

IN THE HIGH COURT OF SWAZILAND

A/THOKODLU

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MUSA PHINDA DLAMINI

Vs

JEFFREY GAMA THOKO DLUDLU DUP'S PROPERTY LTD DUP'S FUNERAL UNDERTAKERS
& THABITHA MAVUSO AND OTHERS

INTERVENING

Case No. 591/97

CORAM: S.W. SAPIRE. A C J

FOR PLAINTIFF MR MICAH MAVUSO

FOR DEFENDANT MR. MANZINI

JUDGMENT

(8/4/97)

This matter originally started as an Application to prevent the burying of a certain deceased person.

The matter first came before His Lordship Mr. Justice Matsebula who wisely suggested to the parties that a family conference or parley should take place to decide who should be responsible for the burial of the deceased. The deceased is the late Teresa Dlundu.

In accordance with this there was a meeting I understand as a result of which the original applicant while not formally withdrawing his claims in fact was prepared not to press them. As a result of this the Mavuso family decided to intervene to press for their rights which they claim.

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While all this is going on the deceased is lying in the mortuary unburied. This is a very sorry state of affairs.

I have read the voluminous papers which have been presented in this matter. There are a number of important questions of fact which it is impossible to decide on the papers. Among the questions of fact, and it is as a question of fact that this has to be dealt with, is, what is the Swazi Law and Customs applicable to the facts? The proper practice in this Court where questions of Swazi Law and Customs are to form the basis of the decision, is that expert testimony must be produced if there is any conflict as to what the Law and Customs is it has to be decided like any other question of fact.

These questions of fact are dependent on the other questions of fact as to what happened in the history of this family. In other circumstances I may have considered referring this application for the hearing of oral evidence on both as to the family history of the deceased and also as to the question of what provisions of Swazi Law and Custom are to be applied on this matter.

In my view the urgency of the matter detracts from such a course and makes it quite impossible to allow the matter to stand over while witnesses are collected and a date found for the hearing of the matter. The circumstances require the early burial of the deceased For this reason I propose making no order on the application and no order on the application for intervention. I would also discharge the interim order in a form of a rule preventing the burial of the deceased and whoever is in possession of the body would be obliged to proceed with the funeral.

I would take this course and nothing is to be read therein relating the inheritance from the deceased or any other matters consequent on her death.

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I therefore dismiss the application and dismiss the application for intervention and I order that the parties all bear their own costs. I also make it clear that this application has no bearing on any questions which may arise from the death of the deceased.

S.W. SAPIRE

ACTING CHIEF JUSTICE