

SOUTH AFRICA / JUDGMENT

J.S.N v T.H.N (2229/2017) [2024] ZAECQBHC 86 (26 March 2024)

[2024] ZAECQBHC 86**COURT**

Eastern Cape High Court, Gqeberha

BEFORE

M Makaula

CASE / FILE NUMBER

2229/2017

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Policy**IN THE HIGH COURT OF****SOUTH AFRICA****EASTERN CAPE DIVISION****– GQEBERHA****Reportable/not****reportable****Case****No: 2229/2017****In the matter between:**

J[...]

S[...]

N[...]

PLAINTIFF

and

T[...]

H[...] N[...] (born N[...])

DEFENDANT

JUDGMENT

Makaula ADJP:

A.

Introduction:

[1] The parties are embroiled in a bitterly contested divorce action. It is common cause between them that their marriage is irretrievably broken down. Central to their dispute before me, is which matrimonial regime is applicable as the issue of proprietary rights was separated and stood over for the latter determination. For me the issue to be determined, is whether the parties are married in terms of the Recognition of Customary Marriages Act[1] (RCMA) or in terms of the Marriages Act[2] (the MA). The cause for this conflict is that the parties first observed the cultural practice of ukulobola (paying the bridal price) as well as the associated traditional rituals.

There is no dispute regarding that cultural practice, which, if all the requirements stipulated in terms of section 3 of the RCMA are met, would amount to a valid customary marriage.

[2] The plaintiff avers that, despite the observance of the cultural practice, his intention and that of the defendant were to marry by civil rights hence the antenuptial contract (ANC) and subsequent solemnisation of the marriage at the Department of Home Affairs. The defendant contests otherwise.

B. The Issue:

[3] The issue for determination is whether the parties consented to marry in terms of section 3 (1) of the RCMA.

C. Common cause facts:

[4] The parties met in 2008 in East London and that culminated in a love relationship in 2012. A year later they decided to get married. On 3 May 2013, the family of the plaintiff wrote a letter to the defendant's family. The gist of the letter literally interpreted by the parties as it was written in isi Xhosa or Isizulu was to the effect that they were requested by their son (the plaintiff) to ask for a hand in marriage of their daughter (the defendant) on 18 May

2013. The relevant part, as translated below reads;

“Sithunywe indodana yethu ukuba sizocela ubuhlobo ngokucela intombi yama Mpinga igama layo engu-T[...].”

The letter elicited a response dated 5 May 2012 from the defendant's family acknowledging receipt of the letter and stating that they would await their arrival. Indeed, lobola negotiations were started and completed over a period of one visit. The day being on 22 March 2014. The lobola was paid and the next stages followed. Because the family of the plaintiff was from,

Johannesburg, it was prearranged that they should be present on 22 March 2014. Having finished lobola, the family of the plaintiff was formally, accepted as inlaws (abakhozi) and the plaintiff as umkhwenyena (their son in law) and sheep were slaughtered in their honour. Subsequent to that the defendant's family started by giving presents to her selected family members. That in isiXhosa is called 'ukwembesa'. Pursuant to the exchange of gifts, the plaintiff's family asked for her to be released so that they could dress her in Zulu traditional attire. They took her to their aunt's room where they dressed her as their daughter inlaw (uMakoti) in isiZulu traditional attire. Photographs of the whole process were handed up as exhibit B. They, thereafter, went to church where they were blessed by the Reverend Minister/Pastor. The ceremony was attended to by about 40 (forty) members from the plaintiff's side, about 200 from the defendant's family and people from her home village.

- [5] On 20 December 2014 a second ceremony similar to the first was held in Johannesburg at the plaintiff's home. She travelled to Johannesburg with quite a number of her family members i.e. Uduli accompanying her to her marital home. Sheep were also slaughtered and she was traditionally accepted and acknowledged as a 'uMakoti'. She and her family were showered with gifts i.e. 'umembeso'. She was clothed or dressed in a wedding dress. They also had bride's maids and groom's men. The maid of honour was her friend Zanele and the best man was the plaintiff's friend Vincent Zimba. In church, they exchanged vows and their wedding rings were blessed by the Reverend who was officiating. Thereafter, they all went to a venue where speakers took turns in wishing them well in their marriage.
- [6] After that a ceremony called 'ukuyalwa' took place. It is where elderly people would congregate to give them advice and counselling on how to look after their marriage. Following that, the plaintiff's mother stayed with the defendant for some time introducing and showing her how to look after her marriage in terms of their culture and traditions.
- [7] It is noteworthy that the whole process has not been denied by the plaintiff. In fact he confirmed it and stated that it was all in the name of observing the family traditions of both and seeking blessings from his ancestors as previously stated.

