REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1) REPORTABLE: yes
(2) OF INTEREST TO OTHER JUDGES: yes
(3) REVISED.

Gavin Rome
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G. ROME **14 MARCH 2023**

CASE NUMBER: 4888/2020

In the matter between:

MGENGE, MANTSHADI JEANETTE Applicant

and

MOKOENA, MALESHOANE ROSE First Respondent

DEPARTMENT OF HOME AFFAIRS Second Respondent

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be 10 am on 14 March 2023

Summary: Customary law – Recognition of Customary Marriages Act 120 of 1998 – Requirements of a customary marriage – Requirement that marriage be negotiated, entered into and celebrated in accordance with customary law – Where the applicable custom is disputed *lex loci domicilii* applicable is bride's father custom or tradition.

Customary law – Recognition of Customary Marriages Act 120 of 1998 – Requirements of a customary marriage – Marriage certificate provides prima facie proof of the customary marriage against which applicant did not cast doubt, application dismissed with costs.

JUDGMENT

ROME AJ:

Introduction and background

[1] This matter concerns a challenge to the validity of a marriage certificate that was registered under the provisions of the Recognition of Customary Marriages Act 120 of 1998 (the Recognition Act). The certificate, dated 27 November 2019, records that Mr Siphiwe Mgenge and Ms Maleshoane Rose Mokoena (the First Respondent) entered into a customary marriage. Pursuant to my judgment dated 21 April 2021[i] (the previous judgment) the dispute arising out of a challenge to the marriage certificate's validity, was referred to oral evidence. The

previous judgment traverses the factual context of the dispute. It is nonetheless convenient to again refer to the material facts.

[2] The deceased and the First Respondent are the parents of a minor child, a son, who was born on 2 January 2019. The deceased and the First Respondent were in relationship and had for several years prior to the deceased's death, and both before and after the date of their recorded marriage, cohabited in their home in Tembisa, Gauteng. The deceased passed away on 7 November 2019. The First Respondent therefore had belatedly procured the marriage certificate a few weeks after the date of his death.

[3] The Applicant is the mother of the deceased. She seeks an order that the marriage certificate be cancelled. Her allegations, per her founding affidavit, were to the following effect. The deceased was of a mind to enter into marriage negotiations with the First Respondent's family. These negotiations if successfully concluded, would have resulted in a customary marriage. The negotiations however never reached conclusion and the marriage was not celebrated in accordance with customary law.

[4] The Applicant relied on the contents a of handwritten and signed document which, according to her, indicated an intention to enter into marriage if things went well. As noted in the previous judgment the document was the source of contestation in the litigation; the First Respondent contending that it was a binding lobola agreement and the Applicant arguing that it was not an agreement on lobola but merely indicated an intention to commence marriage

negotiations. As noted in the previous judgment, the document was written in Sesotho and it had not then been translated into English. This omission was only remedied after the referral of the application for oral evidence.

[5] The Applicant alleged that it was after her son's death and in the course of communicating with the Master's Office and during January 2020 that she discovered the existence of the marriage certificate. She stated that when she first saw a copy of the certificate, she was surprised as she "is the single mother of the deceased" and she did not have knowledge of the marriage and had not consented thereto. The Applicant averred that in terms of customary law, she (the Applicant) as the mother of the deceased was required to have participated in any pre-marriage negotiations between the families of the First Respondent and deceased. In summary, her complaint was that given the absence of her consent to the union, the certificate incorrectly records that the deceased and the First Respondent were married in accordance with customary law.

[6] In answer to these allegations the First Respondent said that during 2018, she and the deceased had decided to get married in accordance with customary law. Thereafter the necessary customary marriage negotiations were successfully finalised at a meeting of the families' respective representatives, held at her family home in QwaQwa. The First Respondent further alleged that after the negotiations were concluded a written lobola agreement was signed and witnessed by the respective family

representatives. This written agreement is the document upon which the Applicant relied (in regard to her submission that the families had merely initiated marriage discussions) and which was annexed (as annexure C) to the founding affidavit.

