

<p style="text-align: center;">KOVSIÉ FIRST YEAR MOOT COURT COMPETITION 4 to 6 OCTOBER 2012</p>

Tumelo Bohang, born on 27 January 1983, grew up in the Natal Midlands. His family was very well acquainted with the Tladi's and spent much time together. Consequently, he developed a close bond with the Tladi's only child, Thuli, who had the same birthday. The two of them were inseparable and, as luck would have it, were placed in the same class from Grade 1 until Grade 12.

During their high school years their love blossomed and the two of them, although not formally, had promised to marry each other. Only when the time came for them to undertake their tertiary studies did their paths separate. Tumelo and Thuli had both applied to the prestigious Australian McLeland University which had recently established a campus in South Africa. Due to a clerical error Thuli's application was incorrectly processed and she was not admitted and she instead attended a university closer to home. She and Tumelo had discussed the matter at length and decided that, although being apart would be difficult, it would be better for their future together if Tumelo graduated through McLeland as this would give them the opportunity to emigrate should the need ever arise.

After they matriculated in 1995, Tumelo and his father approached Thuli's father and uncles and lobolo negotiations commenced between the parties. Once the parties reached agreement as to the amount of lobolo to be paid, Tumelo proposed to Thuli and she gleefully accepted. Four years later, in 1999, Tumelo graduated with an honours degree in Accounting and Thuli graduated with an LL.B degree. The young couple was to be reunited as both of them found work in Bloemfontein. They concluded a customary marriage on 14 February 1999.

Thuli was admitted as an attorney two years later and Tumelo qualified as a chartered accountant the year thereafter. It was at this time that they celebrated the birth of their first son, Kabelo, on 28 August 2002. The couple could not have been happier.

A month after the birth of their son, the couple drove to their parents' hometown in Natal in order to spend some time with their families. The weather was terrible as they made their way through the treacherous Van Reenen's Pass. The rain was heavy and visibility was poor. An oncoming car, without its headlights on, veered into their lane and collided with their vehicle. Thuli was killed on impact and Tumelo sustained serious injuries. Thankfully Kabelo escaped without much harm having come to him.

Tumelo found it difficult to come to terms with Thuli's loss. He had difficulties adjusting to single parenthood and hired an *au pair* to assist him. He started avoiding going home as much as possible as Kabelo reminded him too much of Thuli. Tumelo also started drinking heavily and started frequenting local bars and

clubs. He began abusing recreational drugs and uses the R5m he received from the payout of Thuli's life insurance policy to pay for his habit.

At the Cascade Club on New Year's Eve 2002, Tumelo met an eighteen year old girl by the name of Lindiwe Dikgetsi. She singled him out as she noticed that he is a big spender buying drinks for single ladies at the bar. She had a conversation with him and later invited him to her home. At her flat she informed him that she had some cocaine and asked if he would be interested in indulging in some with her.

Tumelo and Lindiwe began a relationship and lived a fast lifestyle. Kabelo was left alone with the *au pair*, Karabo Monareng, to raise him while Tumelo and Lindiwe spent every possible night out partying and abusing drugs and alcohol. Tumelo learnt that Lindiwe left school at grade ten to move from Prieska to Bloemfontein to pursue a modeling career. She is currently unemployed and has various "sugar-daddies" paying her rent and living expenses and providing her with drugs and expensive clothing in exchange for her company. Lindiwe tells Tumelo at first that the older men are her "agents" and "publicists". When he finds out the truth, she cries terribly and blames her wrong decisions on her bad childhood.

Tumelo experiences some problems at work. The managing partners of the auditing firm are aware that he has been arriving late for work and has problems concentrating and find him asleep at his desk on more than one occasion. At first they turn a blind eye because they sympathise with him. Tumelo becomes more dependent on cocaine and begins using it at work. He is caught using the substance in the men's bathroom by the director and is ordered to undergo rehabilitation treatment or face disciplinary charges. Tumelo checks in to a facility and undergoes counseling. Six weeks later he is released and returns home to his son, Kabelo, who is almost a year old. Lindiwe visits him at home that first night expecting that all will be as it was and that they will resume their partying lifestyle. Tumelo, however, wants to remain sober and explains to Lindiwe that they can only continue their relationship if she undergoes rehabilitation. Lindiwe agrees and checks in to the same facility, since her friend Ayanda told her that modeling scouts often go to rehab facilities to find pretty girls. Tumelo pays for both of them to go to rehab.