D. The evidence:

- [8] As stated previously, the plaintiff's contention is that it was his and their intention to marry by Civil rites. He testified this about his beliefs;

"Going forward, obviously that was in 2013, you know I am a strong believer in traditional affairs, you know, I needed to do the right things, as like I said [interrupted]"

- [9] In his evidence, he explained the three stages that took place in the customary engagement as a project. He started by admitting that lobola was paid. He says the second stage encompassed the cultural celebrations that took place in Queenstown and Johannesburg. He categorical states that he does not deny the occurrence of these events but repeatedly states that the observance of the cultural and traditional norms cannot be elevated to the level of a customary marriage as it was their intention to conclude a civil marriage, as aforesaid. He

refers to the changing clothes, having a matron of honour and best man and attending church as a “white wedding”, he states that “no documents” were signed on that occasion.

[10] He refers to the final stage of the project as the execution of an ANC and signing or getting married at the Department of Home Affairs. It was as a consequence of that final stage that in 2016 he approached Mr Madikizela to execute the ANC. Before Mr Madikizela they both told him that they were not married. He stated that shortly after they concluded the third project, they experienced marital problems, which culminated in him suing for divorce. That is the sum total of his evidence in so far as it is relevant to the issue at hand.

[11] Apart from the common cause facts, the defendant relied on email and other instances where the plaintiff referred to her as his wife. She referred to an email dated 18 November 2015 to ABSA bank, in which he referred to her as ‘his wife’ notwithstanding that their civil marriage was only concluded a year later, on 20 October 2016. At that time they were both wearing their wedding rings.

[12] The defendant sought an opinion from Professor Nomthandazo Ntlama (Prof Ntlama) who later testified on her behalf. Her credentials and the fact that she is an expert in the field of constitutional law with a special focus on customary law is common cause between the parties. She therefore was called as an expert witness. This is even borne out by the concession by the plaintiff’s counsel in the following manner:

“Ms Olowookorun: ... When I look at your CV and everything that is set out there, it is no doubt that when it comes to customary law you are quite conversant ...”

In her report and testimony, she states her mandate as follows;

“... the cause of the disagreement is on the validity of a customary marriage for lack of consent to the said marital regime system as envisaged in the Recognition of Customary Marriages Act 120 of 1998 (RCMA) between S[...] N[...] (Plaintiff) and T[...] H[...] N[...] (born N[...]) – Defendant.”

[13] In dealing with the issues she relied specifically on the provisions of section 3 (1) of the RCMA. For the sake of completeness I shall, at this stage refer to the provisions of the section. Section 3 (1) of the RCMA reads

“3 Requirements for validity of customary marriages

- (1) For a customary marriage entered into after the commencement of this Act to be valid –
 - (a) the prospective spouses –
 - (i) must both be above the age of 18 years; and
 - (ii) must both consent to be married to each other under customary law; and
 - (b) the marriage must be negotiated and entered into or celebrated in accordance with customary law.”

She states that the latter two provisions of the section i.e. section 3(1)(a)(ii) and (b) “are foundational to the disagreement in this case as the third requirement seek to respond decisively to the second one, which is the subject of the dispute in this matter.”

[14] In her introduction, Prof Ntlama states that the facts that are foundational to the dispute, were sourced from the defendant’s counterclaim. She relies partly on the judgment in *Moaropane v Southon*[3], she states that the requirements of a valid customary marriage find application in this matter. She concludes that the “evidence

presented by the defendant puts it beyond reasonable doubt and not even on a balance of probabilities that the plaintiff did consent to the conclusion of a valid customary marriage.”

It is worth mentioning that the defendant’s facts dealt with in the counterclaim are fundamentally those that are common cause between the parties.

[15] Mr Madikizela is the attorney who prepared the ANC. His testimony is based on the short note that he prepared during the consultation he had with the parties and his general knowledge of how he does things when he prepares an ANC. He further concedes that he does not with specificity recall who said what during his consultation with them.

