



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: 12 September 2025

Status: Immediate

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Tshivhase v Tshivhase N O and Another (105/2023) [2025] ZASCA 131 (12 September 2025)

Today, the Supreme Court of Appeal (the SCA) handed down a judgment in which it upheld the appeal of Ms Thimbiluni Elizabeth Tshivhase (the appellant), against the judgment and order of the Limpopo Division of the High Court, Thohoyandou (the high court).

The appeal arose from a dispute over the validity of a customary marriage allegedly concluded in 1966 between the late Mr Ndavheleseni Lazarus Tshivhase (the deceased) and Ms Azwihangwisi Francinah Tshivhase (the respondent). The respondent had lodged an urgent application in the high court to, *inter alia*, declare the civil marriage concluded, in 1977, between the deceased and the appellant void *ab initio* and to set aside their joint will.

The respondent claimed that she entered into a customary marriage with the deceased on 24 December 1966, relying on an entry in her identity document (ID), issued by the then Republic of Venda, which she contended was proof of the customary marriage. She contended that the prior customary marriage invalidated the civil marriage due to non-compliance with s 22 of the Black Administration Act 38 of 1927 and s 10 of the Recognition of Customary Marriages Act 120 of 1998.

The high court found that the entries in the ID were *prima facie* proof of the customary marriage and declared the civil marriage void *ab initio*, setting aside the joint will. The high court also dismissed the appellant's point *in limine* regarding the non-joinder of the beneficiaries recorded in the joint will.

The core issues for determination by the SCA were whether the alleged customary marriage had been properly proved; whether the civil marriage should be declared void; and whether the high court erred in dismissing the non-joinder point *in limine*.

The SCA found that the respondent failed to sufficiently prove the existence of the customary marriage. Following its previous decision in *Manwadu v Manwadu*, the SCA held that once there was a challenge to the existence of a customary marriage, the party relying on it must provide collateral evidence outside of an entry in the ID. The SCA held that the respondent was required to prove that all legal and customary requirements were adhered to, including traditional rituals and celebrations, lobola negotiations, and compliance with applicable customary law. The respondent failed to furnish such evidence. Furthermore, the respondent failed to provide evidence that the

deceased was assisted by a guardian in concluding or registering the customary marriage, as he would have been below the age of 18 at the time that the customary marriage was alleged to have been concluded.

The SCA further found that the high court erred in dismissing the non-joinder of beneficiaries point *in limine*. The beneficiaries of the joint have a direct and substantial interest in the proceedings. Invalidating the joint will has the effect that the estate will devolve intestate as opposed to testate, directly prejudicing the interests of the beneficiaries.

As a result, the SCA upheld the appeal with costs, set aside the order of the high court and replaced it with an order dismissing the application with costs.

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