[7] In responding to the Applicant's professed ignorance of the marriage, she (First Respondent) referred to the family delegation of the deceased having the night before the wedding stayed over at the Applicant's home (in Gauteng) before travelling back to QwaQwa to meet her family members to discuss and finalise the marriage. She said that the Applicant had been aware that this family delegation had travelled to QwaQwa for the purposes of negotiating the lobola. The First Respondent's evidence was that a customary wedding was in fact celebrated on 17 November 2018. She said that upon the successful conclusion of an agreement on lobola there was a celebratory meal, a sheep was slaughtered, fat of the sheep was rubbed on the deceased's head (symbolizing the conclusion of the marriage under customary law) and that the deceased made part payment of the agreed lobola amount (with the balance to be paid at a later date).

[8] In her replying affidavit, the Applicant persisted with her version that the lobola document merely evidenced an intention to commence initial marriage negotiations. While she acknowledged the visit by the deceased's family delegation to the First Respondent's family home, she contended that the members of the deceased's family had not visited for the purpose of finalising marriage arrangements. She asserted that the family delegation

had been sent to the Mokoena family, but that they were going to "*kopa sego sa metsi*" (which loosely translated, meant "introducing the family of Mahlangu (Mgenge) to that of Mokoena") and if welcomed, to find out how much will be needed for the conclusion of the marriage. According to the Applicant, this was not a marriage, rather it was an "introduction".

[9] The Applicant on the usual principles applicable to disputes of facts in motion proceedings was not entitled to the relief sought. In the previous judgment I dealt with the reasons why I was nonetheless not minded to dismiss the application and why the dispute was instead referred to oral evidence.

[10] After the referral to oral evidence, the parties in accordance with the directives for the hearing submitted witness statements. The witness statements and the oral evidence at the hearing is dealt with below. In addition, the Applicant called a Professor of Customary Law, Professor Nhlapo, as an expert witness. Professor Nhlapo gave opinion evidence on which particular customary tradition would have been appliable to a customary marriage between the First Respondent and the deceased. The need for his evidence came about as a result of two of the parties' respective witnesses stating that the question of whether there had been a marriage under customary law fell to be determined by reference (respectively) to Zulu and Ndebele customs. Before considering Professor Nhlapo's evidence, I turn to an assessment of the parties' further factual evidence.

Applicant's Evidence

[11] The Applicant's first witness was Mr Nhlanhla Letlhake ("Mr N Letlhake[ii]"). Mr N Letlhake's evidence was that he is a cousin of the deceased. He was part of the family delegation that travelled to QwaQwa on 17 November 2018. He said that the visit was for the purpose of negotiating lobola. He confirmed the First Respondent's evidence that: a sheep was slaughtered, a festive lunch was shared, the deceased's family were then given the remaining half of the sheep to take back with them and that the deceased made payment of the first lobola instalment of R10,000.00. He however stated that in terms of Zulu culture, the parties were not married. According to his evidence, Zulu custom required that there be a further ceremony to be held at the deceased's family home and at the end of which the bride would be handed over to the groom's family. Mr N Letlhake was however not qualified to give any opinion about the applicability and of Zulu customs to conclude the marriage.

[12] The Applicant's second witness was her neighbour, Ms Samari Elizabeth Moripe, a pensioner. Her evidence appeared to take the matter no further as it focussed on what is said to have occurred at the Applicant's home during the mourning period after the deceased's death but before his burial. In short, the Applicant appeared to regard it as significant that rather than sitting together with the deceased's family on a mattress, which had been arranged for this purpose, the First Respondent acceded to the Applicant's request that she sit not on the mattress but on a chair in the living room. The First Respondent in cross-examination

explained that she acceded to the Applicant's request because she, simply at that time, did not wish to upset the Applicant. In my view this explanation was both reasonable and credible. Ms Moripe's evidence accordingly did not take the matter any further.