[16] In his evidence, he states that during the first consultation with the parties, the plaintiff interchangeably referred to them as married and would later say they were not married. That made him make a note, which would serve as a reminder to him to determine whether a customary marriage existed between them. He clarified the issue specifically with the plaintiff and then he said he was using the word “married” in a literal sense, as he was merely referring to the traditional ceremonies after having paid lobola. He informed the plaintiff that if they were married customarily then they would have to go another route and could not execute an ANC. He assured him that they were not married. He further went on to ask about whether they had intended to enter into a customary marriage, they both said no, that was not their intention. Regarding who did the talking between them, his response is as follow:

“Okay, as I said earlier M’Lord, it was Mr N[...] who did most of the taking during the introduction of the topic and when I sought clarity, he is the one that responded but I then confirmed it with Mrs N[...] if that was the case.”

[17] He further states that the parties did not know what a customary marriage was in the legal sense. He explained to them the impact of the accrual system. It is then that the defendant started to engage him with an extent and he suggested that she could get a second opinion from another lawyer if they did not agree. The defendant, however, did not do so but signed the ANC.

E. Plaintiff’s argument:

[18] The plaintiff argues that neither party understood or had an understanding of what a customary marriage was in the legal sense. Therefore, the crux of the evidence of Mr Madikizela is to establish that neither party intended to marry in terms of the customary law. Furthermore, Mr Madikizela spelled out the issue of the defendant having signed the ANC under duress. Mr Madikizela made it clear that the defendant signed the ANC after he had thoroughly explained what a customary marriage was and the implications of marrying in terms of the Marriage Act,[4] and the impact of signing the ANC.

[19] The plaintiff further argues that he repeatedly used the word marriage loosely, as he had no informed legal knowledge of it hence Mr Madikizela concluded:

“M’ Lord, it didn’t really bother me in the sense that when he referred to marriage, that he was married on such and such a date, it didn’t bother me because at that time I already understood what he means by the terms marriage. So, even the dates at that time, it didn’t really make any difference to me because they were irrelevant for the purposes of me drafting the antenuptial contract because in my mind the date of the marriage was still to come.”

The plaintiff submits that even Mr Madikizela went through the customary celebration, but he got married in terms of civil law. The plaintiff places reliance on the assertion by Mr Madikizela that the purpose of ceremonies were celebratory in nature and not to be misconstrued as a customary marriage. In sum, the plaintiff contends that his version and that of Mr Madikizela hold more probative value and should be believed than that of the defendant.

[20] The plaintiff criticises the evidence of the defendant as not credible in that she kept on changing her plea and that she failed to inform the marriage officer at Home Affairs that she was married in terms of customary law. He contends that the defendant was “regime shopping”.

[21] The plaintiff criticises Prof Ntlama’s report primarily on the basis that she did not consider all the facts before arriving at the conclusion she did. The plaintiff submits that Prof Ntlama laboured under the assumption that proof of what constitutes a customary marriage was all that needed to be determined and was not informed that the parties concluded an ANC and subsequently a civil marriage. Had she been furnished with all the facts, she would have arrived at a substantially different conclusion.

[22] The plaintiff’s submission is that the provisions of section 3

(1) of the RCMA are peremptory in that both parties must consent to be married to each other under customary law. The plaintiff and the defendant were both unaware of the requirements of section 3 (1) until after consultation with Mr Madikizela, so argues the plaintiff.

F. The defendant’s argument:

[23] The defendant contends that throughout the proceedings, the plaintiff had consistently agreed with the defendant that a valid customary marriage had been entered into between the parties. The only time that the plaintiff changed tack was when the defendant amended its counterclaim. This assertion by the plaintiff was not gainsaid by the defendant. I shall deal with it. The defendant argues that, having concluded a customary marriage, the plaintiff should have followed section 21 of the MA where they would jointly apply to court for leave to change their matrimonial property system. For the reason that they did not do so, the customary marriage subsists and is applicable to their marriage, so contends the defendant.

G.

Analysis:

[24] Section 1 of the RCMA defines customary law as the customs and usages traditionally observed among the indigenous African people of South Africa and which form part of the culture of those peoples. Customary marriage “means a marriage concluded in accordance with customary law”.

