

IN THE HIGH COURT OF SWAZILAND**HELD AT MBABANE****CASE NO. 4556/07****In the matter between:****NTOMBI LANGWENYA****(BORN DLAMINI)****1ST APPLICANT****JUDAH NDLANGAMANDLA
VS****2ND APPLICANT****SHIGWANE SIHLONGONYANE****1ST RESPONDENT****AGREENETH LANGWENYA****(BORN SHOYISA)****2ND RESPONDENT****CORAM****MAMBA J
(with Assessors)****FOR APPLICANTS****MR MADAU****FOR RESPONDENTS****MR MKHWANAZI**

RULING**31st January, 2008**

[1] First, from the onset I must say that this is a sad incident or event where two families who are supposed to cooperate at such a sad event such as the death of one of their members should fail to cooperate for reasons that are not very clear to us. These issues about payments or penalties or fines being made, one would have expected that these

issues were put on hold now until and after the burial of the deceased. This issue reminded me of the Siswati saying that “Licala aliboli”, even after 20 years if there was anything owing, that would still remain owing and it would be pursued. The parties should have been more matured and decided this issue of the burial without coming to court.

[2] But perhaps that is a side issue again, what seems to be the central issue is whether the first applicant is recognized as a wife to the deceased. Why, she brought the application was because when she went to mourn the deceased with whom she was associated in a love affair she was denied the chance to be with the deceased’s family at the deceased’s home.

[3] This fact has no doubt led to the other issue that the Sihlongonyane family or at least some of them do not recognize her as the wife to the deceased. They recognize LaShoyisa as the wife to the deceased and it is common cause that LaShoyisa was living with the deceased at the time he died at his home in Siphofaneni.

[4] We should make this clear, in terms of Swazi law and custom a woman may lawfully marry once and once only. And in this regard she may only be smeared with red ochre

once and laShoyisa was smeared with red ochre when she got married to Mpopoli Motsa and although they are in separation, although she went through the marriage ceremony with the deceased, in terms of Swazi law and custom; that according to Swazi law and custom is null and void, she is not the wife of the deceased.

[5] However, its not a question of her status, we cannot prevent her from attending the funeral of the deceased because it is a fact that she had an affair with him then for all intents and purposes cohabited as husband and wife with the deceased. We mention the statuses of the two ladies simply because it is at the centre of this application.

[6] The evidence from the Ndlanganmandla family and from the first applicant is that she, the first applicant, was lawfully married to the deceased at Shisizwe. All the people who have said she is not a wife have merely said she is not a wife because they did not witness it. But that is not a reason good enough or strong enough to say that because you do not know me or know when I was born, then if I tell you I am hundred years old you say no I am 2 years old. We are satisfied from the evidence that she was lawfully married to the deceased in terms of Swazi law and custom and this marriage took place at the Ndlangamandla homestead at

Shisizwe.

[7] There is a lot of confusion as to whether the deceased had paid everything, either him or his people had done everything to sever his ties with his maternal parents. At the end of the day we did not have to decide that fact because the deceased was a grown up man. Whether he had properly separated from his mother's family does not form any consideration in this matter. He was an already grown up man. He had his own family. He had his own chief, different from that of his mother's family.

[8] So in that regard, the family who are responsible for burying him, we are of the view that they should bury him at the place where he had set up his home. Had he been a young man who was still living with his family be it on the mother's side or on the father's side then our ruling would have been different. In this instance, he was a grown up man and had a family, had a home and had his own Chief. I think he should be buried at Siphofaneni that is where he had set up his own home.

[9] I am also mindful of the fact that this would in all likelihood create some hardship for the first applicant, mainly how she should attend this burial. And in that regard the

best the court can do is to issue an order against the Sihlongonyane family and the Shoyisa family, that they are not to harass or in any way interfere with the presence of the first applicant at the funeral. The court rules that, like any other citizen or any other person who knew or had a relationship with the deceased, the first applicant has a right to attend the funeral. And the Sihlongonyane family and the Shoyisa family, I stress this, they are interdicted from preventing her from being there or from doing anything to interfere with her presence during the funeral, either themselves personally or directly or anybody acting under their directions or orders.

[10] Although the first applicant has not had her wish, her application was in my judgement well brought to court, she had the right and she had the reason to bring it to court. Her application was justified. Therefore I order that there would be no order for costs. Although she ends up on the losing side, she is not ordered to pay the costs because she had a reasonable and clear action as to why she had to bring this matter to court.

[11] Both my assessors agree with this decision.

MAMBA J