

SOUTH AFRICA / JUDGMENT

Miya v Mnqayane and Another (3342/2018) [2020] ZAFSHC 17 (3 February 2020) [2020] ZAFSHC 17

COURT

Free State High Court, Bloemfontein

BEFORE

Naidoo

CASE / FILE NUMBER

3342/2018

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case number: 3342/2018

In the matter between

JOHANNAH MMAMOEKETSI MIYA Applicant

and

SIKHOLWANGUYE MAXIN MNQAYANE First Respondent

DEPARTMENT OF HOME AFFAIRS Second Respondent

CORAM: NAIDOO, J

HEARD ON: 23, 24 and 26 APRIL 2019;

16-20 SEPTEMBER 2019

Written Heads of Argument filed on 25th and 30th October 2019

DELIVERED ON: 3 FEBRUARY 2020

INTRODUCTION

- [1] This matter started out as an application in which the applicant sought the following relief against the first and second respondents:

“1. That the customary marriage entered into between the Applicant and the First Respondent on 16 September 2017 be declared valid and of effect, in terms of the Recognition of Customary Marriages Act 120 of 1998

2. That the DEPARTMENT OF HOME AFFAIRS be ordered to register the customary marriage between the Applicant and the First Respondent, in terms of the Recognition of Customary Marriages Act 120 of 1998
3. The First Respondent is ordered to pay the costs of this Application (only if opposed)”

The first respondent opposed the application, and as a result of a factual dispute, the matter was referred for the hearing of oral

evidence on the question of whether or not the applicant and the first defendant concluded a valid customary marriage on 16 September 2017 or at all. Ancillary orders were also made in respect of witnesses to be called by the parties. The applicant was represented by Adv ND Khokho. The first respondent was initially represented by Adv W Van Aswegen, who withdrew at the end of the first session of the hearing (on 26 April

2019) due to his subsequent unavailability, but informed the court that Adv CD Pienaar would thereafter represent the first respondent. The matter was then postponed for further hearing from 29 July to 1 August 2019, as well as 6 and 7 August 2019.

On 29 July 2019, Mr Pienaar informed the court that due to a conflict of interest, he was obliged to withdraw as the first respondent’s

legal representative. The court was informed that the first respondent had engaged another attorney who was not present on that

day. Mr JJ Mteyisi subsequently placed himself on record for the first respondent on 1 August 2019, and further dates for hearing were arranged. Mr Mteyisi represented the first respondent until the evidence was finalised. The second respondent did not respond to the application and played no part in this matter.

EVIDENCE FOR THE APPLICANT

- [2] The applicant testified and called 4 witnesses, Sefako Rathabe (Mr Rathaba), Fusi Rathabe (Fusi), Mamiki Mokati (Mamiki) and Mpa Simonyo (Mpa). Her evidence was that she met the first respondent in 1999 and thereafter began an intimate relationship with him. She was widowed at that time. They began to live together as husband and wife in 2001, when she left her residence and moved in with him at his house in Namahadi, Qwa Qwa in the Free State. This co-habitation continued until 2018. In 2017, the first respondent indicated to the applicant that it is time for them to marry in accordance with custom, as they had been together for a long time. Arrangements were made for their respective families to meet for the purpose of negotiating lobola. I pause to mention that the applicant is a Sotho woman and the first respondent hails from a Xhosa family.

- [3] The lobola negotiations took place on 16 September 2017 at the residence of the applicant's family in Bluegum Bush in the Free State. The applicant and first respondent were each represented by a number of people. At the conclusion of the negotiations, a document was drawn up in Sesotho (the lobola document), which (translated) was headed "Arrangement/ Negotiation for Marriage".

The content of the document read as follows: "We the family of Rathaba and Miya met with those of Mnqayana and agreed to the marriage of our daughter, Mmamoeketsi Johanna Mia to be married by Maxin Sikhologangwe Mnqayana.

The Mnqayanas married Mmamoeketsi Johanna Miya with an amount of R15 000.00 to be their daughter in law. She is being married by Sikhologangwe Maxin Mnqayana. Those who were present in this arrangement/negotiation were:

Witnesses of the Miya:

1. Radebe (Signed)
2. Sefako Rathaba (Signed)
3. Moipone Mareletse (Signed)
4. Maria Miya (Signed)
5. Mafika Miya (signed)

Witnesses for the MNqayana:

1. DV Mnqayana (Signed)
2. HE Mnqayana (Signed)
3. TA Mnqayana (Signed)"

- [4] Five people signed as witnesses on behalf of the applicant and three as witnesses on behalf of the first respondent. The parties were represented largely by the elders in the respective families. Moipone Mareletse, who appeared to be a close friend of the applicant, was invited to be part of the delegation representing the applicant, but ultimately testified for the first respondent and against the applicant. I will return to this later.

