

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 1857/2008

NTOMBIKAYISE MABUZA

Applicant

And

MUNICIPAL COUNCIL OF MBABANE

1st Respondent

CITY COUNCIL OF MBABANE

2nd Respondent

GROUP LIFE SCHEME

3rd Respondent

Coram: S.B. MAPHALALA – J

For the Applicant: MR. M. SIMELANE

For the Respondents: MR. K. MOTSA

JUDGMENT

26th September 2008

[1] The Applicant has filed before this court an application on Notice of Motion in the long form for an order in prayer 1 that the 1st and 2nd Respondents be ordered to release the Minutes of the Trustees of the Pension Fund dealing with the death benefits of the late Cornelius December Mabuza. In prayer 2 thereof that 1st and 2nd Respondents be ordered to release the Defendant's nomination card dealing with the death certificate of the late Cornelius December Mabuza.

[2] In prayer 3 thereof that the 1st and 2nd Respondents transfer the death benefits of the late Cornelius December Mabuza to the Master's office and in prayer 4 costs of the application.

[3] In arguments before me on the 18th July 2008, Counsel for the Applicant abandoned prayer 1 and 2 as cited above and proceeded to argue prayer 3 thereof.

[4] Both parties in the dispute have filed the requisite affidavits for and against the application.

[5] The brief history of the matter is that the Applicant was married to one Cornelius December Mabuza in terms of Swazi law and custom on the 27th January 1990. The said Mr.

Mabuza was employed by the 1st Respondent and he passed away on the 24th January 2007. The Applicant has been appointed *executrix* in the estate of the late Mr. Mabuza. It also appears on the facts that the deceased had contracted other marriages with other women and thus complicating the matter further.

[6] The main argument for the Applicant is that the 2nd Respondent does not have a mechanism to deal with objections and the Master's office is better placed to deal with estate issues. It is therefore imprudent that the money which has been allocated to the two women who are alleged to be wives be dealt in an open forum where views of all the parties concerned and especially the family of the deceased can be heard.

[7] *Mr. Simelane* for the Applicant contends that the deceased entered into a contract with the 2nd Respondent as to how his estate is to be distributed and cannot override the requirements of the Will Act 12 of 1995 read against the Administration of Estates Act of 1902.

[8] *Mr. Motsa* for the Respondent filed arguments against the above arguments by the Applicant that the Applicant seems

to suggest that she is the only wife and hence she should benefit alone. This does not assist the Applicant as there are disputes of facts on the above and the 2nd Respondents Rules and the Act do not only grant the trustees the power to determine who should be paid, but also any "dependants" whom the deceased ought to maintain is entitled to benefit.

[9] Further that the Applicant seems to suggest that because the Fund was not registered it could not distribute the benefits. This is a fallacious argument and was dealt with by the Respondent at paragraph 29.2 to 29.2.3 of pages 28 - 2 of the Book of Pleadings. In fact this Act does not operate retrospectively.

[10 For completeness the above-cited paragraph [9] above reads as follows:

29.2. However, on the issue of the 2nd Respondent not being registered I wish to state the following:

29.2.1. The Fund was established in 1965 long before the retirement Funds Act of 2005 came into being; and

29.2.2. As I have mentioned above the Act and the Fund give trustees powers to distribute terminal

benefits and they do not form part of an estate.

The Applicant and his attorney are aware of this as they were advised in terms of annexure "CI3" and "CI5" and;

29.2.3 The Applicant is not a lawyer, and hence advised her that the Act does not stop funds which were established before it commenced from operating. Instead they are obliged to register. The Applicant and her attorney I believe advised that the 2nd Respondent had complied with the requirement to register and the register of funds is processing this application. Therefore, I do not understand the fuss about this issue of registration.

[11] Having considered the arguments of the parties I am inclined to agree with the arguments of the Respondents that the Applicant has advanced a fallacious argument in view of what is stated above at paragraph [9] of this judgment. Furthermore, it would appear to me that the present application is now academic because the income in the estate has all been disbursed to the beneficiaries of the estate of the late *Mr. Mabuza*.

[12] In the result, for the afore-going reasons the application is dismissed with costs.

S.B. MAPHALALA

PRINCIPAL JUDGE