



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

In the matter between:

Case No. 1228/2014

JAMES BONGINKHOSI MAZIYA

Applicant

And

ESTER DZINGILE MATFONSI

Respondent

Neutral citation: *James BonginkhosiMaziya v Ester DzingileMatfonsi(1228/2014)*
[2015] SZHC201(10th November2015)

Coram: M. Dlamini J.

Heard: 26thOctober 2015

Delivered: 10thNovember, 2015

The stick marking the number of cattle is only given to the groom's parents upon a woman having been tekaed. The rationale behind this is that Swazi law and custom dictates that lobolo is only paid for a married woman. This stick is only sent by the married woman's in-laws to demand lobolo.

Summary: Under motion proceedings, the applicant seeks for an order declaring that he has a right to bury the deceased on the basis that he was lawfully married to him in terms of Swazi law and custom.

Background

[1] When the parties appeared before me, I ordered that the matter be referred to oral evidence owing to the dispute of fact.

Oral evidence

[2] The applicant took the witness stand. He stated on oath that he was married to the late Goodness ChamkileMaziya in terms of Swazi law and custom. The marriage took place at kaShewula, his parental home. His wife was smeared with red ochre by Thabisile Sifundza in 2010 during the marula season. Chief's runner SifubaSifundza and his mother and sisters were present. A goat was slaughtered by the Chief's runner whose tide was used to make a pinafore for his wife. Goodness returned home and her parents brought her back in the company of her aunt, brothers and elder sister. They brought the customary firewood (*lubandze*). He duly paid a cow as *insulamnyembeti*. This cow was taken by him and his wife together with Mr. Masuku who was the driver of the car that was used to convey the cow.

[3] They established their matrimonial home at kaShewula and lived together at Mhlume, their workplace. His wife was late having died through an accident at Mhlume mill. I will refer to AW1's cross examination later in this judgment.

[4] The next witness was **Ncobile Goodness Maziya (AW2)**. She identified herself as the biological sister of applicant. She stated that applicant was married to Goodness ChamkileMatfonsi who was employed at Mhlume Sugar Mill during her life time. Applicant married deceased in terms of Swazi law and custom. Deceased was smeared with red ochre by ThabsileSifundza. Applicant later paid *insulamnyembeti* in a form of live beast. After their marriage, they resided at home for a while and thereafter built their own matrimonial home. Deceased was taken back after the marriage. She returned with her party and they brought along a stick indicating the number of *lobolo* cattle.

[5] The last witness for the applicant was **Samson Sifubasenkhabini Mnisi** who testified on oath that he was the Chief's runner at kaShewula under Chief MbandzamaniSifundza. He knew applicant who had a wife but who was late. She was a Matfonsi. He caused the deceased to take an oath during the marriage. This was before the smearing of the red ochre. He further witnessed the bride party from the Matfonsis.

[6] The applicant closed its case with respondent insisting on the all witnesses that the deceased was never *tekaed* and that no *umsasane* was taken to the deceased's home as an announcement that the deceased was married in terms of Swazi law and custom.

[7] Respondent gave evidence to controvert applicant's case. She identified the deceased as her fourth biological child. She testified that her child was never married. There was no throwing of *umsasane*. No one brought her daughter to her family to announce that the deceased was married. She never delegated any brides party to the applicant's family. She did, however send the cow identity stick. She gave it to her children who were

paying their sister (deceased) a visit as deceased was cohabiting with the applicant. She did further receive a cow from the deceased which her daughter said it was for asking for her hand in marriage.

Adjudication

- [8] The question for determination is whether the deceased was married in terms of Swazi law and marriage.

