

SOUTH AFRICA / JUDGMENT

Phoka v D C and Others (1591/2020)

[2020] ZAFSHC 237 (10 December 2020)

[2020] ZAFSHC 237**COURT**

Free State High Court, Bloemfontein

BEFORE

T.V Raikane

CASE / FILE NUMBER

1591/2020

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Policy**IN THE HIGH COURT****OF SOUTH AFRICA,****FREE****STATE DIVISION, BLOEMFONTEIN****Case****number:1591/2020****In**

the matter between:

RETHABILE
ELIZABETH
PHOKA Applicant
and
D
C 1st
Respondent
MASTER OF HIGH COURT
SOUTH AFRICA,
BLOEMFONTEIN 2nd
Respondent
LEGAL AID SOUTH
AFRICA 3rd
Respondent

JUDGMENT

BY: RAIKANE, AJ

HEARD ON: 19 NOVEMBER 2020

DELIVERED ON: 10 DECEMBER 2020

INTRODUCTION

[1] The applications under this case number are twofold. Under Part A it is an application to compel and in Part B is an application for a declaratory order which will depend on the outcome of the results of the application under Part A. The only issues to be determined by this court are covered under Part A. The Application is only resisted by the First Respondent.

PART A:

[2] Both the applications are triggered by the death of the Applicant's father who was employed by the South African Defence Force (SANDF) on 7 May 2019 and whose pension fund benefits are to be paid out to a beneficiary/ beneficiaries. According to the policy of the SANDF, this will only be paid to nominated beneficiaries or children of the deceased and who are in possession of a letter of authority issued by the Second Respondent.

[3] The Applicant was summoned to the offices of the SANDF in connection with the pay-out as she was the only nominated beneficiary noted against such pension fund. Upon her arrival at their offices, The First Respondent, a guardian to the minor child, S C was also there to claim pension benefit on his behalf on the basis that he was also a minor child of the deceased. This was disputed by the Applicant who stated that she was the only child of the deceased born of the marriage between the deceased and her late mother. Their marriage was dissolved in this court and her

custody was awarded to her mother and the deceased had reasonable access to her. The deceased was further ordered to pay maintenance

towards her. Both copies of the decree of divorce and the maintenance order are annexed to the papers as part of the record.

[4] According to the Applicant the deceased even during his lifetime informed her that S is not his child. They were both advised that in the face of such diverse contentions the benefits will only be released once the paternity of the child has been proven and a letter of authority has been issued by the Second Respondent. The Applicant went to the offices of the Second Respondent to request the letter of authority and was informed that it has already been issued to the First Respondent.

[5] The Applicant arranged blood test to be conducted between her and the minor child to establish paternity. Three appointments were scheduled for the test on 26 June 2019, 5 December 2019, and 23 January 2020, respectively. Letters pertaining to the

particulars of the place, date and time of such tests were delivered to the First Respondent first through the sheriff the return of service is annexed to the papers, and the remaining two were served on the attorneys of record of the First Respondent who acknowledge

receipt thereof. The First Respondent missed all three appointments.

[6] The First Respondent's contention is that a paternity test on her minor child was done in 2012 whilst the deceased was still alive when she was applying for a maintenance order, and they proved positive. No documentation to prove that were annexed to the answering affidavit filed of record. Further that the deceased thereafter that asked her to move in with him and he maintained her and the minor child until his demise.

[7] It was further contended that the applicant is not the child of the deceased and that the sibling testing will not provide accurate

result and at best possible evidence on paternity could be the grand parenting comparison. However, the First Respondent did not want to help by asking either the paternal relatives being the grandmother or the aunt to submit to the testing. She was well aware that the relationship between the Applicant and them had soured over the pay-out.

[8] A point in limine was also raised that the Applicant cannot be presumed to be the daughter of the deceased due to the fact that in the deed of settlement only one name 'Elizabeth' is mentioned and the year of birth is not correct.

[9] I do not agree with that version as the subsequent maintenance order reflects her second name only and the correct date of birth. Also, The SANDF called her and in their records, she is named as the beneficiary of the pension fund. She has been willing to undergo this paternity test from day one. The submission that a child born of a marriage is presumed to be the child of the father married to the mother is correct not unless is rebutted by evidence not names or date of births.

[10] If the submission by the First Respondent is correct that a paternity test on the minor child was done in 2012 is true what prevents her from disclosing the results or alternatively to quash the contention on paternity why not submit the minor to the paternity test. The conduct of the First Respondent as correctly submitted is in contrast to the obligation of a guardian who is supposed to take care of the interest of the minor child and it is delaying the processing of the pay-out.

[11] I accordingly make the following order:

1. The First Respondent is directed to subject the minor child to a paternity test for the purpose of determining whether the deceased is the biological father of the minor child within 30 days of this order.
2. Costs reserved until the determination of Part B of the application.

T.V RAIKANE, AJ

On behalf of the Applicant:

Adv. Modisenyane

Instructed by:

Modisenyane Attorneys Inc.

BLOEMFONTEIN

On behalf of the Respondent:

Adv. De Wet

Instructed by:

Legal Aid

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Prepared on 10 October 2026 · Esheria