

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**(1) REPORTABLE: YES**  
**(2) OF INTEREST TO OTHER JUDGES: YES**  
**DATE: 30 October 2023**  
**SIGNATURE:**

**CASE NUMBER: 6583/17**

**In the matter between:**

**CHIMANE JONAS PHETLA**

**APPLICANT**

**And**

**DEPARTMENT OF HOME AFFAIRS**

**FIRST RESPONDENT**

**MASTER OF THE HIGH COURT (PRETORIA)**

**SECOND DEFENDANT**

**LISBET MABUSA**

**THIRD RESPONDENT**

**Delivery:** *This judgment is issued by the Judge whose name appears herein and is submitted electronically to the parties /legal representatives by email. It is also uploaded on CaseLines and its date of delivery is deemed 17 November 2023.*

**Summary:** *Application for condonation, late registration, and validity of a customary marriage – non-compliance with the fulfilment of the ilobola agreement – application of section 3(1)(b)- Recognition of Customary Marriages Act 120/1998. Successful negotiations between families and payment of the agreed ilobola except for the delivery of the living cow. Celebration of customary marriage, particularly with the non-delivery of the cow was in dispute. Application for condonation and validity of the marriage upheld and an order for registration of the marriage is made.*

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## JUDGMENT

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NTLAMA-MAKHANYA AJ

### *Introduction*

- [1] This matter involves an application for condonation of the late registration of a customary marriage as well as the confirmation of the validity of the said marriage between the applicant and his late wife: Anieke Lebogang Retief (Anieke) in terms of the requirements of the Recognition of the Customary Marriages Act 120 of 1998 (Recognition Act). Secondly, for the registration of this marriage by the Department of Home Affairs (First Respondent).
- [2] The First and Second Respondents did not oppose this application and are to be bound by the order of this court except of the costs order against them. Thus, the Third Respondent: Lisbet Mabusa and a mother to Anieke opposes this application alleging that there was no existence of the customary marriage because the applicant did not fulfill the final portion of

the *ilobola* agreement and deliver the living cow in anticipation of the celebrations that could have constituted the validation of the said marriage.

[3] The applicant prays for the:

[3.1] condonation for the late registration of the marriage between him and his deceased wife.

[3.2] confirmation of the validity of the said marriage as in full compliance with the requirements of the Recognition Act.

[3.3] for the First Respondent to be directed to confirm the marriage.

[4] I must now present the background facts in this dispute.

### ***Background facts***

[5] The applicant placed before this court that his emissaries were sent to his deceased wife family on 14 March 2014 to negotiate marriage which was agreed upon by the two families. The amount of R32000 was agreed upon as the payment for *ilobola* which also included a living cow. The emissaries paid an amount of R10 000 on the day of the negotiations and left to settle an outstanding balance of R22 000 which was also paid on 19 March 2016 except for the living cow. The 19<sup>th</sup> March 2016 meeting resulted in the celebration of the marriage with messages of support from family and friends on their new status as husband and wife. The applicant and his deceased wife have since 2010 even before their marriage shared the common household and on payment of *ilobola* with celebrations on 19 March 2016, they continued to live together as husband and wife until the wife's death on 27 November 2016. Two affidavits from friends as Annexure CJP1 from the friends of applicant and his late wife: Mammtasi Lorraine Matlou and Grace Mpelegeng Seaageng were included in support of the marriage.

[6] Further, the applicant placed before this court that following his wife's death, he was advised to register his marriage. In pursuance of such advice, he was met by a 'brick-wall' to have his marriage registered by the Department of Home Affairs (First Respondent). The applicant also learnt of the Will left by her wife from her previous marriage. The said Will appointed Old Mutual Trust Limited as an executor of the estate of his late wife. He

placed on papers that he withdrew from pursuing his claim against the Master's Office on the appointment of the Executor after being aware of its contents and also of him not being the beneficiary in the said Will. He further stated he attended the funeral at his wife's maiden home and made financial contributions towards the expenses of the said funeral. Hence his application to this court to apply for condonation of the late registration including the confirmation of the validity of their marriage.