[25] There is no dispute between the parties that the payment of lobola and the cultural ceremonies conducted by the parties form part of customs and traditions followed by both amaZulu and amaXhosa as part of the Nguni custom of a customary marriage. The plaintiff is a Zulu man and the defendant, a Xhosa woman. Their customs and cultural practices overlap if not almost the same. The plaintiff acknowledges the tradition and culture regarding the consummation of a customary marriage, despite his advances as a reason to follow them that if he does not, he is afraid to attract bad luck by not pleasing his ancestors. He states that if he were to advise his 25 year old son he would tell him to go the tradition route first before concluding a civil marriage. He goes on further to say:

“The only route as Africans is to first go lobola negotiations and do also the traditional activities, then conclude because by so doing, that you have already appeased your ancestors, you have already got the blessing, they said boy, we are releasing you now, you can continue with your western life, which is the civil marriage.” (sic)

[26] With respect to the plaintiff, this culture and tradition he is speaking of has been practiced for many years. It was never intended to appease ancestors. It is a practice and culture that has been followed to mark the consummation of a customary marriage. It is unfortunate that his belief suddenly coincides with a practice that has been followed for years to confirm that a customary marriage has been consummated. The belief by the plaintiff to appease the ancestors is disingenuous for reasons to be elaborated further below.

[27] Recognition of a customary marriage is now governed by section 3(1) of the RCMA referred to above. Section 3(1)(a)(i) and 3(b) of the RCMA are not a factor to be decided in this matter. What is in issue are the provisions of section 3(1)(a)(ii) of the RCMA. This subsection requires that both parties must consent to be married to each other under customary law.

The parties' views in this regards are, as can be gleaned above, are diametrically opposed to one another in this respect. The plaintiff denies that the parties intended to marry by customary law whereas the defendant vehemently disagrees and insists that their intention was to consummate a marriage in terms of custom and no further.

[28] Mngadi J, in *Mankayi v Minister of Home Affairs*[5] said the following:

“[28] An agreement on lobola and staying together of the bride and bridegroom as husband and wife with knowledge of her people means the existence of a customary marriage ... The express handing over of the woman to her husband or his people or to allow her to live with him or his people as his wife, after the agreement relating to lobola, concludes the existence of a customary marriage. Some traditional communities, after an agreement on lobola and part payment thereof, slaughter a beast celebrating the event, which effectively recognises the bride and the bridegroom as husband and wife. The other customs and rituals relating to the customary marriage including its celebration may remain outstanding.

[29] The indigenous communities may differ in the manner the prospective spouses convey their consent to marry each other or in the manner they conduct the lobola negotiations. They may also differ in the manner the handover of the bride, and in the manner the bride is accepted in her new family or in the manner they exchange gifts and the manner they conduct various rituals and ceremonies around the customary marriage. The core requirement must not be lost of which is the factual existence of the marriage. Others though factually married, might be heard saying they are not married, meaning that their marriage has not yet been celebrated. The factual position trumps the dogmatic expectations.

[30] The conclusion of a customary marriage is a process rather than an event. Once there has been an agreement on lobola and the bride is allowed to join her husband or his family a customary marriage has been formed. Children born from the relationship are the children of the marriage.” (Emphasis added and authorities relied upon omitted)

[29] I fully agree with Mngadi J. The consent of the parties herein need to be determined by the circumstances that prevailed at the time before the ANC was entered into. Put differently, the intention of the parties has to be inferred from the circumstances of this matter. The starting point is the phone call allegedly made by the plaintiff to the defendant while she was still working in Johannesburg. The defendant testified as follows:

“Defendant: And he was here in Port Elizabeth, so it was on a Sunday afternoon. And then he called me. And then he proposed over the phone, that is how he proposed like ja we need to get married and will you marry me. Yes.

Ms Gagiano: When did the two of you start planning your customary law marriage or ceremony?

Defendant: Okay, after the proposal obviously I informed my parents and then I had to also inform his parents. So, it started after the parents were informed.”

[30] This aspect of her evidence has not been disputed by the plaintiff. It remains unchallenged. Pursuant to this conversation the letter dated 3 May 2013 was written by the family of the plaintiff and addressed to the defendant's family basically for a date when they would come and ask for "a hand in marriage". The Oxford Dictionary meaning of this is "phrase in marriage, as husband and wife" an example made is "he asked my father for my hand in marriage". This letter confirms his intention to marry the defendant. Following this intention, the plaintiff pursued the customary tradition of concluding a customary marriage especially the requirements of section 3(1)(b) of the RCMA. Having expressed his intention on the above referred occasions, the plaintiff "negotiated and entered into and celebrated in accordance with customary law."

Gifts were exchanged, sheep were slaughtered, the defendant was handed over to the plaintiff's family and ultimately, the

blessing of their wedding rings in church. At no stage did he expressly convey to the defendant that by following all these customary practices, he did so only to "appease his ancestors." All that he is saying is, their intention was to have a "civil

marriage". Knowing the custom and cultural practices followed when a customary marriage is consummated, he did not see it fit to inform the defendant specifically that they would enter into a civil marriage. I say so mindful of the evidence of Mr Madikizela, which I shall deal with later, that both did not know that they were married at the time they visited his office for the ANC.

