



SWAZILAND HIGH COURT

Ndzabandzaba John Phathaphatha
Applicant

vs

Sibandze Phephisile S. & 2 Others
Respondents

Civil Trial no. 7805/2000

JUDGMENT
(20/10/2000)

Coram

Sapire, CJ

For Applicant

Mr. Ntiwane

For Defendant

Mr. Hlophe

The applicant, coming to court as a matter of urgency, has sought an order

“declaring the applicant to be the husband of the late Sibongile Juliet Vilakati; or alternatively, an order that the administration of the estate of the late Sibongile Juliet Vilakati be stayed pending an action to be instituted within 14 days of the date of the order or such declaratory order.”

The applicant sets out in his affidavit that he is the businessman of Manzini and that the 1st respondent is an adult married woman. She is alleged to be the executrix dative in the estate of the late Sibongile Juliet Vilakati. The Master of the Supreme Court is joined in the application as is the Attorney General. These are formal joinders which have no bearing on the relief claimed.

The applicant claims that in 1994 he fell in love with the deceased who died on the 5th December, 1999. He says that in May 1996 he married the deceased according to Swazi Law and Custom and describes the process by which he says this marriage was celebrated. Suffice it to say that the 1st respondent disputes that the marriage took place. The subsistence of the marriage was questioned in this court when the deceased died. It was the deceased's family were given privilege of burying her rather than the applicant it being held that there was no proper evidence of the marriage having taken place.

The applicant now relies on photographs which, were not available at the earlier hearing but which he says prove that a marriage took place. These photographs in themselves are insufficient to be conclusive on this account. It is clear that there is a dispute of fact, of which the applicant was aware. He should not have proceeded by way of application.

After the deceased had died the estate was reported to the master by the deceased's relatives who the applicant claims are unknown to him.

The applicant claims a right to be involved in the administration of the estate and to be an heir of the deceased. He requests that the court declare that he was married to the deceased and entitled to all the rights that flow out of his marriage to her.


The 1st respondent opposes the granting of any order as claimed by the applicant. Several points are raised in limine.

The first point is that there is a dispute of fact which should have precluded the commencement of the proceedings by way of application. The respondent refers to the previous application and on the basis thereof submits that the validity of the applicant's marriage has already been decided. As the previous application was not a final decision on this particular issue it cannot be said that this matter was *res judicata*. It is clear that there was a dispute as to the marriage and this can only be decided on evidence hence the alternative claim made by the applicant.

I am however not disposed to grant the alternative claim for a stay of the liquidation and distribution of the estate. Having regard to the method and procedures for the administration of the estate and having regard to the necessity for the filing of the liquidation and distribution account it is not an urgent matter that a different executor be appointed. The first respondent as executrix has to administer the estate in terms of the provisions of the provisions of the administration of estates act. None of the assets of the estate can be disposed off until such time as the account has been produced and lain for inspect.

The applicant has ample time to object to the account and to raise the issues which he now seeks to do on paper. He may also as he says institute an action for declaration that he was the husband of the deceased but as yet no such action has been instituted. If at a later stage once the action has been instituted the applicant may apply for such relief as he may show is necessary to protect his rights.

The application is dismissed with costs.


S.W. SAPIRE, CJ