- [7] The Third Respondent opposes this application and raises a plethora of objections against the marriage. Her main contention is her assertion that the applicant and his family did not comply fully with the terms of the *ilobola* agreement. The assertion relates more specifically to the delivery of the cow. She further contends that there were no celebrations that took place as agreed upon by the two families that could have served as full compliance with the prescripts of customary law as practiced in their area in validating a customary marriage.
- [8] The Third Respondent, in support of her contention argues that the applicant did not dispute Anieke's uncles' contention who negotiated *ilobola* that there was never a celebration or handing over ceremony to conclude the said marriage. Three sworn affidavits from Anieke's uncles: Edward Simon Khosasa; Joseph Mogola and Malekane Esther Mahome confirmed the payment of R10 000 during the initial discussions and the last payment of R22 000 and other special gifts on 19 March 2016 as agreed except for the cow that could have led towards the celebration of the marriage. In addition, the applicant did not provide any supplementary affidavits from his own family and emissaries that negotiated *ilobola* for the confirmation of the celebrations and validation of the marriage. However, with the objections raised, she did not dispute that the emissaries from the applicant's family and the agreement relating to the payment of the agreed amount for *ilobola* were received by her family. Also, she was present during the process and signed the documents for the receipt of the original payment of *ilobola* amount.
- [9] I must now deal with the framework that serves as the cornerstone relating to the status of customary law in this matter. This is traceable from the constitutional recognition of customary law and the jurisprudence that has since developed in giving meaning to the said status in the new constitutional dispensation.

## **Legal framework**

- [10] Given that customary law has since the new dawn of democracy become an integral part of the legal system of the new dispensation, its legitimate status is evident from various provisions of the Constitution of the Republic of South Africa, 1996 (Constitution). I will limit the centrality of the protection of customary law to the intersection of sections 30 and 31 and 211(3). Sections 30 and 31 capture the broad overview on the protection of individual and collective rights and the exercise of such rights within the community of people practising those rights. Of particular importance is section 211(3) that entrenches a primary responsibility for the judiciary, specifically, with reference to the resolution of disputes that originate from customary law's context and not to impose other values and principles that may be foreign to it. These provisions without doubt place no questions about the status of the people adhering to the system of customary law. People adhering to the system no longer have to justify its legitimacy and its effects in regulating their human living alongside other systems. I must pause to mention, like all other systems, it is also subject to the supremacy of the Constitution as envisaged in section 2.
- [11] For the purpose of this application, the constitutional recognition of customary law, particularly with reference to customary marriages, has been given effect by the adoption of the Recognition Act. The Recognition Act placed no doubts about the originality and the distinct nature of customary law as it defines customary marriages in section 1 as the *'customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples'*. Also, a customary marriage is defined as *'a marriage concluded in accordance with customary law'* and *'ilobola'* as *'the property in cash or in kind whether known as **lobolo, bogadi, bohali, xuma, thaka, ikhazi, magadi emabheka** or by any other name, which a prospective husband or the head of his family undertakes to give the head of the family of the prospective wife's family in consideration of a customary marriage'*. Given that the marriage was entered according to customary law, and as envisaged in section 7(2) of the Recognition Act, its legal status is that of *'the marriage in community of property and of profit and loss except for the exclusion of such consequences by means of an antenuptial*

contract which will regulate the matrimonial property regime of the marriage', (**Ramuhovhi v President of the Republic of South Africa 2018 (2) BCLR 217 (CC) para 31**).