[31] Their child S[...] N[...] was born on 18 May 2013 before the conclusion of the ANC and their subsequent marriage at the Department of Home Affairs, but he assumed the surname of the plaintiff. In fact, he was even given the name S[...] by the plaintiff. He ascribed to the name a meaning that they were now complete as a family with S[...]. If the parties were not married how did he name him and be allowed to assume his surname? It is also a factor that should be taken into account to determine the intention to marry customarily. That would not have been allowed in terms of custom if they were not married at the time of his birth.

[32] The invitation that was sent out for 20 December 2014 reads in part:

"TOGETHER WITH THEIR FAMILIES

T[...] N[...]

AND

S[...] N[...]

REQUEST THE HONOUR OF YOUR PRESENCE AT THE CELEBRATION OF THEIR MARRIAGE

ON THE 20TH OF DECEMBER 2014

AT 09H00 AT THE GROOMS HOME FOR UMEMBESO (emphasis added)

The invitation speaks of “their marriage” and inviting people to the Groom’s home. This also points to one direction that the plaintiff knew that he was getting married by customary law to the defendant. Furthermore, post the customary celebrations the plaintiff kept on referring to the defendant as his wife. On 18 November 2015, the plaintiff sent an email to his banker ABSA bank and referred to the defendant as his wife. It reads:

“My wife will come today during lunch time, to bring a copy of my ID”.

[33] Furthermore, when giving his instructions to Mr Madikizela, he excluded the property in Soweto and included another in Gqeberha stating that those properties were acquired before “they got married”.

[34] After they consulted with Mr Madikizela about their civil marriage at the Department of Home Affairs, the pleadings filed by the plaintiff on three occasions refer to them as having been married in terms of customary marriage. In his affidavit dated 9 July 2018 filed in opposition to a Rule 43 application by the defendant, the plaintiff says:

“It is admitted that a customary marriage ceremony took place on 29 march 2014 in Queenstown and that a further traditional ceremony took place on 20 December 2014 in Soweto. Thereafter in accordance with section 10 of the Recognition of Customary Marriages Act, in a monogamous customary marriage were married to each other at Port Elizabeth on 20 October 2016 out of community of property.”

[35] When asked why he preferred to say they were married customarily, he gave a longwinded answer blaming his erstwhile attorney, lamenting that he wished he was in court. In the process he spoke about them being under pressure to file the affidavit. That cannot be true. No reasonable attorney may compel his/her client to attest to something that blemishes a client’s case. In fact, he even changed when asked further to say the following:

“I read the document hence I took it with my attorney at the time, hence that affidavit that she misunderstood and yes, because I provided the supporting document.”

Ms Gagliano: Did you tell her this was a mistake and that it needed to be changed?

Mr N[...]: I said this is not how I narrated because I communicate via email. I submitted the email, I say this is the position; that is what it is. But when I read the papers, it was referring to something else?” (sic)

[36] I cannot make head or tail of this response. It is unintelligible. Pressed further on this response, he blames the time period within which the affidavit, which he refers to as a document, was to be filed, and how expensive the court penalties were for late filing of documents. He says in this regard:

“No, I am saying when the document came in, before I signed it, because it was a timeframe that his document needed to be responded to within a certain period. If they are going to revise this, I am not sure in terms of the court, there might be penalties and that therefore we will correct it later. On that basis, with the advice giving lawyer, then I had to sign it because it has to be served. There was a certain specific date I didn’t agree with the content.” (sic)

- [37] With respect, this is unbelievable that a client can receive such a bad advice. It cannot be heard that this could come from an attorney. Be that as it may, this is not the only bad advice given to him about being married in terms of customary law. The response by the plaintiff blaming his attorney is not true because in March 2019, the plaintiff attested to yet another affidavit wherein he admitted that they were married in terms of customary law. Similarly in his replication dated 19 July 2019, he admits being married in terms of customary law, paragraphs 1.2 and 1.3 reads:

“1.2 It is admitted that a customary law marriage took place on 21 March 2014 in Queenstown.