When Lindiwe returns, Tumelo asks her to move in with him. He explains to her that he wants to marry her and for the two of them to raise his son together. Lindiwe is not too keen on the thought of raising a child, but loves Tumelo and all that he can provide for her, so she agrees. Tumelo's family is not overly fond of Lindiwe as they are aware of the lifestyle that the two of them had been living and worry about her raising their grandchild. However, they are so relieved that Tumelo is almost back to being his old self and decide to support the new couple.

Lindiwe's father passed away two years ago and her mother now heads up the household. Tumelo and his father approach Lindiwe's mother during 2004 and negotiate lobolo for her. The lobolo is paid and the marriage is negotiated, concluded and celebrated in accordance with their tribe's customs. Tumelo and Lindiwe try to settle into their new life together, but Lindiwe is bored with being a housewife. She misses going out to clubs and bars with Tumelo. She finds it difficult to connect with Kabelo, and leaves the mothering to the *au pair*.

Tumelo suggests that they have a birthday party to celebrate Kabelo's second birthday and he tells Lindiwe to arrange it. She does so without much enthusiasm and decides that she will invite one of her old friends to join the party so that she does not have to converse with the wives of Tumelo's colleagues too much.

On the day of the party, Ayanda, Lindiwe's friend, brings some cocaine along and tells Lindiwe that it would help take the edge off and make the party a bit more fun for her. Lindiwe uses the cocaine and finds that the party is no longer so tedious. Furthermore, Tumelo never suspects that she has used cocaine. She and Ayanda start spending some of Tumelo's money on various drugs and spend the days shopping and going to spas.

Tumelo becomes frustrated that Lindiwe is not bonding with his son or trying to be a mother to him and they fight often. At night Lindiwe takes to drinking copious amounts of gin and vodka on the sly. One day she tells Tumelo that she is going to dinner with Ayanda, but the women go out on a night on the town and Lindiwe returns home at 5am. Tumelo is waiting for her, and realises when he sees her that she must be indulging in substance abuse again. They have an argument and Lindiwe convinces Tumelo that it was a one-time thing. She realises that she must be more careful.

Tumelo becomes very suspicious of Lindiwe and they have many arguments. Lindiwe, fearful that she will lose Tumelo, decides to fall pregnant as she knows that Tumelo will never leave her if she bears him a child. She becomes more careful about when she uses cocaine, and she always has bottles of vodka hidden away in her shoe boxes. For all intents and purposes, Lindiwe becomes a functional alcoholic.

When she announces that she is expecting their first child, Tumelo is overjoyed. He now believes that she will more easily settle down into her role as wife and mother and he is blissfully unaware of the amount of alcohol that she consumes daily. When the gynaecologist enquires about her eating habits and lifestyle during her one appointment in 2007, Lindiwe states that she eats very healthily and lives a relaxed life as the wife of an auditor. The doctor expresses concern because the fetus is not developing as it should and is abnormally small.

At home Tumelo confronts Lindiwe and she admits that she is still abusing alcohol and cocaine from time to time. Tumelo clears out the bar and stops giving

Lindiwe spending money in the hope that she will not be able to purchase more. He is unaware of the alcohol that she has hidden in her shoe boxes and Ayanda always helps her out with a bottle or two when needed.

At the next doctor's appointment the doctor expresses concern that the baby will have some developmental issues as the situation has not improved. At home Tumelo and Lindiwe argue and Lindiwe states that she never wanted children, but that she knew that Tumelo wanted more and that's why she fell pregnant. She said that she does not love Kabelo and the unborn child even less. Tumelo, in a state of shock, leaves the house and Lindiwe alone in it. Lindiwe begins drinking heavily and wanders aimlessly around their house. When the bottle is done she goes upstairs to get another and stumbles and falls down the stairs. Thankfully the *au pair* hears the commotion and finds Lindiwe unconscious at the bottom of the stairs. She calls Tumelo and an ambulance. Lindiwe is rushed to the hospital. Lindiwe later tells Tumelo that Karabo pushed her down the stairs, even though Tumelo does not believe her.

