



THE SUPREME COURT OF ESWATINI

Case No. 120/23

In the matter between:

ANTOINETTE CHARMAINE HORTON. N.O

Appellant

And

BRENDA HORTON

1st Respondent

CHARLOTTE HORTON

2nd Respondent

THE EXECUTOR OF THE ESTATE OF THE LATE

JACK HORTON

3rd Respondent

BRANHAM HORTON

4th Respondent

THE MASTER OF THE HIGH COURT N.O

5th Respondent

THE ATTORNEY GENERAL

5th Respondent

Neutral Citation: Antoinette Charmaine Horton N.O vs Brenda Horton and 5
Others (120/23) [2025] SZSC 146 (20/03/2025)

Coram: S.J.K. MATSEBULA, JA;
N.J. HLOPHE, JA AND;
J.M. VAN DER WALT, JA;

Date Heard: 11 March, 2025.

Date Delivered: 20 March, 2025.

ABRIDGED JUDGMENT

This is an abridged judgment and the relevant background of the matter and the Court findings are as follows –

- [1] First the dispute arises from the winding up and distribution of the estate of the late Jean Horton who passed away around 2020/2021 and who was married in community of property to the late Jack Horton who passed on much earlier on the 21st October, 1983.
- [2] Secondly the dispute, relates to the estate of the late Jack Horton who died intestate, leaving no will as to how his half share in the community of property should be distributed.
- [3] The litigants or contestants herein are biological children to Jack and Jean except the Appellant who is half-sister to the other children and given birth to by Jean and said to have been adopted by Jack, the husband to Jean.
- [4] According to an Affidavit by Jean to the Master of the High Court, dated 20th February, 2020, before her demise, the following facts appear –
- (a) at paragraph 4 –
- “There were six (6) children born of our marriage.”*
- The six includes the adopted child who is Appellant herein.

(b) at paragraph 5 –

“All my children have agreed that I should inherit my late husband’s share of the joint estate. Charlotte has not indicated her position because she is nowhere to be found.”

The “all” here is not a truthful assertion.

(c) at paragraph 7 –

“In the circumstances it is fair and just that the wishes of the majority of the beneficiaries in the estate (Jack’s estate), that is my children, be implemented by allowing the registration of certain Lot No 216, situate in Ngwane Park Township, District Manzini, Swaziland.”

Of note is that the majority cannot divest the minority of their inheritance without the minority consenting. Also the consent must be unequivocal and should not be conditional and if conditional, the condition must first be met.

[5] In respect of the estate of the late Jack Horton, who died on the 21st October 1983, the Master of the High Court, on the 26th August, 2008, issued Letters of Administration to Jean Horton to administer and distribute the estate of her husband, Jack Horton. She never wound up or distributed the estate of Jack Horton until she herself passed on somewhere around 2020/2021.

[6] Before her passing, Jean Horton in 2018 made a will and sought to bequeath mainly two properties as her own yet they were not. These included the Grandvalley property which she did not own, the Ngwane Park, Plot No 216 which comprised of Jack Horton’s undivided and undistributed 50% (half) share. This meant that Jack’s 50% share was being bequeathed not equally amongst his beneficiaries but only to Appellant and 4th Respondent. In law it meant the other four (4) beneficiaries were unlawfully being divested off their inheritance from Jack’s 50% share.

- [7] On realization that, in law, one may not bequeath a property that she does not own or have power over it, Jean Horton got three (3) out of six (6) of Jack's beneficiaries/heirs to sign an affidavit and a memorandum agreeing that Jack's 50% (half) share be transferred to her in late 2019. Those who signed the two documents are Antoinette Charmaine Horton, Brenda Horton (who later sought to retract or withdraw her consent) and Branham Horton. The non-signatories are Charlotte Horton (Second Respondent), Jacqueline Horton and Kevin Horton. The last two children, Jacqueline Horton and Kevin Horton are said to be deceased. No dates are given for the dates of their deaths and whether they had children of their own (grand-children to Jack). This information is important as it would determine the number of beneficiaries and amount of benefit to each of Jack's beneficiaries.
- [8] The 1st and 2nd Respondents herein (as Applicants) in the Court *a quo* sought and prayed for Jean's will to be declared a nullity alternatively the axing off clauses 4 and 6 of Jean's will which was bequeathing the Grandvalley and Ngwane Park properties to the Appellant and 4th Respondent at the exclusion of the other children, or in particular, Jack's other heirs and beneficiaries. The Court *a quo* granted these prayers hence the appeal by the Appellant.
- [9] The considered view of this Court is that Jack's 50% share in the joint estate with Jean which means the estate of the late Jack Horton, as represented by the 3rd Respondent, should first be dealt with, that is, it should be distributed to his heirs/beneficiaries and thereafter the estate of the late Jean Horton as represented by the Appellant in her role as executrix would then be distributed according to her wishes as much as could be gathered and salvaged from her will or permissibly in line with her will.

Court Order

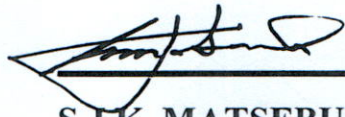
[10] In view of the foregoing, the Court makes the following orders –

- (a) Noting that the estate of late Jack Horton, was only administered not distributed by Jean, it must henceforth be distributed in terms of intestate prevailing laws of Eswatini.

(b) The distribution of the estate of the late Jean Horton may only be carried out after the distribution of the late Jack Horton's estate.

(c) The judgment of the Court *a quo* is set aside *in toto*.

(d) Each party pays its costs at the court *a quo* and in this Court.



S.J.K. MATSEBULA

JUSTICE OF APPEAL

I agree



N.J. HLOPHE

JUSTICE OF APPEAL

I agree



J.M. VAN DER WALT

JUSTICE OF APPEAL

For Appellant – M. Mntungwa (Dynasty Attorneys)

For 1st and 2nd Respondents – L. Manyatsi (Manyatsi and Associates)