[13] The Applicant's third witness was Ms Busisiwe Mmita Dinah Mpye, another of her neighbours. As was the case with the evidence of Ms Moripe, Ms Mpye's evidence focussed on events pertaining to the period after the deceased's death and before his burial. According to Ms Mpye, during these discussions about burial of the deceased, the Applicant told the First Respondent that she could not travel to the mortuary or participate or attend at the burial site together with the rest of the Applicant's family. This sort of evidence once again took the matter no further.

The First Respondent's Evidence

[14] The First Respondent confirmed the contents of her affidavit and was cross-examined thereon. Apart from some questions as to whether she and the deceased had intended to waive the customary requirement of handing over of the bride, nothing much turned on her cross-examination.

[15] The First Respondent's further witness was Mr Joseph Lehlake ("Mr J Lehlake") an uncle of the deceased. His evidence per his witness statement was the following. He was approached by the deceased who informed him that since he intended to marry the First Respondent, negotiations needed to be initiated between the

two families. A meeting between the families was then arranged for this purpose. The meeting was then duly held at the Mokoena family home in QwaQwa. The following family members represented the deceased in these negotiations, the deceased's father Mr John Solani Mahlangu, his brother Mr Venter Mahlangu, his cousin Mr Lucky Lehlake, and his uncles Mr Buthi Lehlake and Mr Mapiko Lehlake. In these negotiations, the First Respondent was represented by her brother and two uncles.

[16] On 16 November 2018, the deceased's representatives met at the Applicant's home. They spent the night there before making the trip to QwaQwa. They arrived at the First Respondent's family home on 17 November 2018 and met with the above members of the First Respondent's family. After exchanging introductory courtesies, the parties negotiated and reached an agreement on lobola, which agreement was then reduced to writing and signed by the parties' family representatives.

[17] The lobola document was signed on 17 November 2018 and read thus as translated:

"*Below are the marriage agreements between the family of Mokoena and the family of (Mahlangu) Mgenge.*

The Mahlangu's and the Mokoena's agreed on ten (10) cattle whereby one cattle will cost Three Thousand Five Hundreds Rands (R3,500.00) ...

The Mahlangu's paid the amount of Ten Thousand Rands (R10,000.00) and the balance is Eighteen Thousand Rands (R18,000.00) And Two living cattle."

[18] Mr J Lehlake further confirmed that on 17 November 2018, and pursuant to the conclusion of the lobola agreement that he (on behalf of the deceased) paid R10,000.00 to the First Respondent's family in part payment of the agreed lobola amount. This evidence was not challenged.

The requirements of a customary marriage

[19] As set out in the previous judgment, the requirements for the conclusion of a valid customary marriage are contained in section 3 of the Act. They are the following: (a) The prospective spouses must both be older than 18; (b) They must both consent to be married to each other under customary law; and (c) The marriage must be negotiated and entered into (or celebrated) in accordance with customary law. If either of the intended spouses is a minor, his or her parents must both consent to the marriage. The intended spouses must not be prohibited from entering into the marriage because of a proscribed relationship by blood or affinity, as determined by customary law. The requirements appear capable of easy fulfilment. However, the prerequisite that the marriage must be negotiated and entered into or celebrated in accordance with customary law gives rise to some legal complexities.

The requirement that the marriage be negotiated in accordance with customary law

[20] I deal firstly with the requirement that the marriage be negotiated in accordance with customary law. On the evidence, it is clear that there is no merit to Applicant's contention that the lobola document

did not indicate the successful negotiations of a customary marriage. Both the wording of the lobola document and the part payment of the agreed lobola, gainsay the Applicant's assertion that the document merely evinced an intention to enter preliminarily into a customary marriage and had thus been introductory. Her submission that the families had merely commenced discussions about a possible marriage is likewise belied by the evidence.