On 15 December 2007, Lindiwe gives birth to a little boy, Temoho, born prematurely at 32 weeks and it is further explained to them that the baby is showing symptoms of Fetal Alcohol Syndrome. The child will require additional medical attention. Enraged, Tumelo goes on a bender and buys cocaine and drinks himself into a stupor. When he regains consciousness, he realises that he needs to check into rehab again, and that Lindiwe needs to come with him. He calls Lindiwe's mother asking her if she will help and she unequivocally states that she is embarrassed by her daughter's conduct and that she wants nothing to do with her ever again. She threatens to disown Lindiwe.

Tumelo decides not to contact his family as relations are already tense in that they are not fond of Lindiwe and will not be pleased that they are both checking into rehabilitation again. To make matters worse, his *au pair*, Karabo Monareng, indicates to him that she can no longer tolerate working for the family as she cannot stand by and watch how the children will be neglected by their mother. Tumelo, with much pleading, convinces Karabo to stay on and care for the children. She reluctantly agrees to take care of the toddler Kabelo and baby Temoho.

Tumelo and Lindiwe return home after 6 weeks in rehabilitation and Lindiwe, determined to make restitution, tries her best to be a good mother to her infant son and Kabelo. Temoho is a difficult baby and has many needs and this sometimes frustrates Lindiwe. As Temoho grows older his various health issues become more apparent. The situation proves to be too much for Lindiwe to cope with and she begins abusing alcohol again. Her relationship with Tumelo becomes tumultuous and they have many arguments. The tension in the household results in two year old Kabelo refusing to engage with anyone but Karabo.

One night, during June 2008, an argument between Tumelo and Lindiwe escalates to such an extent that Lindiwe decides to leave home. She takes all the money from the safe in the study and while Tumelo is sleeping she packs her bags and leaves. When Tumelo wakes up the next morning he is shocked to see that Lindiwe has left him alone to raise the two children. Determined not to relapse, he begins to spend more time with the children and assists Karabo more often with seeing to their needs.

Tumelo and Karabo become very close and spend much time together with the children. One day while picnicking with the children at the botanical gardens, Kabelo calls Karabo “mommy” and Karabo corrects him. Tumelo remarks that Karabo is the only mother than Kabelo has ever known and that baby Temoho is lucky to have her to take care of him.

Tumelo considers Karabo as part of the family and realises that she is an excellent mother to his children and realises that she will make an excellent wife. One evening he decides to have a candid conversation with her and explains that in the months that they have spent raising the children together he has grown to love her and that he would like her to become part of the family. Tumelo proposes and Karabo, always having been infatuated with him, gladly accepts.

Tumelo explains to his family that Lindiwe disappeared but that he, in the interim, has found happiness with Karabo and wishes to marry her. The family accepts Karabo as they are well aware that Karabo has been Kabelo’s care-giver since Thuli’s death and they feel that she might be a stabilising influence in Tumelo’s life. Tumelo and his father approach Karabo’s father and begin lobolo negotiations. Shortly thereafter the couple concludes a customary marriage during February 2009. The new family settles into their new life quite easily with Karabo maintaining the home and caring for the children and Tumelo provides for the family.

Karabo proves to be a good mother for the children and believes that much of the children’s time should be devoted to study and less time should be devoted to play. She spends hours tutoring them, with the result that Kabelo is top of his class academically. After IQ tests on the boy, the family is informed that Kabelo displays an unusually high cognitive function for a child his age.

Karabo also dedicates much of her time to helping Temoho as he has difficulties learning as well as other developmental issues resulting from Fetal Alcohol Syndrome. At times Tumelo feels that Karabo might be too strict a disciplinarian and that the boys should have more time for play, but when he broaches the subject with her she quickly reminds him that for most of their lives, she was the only person parenting the children and that she knows best.

