



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

Date: 31 OCTOBER 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Nyamukamadi Mukumela Denga (Mabirimisa) & Others v Mabirimisa Tshililo Arnold N N O & Others (1296/2021) [2022] ZASCA 148 (31 October 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal against a decision of the Limpopo Division of the High Court, Thohoyandou (the high court).

The issue before the SCA was whether the estate of the deceased, reported at the Magistrate Court under file number 44/98 was finalised.

This appeal arises from proceedings instituted by the appellants in the high court, seeking an order declaring that the estate of the late Mudzielwana Josiah Denga Mabirimisa (the deceased) be administered in terms of the Administration of Estates Act 66 of 1965 (the Administration of Estates Act), and that the appellants be declared the heirs in the deceased estate.

The deceased died intestate on 19 April 1998. The deceased had, during his lifetime, concluded three customary marriages, thus constituting three houses, in terms of custom. The deceased's first wife was Denga Denga (the fifth respondent). The first appellant was the deceased's second wife. The third wife, Alilali Denga predeceased the deceased. The deceased was a businessman and owned a 50 per cent shareholding in Mabirimisa Bus Service (Pty) Ltd (the bus company), which was operated in the Vhembe District of Limpopo Province.

On 29 April 1998, a firm of attorneys acting on behalf of the first respondent, reported the estate to the estates department at the Magistrate's Court of Dzanani (the magistrate). The estate was registered under estate number 44/98 (the deceased estate). On 30 April 1998, the magistrate appointed the first respondent as the representative of the deceased estate in terms of s 23(10) of the Black Administration Act. The first respondent was the first-born son of the deceased. His appointment as the representative of the estate appeared to have been based on the application of the principle of male primogeniture.

The first appellant averred that she did not benefit anything from the estate and was struggling financially, as she was a pensioner. She contended that instead of finalising the administration of the estate, the first respondent collected all the assets of the estate for the benefit of himself and members of the first house, with no regard for the appellants as the members of the second house. The respondents submitted that the relief sought by the appellants was impermissible in law in the light of the fact that the administration of the deceased estate had already been finalised in terms of section 23 of the now repealed Black Administration Act 38 of 1927 (the Black Administration Act); that the finalisation of the estate was in terms of a settlement agreement which was made an order of court made by the Magistrate on or about 7 March 2006; and that the order granted by the Magistrate on 7 March 2006 was never challenged by the appellants and remains valid and effective until set aside or rescinded.

The SCA found that the respondents' detailed version could not be described as far-fetched or untenable. It was a detailed version supported by correspondence issued by the magistrate. Moreover, it was supported by a court order which reflected the settlement agreement. Applying the principles enunciated in *Bhe and Others v Khayelitsha Magistrate and Others*, the SCA held that nothing precluded the finalisation of this matter in terms of the Black Administration Act, as it was reported and registered in the Magistrate's Court in 1998, before that Act was repealed. It therefore found that estate was administered and wound up under the Black Administration Act in 1998 and could not be administered anew in terms of the Administration of Estates Act.

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