[21] The evidence shows that that the respective families had on 17 November 2018, and in accordance with customary law, successfully negotiated a customary marriage. This aspect of the Applicant's challenge to the marriage certificate was therefore unfounded.

The integration of the bride into the groom's family

[22] I turn now to the issue of whether the marriage was celebrated in accordance with customary law. According to the Applicant's witness (Mr N Letlhake) any customary wedding between the deceased and the First Respondent was subject to the requirements of Zulu customs and traditions. According to the First Respondent's witness (Mr J Lehlake) Ndebele customs applied. The First Respondent herself did not state under which specific ethnic tradition and customs she was married. After being prompted by the Court as to whether expert evidence might assist on the issue of determining the relevance and requirements of a particular tradition, the Applicant sought the opinion evidence of Professor Thandabantu Nhlapo.

[23] Professor Nhlapo has an impressive curriculum vitae reflecting his expertise in the field of African Customary Law. He holds the following law degrees. A BA (Law) from the National University of Lesotho (1971) , LLB (Honours) from the University of Glasgow (1980) and a PhD in Family Law, which he obtained from Oxford University in 1990. He was Deputy Vice-Chancellor at the University of Cape Town for ten years, where he had served as Professor and Head of the Department of Private Law. His evidence demonstrated admirable knowledge and thorough research into the issue of the requirements for the celebration of a customary marriage and of the legal principles involved, not only in South Africa but also in other Southern African jurisdictions.

[24] In his report, Professor Nhlapho stated that he was briefed by the Applicant's attorneys to assist the court in answering the following three issues. (a) Whether the deceased when marrying ought to have followed the traditions of his biological father being the Ndebele customs. (b) Whether the deceased, when marrying ought to have follow the traditions of his mother being the Zulu customs. (c) The requirements to be satisfied for a valid customary marriage in terms of the Sesotho, isiNdebele and isiZulu customs.

[25] Professor Nhlapho's evidence, which was essentially unchallenged, was to the following effect. The problem in assessing the respective contentions that isiZulu or isiNdebele customs applied was that on the evidence, there was a total lack of information about the relationship between the deceased's

parents. To the extent that it was contended that isiNdebele custom applied because of the Ndebele background of the deceased's father, Professor Nhlapo stated the following: On general principles, it would be important to know many details that are central to the determination of the deceased's relationship with his father, including what was the extent of the father's "invisibility" in the life of the deceased that had led the Applicant to describe herself as a single parent. This information is important because, generally speaking, in African culture it is this relationship (or any vestiges of it that remain) that determine whether the biological father has any rights, obligations or access in relation to the family of his child's mother, or whether he is totally invisible in a civic and legal sense. In the latter case, he might as well be dead because all relations and contact are severed.

[26] A scenario of an absent biological father would militate against importing anything associated with the deceased's father into the deceased's affairs, including his culture. The fact that an ostensibly absent father was part of the delegation to QwaQwa did not of itself mean that any wedding would have been held in accordance with Ndebele traditions. Further rendering the possibility that the relevant customary tradition in this matter might be Ndebele is that lobola takes place at the bride's home. Professor Nhlapo was therefore of the view it was more likely that the *lex loci domicilii* of the bride's father would point to the appropriate law or tradition governing the customary marital process, i.e., in this matter, Sesotho customary law would apply.

[27] Having considered and then discounted the possibility that either isiZulu or isiNdebele custom applied, Professor Nhaplo's explained that in customary marriages the bride's family members are the "centrepieces" in the process, this is because of their ability to welcome or reject suitors. His view is that it is unlikely that this very real social power is exercised under the law of the suitor. Rather, Professor Nhlapo's explained, it would be more appropriate that the search for the living law should be directed at where bride's home community is situated and not anywhere else.