During November 2011 Karabo inherits in terms of an insurance policy on her grandmother's life. She cannot be considered an independently wealthy woman by any means, but she considers the inheritance a nice nest-egg for herself.

In January 2012, Lindiwe unexpectedly returns and is surprised to find that Tumelo has taken a second wife. Lindiwe explains to Tumelo that she has seen the error of her ways and that she wants to return home. She says that she is willing to take her place in the newly formed family if Tumelo will accept her. Tumelo, wanting to do the right thing for his youngest son, accepts her back into the family. Karabo, however, feels uneasy about Lindiwe's return.

Lindiwe finds it difficult to engage with the children and she resents that Temoho also refers to Karabo as "mommy". She feels like an outsider in the family, especially after both Temoho and Karabo gives handmade Mother's Day cards to Karabo, and most decisions regarding the children are made by Karabo. She begins causing tension in Tumelo and Karabo's relationship and Karabo resents the extent to which Tumelo is willing to accommodate Lindiwe. After 2 months Karabo has a discussion with Tumelo in which she explains that she feels as if she has been reduced to an *au pair* again and that she wants more from the relationship. Tumelo explains that Lindiwe is Temoho's mother and he owes it to his son to make things work with her.

Karabo decides to leave the family home during April 2012, leaving Tumelo and Lindiwe to care for the children alone. Two weeks later things become difficult and Lindiwe finds that she cannot handle the children on her own. To make matters worse, Tumelo is away on an audit. Lindiwe phones Karabo and begs for assistance. Karabo refuses to return home, but states that if Lindiwe brings the children and their belongings to her at her new home she will care for the children. Lindiwe is reluctant to do this, as she is determined to prove to Tumelo that she could be a good wife and mother. She firmly tells Karabo that she would find assistance elsewhere and hangs up. However, Kabelo overheard the conversation and immediately starts begging Lindiwe to take them to Karabo. Temoho starts imitating his older brother and, feeling resentful and angry, Lindiwe agrees to take them to Karabo.

While dropping off the children at Karabo's new apartment, Lindiwe noticed that the entire building was shabby and the neighborhood seemed unsafe. Lindiwe does not phone Tumelo to tell him that she has dropped off the children at Karabo; instead, she goes on a week-long bender with her friend Ayanda and Ayanda's new boyfriend. She feels useless and angry, with all her good resolutions gone completely out of the window.

When Lindiwe stumbles home on Monday morning, she finds that Tumelo has returned a day early and is distraught at finding his children gone. Lindiwe bursts out into tears and immediately blames everything on Karabo. While Tumelo is still trying to make heads or tails of her story, the sheriff serves a summons for

divorce on Tumelo. Lindiwe is joined in the proceedings. Karabo is suing Tumelo for a divorce and is requesting a division of the marital estate, care of both minor children, and maintenance for the children as well as herself.

Karabo's Particulars of Claim state that she prays for an order in the following terms:

1. Decree of divorce;
2. Full parental rights and responsibilities in respect of both minor children, subject to the Defendants' reasonable right of contact with the minors;
3. Maintenance for the minor children;
4. Maintenance for the Plaintiff; and
5. Division of the Plaintiff and First Defendant's joint estate.

Tumelo and Lindiwe file their Counterclaim with prayers for an order in terms of the following:

1. Decree of divorce;
2. Full parental rights and responsibilities in respect of both minor children;
3. Division of the Plaintiff and First Defendant's joint estate.

During round table discussions it becomes apparent that the First and Second Defendants, Tumelo and Lindiwe, are presenting a united front and do not want Karabo to have any contact with the children.

Tumelo and Lindiwe, however, have had to employ a new *au pair* in order to cope with raising the children as Lindiwe is not able to care for them on her own. The children refuse to speak to the *au pair* or obey her and Lindiwe displays impatience with them. The children beg to be allowed to live with Karabo, and Karabo encourages them to voice their opinions to their father. She resents Lindiwe and also knows that the children's incessant begging irks Lindiwe.

The parties fail to reach any settlement once the matter proceeds to trial. You are expected to prepare heads of argument and argue the cases of both the plaintiff and the defendants in terms of the prayers. You need not address the issue of division of the marital estate.