- [12] Also, the judiciary has since undertaken its primary role and endorsed the status of customary law. I need not exhaust the jurisprudence of the court except to highlight that the aspirations for the application and resolution of customary law disputes have since been settled with reference to the context from where they come from. Such settlement and consideration gave meaning and status of customary law within the constitutional framework of the Republic. To date, the Constitutional Court in **Pilane v Pilane 2013 (4) BCLR 431 (CC)** acknowledged that customary law '*as a living body of law, its true nature entails an active and dynamic system with an inherent capacity to evolve in keeping with the changing lives of the people whom it governs*' (**para 34**). The view was similarly expressed in **Alexkor Ltd v Richtersveld Community 2003 (12) BCLR 1301 (CC)** in that:

*in applying indigenous law, it is important to bear in mind that, unlike common law, indigenous law is not written. It is a system of law that was known to the community, practised and passed on from generation to generation. It is a system of law that has its own values and norms. Throughout its history it has evolved and developed to meet the changing needs of the community. And it will continue to evolve within the context of its values and norms consistently with the Constitution, (para 53).*

- [13] The consideration of customary law in the new dispensation, particularly the context where the dispute derives from was endorsed by Sachs J in **S v Makwanyane 1995 (6) BCLR 665** as he fore warned the courts in that:

*it is a distressing fact that our law reports and legal textbooks contain few references to African sources as part of the general law of the country. That is no reason for this court to continue to ignore the legal institutions and values of a very large part of the population, moreover, of that section that suffered the most violations of fundamental rights under previous legal regimes, and that perhaps has the most to hope for from the new constitutional order. ... [and] this would*

*require reference not only to what in legal discourse is referred to as 'our common law' but also to traditional African jurisprudence, (paras 371-373).*

[14] I am persuaded by Sachs J in **Makwanyane** on his transformative approach towards the reform of the jurisprudence that should be undertaken by the courts. The courts are today armed with a transformative Constitution not just to mere apply customary law but to ground such application with reference to its own context that will serve as a determinant for the infusion and influence of the system of customary law in the broader framework of the new dispensation. In essence, Sachs J says the application of customary law principles is no longer at the discretion of the courts but a constitutional imperative that is designed to consider South Africa's pluralistic character. It is for the courts to undertake the central responsibility in bringing 'life and meaning' to the system of customary law alongside other systems that are applicable in the Republic.

[15] It is then of significance that I deal with the application for the late registration of the customary marriage.

#### ***Application for condonation***

[16] The application for condonation is central to the second leg of this dispute relating to validity of the customary marriage and its registration. The consideration of the late registration of the marriage between the applicant and his deceased wife (Anieke) struck at the core content of the merits of this dispute. Such consideration is a significant factor for the determination of the rationality of the merits of the main application on the validity of the customary marriage. Ackerman J in **Fose v Minister of Safety and Security 1997 (7) BCLR 851 (CC)** gave substance to the contention herein and held that *'given South Africa's historical context, [especially the judicial development of customary law principles] this Court has a particular duty to ensure that within the bounds of the Constitution, effective remedies are granted for breach of the values [of the new dispensation] without which the rights entrenched therein cannot be properly upheld or advanced. Particularly in a country where there is a high cost of litigation which mostly affect the vulnerable, ... the courts have a particular responsibility and are obliged to 'forge new tools' and shape innovative remedies if needs be to achieve this goal', (para 69)*. I am convinced by Ackerman J in that the consideration of the condonation application will not be prejudicial

to the Third Respondent as it seeks to provide certainty on the outcomes of the alleged non-existence of the customary marriage between her daughter (Anieke) and the applicant. It is also meant to determine the influence of the system of customary law and also for it to be influenced by the prescripts of the new dispensation.

[17] I need not repeat and exhaust the extensive factual background as provided for in the papers and during argument except to provide the summary and highlight:

[17.1] the opposition to the main cause of this application by the Third Respondent for the late registration of the customary marriage between the applicant and his late wife which is of direct relevance to the condonation application.

[17.2] during their lifetime, they lived together as husband and wife.