Guiding principle:

- [9] **Professor ThandabantuNhlapo, Marriage and Divorce in Swazi law and custom**wrote:

*“A valid marriage by Swazi law and custom comes into being when a woman of marriageable age is **anointed with libovu by members of a man’s family** during an appropriate ceremony with the intention of making the woman the wife of such man; provided that negotiations for the transfer of lobolo by the man or his family to the guardian of the bride have been, or will subsequently be, completed to the satisfaction of both contracting parties.”*

Parties’ version:

- [9] The applicant relies on four factors as evidence that he lawfully married the deceased in terms of Swazi law and custom: firstly, that the deceased was smeared with red ochre. Secondly, that *insulamnyembeti* was paid over to his in-laws. Thirdly that his in laws acknowledged that the deceased was married in terms of Swazi law and custom by bringing back the deceased through *sitsinjana* and left the customary stick. Lastly that the deceased

registered her national identity and referred to herself as Maziya which is his last name.

[10] The respondent on the other hand contended that if the deceased was married, there would be the throwing of *umsasane*. As there was no such, the deceased was never married by the applicant. Responding on the *insulamnyembeti*, respondent testified:

“Mr. O. Nzima: *“It is said that insulamnyembeti was brought?”*”

AW1: *“I do not know that. My daughter called asking the number for the dipping tank and I gave her. She called again saying please meet us at the road and they came with the beast and left it.”*

Court: *“You accepted it?”*

AW1: *“Yes.”*

Court: *“What was it for?”*

AW1: *“I asked my daughter and she said it was for asking for her hand in marriage.”*

[11] She also pointed out, *‘The beast was brought by my daughter. I saw her alight from the motor vehicle and she said she was with her boyfriend.’* On the *sitsinjane*, she stated:

“There was no sitsinjana. What happened was that, because my daughter reported that she was residing with her boyfriend, my children requested to go and see her. They left at 9.00 a.m. and came back at 6.00 p.m.”

[12] I am very much alive to my duty of weighing the evidence on the scales of justice. The evidence I am called upon to consider at the end is one with probable value.

[13] During cross examination of RW1 which was very brief, RW1's version crumbled on her face. For instance, she was confronted with the evidence adduced by AW1 as follows:

“Mr. Z. Magagula: “Your daughter in her official document, that is, the identity card, used the surname Maziya. Why?”

RW1: “I do not know.”

[14] Fortunately this court, drawing from the evidence adduced by AW1 and the action of the deceased to register herself as a Maziya, knows why she referred herself as Maziya. The answer is very simple, she too acknowledged that she had been lawfully married by the applicant. More startling and therefore betrayed respondent was the following piece of evidence:

“Mr. Z. Magagula: “This court was told that the people brought with them a stick marking a number of cattle?”

RW1: “The children did carry the stick with them, in the event their brother-in-law intended to teka their sister. He would then know the number of cattle”

[15] This response was totally unexpected from a person of RW1 who, from the onset of giving her evidence, repeatedly referred to Swazi law and custom detecting that the *umsasane* should be thrown or brought to the deceased's in-laws and that would have informed them that their daughter had been *tekaed*. She asserted with emphasis that failure to bring *umsasane* meant that there was no marriage. In fact this emphasis by RW1 gave the court the impression that this witness was well vest in Swazi law and custom. It is not clear how then she testified that the stick marking the number of cattle would be taken on a casual visit to applicant. This is totally

untenable in Swazi law and custom. The stick marking the number of cattle is only given to the groom's parents upon a woman having been *tekaed*. The rationale behind this is that Swazi law and custom dictates that *lobolo* is only paid for a married woman. This stick is only sent by the married woman's in-laws to demand *lobolo*. I do not envisage any other circumstance where this stick could be dispatched other than when the woman is already married in terms of Swazi law and custom. In fact, to do what RW1 professes was done in this case is taboo in our culture as it culminates to an omen.

[16] RW1's version stands to be rejected. I therefore find for the applicant and enter the following orders:

1. Applicant's application succeeds;
2. It is hereby declared that applicant has the right to bury the late Goodness ChamkileMaziya (born Matfonsi) at kaShewula area or any other place that he may deem appropriate.
3. Costs to follow the event.

M. DLAMINI
JUDGE

For Applicant : **Z. Magagula of Zonke Magagula & Co.**
For Respondent : **O. Nzima of Nzima and Associates**