As can be seen, lobola was negotiated and agreed in the amount of Fifteen Thousand Rand (R15 000.00). The plaintiff and her

witnesses testified that this was the total amount agreed upon and was paid in full when the lobola negotiations were concluded on 16 September 2017. The family of the first respondent were given food to eat. They subsequently left and the applicant was thereafter informed that she is to prepare herself to be accompanied to the home of the first respondent (the same home that she shared with the first respondent for approximately 17 years). For this purpose, her uncle, Sefako Rathabe, directed three family members to accompany her to the home of the first

respondent. They were her cousin, Fusi Rathabe (Fusi), her sister, Mamiki Mokati (Mamiki) and Mpa Simonyo (Mpa), the sister of Fusi. The applicant testified that upon their arrival at the first respondent's house, they were welcomed by a number of the first respondent's family members.

[5] There was much celebration, joy and ululating to welcome the applicant and those accompanying her to the first respondent's

house. The latter's niece Gladys Tlali (Gladys), who was part of the lobola negotiations, was also present at the first respondent's home, and declared that the woman of the house (referring to the applicant) has arrived. Gladys then gave the

applicant a new name in accordance with custom – Nomusiwakhe. The family members who accompanied her stayed for a short while and thereafter left. The applicant and the other people, thereafter ate food that had been prepared. She was informed that the first respondent's elder brother did not approve the slaughtering of an animal, as is the practice for such occasions, because his religious beliefs did not allow him to participate in such a ritual.

According to her the first respondent indicated to her that they (he and the applicant) would decide on a day for that celebration (when an animal would be slaughtered).

Her version was largely corroborated by the witnesses called on her behalf. There were some variations in their evidence regarding the sequence of events at the Mnqayana residence. I will deal with these later in this judgment;

EVIDENCE FOR THE FIRST RESPONDENT

[6] The first respondent testified and called three witnesses, Velile David Mnqayana (David), Moipone Sophia Mareletse (Moipone) and Mpomotseng Abigail Mnqayana (Mpo). He testified that he was in a relationship with the applicant from 2002 until 2018. He also

confirmed that he sent a delegation of his family members to the applicant's home on 16 September 2017 to ask for her hand in marriage, and to negotiate lobola. The delegation was comprised of his brothers David Mnqayana, Kunase Hotnot Mnqayana and Tataki

Mnqayana. He denied that he asked any female person to be part of that delegation. He gave his delegation Fifteen Thousand Rand

(R15000.00) for the purpose of payment towards lobola. The delegation returned to his home later in the day and reported that everything

went well and that they would have to meet again to finalise the number and price of cattle that the applicant's family were

asking. David reported that the applicant's family did not know the price of the cattle nor how many head of cattle they wanted, necessitating the further meeting.

[7] The first respondent indicated that the R15000.00 was paid as a deposit towards lobola. Nothing further happened that day.

His female relatives, namely, Nonseka (another name for Mpo), who is David's daughter-in-law, Mateboho, his nephew's wife and his niece Gladys Tlali, arrived and were preparing to dish up food for the rest of the people in the house. The applicant thereafter also arrived, alone, and joined the women in the kitchen in dishing up food for the family members in the house. The first respondent denied that she was accompanied by any of her family members, or that there was any celebration in the house during which the applicant was given a new name, as alleged by the applicant. The first respondent also denied that Fusi had advised them that he accompanied their bride (the applicant) to hand her over to them (the Mnqayanas). He described in detail the Xhosa customs, traditions and practises for the acceptance of the bride into the family, alleging that there was no handing over of the applicant, as none of the processes he described were performed in respect of her. Hence he did not consider a valid customary marriage to have been concluded by him and the applicant.

[8] The three witnesses called by the first respondent denied that there was any form of handing over of the applicant to the family of the first respondent. They also denied that she was accompanied by any of her family members to the house of the first respondent. There were also differences and discrepancies in the evidence of these witnesses, which will be dealt with later. David Nqayana's

evidence regarding the lobola negotiations was similar to the version tendered by the first respondent in that regard.