[28] He referred in this regard to the views of Professor Bekker who writes that –

> "*In the Sotho-Tswana group, the wedding is celebrated at the family home of the bride's people, where the lobola discussion and agreement takes place. On the completion of the lobola agreement, the bride's guardian provides a beast for slaughter, each party receiving half the meat; certain ceremonies are performed with the entrails. This slaughter signifies not only the completion of the lobola agreement, but also the consummation of the customary marriage, which is not rendered less effective if the bride does not leave with the bridegroom's party on that occasion, and usually she does not."*[iii]

[29] Professor Nhlapo then endorsed Bekker's statement that "*[t]here is one recorded exception to the rule that the bride must be handed over; among the Sotho . . . if the bride's guardian has ceremonially slaughtered a beast at the lobola negotiation, this killing signifies his acceptance of the bridegroom as his daughter's husband and consummates the customary marriage, even though the girl is not actually handed over at the time*".[iv]

[30] Following Professor Nhlapo's reasoning, the enquiry about which particular customary traditions applied, would lead to a conclusion that the Applicant and the First Respondent's marriage had to be celebrated in accordance with Sesotho customs, which customs did not require anything more that the ceremonial slaughter of a beast after the conclusion of the lobola agreement.

[31] However, as compelling as Professor Nhlapo's reasoning might be, I do not consider it necessary on the facts of this matter definitively to determine the outcome of the dispute on the basis that Sesotho customs applied. I accordingly make no determination that the slaughter of a sheep, at the time when the lobola was concluded, of itself sufficed to signify the conclusion of the marriage between the families of the First Respondent and the deceased.

[32] The question of whether the requirement of handing over was met can be determined on the basis of the following more general considerations.

Marriage certificate is prima facie proof?

[33] As noted in the previous judgment a marriage certificate stands as prima face proof of the marriage. The existence of the marriage certificate is potentially significant because "prima facie proof, in the absence of rebuttal, means clear proof, leaving no doubt."[v] This means that a judicial official must accept the contents of the certificate as correct unless she is convinced that

she cannot rely upon them. Whether such a conviction is justified must depend on the existence of evidence which may refute or throw doubt upon the contents of the certificate.[vi]

[34] The following has recently been stated about the evidentiary nature of a marriage certificate:

> *"In the case of W v W a marriage certificate was dealt with as follows:*
>
> *In terms of sec. 42(3) of Act 81 of 1963, a marriage certificate (and other types of certificates):*
>
> *'shall, in all courts of law . . . be prima facie evidence of the particulars set forth therein'.*
>
> *This means that a judicial official must accept the particulars as correct until he is convinced that he cannot rely upon them. Whether such a conviction is justified must depend on the evidence which refutes or throws doubt upon the contents of the certificates. (R v Chizah 1960 (1) SA 435 (AD)). Included in the presumption thus created would be all the essentials for the conclusion of a valid marriage including the capacity of the parties. The presumptions referred to may, of course be rebutted."*[vii]

[35] The Applicant's allegations and evidence would need to be of such a nature that they would disturb the prima facie import of there being a registered marriage certificate confirming that the First Respondent and the deceased on 17 November 2018 and at "Boiketlo QwaQwa" were married in accordance with customary law.

[36] There is an obvious weakness in the Applicant's version that the events of 17 November 2018 merely amounted to initial

discussions about marriage. The Applicant at the outset asserted that the reason for the certificate's invalidity was that her consent to the marriage as the sole parent of the deceased was required. This consent was allegedly absent as the Applicant said she knew nothing about a marriage having been concluded in QwaQwa on 17 November 2018. This version was contradicted by undisputed evidence that the Applicant knew that a family delegation, which included the deceased's father, travelled to QwaQwa on 17 November 2018 to discuss the marriage between the First Respondent and the deceased.

