEMBER has not so nominated any person to benefit or has not so advised the EMPLOYER of any dependants, the SUM ASSURED will be paid to the MEMBER'S estate.

It is common cause that the deceased nominated his two wives, Annah and Rita as his beneficiaries under the scheme. The 1st respondent, acting in terms of clause A.6.2., made out an advance

payment of E1 000.00 to each of the beneficiaries and intends paying out the balance equally between them. The applicant now seeks an order –

1. Declaring that the death benefits of the deceased which are in the possession of the 1st respondent form part of the cash assets of the deceased's estate and fall to be distributed in terms of the laws governing the administration of deceased estates in Swaziland.
2. Directing 1st respondent to deliver the death benefits to the applicant in his official capacity as the Executor Dative of the deceased's estate and / or to the 2nd respondent.

The submission on behalf of the applicant is that according to the law of the Republic of South Africa succession to the movable property of the deceased falls to be determined by the law of his country of domicile, which in this case is Swaziland See *ESTATE BAKER & OTHERS v. ESTATE BAKER & OTHERS* 1908 SC VOL. 1 In Swaziland, it was submitted, the general administration of estates is governed by the ADMINISTRATION OF ESTATES ACT NO. 28/1902. Mr. Maziya went through the sections of the Act relevant to the duties and powers of an executor to obtain possession of all the assets of the deceased for purposes of liquidation.

Mr. Flynn, on behalf of the 1st respondent, had no problem with the legal position as stated by Mr. Maziya. His submission was simply that the death benefit did not form part of the assets of the estate.

There is much to be said for Mr. Flynn's submission. The deceased had in his lifetime, nominated

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specific beneficiaries in a contract which specifically spelt out the circumstances under which the benefit would fall into his estate. The nomination of the beneficiaries became irrevocable at the time of the death of the deceased and thus the benefit, could not form part of the assets of the deceased See *EX PARTE MACINTOSH NO: In Re ESTATE BARTON* 1963(3) SA 51 The argument on behalf of the applicant, that even a will by the deceased would be subject to the powers of the Executor loses sight of the fact that a will deals with assets of the deceased. The benefits under the scheme were from the outset, specifically for the named beneficiaries The benefits were never the assets of the deceased.

The application is dismissed with costs, such costs to be paid out of the estate of the deceased.

B. DUNN.

JUDGE.