THE LAW

[9] Section 3(1) of the Recognition of Customary Marriages Act 120 of 1998 (the Act) provides as follows:

"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."

The parties were both above the age of 18 years in 2017 and both consented to be married to each other under customary law, which

culminated in the lobola negotiations on 16 September 2017. The contents of the lobola document I alluded to earlier, are common

cause between the parties, as are the signatures of the members of the delegations representing the applicant and first respondent.

[10] Put differently, the parties agree that there were lobola negotiations on 16 September 2017 which resulted in the payment of

R15 000.00 to the applicant's family for the marriage of the applicant to the first respondent, which marriage both families consented to. The point of departure is the first respondent's contention that the marriage was not celebrated according to custom and that the applicant was not handed over to his family.

Therefore, he argues, he and the applicant did not conclude a valid customary marriage. The matter was referred to oral evidence to enable the court to ascertain if a valid customary marriage was entered into.

EVALUATION

[11] It is not in dispute between the parties that neither the Sotho nor the Xhosa customs, rituals and traditions in respect of the celebration of the marriage and handing over or transfer of the bride to the groom's family were observed in this matter. As indicated, the applicant alleges that she was accompanied by her family members to the first respondent's home where she was handed over to his family, and given a new name by the niece of the first respondent. The first respondent and his witnesses gave detailed descriptions of what the Xhosa traditions and rituals were and what the handing over of the bride according to Xhosa custom entailed. The distinct impression gained from such descriptions was that these were traditions practised in the days of old, and usually where the bride was a young woman, marrying for the first time. Moipone Mareletse, who is a Sotho woman, described what she observed to be Sotho rituals and traditions regarding the handing over of the bride. Such rituals were not performed in respect of the applicant. Ms Mareletse, herself, was not married.

[12] It also emerges from the evidence that, except for the issue of the slaughter of an animal, the observance of the marriage customs and traditions of the respective families was not discussed.

The uncle of the applicant, Sefako Simon Rathaba appears to have been the lead negotiator at the lobola negotiations, and is the one who finally agreed on the amount of R15000.00. Mr Rathaba is an illiterate and unsophisticated man, but came across as honest.

The simplistic manner in which he answered the questions put to him, give insight not only into how he understood the situation regarding the payment of lobola and its implications but the probable manner in which events unfolded.

[13] What emerged clearly from his evidence is that the observance and performance of the usual marriage customs and traditions were dispensed with in respect of the applicant. The reasons he put forward for this are that she is a widow, not a spinster, she and the first respondent had lived together for a long time and the payment of lobola in full indicated that they were married in accordance with custom. Upon payment of the lobola there was agreement at the negotiating table that the applicant would be sent to the family of the first

respondent later that same day. The manner in which the marriage was to be celebrated was up to the applicant and first respondent. Fusi confirmed this when he testified, indicating that the Mnqayanas had said that they just wanted to “get rid of” the lobola issue, after which the Miyas must bring their bride to them. Thereafter the bride and groom can decide how they will celebrate.

- [14] The clearest indication that there was no discussion or even an intention to have an elaborate handing over of the bride, in

accordance with either the Sotho or Xhosa cultures and customs was Mr Rethaba’s answer to a question by the court about the reason for this.

His response was that the applicant was “second hand”. As crude as this sounded, I accept that it is due to his lack of appropriate vocabulary, his lack of sophistication, and that he meant no offence by it. He was merely attempting to illustrate that all that was necessary in the case of the applicant was for her to be taken to the Mnqayana family after the lobola was finalised, as the parties were considered to be married at that stage.

- [15] Mr Rathaba is corroborated by the evidence of Fusi, Mamiki and Mpa that they were instructed by Mr Rathaba to accompany the applicant to the home of the first respondent and hand her over to the Mnqayanas, which they did. Each of them testified that they were welcomed with joy, amidst a celebratory atmosphere. The first respondent’s niece Gladys Tlali, who appears to have played a prominent role not only during the lobola negotiations at the applicant’s parental home, but also at the Mnqayana home, is the one who gave the applicant a new name. Her alleged version was extensively put to the applicant’s witnesses, but she was not called to confirm her version. I pause to mention that the first respondent had engaged an expert to prepare a report in respect of customary marriages and practises, specifically in relation to this matter. He too was not called to testify.
- [16] Fusi testified that he as well as Gladys Tlali were part of the lobola negotiations but the agreement was that only the names of the elders would be mentioned in the lobola letter. She is in fact the person who had the R15000.00 with her and it was she who counted it before handing it over to the Miya family. He was a good witness whose testimony withstood rigorous cross-examination.