[37] The Applicant in reply and in oral evidence explained that she had referred to herself as the sole parent of the deceased because she had had primary or sole responsibly for parenting the deceased when he was a child. Nonetheless it is significant that the Applicant had in her founding affidavit omitted to mention that the deceased's father had travelled to QwaQwa as part of the delegation that would represent the deceased in their meeting with the First Respondent's family. This omission together with her initial failure to mention that a family delegation, had to her knowledge and without any objection, travelled to QwaQwa to meet with the First Respondent's family, casts serious doubts on the Applicant's version.

[38] Later and both in the replying affidavit and oral evidence the Applicant admitted the meeting of the two families but contended that the family delegation of the deceased had gone to QwaQwa to discuss introductory matters and not to conduct lobola

negotiations pursuant to concluding a customary marriage.

[39] This somewhat fine distinction, the nature of a pre-arranged meeting of the families, does not detract from the import of the Applicant's failure to initially acknowledge her awareness of the fact that the deceased's' family delegation had travelled to QwaQwa to, at the very least, discuss the possibility of marriage. The Applicant failed to acknowledge that it was in the context of that pre-arranged visit that the lobola document was concluded.

[40] Moreover, the Applicant had in her founding affidavit alleged that while the deceased had informed her that he intended to marry the First Respondent, he later changed his mind. According to the Applicant, this was because the First Respondent had not accepted the children born of the deceased's previous marriage. The Applicant nevertheless proffered no evidence to support this allegation.

Is physical handing over of the bride an essentialia of customary marriage?

[41] As a last resort, the Applicant's case in argument simply amounted to this. As the events in QwaQwa did not comply with the requirement of the handing over of the bride, the marriage had not been concluded in accordance with customary law. This submission was not based on the contents of the founding affidavit. In any event and on the evidence, I am satisfied that the requirement of integration (or handing over) was indeed fulfilled

during the events of 17 November 2018.

[42] The Applicant's submission on the absence of the handing over requirement fails to take into account the principle that the integration of the bride comprises a series of events, some of which may be waived, condoned or abbreviated by the parties. What is required is that the bride must at least be handed over to her in-laws in compliance with the customary integration requirements.[viii]

[43] This is demonstrated by the decision of this Court in Sengadi v Tsambo.[ix] In that matter, the families met and reached an agreement on the lobola, partial payment was made. On the same day, the bride had changed into a traditional attire was taken into a room where she was given a traditional dress. A lamb was slaughtered and bile was smeared on the deceased.

[44] On these facts and in the court a quo, Mokgoathleng J found that there was a valid customary marriage. In reaching this conclusion the Court held that the handing over of the bride is not an "indispensable sacrosanct essentialia" for a lawful customary marriage.

[45] Mokgoathleng J further determined that the evidence in the Sengadi matter showed that the groom's family tacitly waived compliance with the handing over requirement by allowing the parties to cohabit, and had opted for a "symbolic handing over" after the conclusion of lobola negotiations.

[46] The judgment of Mokgoathleng J in Sengadi (apart from that part of the judgment which declared the requirement of handing over to be unconstitutional) was upheld on appeal. On appeal, in dismissing the appeal, the SCA referred to its previous dictum where it was held that:

"The Recognition Act does not specify the requirements for the celebration of a customary marriage. In this way, the legislature purposefully defers to the living customary law. Put differently, this requirement is fulfilled when the customary law celebrations are generally in accordance with the customs applicable in those particular circumstances. But once the three requirements have been fulfilled, a customary marriage, whether monogamous or polygamous, comes into existence."[x]

[47] After a thoroughgoing consideration of the case law, the SCA in Sengadi per Molemela JA (for the unanimous court) concluded that the requirement of integration had been established even though there was no physical handing over. In reaching this conclusion, Justice Molemela reasoned as follows (paras 26-27):

"Bearing in mind that the purpose of the ceremony of the handing over of a bride is simply to mark the beginning of a couple's customary marriage and introduce the bride to the bridegroom's family I am inclined to agree with the respondent's assertion that a handing over, in the form of a declared acceptance of her as a makoti (daughter-in-law), satisfied the requirement of the handing over of the bride.

