

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 2413/2008

PHUMZILE METHULA

Applicant

And

SIKHUMBUZO JOHAN KHOZA

1<sup>st</sup> Respondent

REGISTRAR OF BIRTHS, MARRIAGES

AND DEATH

2<sup>nd</sup> Respondent

THE ATTORNEY GENERAL

3<sup>rd</sup> Respondent

Coram

S.B. MAPHALALA - J

For the Applicant

MR. S.MNGOMEZULU

For the Respondent

JUDGMENT

3<sup>rd</sup> October 2008

[1] The Applicant filed an application in the long form for an order directing the 2<sup>nd</sup> Respondent to forthwith delete and/or cancel Marriage Certificate No. 2361 from the Registrar of Marriages solemnized in the Kingdom of Swaziland. Further directing the 1<sup>st</sup> Respondent to pay the costs of this application.

[2] The Founding Affidavit of the Applicant is filed in support of the application with pertinent annexures. A confirmatory affidavit of one Sikhumbuzo Johane Khoza is also filed.

[3] The Respondents have not filed any opposition to the application.

[4] On the 25<sup>th</sup> July 2008, the matter appeared before Mabuza J who extended a rule *nisi* which had been granted by Monageng J on the 11<sup>th</sup> July 2008. The learned Judge then posed a question in the following terms:

"Does this court have jurisdiction to dissolve customary marriages? If not such orders are empty and will ultimately bring the administration of justice into disrepute and High Court".

[5] On the 1<sup>st</sup> August 2008, the matter appeared before me in the

8.30a.m roll where I requested the attorney for the Applicant to file comprehensive Heads of Arguments in this very important case. Indeed on the 6<sup>th</sup> August 2008, Counsel filed these Heads of Arguments for which I am grateful to Counsel.

[6] The crux of the argument in the Heads of Arguments by the Applicant is that this court is competent to grant the order sought by the Applicant in as much as Applicant does not seek an order cancelling and/or annulling her marriage to the 1<sup>st</sup> Respondent. That this court duly granted the order sought by the Applicant *in casu* in the case of *Ex parte Ginindza and Another 1979 - 81 S.L.R. 361 at 363*.

[7] I order to unravel this mystery pointed out by Mabuza J above at paragraph [4] of this judgment it is important hereunder to sketch the material facts in this case.

[8] On or about the 26<sup>th</sup> February 1996, the Applicant was married to the 1<sup>st</sup> Respondent herein by Swazi law and custom at Malibeni within the Hhohho Region. One child was born of the marriage relationship. Her name is Delisile Khoza and she is a minor of eight years old and resides with her. The 1<sup>st</sup> Respondent had from the year 2000 engaged in numerous extra-marital affairs hence their relationship irretrievably broke down.

[9] The 1<sup>st</sup> Respondent has perpetually committed adultery with

one Tanele Zibuko and Applicant has at all times material hereto not condoned the adultery.

[10] On or about November 2007, the 1<sup>st</sup> Respondent proceeded to the Manzini District Commissioner whereat he duly entered into a marriage by civil rites to the aforesaid Tanele Zibuko.

[11] By the time the 1<sup>st</sup> Respondent married Tanele Zibuko, they had duly dissolved their marriage in terms of the Swazi custom known as "**kugeza libovu**" (cleaning the red ochre).

[12] On or about March 2004 her family and that of the 1<sup>st</sup> Respondent duly held a meeting at her parental home whereat both families agreed that the marriage relationship was duly dissolved. Her family made an undertaking to return to the 1<sup>st</sup> Respondent and his family a cow paid in respect of "**insulamnyembeti**". The Respondent paid a sum of E1, 20000 **in lieu** of such cow hence the said amount will be refunded to him in full.

[13] The Applicant further brought to the court's attention that the 1<sup>st</sup> Respondent had not paid any dowry (**lobola**) hence there are no cows to be refunded to 1<sup>st</sup> Respondent in that regard.

[14] The 2<sup>nd</sup> Respondent herein duly registered their marriage in the Marriages Register kept by him. The Manzini District

Commissioner also advised the 1<sup>st</sup> Respondent that the entry in the Marriage Register has to be cancelled and/or deleted as the customary marriage between herself and him was dissolved as per Swazi law and custom. The 1<sup>st</sup> Respondent duly approached her as the Marriage Certificate has always been, in her custody, and requested that they cancel the Marriage Certificate accordingly.

[15] It is stated that the present application is not opposed by the 1<sup>st</sup> Respondent. A certificate of consent hereto is annexed marked "B". Applicant further contends that the cancellation of the Marriage Certificate will amount to a confirmation that the customary marriage between her and the 1<sup>st</sup> Respondent was annulled. The 1<sup>st</sup> Respondent and she have duly accepted the cancellation and/or annulment of their marriage and they are both prepared to go separate ways.

[16] The Applicant's Counsel argued before me that on the 25<sup>th</sup> July 2008, the court queried whether it had jurisdiction to dissolve Swazi law and custom marriages whereas no order for the dissolution of any marriage was sought before it.

[17] Having considered the facts of the matter and the *dictum* in the High Court of *Ex parte Ginindza (supra)* it would appear to me that the Applicant is correct that the cause of action in the present case is not the dissolution of a Swazi law and custom

marriage but that 2<sup>nd</sup> Respondent forthwith delete and/or cancel Marriage Certificate No. 2361 from the Registrar of Marriages solemnized in the Kingdom of Swaziland. This finds support in *Ex parte Ginindza (supra)* which is at all fours with the present case.

[18] In the result, the application is granted in terms of prayer (a) of the Notice of Motion. I make no order as to costs as 1<sup>st</sup> Respondent has not opposed this application.

**S.B. MAPHALALA**

**JUDGE**