I have no reason to criticise or doubt his evidence. Mamiki and Mpa corroborated his evidence in all material respects. There were

discrepancies in their evidence regarding who came out to meet them when they arrived at the Mnqayana house with the applicant, where the applicant sat and at what stage she proceeded to her bedroom in the Mnqayana house. In my view these are not material and certainly do not affect the credibility of these witnesses. If anything, it indicates that they have not tailored their evidence or colluded with each other to deliver word-perfect testimony

[17] The applicant was also cross-examined extensively. Much was made about the fact that she initially said that the photographs which were attached to her founding affidavit were taken at the Mnqayana home when she was being handed over to the Mnqayana's. She later indicated that this was a mistake (alluding to a possible misunderstanding on the part of her attorney) and that the

photographs were actually taken at her home after the payment of lobola. The latter was confirmed by the first respondent's

witnesses. Another point raised by Mr Mteyisi concerned the commissioning of the Founding and confirmatory affidavits. The latter

was signed after the confirmatory affidavits. The applicant explained that an unsigned copy of her affidavit was sent to Mr Rathaba and the others (who signed confirmatory affidavits) to give them insight into the contents of her affidavit.

[18] They all live in a rural area and it was not easy to get them all together to sign their affidavits. Hence an unsigned copy of her affidavit was sent to them, so that it could be read to them in order that they could properly confirm the contents.

I find nothing sinister in the fact that the applicant signed her founding affidavit after the confirmatory affidavits were signed, and accept her explanation in this regard. The practical difficulties of reaching people in a rural area, much less getting them to sign affidavits are well known.

[19] I pause to mention that when regard is had to the photographs I referred to above, it is clear that on 16 September 2017, the

applicant wore a dress made of the traditional siShweshwe fabric, with a matching hat and a shawl over her shoulders. Her family had the outfit made for her in keeping with the cultural importance of the lobola proceedings. The first respondent and his witnesses went to great lengths to describe how a traditional Xhosa bride should be dressed. Given the testimony of David Mnqayana and Mr Sefako Rathaba that customary practices and rituals have changed over the years, it seems to me that the applicant was "traditionally"

dressed, albeit with a modern twist.

[20] The first respondent and his witnesses, on the other hand, did not impress me as good witnesses. I gained the distinct impression that they seemed to think that if they denied the payment in full of the lobola and the handing over of the bride, it would put paid to any contention that a customary marriage had been concluded. The issue of the R15 000.00 being paid as a deposit seemed to be contrived for this purpose. This was not put to Sefako Rathaba or Fusi who was one of the lobola negotiators, nor was the version that the Mnqayanas would have to return to complete the lobola negotiations.

When the contents of the lobola document are read, it does not give the impression that the R15 000.00 mentioned therein was a deposit towards lobola. In fact the contrary is the more probable interpretation of that document, namely that the families consented

to the marriage, lobola of R15 000.00 was paid and the parties were considered to be married. If David's version of the result of the lobola negotiations was true, it is telling that the other two members of the Mnqayana delegation were not called to confirm it.

[21] The first respondent was evasive and on a number of occasions had to be admonished by the court to answer the questions put to him. Some of his answers were nonsensical. David Mnqayana's testimony likewise seemed to be tailored to come to his brother's

assistance. He was also an evasive witness who tried to dodge answering, for example, how long he had known the applicant. Great

difficulty was experienced by the applicant's counsel to get him to acknowledge that the R15 000.00 that was given to him, was in fact for lobola. He signed the lobola document but made no attempt to clarify at the time that the R15 000.00 was a deposit. Only when confronted with a sworn statement in other legal proceedings between the applicant and the first respondent (which was introduced into evidence by his legal representative), in which the first respondent said he had paid lobola of R15 000.00, did he appear to relent. It also seemed strange that after a meal was eaten at the Miya residence, the women relatives arrived at the first respondent's house to prepare food for the lobola negotiators.