That the couple continued to cohabit after that celebration and that the respondent registered the deceased as a beneficiary and

spouse on her medical aid scheme are features that cannot be dismissed as insignificant, as they are consonant with the existence of a marriage. I am fortified in this view by Professor Bennet's argument with regards to the handing over requirement. He argued that the parties' intention could be inferred from cohabitation. According to him, where the parties were cohabiting, the gravamen of the enquiry was the attitude of the woman's guardian. If the guardian did not object to the relationship, a marriage would be presumed, irrespective of where the matrimonial home happened to be or how the 'spouses' came to be living there Professor Bennett placed reliance on a case in which the Court had remarked that 'long cohabitation raises a strong suspicion of marriage, especially when the woman's father has taken no steps indicating that he does not so regard it'. In this matter, the respondent averred that her mother had not instituted any action for seduction or demanded payment of a fine, well knowing that the respondent cohabited with the deceased. She accepted that the respondent and the deceased had entered into a valid customary marriage." (Footnotes omitted.)

[48] Applying the above dicta to the facts of this matter, it is clear that there was a series of events at the meeting of the families of the deceased and the First Respondent which resulted in the conclusion of a customary marriage on 17 November 2018. These events included the successful conclusion of a lobola agreement, part payment of lobola, the observance of customary rituals such as the slaughtering of a sheep, the rubbing of fat on the groom, the families thereafter partaking in a celebratory meal and the gifting of the remaining part of the sheep.

[49] In addition, after the events of 17 November 2018, the First Respondent and the deceased returned together to their home in Tembisa. They, until the death of the deceased then continued to

cohabit and live as a family without any objection from the Applicant (or from any member of the deceased's family).

[50] The argument that the customary requirement of the integration of the Applicant into the deceased's family had not been satisfied thus does not accord with either the authorities or the evidence; it is accordingly rejected.

Conclusion

[51] In conclusion the Applicant's version that the events of 17 November 2018 pertained not to the conclusion of a marriage but instead concerned introductory discussions about a potential marriage did not suffice to cast any doubt on the validity of the marriage certificate.

[52] Accordingly, and on consideration of all the evidence I find that the marriage certificate correctly recognises the existence of a marriage between the First Respondent and the deceased during the lifetime of the deceased. In addition, the evidence did not cast any doubts on the validity of the marriage certificate and the correctness of its contents.

[53] In the result, the application is dismissed with costs.

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G ROME

Acting Judge of the High Court

Gauteng Division, Johannesburg

Heard: Gavin Rome

Judgment: 14 March 2023

For the applicants: Adv. MJ Letsoalo

Instructed by: M.J Mphahlele Attorneys

For the respondents: Adv. WJ Prinsloo Instructed by:

BMH Attorneys Inc

Dates of hearing: 25 November 2022, 4. November 2022, 5 July 2022

Date of judgment: 14 March 2023

[i] *Mgenge v Mokoena and Another* (4888/2020) [2021] ZAGPJHC 58 (21 April 2021).
[ii] There was some variation in the papers in the spelling of the Letlhake surname.

[iii] J. C. Bekker, J. J. J. Coertze, and Wilfred Massingham Seymour**,** *Seymour's Customary Law in Southern Africa* (Juta, 1982).
[iv] Ibid.
[v] *Ex parte Minister of Justice: In re R v Jacobson and Levy* 1931 AD 466 at 474.
[vi] *R v Chizah* 1960 (1) SA 435 (A).
[vii] *Gumede v S* [2021] ZAMPMHC 22 para 36.
[viii] Sibisi, S "Is the requirement of integration of the bride optional in customary marriages?" *De Jure* (Pretoria) vol.53 n.1 Pretoria 2020 90 at 103.

[ix] *Sengadi v Tsambo: In re Tsambo* [2019] 1 All SA 569 (GJ).
[x] *Tsambo v Sengadi* [2020] ZASCA 46 (30 April 2020) para 15.