[17.3] only after the death of the wife that the applicant became aware of the need to register their customary marriage.

[17.4] applicant encountered a 'brick wall' on approaching the First Respondent (Department of Home Affairs) for the registration and was advised to seek legal advice.

[17.5] following the advice, he then approached this court for condonation for the late registration of the customary marriage.

[18] This application merits the identification of the principles that are applicable for condonation applications which are of direct relevance to the system of customary law as well. This court acknowledges that in the exercise of its judicial discretion it must be satisfied that the applicant has shown good cause for the delay in registering the marriage. Such a cause should also be in the interest of justice in the filling of the void in the interpretation of the law relating to the merits of his condonation application, (*Mayelane v Ngwenyama* 2013 (8) BCLR 918 (CC) para 16).

[18] In considering the condonation application, the premise upon which it is considered, reference is to be made from the context of the system of customary law where this dispute emanates. In this regard, it is also imperative on an application of this nature, to consider the quest for the fundamental principles of the good cause being shown alongside the interests of justice as is the case with other systems. With the background



facts presented before this court, this application touches on the core content of section 4 of the Recognition of Act relating to the registration of customary marriages. Section 4 of the Act places a primary responsibility on the parties to register their marriage within a prescribed period. The parties are then required to present the relevant information to the satisfaction of the registration officer who will then issue a certificate for the conclusion of a valid customary marriage. However, section 4(9) of the Act has left the 'door open' for the evolution of the living version of the system of customary law as it does not invalidate the recognition of the said marriage due to the failure to register it. Froneman J in **Mayelane** contextualised the significance of section 4(9) on its due recognition of the living version of customary law and held:

*importantly, however, the Recognition Act does not purport to be – and should not be seen as – directly dealing with all necessary aspects of customary marriage. The Recognition Act expressly left certain rules and requirements to be determined by customary law, such as the validity requirements referred to in section 3(1)(b). This ensures that customary law will be able to retain its living nature and that communities will be able to develop their rules and norms in the light of changing circumstances and the overarching values of the Constitution, (my emphasis, para 32).*

[19] This is a direct response to customary law being broad enough as defined in the Recognition Act to endorse the living practices and customs that are observed by the said communities. The holistic consideration of the factors placed before this court by the applicant indicates no fatal outcome for the granting of the condonation application and its relevance regarding the non-registration of the customary marriage. The endorsement of the living version of customary law in the Recognition Act entails the occupation of the constitutional space by the system of customary law in its own context. Such occupation is in the interest of justice for a system that is recovering from its subordination during South Africa's pre-democratic dispensation. The opportunity that is presented today for its constitutional recognition in ensuring the evolution of its principles should not be viewed as a 'mere status' in light of the post-democratic principles, (**Bhe v Khayelitsha Magistrate 2005 (1) BCLR 1 (CC) para 43**). This seeks to ensure the fitting and influence of the system of customary law in the general framework of the law that is grounded in the Constitution 1996.

[20] This court as envisaged in section 4(7) of the Recognition Act seeks to set the tone for the determination of the merits of this case relating to the legitimacy of the customary marriage between the applicant and his wife. The court is not to blatantly refuse this application for condonation as it is foundational to the consideration of the merits of this case regarding the validity and the registration of the customary marriage. I am finding no reason when an opportunity presents itself to leave customary law in the periphery of judicial reasoning in determining the relevance of its values and principles in the new dispensation. In this case, the importance of the non-delivery of the cow is the deciding factor on the validation of this marriage. Having said this, condoning this application justifies its relevance in dealing with the substance of this dispute.

### **Discussion**

[21] The second leg of this application deals with the substance of this application regarding the validity of the customary between the applicant and his deceased wife (Anieke). The lens through which I deal with this factor is to determine the rationality of the practice of the delivery of the cow and its effect on the legitimacy of a customary marriage.

