# NATIVE LAW - NATAL DECISIONS.

MARRIAGE.

NXASANA vs NXASANA 1922 N.P.D. 441.

Code of Native Law 1878 - marriage essentials:-
(1) Payment by husband
(2) Consent
(3) Marriage feast
(4) Official witness inquire.

MAKABENI vs SMITH 1917 N.P.D. 148.

Section 230 of the Native Code means that although there are well-recognised property rights connected with or arising out of their marriages, native women and girls are not for that or any other reason to be regarded as mere property, or chattels; but the Code itself recognises and makes regulations as to lobola for women and girls given in marriage as a property right connected with their marriages which does not involve their treatment as mere property or chattels in the sense of the section.

DUNN vs REX 1907 N.P. 56.

A marriage in the Zulu sense is no marriage in the English sense.

RADEBE vs REX 1905 N.P. 260.

The law of Natal recognises a marriage contracted according to native law and under native rites. Letters of exemption are not granted to a native who has more than one wife alive, the appellant, having become exempt from native law after contracting a marriage by native custom, could not lawfully enter into another marriage by Christian rites, or otherwise.

REX vs MDIYA LUTULI 1902 N.P. 253.

It would be very serious if an exempted native who had contracted a valid marriage by Christian rites, should be held ~~seh seh~~ scatheless if he subsequently contracted according to the formalities of the law from which he had been exempted, bigamous or polygamous marriages.

GOBEYANA vs MARANANA 1900 N.P. 19.

There is no reason in Native Law why an ukungena union should not be formed with a stranger who is not a relative of the woman.

MAKULA AND OTHERS vs SUPREME CHIEF 1898 N.P. 156

The offence of coercing a girl to marry against her will may be complete, although the marriage has not been completed.

UGCETSHWA vs GOBELA 1898 N.P. 12.

The first wife of an appointed Chief is presumably his great wife, See s. 22. Natal Native Code 1878.

UKWEKWANA vs MATYANA 1898 N.P. 152.

An action for cattle lent by one brother to another to assist the latter to lobola a wife is not barred under section 182 of the Code of Native Law (1891)

NKOMIYAPI vs NONTUNTU 1896 N.P. 238.

The question of Ukungena, however repugnant it may be ... has

one advantage, and that is that the children follow the mother and they receive the kindness and protection of the late husband's family.

MYAIZA vs NKANISE. 1896 N.P. 348.

Although it may be proper for a father to provide lobola cattle for the marriage of a younger son, there is no legal obligation upon him to do so.

MANJWEMBE vs WILLEM. 1895 N.P. 24.

166th Section Code 1891 proof of attempts at reconciliat-tion is required before divorce can be granted.

NOMANYA vs MOMAXOKI and SIBANDA 1893 N.P. 157.

Natives married by Christian rites under Law 46 of 1887, though brought under the ordinary law of the Colony as regards divorce and separation or restitution of conjugal rights, can-not sue for and obtain damages against a co-respondent in an action in the Supreme Court for divorce.

SUCCESSION. MSUTU vs BOVELA 1896 N.P. 357.

Section 99 of the Code of 1891 provides that the eldest son of the chief house is as general heir liable for his ~~fat~~ father's general debts.
HELD. That the heir is only liable for such debts in so far as he has received property from the estate to meet the same.

DISHERISON.

PUPUTI vs MANZINI 1898 N.P. 170.

A Chief cannot disinherit his son under Section 140 of the Code of Native Law, although he may be entitled to do so otherwise.
Kraal head. Refuse to be controlled Disgraced
Sufficient cause.

WILLS.

CILI vs ESTATE BOZIANA 1919 N.P. 106.

The Supreme Court N.P.D. has no jurisdiction to interpret the will of an ex unexempted native.

MADELA vs ESTATE MADELA 1924 N.P.D. 114.
Act 7 of 1895.

