



## **IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 1162/98

In the matter between:

**ANNIE DLAMINI**

**APPLICANT**

and

**SIPHIWE SIMELANE**

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

**THE MASTER OF THE HIGH COURT  
RESPONDENT**

**2<sup>ND</sup>**

**THE ATTORNEY GENERAL**

**3<sup>RD</sup> RESPONDENT**

CORAM

:

Q.M. MABUZA -J

FOR THE APPLICANT

: MS. L. KUNENE

FOR THE 1<sup>ST</sup> RESPONDENT

:

MR. J. MAVUSO

FOR THE 2<sup>ND</sup> & 3<sup>RD</sup> RESPONDENT :

### **JUDGMENT**

[1] The applicant herein seeks the following orders:

- (a) “Declaring the purported marriage between the first and the late AMBROSE GENDINYONI BANDA null and void:
- (b) “Directing the second respondent to call a meeting of the next of kin for the purposes of appointing an executor of the estate of the late AMBROSE GENDINYONI BANDA.
- (c) ***Granting costs of the application against the respondents.***
- (d) ***“Granting further and/or alternative relief”.***

[2] The application is opposed by the Respondents. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did file affidavits to oppose in which the 2<sup>nd</sup> Respondent’s state that there when the estate was reported to him there was ***prima facie*** proof of a marriage between the deceased and the 1<sup>st</sup> Respondent. This proof is found in Annexure “A” to his affidavit. Annexure “A” is a declaration by the 1<sup>st</sup> Respondent before the Regional Secretary at Siteki wherein the 1<sup>st</sup> Respondent certifies that she was married to the deceased according to Swazi law and custom. Annexure “A” is what caused the 2<sup>nd</sup>

Respondent to uphold that the 1<sup>st</sup> Respondent is the surviving spouse. The 1<sup>st</sup> Respondent who opposed the application has filed her affidavit in which she states that she and the deceased were married in terms of Swazi law and custom at Siteki during 1995. The Applicant is the mother of the deceased and she denies that such a marriage took place because she would have been informed about it.

[3] Oral evidence was led and the Applicant testified that the deceased and the 1<sup>st</sup> Respondent had a relationship and used to live together during his lifetime. The deceased previously had a wife by the surname of Mbatha and that she had left him and that they had one child who was still a minor. The 1<sup>st</sup> Respondent and the deceased fell in love after LaMbatha left. They lived together in LaMbatha's house for about seven to eight months and the 1<sup>st</sup> Respondent had left thereafter. She further stated that the 1<sup>st</sup> Respondent was never smeared with red ochre at the instructions of the deceased.

[4] She stated that all customary marriages entered into by members of her family are carried out at her elder sister's

home at Siteki. Her sister's name is Thozane. Thozane would have informed the Applicant had she conducted such a marriage.

[5] She was cross-examined by Mr. Mavuso. She confirmed that she lived at Nkwalini outside Mbabane where she had built a home for herself. It was put to her that after the deceased and the 1<sup>st</sup> Respondent fell in love, the deceased used to live with the 1<sup>st</sup> Respondent's relatives who also had a home at Nkwalini. She agreed. It was put to her that the deceased had asked 1<sup>st</sup> Respondent's family for her hand in marriage. She denied this. She was informed that the 1<sup>st</sup> Respondent and the deceased travelled to Siteki to Thozane's home to get married. She responded that she was not aware of that. It was put to her that as arranged the marriage took place. Her response was that Thozane should have informed her but there was nothing that she had told her and she was not aware that the marriage had taken place. She was informed that a certain woman by the name of Mdedengu Nhlabatsi had smeared the 1<sup>st</sup> Respondent with red ochre. She responded that she had asked LaNhlabatsi about the smearing and LaNhlabatsi had denied its occurrence or that she knew the 1<sup>st</sup> Respondent.

[6] It was put to her that Nonono, a young lady and daughter to Thozane had awakened the 1<sup>st</sup> Respondent early in the morning of her wedding day. Her response was that she did not know as nobody had informed her about it.

I set out the questions and answers:

**Q: "My instructions are that after being called out she was taken to the cattle byre.**

**A: I do not know nobody told me.**

**Q: I am instructed further that at the cattle byre she was given a spear as is customary and she mekezaed.**

**A: I do not know anything.**

**Q: My instructions further is that after the ceremony the people who were there proceeded to the river**

**A: I do not know and Nonono did not tell me.**

**Q: The 1<sup>st</sup> Respondent says after spending some time at the river she then came up to the homestead and was smeared with red ochre.**

**A: Nonono did not tell me.**

**Q: My instructions are that after the ceremony was**

**concluded a certain man was requested to take Sipiwe to her parental home at Lavumisa.**

**A: I do not know anything.**

**Q: I am instructed further that after a passage of some time Sipiwe was taken back to Siteki by her brother Elliot Simelane.**