[22] In this case, there are no fundamental differences on the facts relating to the dispute as presented in argument and in papers. It is common cause that both parties agree that the living cow was not delivered. The main contention is the interpretation of the custom of the delivery of the cow for the solemnization of the customary marriage.

[23] The crux of this application, which is the focus of this court, is the non-delivery of the living cow that was allegedly supposed to have preceded the conclusion of the customary marriage between the applicant and his deceased wife. This court is not to deal with issues raised by the Third Respondent and confirmed by the applicant in that Anieke was buried at her maiden home and the applicant's attendance and his contribution towards the funeral experiences were not of his own account but from Anieke's funeral policies.

[24] The main issue in this case is the agreement itself which is not even linked to the agreed payment of the *ilobola* **but the non-delivery of the living cow**. I put an emphasis on this aspect because this matter provides a unique opportunity for a direct response to consider

the infusion and rationality of customary law practice of the 'delivery of the cow' within the broader framework of the new constitutional order. The flexible nature of customary law as alluded to above is for a clear demonstration that the legitimacy of the customary marriage be considered with reference to shared practices as exercised by the community considering the developments that have since taken place after the attainment of democracy. Such focus is directed to the provisions of section 3 of the Recognition Act which provides that:

(1) *For a customary marriage to be valid after the commencement of this Act:*

(a) *The prospective spouses:*

(i) *must both be above the age of 18 years and*

(ii) *must both consent to be married to each other  
customary law.*

(b) ***The marriage must be negotiated and entered into or  
celebrated in accordance with customary law,*** (my  
emphasis).

[25] In this matter, section 1(a) of the Recognition Act is not in dispute, however, it is the application of section 3(1)(b) of the said Act that raises contentious issues relating to the successful conclusion of *ilobola* agreement with reference to the non-payment of the portion of the *ilobola* (cow), and the slaughtering of the said cow to celebrate the conclusion and validation of the marriage. I must express that section 3(1)(b) captures the content of the living (unwritten practices) and the official version of such practices. The said section is broad enough to incorporate the practices relating to the celebration of the marriage in accordance with customary law. It is this broad definition that enables the Third Respondent to make a great emphasis in that the applicant did not fulfill the last leg of the *ilobola* agreement and pay the cow that could have served as a connection between the living and the dead of both families on the welcoming of the *makoti* into her marital home. However, does the non-delivery of the cow invalidate the marriage after having fulfilled the payment of the agreed *ilobola* amount?

[26] Both parties (applicant and the Third Respondent) did not dispute the agreed *ilobola* amount of R32000 was paid in full and the balance was paid two years after the

conclusion of the original negotiations. It is instances of this nature that the influence of constitutional law principles come into play and rescue the living version of the system of customary from its rigid application and align it with the prescripts and purport of the new dispensation. Such influence requires the determination of the living status on the full payment of *ilobola* itself. This court acknowledges that customary law has shared common values and principles and the lessons which are also applicable in this case. *Ilobola* does not necessarily have to be paid in full for the validation of the customary marriage. As in this case, even if the outstanding balance of R22000 was not paid, that would not have invalidated the marriage. The non-delivery of the cow is an associated practice that cannot override the main agreement relating the meeting of the minds by families first and secondly, for the parties to consent to be married according to the said system and the payment of the agreed amount. The cow is not an essential requirement wherein its non-adherence could invalidate the marriage.