Certificate 1. Magistrate shall cause the will to be explained in his presence to the testator in presence of two persons of full age whose presence and names the certificate must disclose.
5. Must bear that the testator appeared to be fully capable of understanding.
6. That the testator did understand
7. That the testator intended the provisions of the will.

EX PARTE ESTATE MATCHENE MONDISE 1910 N.P.D. 162.
Act 7 of 1895 s.4 amended by Sec, 48 Act 49 of 1898

1. Will shall be read over and explained to the testator by an Administrator in presence of two witnesses.
2. Will shall be signed by the testator or by someone in his presence, and by his direction.
3. Such Signature shall be made and assented to in presence of two competent witnesses present at the same time
4. Such witnesses shall in the presence of the testator affix their signatures.
"Magistrate" was substituted for "Administrator of Native Law".

NATIVE CUSTOM. REX vs KUMALO and NKOSI 1918 A.D. 500.

The customs of native tribes upon vital matters are universal and binding in a very high degree. In order to supply proof of a motive for the crime evidence was led for the Crown to the effect that it was the practice amongst Zulu tribes and especially on the part of witch-doctors to kill and mutilate young persons and use portions of the body, and particularly fat, as a charm against ill-luck and that the first accused was a Baca, an offshoot from the Zulu tribe. HELD, that the evidence was admissible against the first and accused.

NATIVE LAW. SINKWA vs KONIGKRAMER 1914 N.P.D. 321.

In cases between natives and white men the ordinary laws of the country apply. The Native Code is an exposition of Native law, customs, and usages.

NGEQE vs ZWELINJANI 1897 N.P. 135.

Gallwey, C.J.: My impression is that the code of 1877 made no alteration in Native Law but only declared what it was, & those who framed it had the greatest knowledge of the prevailing Native Law. Sir H. Connor said the object of the 1877 Code was not to make Law but to declare it..s.22 with natives other than chiefs, the wife first married and not then a widow or divorced woman, is presumably the great wife.

FODO vs UMTSHOZI. 1896 N.P. 240.

The provisions of the Code of 1891 were not retrospective.

TRUSTEE OF SHUMAYELO'S INS. EST. vs DICK SHUMAYELO.
1886 N.P. 100.

The property of a native who has surrendered as insolvent has to be dealt with according to the ordinary Colonial law; special rights under Native Law do not apply in such cases.

UMFONDINI'S INSOLVENCY 1885 N.P. 238.

There is nothing in the Insolvent Ordinance preventing a native becoming insolvent.

NOMBUDA vs CLERK OF THE PEACE, VICTORIA COUNTY,
1885 N.P. 83.

Abduction is a crime under Native Law punishable by death.

UMPIFFO vs CLERK OF PEACE, PIETERMARITZBURG.
1884 N. 326.

The object of the Code was not to amend Native Law, but state what it then was;

NATIVE CASES. SIDUNGE vs NKOMOZAKE 1913 N.P.D. 131.

Under s. 6 Act 49 of 1898 cases between natives involving questions of ownership of immovable property or title thereto are not native cases within the meaning of the Act, but the Supreme Court may direct the trial in the Native High Court of any civil case between Natives involving such questions.

WANTINK vs ZAKEU 1907 N.P. 55.

S. 80 Act 49 - 1898 provides that "All civil cases arising out of trade transactions of a nature unknown to Native Law shall be adjudicated upon according the to the principles laid down by the ordinary Colonial law in such cases." Where a European is the holder of a promissory note made by a native

in favour of a native the case is not a Native case within the meaning of Act 49 of 1898.

NYAWU vs SUPT. OF POLICE, PIETERMARITZBURG.
1905 N.P. 525.

Act 49-1898 sec. 6.
Licences other than those required under Native Law not a native case. See also Klaas vs Rex 1902 N.P. 10.

NATIVE CHIEFS. NGUBANE vs HEMU 1895 N.P. 239.

A native chief, though empowered by chapter IV of the Code of 1891, to act as a judicial officer, to hold enquiry and to impose fines in certain cases, had no authority to investigate a complaint against an absent individual, without notice, and thereafter to impose and enforce a fine against such absent person.