**A: Nonono did not tell me."**

**Q: "Does a Swazi customary marriage become invalid because the mother of the groom did not know or was not there?"**

**A: If she was married formally she becomes a wife maybe in my case they took long to inform me maybe they did not inform me in time.**

**Q: When did you expect to be told of the marriage?**

**A: They were to tell me anytime because I used to go there and we would sit around even with Nonono and they could have told me. They could have told me soon or later it did not matter.**

**Q: Why is this person you allege took sometime to tell you about the ritual?**

**A: Anyone at home could have informed me.**

**Q: You have told the court that someone could have told you who took some time to tell you?**

**A: I was referring to Nonono.**

**Q: This matter is now about over 10 years. Have you not bothered to find out the truth of this ?**

**A: I did visit Siteki and they did not tell me anything.**

**Q: Is it not correct that you are concerned about this kuteka?**

**A: No.**

**Q: Are you saying that knowing of these proceedings you have not bothered to ask at Siteki as to what happened?**

**A: When I visit and ask they say that they know nothing involving Siphiwe. Nothing ever happens there.**

**Q: I put it to you whether present or not that the Respondent entered into a valid marriage according to Swazi law and custom at Siteki.**

**A: It is not true otherwise Nonono would have interviewed me about this.**

It is noteworthy that the Applicant's complaint is that she did not know about the marriage nobody informed her.

[7] She confirmed that the 1<sup>st</sup> Respondent lived together with the deceased for about eight months and thereafter left. That when the deceased died she had long left him. She revealed that the deceased was buried at Siteki and that she had seen the 1<sup>st</sup>

Respondent at the deceased's funeral. she revealed that she had met the 1<sup>st</sup> Respondent in Mbabane town and saw that she was wearing mourning gowns. She further revealed that 1<sup>st</sup> Respondent had not been given any mourning gowns by her family as she was not the deceased's wife. She denied that she had a bad relationship with the 1<sup>st</sup> Respondent.

- [8] She told the court that the 1<sup>st</sup> Respondent had arrived at the funeral of the deceased in the company of a certain woman. It was this woman who she later met at Mbabane who informed her that the 1<sup>st</sup> Respondent was wearing mourning gowns. This woman asked the Applicant why the 1<sup>st</sup> Respondent was wearing mourning gowns and the Applicant replied that she did not know because she was not given any mourning clothes by the deceased family only a string.
- [9] The Applicant revealed that after the burial the family met and the 1<sup>st</sup> Respondent requested a black string in order to mourn the deceased. The family agreed because she used to be the deceased lover. She left on that same day. Normally the mourning gowns worn



by mourners are sown by the family of the deceased. She concluded that the 1<sup>st</sup> Respondent had made up the mourning gowns herself and dressed herself without the knowledge of the family. She further stated that the deceased never told her that he wished to marry the 1<sup>st</sup> Respondent. She revealed that she had visited home in Siteki several times and if a marriage had taken place her family especially Nonono would have informed but because it did not take place they did not inform her.

[10] When she was asked by the assessors if she knew that according to Swazi law and custom someone from Umphakatsi of the area is normally dispatched such as the chief's runner to oversee the ceremony. She responded that she knew of such a practice but there was no marriage hence there was no need to send someone from Umphakatsi. She was further asked whether or not the 1<sup>st</sup> Respondent remained after the funeral as is the custom when a wife is bereaved. She responded that she thought that it was not wrong for the 1<sup>st</sup> Respondent to leave as she was not the deceased's wife. She was asked how the 1<sup>st</sup> Respondent could take the string if she was not in

mourning. The response was that the 1<sup>st</sup> Respondent had insisted. Asked as to how she could have worn a string over mourning gowns, the Applicant responded that she had been surprised by this. Asked how the 1<sup>st</sup> Respondent could have attended a meeting for the bereaved family after the burial she responded that they saw 1<sup>st</sup> Respondent enter the room where they were meeting and did not have the heart to chase her out. Asked as to who had accompanied her when she went to be tekaed at Siteki, the Applicant responded that she did not know. **The Applicant was unable to state categorically that there was no marriage.**

[11] Mataleni Nhlabatsi (PW2) was the next witness to give evidence on behalf of the Applicant. She stated that Thozane was her sister in law and that the deceased was her nephew. She denied that she had tekaed the 1<sup>st</sup> Respondent. She denied knowledge of the marriage or that she was present when it occurred. She stated that she was present at the deceased funeral. asked if what happened at the meeting after the burial, she merely responded that she did not hear anything.

[12] She was cross-examined by Mr. Mavuso. She denied that she was Mdedengu Nhlabatsi. She denied that she had ever smeared anyone with red ochre. She denied ever smearing any brides of the Applicant. This witness was generally truculent evasive and difficult. Her evidence was that she did not know anything about the smearing of the 1<sup>st</sup> Respondent not that there was no marriage.

The Applicant closed her case after this witness.

**Q.M. MABUZA -J**