[27] The parties were not even distinct from each other in their papers and argument on their reliance on the interpretation of the associated practices. They relied on academic scholars such as Professors Bennette and Bekker and jurisprudence of the court on the dynamic nature of customary law. From the perspective of this court, there is nothing fundamental in their arguments as they contribute to the progressive nature of the system of customary law which evolves with the time, and it is for the communities adhering to such practices to embrace the changes and developments that have taken place. The merits of this case are also not distinct from other matters that have since been decided by the courts although each case must be decided according to its own merits. The Supreme Court of Appeal has provided lessons to be learned from the jurisprudence of the court which were also referred to by both parties and are of direct relevance to the present matter. These lessons were articulated by Maya J in ***Mbungela v Mkabi* [2019] ZASCA 134** as she held that:

*in the court's view, a valid customary marriage could be concluded without the full payment of lobola [considering] the evolution of customary law if other requirements of a customary marriage were met, such as the payment of a portion of the lobola and the exchange of gifts by the two families in the instant matter', (para 15).*

[28] The delivery of the cow as endorsed by Maya J in *Mbungela* cannot be an unqualified criterion for a valid customary marriage because its application is inflexible, very formalistic, and is inconsistent with the aspirations for the promotion of the spirit, purport, and objects of the Constitution. The implementation of customary rituals is different from each respective community. The handing over in *Mbungela vis-à-vis* the delivery and slaughtering of the cow in this case are similarly situated. It is common cause to mention that in some other communities such as AmaXhosa group, the goat or the sheep is used for the ceremony called 'utsiki ceremony' to welcome *umakoti* even before the final payment of the agreed *ilobola* amount. Therefore, the marriage cannot be denied its existence because the *utsiki* ceremony was conducted before the final payment of *ilobola* amount and or a cow or goat was used instead of the sheep **or not done at all** as in this case. This is indicative of the plurastic character on the diverse nature of South Africa's communities which may not be compromised by the rigid application and adherence to the cow slaughtering over the common intention of the parties as envisaged in section 3(1)(i) of the Recognition Act.

[29] The Third Respondent does not dispute in her papers and during argument that the applicant and the deceased stayed together long before the solemnization of their marriage which was validated by the payment of the agreed *ilobola* except for the delivery of the living cow and its slaughtering. The financial contributions made by the applicant towards the funeral which are disputed by the Third Respondent as not from the applicant's personal accounts but from Anieke's funeral policies are an indication of the commitment to each other as husband and wife. This court is restraining itself from justifying the payout to the applicant as it is public knowledge that the insurance industry only makes payouts to the nominated beneficiaries. Thus, the applicant's handing over of the payout is reflective of his confirmation for the validity of their marriage. Therefore, the staying together that was not frowned upon by the Third Respondent and her family before the fulfilment of the delivery of cow towards the validation of the marriage, attest to the flexible nature of the system of customary law wherein some practices may not be strictly adhered depending on the circumstances that prevail at the time the parties find themselves. Similarly, Bozalek J in *Tshongweni v Kwankwa* [2021] ZAWCHC 126 quoting with approval LAWSA *Indigenous Law* Vol 32 **para 86** held that the '*importance of ceremonies whether from a ceremonial or cultural viewpoints cannot be regarded as essential requirements for the conclusion of a valid customary marriage, (para 64)*'. In this

case, the non-delivery of the living cow, which in the Third Respondent's argument invalidated the customary marriage is without substance (**para 111**). Bozalek J endorsed the progressive changes and adaptations that must be undertaken by communities in the enjoyment and fulfilment of their rights.

[30] This court acknowledges that a customary marriage is not an individual affair between the parties but entails the involvement of the family and the community under which the said parties share common practices. However, it is not for this court to second-guess the intention of the parties and hold them by a 'tight-loose-end' of the non-delivery of the cow which might have been affected by other factors that were not before this court. The family allowed and endorsed the intention of the parties to marry according to customary law and cannot in this instance, make a **U-Turn** and refute the consent they gave to the parties and claim invalidity just for a non-essential requirement of the cow delivery. The living together of the parties was not a mere consent to the marriage but an informed consent that is grounded on the prescripts of customary law as evidenced by the final settlement of the outstanding balance of the agreed *ilobola* payment (***Molokane v Williams 2015/12381, para 35***). The flexible nature of customary law allows the evolution of practices that may be waived by agreement or conduct as in this case where the parties lived together until the passing of the wife. Enforcing rigidity on compliance with customs of the past may not have the intended consequence of giving content to the intention of the parties in the living status of their marriage.