1.3 Subsequent to the plaintiff and defendant’s customary law marriage ceremony on 21 March 2014 in Queenstown, and in accordance with section 10 of the Recognition of Customary Marriages Act 120 of 1998, the parties, whom were in a monogamous marriage, were married to each other at Port Elizabeth on 20 October 2016, out of community

of property which marriage still subsists and supersedes the parties customary marriage.” (sic)

- [38] The plaintiff admitted to the customary marriage in his plea to the counterclaim. It is inconceivable that the same mistake can permeate two affidavits and pleadings despite that the plaintiff had been schooled by Mr Madikizela before about not being married in terms of customary law.

- [39] The denial of the customary marriage came after the defendant had amended her counter claim to plead a second basis on which the ANC was void. Initially the counterclaim was premised on the ANC being signed under duress by the defendant. In her second amendment, the defendant pleaded that ANC was void namely for lack of compliance with section 21 of the MA, in that the parties ought to have applied to court to vary their matrimonial property regime and seek the authority of the court to enter into an ANC. Based on this, it is opportunistic of the plaintiff to now deny the existence of the customary marriage.

- [40] Furthermore, as stated above, the plaintiff set to exclude two of his properties from the ANC agreement. He sent an email to Mr Madikizela (post their consultation and the issue of their status clarified by Mr Madikizela) to the following effect:

“The Humewood house was existing before I got married. However, it can be included in the contract. The value of the house was R800 000.00 i.e. when we started to stay. I’m to back date to 2013 even though we got married in 2015. This will form part of the accrual.

(b) The Soweto house was existing before we got married. It must be excluded from the contract i.e. it should not form part of the accrual system.” (sic) (My underlining)

[41] This email flies in the face of what was explained to him by Mr Madikizela. The email is dated 12 March 2016 after they had consulted with Mr Madikizela. It is too good to be true for him to perpetually make the same mistake despite the advice otherwise.

[42] The defendant contends that their agreement was to marry in terms of custom. Apart from what is stated and the consultation with Mr Madikizela, she asserted this contention to her WhatsApp message to her sister on 6 February

2016. She contends as follows in the message:

“This dog says to me we need to sign whatever out of community. I told him straight I am not going to do that, not after I have wasted so much of my time. I will stay with this customary marriage, thank you. I do not want any civil marriage or whatever.” (sic)

The message was written in isiXhosa and correctly translated by her to English. It was written before the ANC and the marriage of the Department of Home Affairs, to state the obvious.

[43] With respect to Mr Madikizela, the evidence prior and post consultation with the parties does not support his evidence that the parties were not married in terms of customary law or that they did not know that they were married in terms thereof. The message to the sister by the defendant clearly points to the direction that there were problems in their marriage before the ANC was signed contrary to the view furnished by the plaintiff. The mere referral to him as a “dog” confirms that. The suspicion expressed by the defendant in her WhatsApp message has credence to it if one has the chronology of the events. The parties celebrated their customary marriage in 2014 and yet nothing became of a civil marriage until

2016. The ANC was eventually signed in October 2016 and yet the plaintiff issued divorce summons (8) eight months later. That should be viewed in the backdrop of her calling the plaintiff a dog prior to signing the ANC.

[43] It is clear that the parties did consent to a customary marriage based on the evidence. The plaintiff did not give convincing evidence, he was long in his answers and would on numerous instances give irrelevant answers. He was evasive and gave inconsistent evidence in light of the documentary evidence he was faced with. As shown above, he blamed his attorney on an issue which was subsequently repeated in the following pleadings. He was not a good witness. The defendant gave detailed and concise evidence starting from the lobola negotiations to the ultimate cultural ceremony, the marital problems they encountered which culminated in the plaintiff wanting and eventually the signing of the ANC.

[44] I need not deal with the aspect of whether the ANC was signed under duress for the reason that the evidence clearly establishes that a customary marriage was entered into by the parties. The parties consented to being married in terms of customary marriage.

[45] In respect of costs there is no justifiable reason that they should not follow the result.

[46] Consequently, I make the following order:

1. It is declared that the parties are married in terms of customary marriage.
2. The plaintiff is ordered to pay the defendant's costs.

M MAKAULA

Judge of the High Court of South Africa

APPEARANCE:

Date heard

: 14, 15, 17 JUNE 2021

13, 14 SEPTEMBER 2021

27, 29 OCTOBER 2021

Date delivered

: 26 March 2024

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[1] Act 120 of 1998

[2] Act 25 of 1961

[3] Moaropane v Southon 755/2012 ZASCA 76 para 39.

[4] Marriage Act Act 25 of 196.

[5] [2021] ZAKZ PHC 43 (2 July 2021) at para 2830.

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