KRAAL HEAD. SISIMANA vs SIMAKI 1897 N.P. 56.

The liability of a kraal head in respect of the acts and defaults of the inmates of the kraal is limited to contracts entered into or fines incurred, or injuries inflicted by the offender when acting as the agent of the kraal head or under his instructions, or for his benefit under S. 73 of the Native Code. See S. 214.

EMANCIPATION. DEYI vs MBUZIKAZI 1897 N.P. 227.

The Supreme Court has no power to emancipate an inmate of a kraal.

SUPREME CHIEF. SIZIBA vs MESENI 1894 Natal 237.
S. 40 Sch. Law 19 of 1891.

The irresponsibility conferred by S. 40 Sch. Law 19 of 1891 is a qualified one; the Supreme Court can inquire into any act of the Supreme Chief to ascertain whether such act is within the scope of his authority or the epeh sphere of his duty.

NATIVE HIGH COURT.

MBEKELA vs NKOMOZAKE. 1921 N.P. 287.

The Native High Court is the creation of statute; it has no inherent jurisdiction; and its powers are limited to those specifically conferred by the statute.

Act 7 of 1895 is passed not only to enable natives to dispose of immovable property, but also to regulate the devolution of immovable property in cases of intestacy.

USWENGE vs REX 1905 N.P. 70.

Although the crime of theft is not recognisable by the Native High Court sitting as a Court of first instance, an appeal from the decision of a Magistrate in a case of theft by a native lies to that Court, and not to the Supreme Court.

QIQA vs DHLANGANE 1891 N.P. 291.

The Native High Court is constituted under Law 26 of 1875, to be a Court having primary jurisdiction over the natives of Natal, whose disputes in the nature of civil cases are to be tried according to Native Law, and in that Court, and not otherwise. See s. 80 Act 49-1898.

BEN CELE vs REX 1905 N.P. 73.

An appeal from a trial by a Magistrate for escape lies to the Native High Court.

MAGISTRATES' COURTS.

REX vs MDIZALA and OTHERS. 1921 N.P.D. 255

Under Act 13 of 1921 s. 4 reviews of sentences in native cases are by the Provincial Division. The effect of sec. 108(1) Act 32 of 1917 as regards native criminal cases is to preserve the whole jurisdiction of Magistrate's Courts in such cases as it stood before the passing of the Act.

LAND.

MAKALA ZIKALALA vs GROENEWALD 1922 N.P.D. 150.

Where a landlord wishes to turn native tenants off his lands three months' notice is the minimum period that should be given. One's knowledge of conditions of this country convince one that it is difficult for a native to find at a moment's notice new land upon which to settle. To remove his kraal takes some time when he has found the land. The right of occupation of the soil has from the earliest times been a fertile source of social and political trouble, and it is incumbent upon the Court to see that the rights of tenants, as regards notice, especially in a country like this, are properly safeguarded, when they are being turned off land.

MAQALAZA AND OTHERS vs BERLIN MISSIONARY SOCIETY. 1916 N.P.D. 427.

In proceedings for the ejectment of native squatters under section 3 of Ordinance 2 of 1855, it is necessary to set out in the summons the capacity of the complainant- whether owner of the land, or representative or mandatory of the owner.

GABUZA vs UNION GOVERNMENT 1916 N.P.D. 320.

In the absence of express words in the statute, regulations for the collection of rents cannot go the length of depriving the person from whom the rents are sought to be collected of the opportunity which is his under every proper system of law of appearing and stating any objections to the demand.

KWININGCOBO vs SHEPSTONE 1906 N.P. 584.

A notice shall be issued to the squatter before he can be ejected. He shall be given an opportunity of answering the complaint.

NONDWEBU and OTHERS vs NEL AND BOTHA 1901 N.P. 416.

On the hearing of a complaint to a Magistrate under Ordinance 2 of 1855, evidence must be taken, and the proceedings must be conducted in ordinary form.

