THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Queen Sibongile Winnifred Zulu v Queen Buhle Mathe and Others (1062/2022) [2024] ZASCA 22 (08 March 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs, including the costs of two counsel where so employed. The appeal emanated from the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court) where that court dismissed an application, by the appellant, Queen Sibongile Winnifred Zulu (the appellant Queen), wherein she sought a declaratory order stating that she was married to the late King Goodwill Zwelithini kaBhekuzulu Zulu (the late Isilo) in terms of civil law, in community of property and profit and loss; and that the late Isilo was precluded from entering into customary marriages with other persons while the marriage between them subsisted. This application by the appellant Queen was opposed only by the first to the fifth respondents (the respondent Queens).

The appellant Queen and the late Isilo entered into a marriage in community of property and profit and loss on 27 December 1969, in accordance with s 22 of the Black Administration Act 38 of 1927 read with the Marriage Act 25 of 1961 (the Marriage Act). The marriage still subsisted at the time of the King's death. During the subsistence of the civil marriage, the late Isilo entered into customary marriages with the second respondent, the late Queen Shiyiwe Mantfombi Dlamini (the late Queen), and the first, third, fourth and fifth respondent Queens. The late Queen passed on shortly after the late Isilo, and her estate is represented in these proceedings by its appointed executor.

In his last will and testament (the validity of which is the subject of another dispute), the late Isilo prefaced the devolution of his estate by making an introductory statement, stating that the notion of marriage in community of property and profit and loss was foreign to the Zulu people, regardless of their social-economic standing. He went on to say that no Zulu king had ever got married to one wife by civil rights, in community of property, because of the very nature of the Zulu laws and culture, adding that a traditional marriage denoted a marriage according to custom. He acknowledged that he was no exception to this, and as a result, he was married to six Queens during his lifetime.

Although the nature and proprietary consequences of the marriage between the late Isilo and the appellant Queen were initially disputed, all the respondent Queens before the high court admitted the validity of the marriage and that it was in community of property, and consequently, with profit and loss. However, the respondent Queens denied that the existence of the civil marriage between the appellant Queen and the late Isilo precluded the late Isilo from validly entering into customary marriages with them. The high court found that since the nature, status and proprietary consequences of the marriage

are settled as a matter of law, it did not deem it necessary and equitable to grant a declaratory order relating to the marriage. On the issue of whether the late Isilo was precluded from entering into customary marriages with other Queens during the subsistence of his marriage with the appellant Queen, the high court found that such a declaratory order would have no practical effect in the absence of any consequential relief sought.

The issue before the SCA was whether the high court exercised its discretion properly in dismissing the appellant Queen's application.

In coming to a conclusion, the SCA reasoned that the high court correctly found that there was incontrovertible evidence that the late Isilo and the appellant Queen were married in community of property and profit and loss which explains why it therefore found that no practical effect would be achieved by declaring that the late Isilo was married to the appellant Queen in community of property and of profit and loss. The SCA further held that the high court correctly found that the failure to challenge the validity of the marriages was consciously made by the appellant Queen and as a result, she could not, at the last minute, raise something not in her papers, adding that the high court correctly found that the appellant Queen should not have sought interdictory relief as she had not established a clear right that was infringed and needed protection, nor had she sought the declaration of invalidity of the other customary marriages to the late Isilo.

The SCA further stated that the high court correctly found that the prayer for an order that the late Isilo was precluded from marrying other persons while his marriage with the appellant Queen subsisted, was brought in anticipation of the then impending installation of the late Queen as the Ibambabukhosi (Regent) and that, since there was common ground that the late Isilo was married to the appellant Queen in community of property and profit and loss with the parties both admitting the proprietary consequences of the marriage, there was nothing to determine or clarify by way of a declaratory order. What the appellant Queen sought was a declaratory order that was merely abstract, academic or hypothetical.

Holding the view that the winding up of the estate was no longer a live issue in the proceedings, the SCA reasoned that the appellant Queen's apprehension about the administration of the late Isilo's will by Sanlam Trust, who are the nominated executors, was unfounded as the estate would be wound up under the supervision of the Master of the High Court and that the process of winding up of an estate also has safeguards in terms of the Administration of Estates Act 66 of 1965 for the protection of persons who have claims against the deceased estate. Additionally, the SCA held that the appellant Queen had not shown that she will gain a tangible advantage in view of any uncertainty as the only case that she made out was the uncertainty that the late Queen's ascension to the throne would have created.

In the result, the SCA concluded that the high court properly exercised its discretion by refusing to grant the declaratory relief and consequently dismissed the appeal with costs, including the costs of two counsel where so employed.

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