[22] Moipone Mareletse and Mpomotseng Mnqayana were equally unsatisfactory witnesses, who either contradicted themselves or appeared reluctant to answer certain questions, particularly regarding the applicant's movements after the lobola negotiations that day. Ms Mareletse's bearing and responses gave credence to the applicant's testimony that the relationship between the two of them went from being best friends to one of acrimony because the applicant fired Mareletse's daughter from her job at the Country Inn Guesthouse, run by the applicant. It was also not explained why, if the applicant was not residing at the first respondent's house at Namahadi in Qwa Qwa, she would then arrive there after the lobola negotiations and give instructions regarding the dishing up of food for the Mnqayana family members present. Mpomotseng in her testimony when explaining how she came to be at the Miya residence during the lobola negotiations, said she was already invited by the applicant at her house (the applicant's house) at the Country Inn, which is a reference to the first respondent's house. A Freudian slip perhaps, but to my mind, it is indicative of what the applicant had said all along - that she and the first respondent lived at that house for approximately 17 years.

[23] Mpomotseng was also unable to explain the discrepancy between her evidence that Gladys Tlali drove her and Mateboho to the Miya residence whereas Gladys' version in her sworn statement is that she drove her uncles (the Mnqayana brothers) to the Miya residence. Then there is David Mnqayana's evidence that he drove himself and his brothers to the Miya residence, fortifying my view that the first respondent and his witnesses were not honest.

There were a number of other such examples that my overall impression that David Mnqayana, Moipone Mareletse and Mpomotseng Mnqayana were untruthful and tailored their evidence to suit the version of the first respondent.

[24] I therefore find that the version of the applicant and her witnesses that she was in fact accompanied to the Mnqayana residence, handed over to them and received a new name in accordance with custom is the more probable version, given all the circumstances of the matter. I find the evidence of the first respondent and his witnesses, particularly with regard to the issue of payment of lobola and the handing over of the applicant, to be contrived and unreliable. In my view, the applicant and first respondent did indeed live their lives as husband and wife for almost 17 years, when the first respondent decided that they should formalise their union in terms of customary law. The applicant attached a large number of documents to her Founding Affidavit in support of her contention that the parties lived their lives as husband and wife, building their assets together until they owned a veritable empire by the time the trouble between them started. Such trouble was caused by the age-old love triangle where the first respondent had allegedly formed an intimate relationship with another woman.

[25] The documents which in my view are a very clear indication that both parties, and particularly the first respondent, regarded the applicant as his wife, are several insurance and investment policies taken out by the first respondent over the period 2002 -2004, in which he lists the applicant as one of his beneficiaries (together with his sons and a niece).

In each one he cites her as his wife, entitled to a 25% share. In two of those policies, she was entitled to a 15% share. When confronted with this in cross-examination, his reasons for citing the applicant as his wife varied between it being an error, being done in accordance with an agreement between them and that he did so because he had loved her. The first respondent fared just as poorly on this aspect as he did in the rest of his evidence. His insistence, for example that he and the applicant only started living together since 16 September 2017 can be rejected as false.

[26] Having said that, the crisp issue in this matter is whether the applicant and first respondent entered into a valid customary

marriage in terms of section 3(1)(b) of the Act.

I turn now to deal with the issue of the handing over of the bride (or transfer of the bride), and whether it is an essential element for the conclusion of a valid customary marriage. The practices, rituals and customs regarding the handing over of the bride differ from community to community. For many years our courts held that the handing over of the bride, instead of the

wedding ceremony, was a vital element for the conclusion of a valid marriage. Many other difficulties presented themselves as a result, for example, in some cultures, the transfer of the bride was not considered an essential element. The effect of wedding ceremonies and transferring the bride was considered by the Law Commission's Special Project Committee on Customary Law, which found that variations in local practice and the ambiguities inherent in them suggested that neither should be deemed essential for the creation of a customary marriage.

Instead they should be treated as optional elements, which the parties would be free to observe if they chose to celebrate their marriage according to a particular tradition. (TW Bennett Customary Law in South Africa, 2004, p216).

[27] Mr Khokho and Mr Mteyisi referred to a number of cases in their Heads of Argument. It is not necessary to traverse such cases for present purposes, save to mention an aspect of Mr Mteyisi's argument. He mentioned the matter of *Rasello v Chali* (A69/2012) [2013] ZAFSHC 182, a decision of the Full Court of this Division, delivered on 23 October 2013. Molemela J (as she then was), remarked that the transfer of the bride (in reference to the Sesotho custom), is an essential element for the validity of a customary marriage. Similar remarks were made by Bosielo J in *Moropane v Southon* (755/12) [2014] ZASCA 76, a decision of the Supreme Court of Appeal delivered on 29 March 2014, with regard to the handing over of the bride to her in-laws and the integration of the bride into her husband's family.