NATIVE TRUSTS.

BOHLELA vs NATAL NATIVE TRUST 1919 N.P. 174.

The Natal Native Trust was constituted by letters patent, issued by Proclamation in 1864, and the persons entitled by the constitution to administer its affairs were the officers administering the Government of Natal and the members of the Executive Council thereof for the time being. Act 1 of 1912 recognises the continued existence of the Trust.

LETTERS OF EXEMPTION.

NXABA vs NQWEBU 1916 N.P.D. 109.
Sec. 17 Law 28 of 1865.

The original or a certified copy of his letters of exemption must be produced by a native making a claim in the Common Law Coruts.

MAHLUDI vs REX 1905 N.P. 298.

The son of an exempted native born after the date of the grant granting of letters of exemption to his father is not exempt from native law. The policy of Natal legislation is to preserve to the native his rights under his own law. It was recognised then, as it still is with modification, to be impolitic and contrary to the interests of the natives and of the European population that they should suddenly, or en masse, withdrawn from its operations and be made subject to the ordinary laws. Any withdrawal was to be gradual and partial. One of the first Acts of the Crown was to proclaim thatnative subjects should, so far as their civil rights, inter se, were concerned, remain subject to native laws and customs so far as these were not repugnant to the general principles of humanity. These laws and customs were not reduced to writing until they became codified by Law 19 of 1891, and that law comprehends what is now designated "Native Law". The effect of the law is to give exemption from the operation of native law, as known and administered in the Colony of Natal, and not to give the exempted native the full status and rights of a European subject. The exempted native is still subject to those special laws which apply only to natives and are not part of what is called native law. The exempted native is still disentitled to exercise the electoral franchise just as much as the unexempted native is; he is not allowed to carry firearms or to obtain ammunition; he is not allowed to obtain liquor. For exemption from these and other laws it is still necessary for him to be relieved either by enactment or by the special authority of the Governor.

LUTAYI vs TSHELI 1895 N.P. 26.

The exemption from the Native Law does not have a retrospective effect.

NATIVE LABOUR REGULATIONS.

MACKENZIE vs UNION GOVERNMENT 1916 N.P.373

Native Labour Regulations - Advances.

MONEY LENDING.

PATHON vs HLUBI 1914 N.P.D. 104.

Law 44 of 1887 sec. 8 safeguarded tha native, it was found beneficial to the Natives, -- it is repealed by Act 41 of 1908 sec. 3, limited to transactions substantially those of money-lending.

PASCOE vs LUHLONGWANA 1914 N.P.D. 101

By sec. 2 Act 41 of 1908 no judgment can be given against a native for the recovery of a loan unless the contract has been reduced to writing. By Sec 3 it is necessary that every doct. of debt by a native shall set forth separately, the net sum borrowed, the rate of interest, and any other charges and the date of repayment. A statement signed by the lender shall be endorsed on the Doct. that the actual sum lent and the other particulars in the doct. are truly set forth.

The Native shall sign his name or make his mark in the presence of a Magistrate or J.P. A Magistrate shall attest the doct. after satisfying himself. The objects of the Act are the prevention of

(1) The imposition of exorbitant interest or charges on loans to natives, and

(2) the recovery by the lender in respect of the loan of any amount not disclosed in the Doct. of debt.

ASSEGAIS

SWAIMANA vs SUPREME CHIEF 1898 N.P. 85.
Sec. 275 Sch. Law 19 of 1891.

Person not constable on duty, or not otherwise empowered, who shall carry assegais, to any feast, shall be deemed guilty. Sec 292. Natives carrying assegais are liable to be arrested unless they are engaged upon some public duty or have authority of the Administrator of Native Law... or are engaged in hunting or bona fide night travelling.

NATIVE DOCTOR.

RADEBE vs VAN DER MERWE.1905 N.P. 179.

A native doctor licensed under the Native Code of 1891 is not restricted to practising among natives but may prescribe for and receive fees, for services rendered, from a European.