

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

CASE NO. 517/2006

In the matter between:

**JANE MNDZEBELE**

**APPLICANT**

and

**MIRRIAM MAMBA**

**1<sup>st</sup> RESPONDENT**

**THE MASTER OF THE HIGH COURT**

**2<sup>nd</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**3<sup>rd</sup> RESPONDENT**

**WELILE MABUZA**

**4<sup>th</sup> RESPONDENT**

In re:

CORAM: Q.M. MABUZA -J

FOR THE APPLICANT: MR. Z. MAGAGULA

FOR THE 1<sup>st</sup> RESPONDENT: MR. M. SIMELANE

**RULING 31/10/08**

[1] The applicant herein seeks an order in the following terms:

- (a) Directing that the removal of the Applicant from the office of Executorship in the estate of the late Solomon Mhlupheki Mndzebele be declared null and void.**
- (b) Directing that the Applicant be re-instated as the co-executrix dative in the estate of the late Solomon Mhlupheki Mndzebele.**
- (c) Directing that the 2<sup>nd</sup> Respondent, in his official capacity aforesaid be ordered to pay the costs of this application.**
- (d) Granting further and/or alternative relief.**

[2] The deceased Solomon Mhlupheki Mndzebele died on the 19/4/2005. The Applicant and the 1<sup>st</sup> Respondent were appointed by the Master of the High Court to be joint Executor Dative in his Estate. They both allege that the appointment was based on the fact that they were both spouses of the deceased. The deceased married Jane Dlamini, the 1<sup>st</sup> Respondent according to civil rights on the 2<sup>nd</sup> January 1970. While this first marriage was subsisting the deceased married the Applicant Mirriam Mamba according to Swazi law and custom on the 20<sup>th</sup> September 1979. He married a third woman Lindiwe Msane according to Swazi law and custom on the 17<sup>th</sup> February 1995.

The subsequent marriages to the Applicant and to Lindiwe Msane are clearly null and void because they are bigamous.

[3] It is not clear why the Master of the High Court appointed the Applicant and the 1<sup>st</sup> Respondent to be co-executors but this in my view was clearly wrong. The deceased's family may view all three women as wives

but the law views the 1<sup>st</sup> Respondent as the only legitimate wife. Tragic but true. No wonder that there was no meaningful progress in winding up the Estate.

[4] The bone of contention is that the Master revoked the appointment of the Applicant as a co-executor. Rightly so. In my view he merely corrected an error he had made earlier. There is nothing wrong with this. The Applicant has no interest in the estate except to claim maintenance on behalf of her minor children if any. This interest does not entitle her to be an Executor Dative.

[5] I am advised that the deceased built adjoining homes for the Applicant and the 1<sup>st</sup> Respondent. They each own certain assets pertaining to their homes and that both recognise this state of affairs. I do not wish to upset the status quo. I shall however, direct that the Estate Liquidation and Distribution Account be filed within 30 days hereof. The parties agreed to this order and it is so ordered.

[6] The application is dismissed. Each party to pay its own costs. There will be no order of costs against the 2<sup>nd</sup> Respondent.

**Q.M. MABUZA -J**