[28] The question of bridal transfer was revisited and considered in *Mbungela & Another v Mkabi & Others* (820/2018) [2019] ZASCA 134 (30 September 2019), also reported at 2020(1) SA 41 (SCA), a matter which both Mr Khokho and Mr Mteyisi referred to. Mr Mteyisi's assertion that Mbungela is not applicable to the present matter is, in my view, misplaced. I pause to mention that Molemela JA was part of the Bench that concurred in the decision of Maya P in *Mbungela*.

In that matter too, the issue was whether the first respondent, Mr Mkabi, and the deceased, in respect of whom he had paid lobla, had in fact concluded a valid customary marriage in accordance with section 3(1)(b) of the Act. Mr Mkabi paid R9000.00 of the R12 000 + 1 live cow that was agreed as lobola. In addition certain gifts were exchanged between the two families. A few days later the deceased returned to Mr Mkabi's home where they co-habited as husband and wife for approximately three years before her death. The deceased's family denied that the couple entered into a valid customary marriage because certain essential rituals were not performed. They also claimed (as the first respondent in this matter does) that the parties did not live together as man and wife but visited each other occasionally.

[29] In the present matter the first respondent and his witnesses deny that there was a handing over of the bride or that the parties lived together as man and wife, hence no valid customary marriage was entered into.

Citing the definition of customary law in the Act, and the fact that section 3(1)(b) does not stipulate which requirements of customary law must be met to validate a customary marriage, the court in Mbungela, pointed out that the reason for this is that “customary law is a flexible, dynamic system, which continuously evolves within the context of its values and norms, consistently with the Constitution, so as to meet the changing needs of the people who live by its norms” The court also remarked that because of variations in the practice of rituals and customs in African society, the legislature left it open for the various communities to give content to section 3(1)(b) in accordance with their lived experiences (See para17).

I am in agreement with these remarks and am of the view that this is in fact the situation that prevails in the current matter. This court is, in any event, bound by Mbungela.

[30] As I indicated earlier the compliance with section 3(1)(a) of the Act is not in issue. I am satisfied that the applicant has shown, on a balance of probabilities that there was compliance with section 3(1)(b). The parties lived together as husband and wife for about 17 years. It is common cause that lobola was paid, although the first respondent’s version is that the amount of R15000.00 was not the full amount of lobola, as the total amount had not been finalised. I have indicated that the evidence of the first respondent and his witnesses was untrustworthy and I accordingly place no reliance thereon. The evidence indicates that the parties conducted their lives in a way that they considered themselves married to each other. Even if there was no handing over of the bride, it would not have affected the validity of the customary marriage, which was negotiated and entered into (as required by section 3(1)(b) of the Act). I have found that the applicant was handed over to the family of the first respondent, even though it was a very abbreviated ceremony. Such was nevertheless performed in accordance with the agreement between the families after the lobola negotiations were successfully completed.

[31] The concluding remarks of the court in Mbungela are directly applicable to the present matter. The court said at para [30]:

“To sum up: The purpose of the ceremony of the handing over of the bride is to mark the beginning of a couple’s customary marriage and introduce the bride to the groom’s family.”

It is not (sic) an important but not necessarily a key determinant of a valid customary marriage. Thus it cannot be placed above the couple’s clear volition and intent where, as happened in this case, their families, who come from different ethnic groups, were involved in, and acknowledged the formalisation of their marital partnership and did not specify that the marriage would be validated only upon bridal transfer. I am satisfied in all the circumstances that the essential requirements for a valid customary marriage were met”

Almost exactly the same situation pertains in the present matter, and I am satisfied that the essential requirements for the conclusion of a valid customary marriage were fulfilled in this case.

[32] In the circumstances, I make the following order:

32.1 The customary marriage entered into between the applicant and the first respondent on 16 September 2017 is declared to be valid and of effect in terms of the Recognition of Customary Marriages Act 120 of 1998;

32.2 The Department of Home Affairs is ordered to register the marriage between the applicant and the first respondent, in terms of the Recognition of Customary Marriages Act 120 of 1998;

32.3 The first respondent is ordered to pay the costs of this application

S. NAIDOO J

On behalf of Plaintiff: Adv V Khokho

Instructed by: FIXANE ATTORNEYS

(Ref: LG Fixane/ MIY1/0001)

On behalf of Defendant: JT Mteyisi

Instructed by: MTEYISI ATTORNEYS

c/o MCINTYRE AND VAN DER POST

(Ref: MNQ481)

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