[31] This court, as I alluded above is to advance the transformative trajectory of the new dispensation which entails the consideration of the evolving nature of the principle of customary law and not turn a 'blind eye' on establishing prescripts that do not accord with the values of the new democracy. This is not an approach to 'bull-doze' the way of human living by people adhering to the system of customary law. It is for the system, in consideration of the disputes that emanate from it, to be equally given a transformative lens that is aligned with its flexible nature as considered by this court. Moorcroft AJ in ***Thusheni v Minister of Home Affairs [2022] ZAGPJHC 343*** held that '*a court must therefore be careful not to insist on exact compliance with what any party to litigation regards as the appropriate celebrations in a specific case. The key is spousal consent*' (**para 21**). At the risk of repetition, Moorcroft AJ endorses the contention herein that consent is the primary principle and fundamental to the validation of the customary

marriage and not some lack of compliance with associated practices which are not integral towards the conclusion of a marriage.

[32] I must also point out that this matter did not raise the question of the validity of adherence to the practice of the delivery of the cow towards the conclusion of a valid customary marriage. Particularly as a constitutional issue that would have required the development of the practice as envisaged in section 39(2) of the Constitution. The latter section is a directive to the courts to develop customary law or common law to promote the purport and spirit of the Bill of Rights. I will also leave this matter without determination except for the emphasis that the informed consent of the parties when all other requirements have been met cannot be overcome by associated practices in determining the validity of a customary marriage. Therefore, customary marriages are by their nature as envisaged in section 7(4) of the Recognition Act and as noted above, in community of property except with a prior agreement through an antenuptial contract that will determine its status before getting into the marriage.

[33] It is my view that the Third Respondent's contention about the non-delivery of the cow not fulfilling the agreed *ilobola* (which was in monetary terms) is without substance and therefore not justified. If Bozalek J in *Tshongweni*, the court acknowledged the flexible nature of customary law to an extent of the bride not being present at the hand-over ceremony, the rigid reliance on the delivery of the cow in this case does not respond to the envisaged transformative imperatives of the system of customary law. The Third Respondent was present during the meetings set for the deliberations and appended her signature to confirm the rationality of the outcomes of the said meetings. If the last payment was only made two years after the initial negotiations and with the parties having stayed together without protest from the Third Respondent during the lifetime of her daughter (Anieke), her motives for opposing this application and the denial of the existence of the marriage is an abuse of the court process. It amounted to unmerited and frivolous litigation that could not have seen the doors of this court as the question of associated practices was long settled by the courts.

[34] Both parties did not dispute the terms of the *ilobola* agreement with evidence of the payments in two parts: in the years 2014 and 2016 except for the living cow. Of contention was the delivery of the cow which could have yielded to the sealing of the marriage as

argued by the Third Respondent. However, there is uncontested evidence that the parties stayed together after the conclusion of the payment of *ilobola* long before the final payment in the year 2016. I find no reason to accept the applicant's version as not reliable and therefore the applicant and Anieke Lebogang Retief were married to each other according to the system of customary law.

[35] Accordingly, the following order is made:

[35.1] The application for condonation for the late filing of the registration of the customary marriage is upheld.

[35.2] The customary marriage between the applicant and Anieke Lebogang Retief is declared valid.

[35.3] The First Respondent is ordered to register the customary marriage between the applicant and Anieke Lebogang Retief within 30 days of the receipt of this order.

[35.4] There is no order of costs against the First Respondent and Second Respondent.

[35.5] There is no order of costs to this application.

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**N NTLAMA-MAKHANYA  
ACTING JUDGE, THE HIGH COURT  
GAUTENG DIVISION, PRETORIA**

Date Heard: 30 October 2023

Date Delivered: 17 November 2023

***Appearances:***

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