

IN THE HIGH COURT OF LESOTHO

In the Appeal of

SEBOTSANE MANKO

Appellant

v

NKHABE LEBONA

Respondent

J U D G M E N T

Delivered by Hon. Mr. Justice F.X. Rooney
on the 5th day of April, 1982.

Mr. Maqutu for the Appellant
Mr. A.P.S. Mda for the Respondent.

In 1978 the appellant sued the respondent in the Thaba Morena Local Court for an order ejecting him from his land. The appellant claimed that the land had been allocated to him in 1940 by the late Morena Tsela Lerotholi. He continued to plough the land until 1978 when the respondent entered upon it and ploughed it in contravention of the appellant's rights.

In his reply to the claim the respondent said that the land belong to his grandfather Manko who had two sons. These were, Lebona, the elder and father of the respondent and the appellant Sebotsane. Lebona predeceased his father and until 1965, the appellant was his guardian. Manko's widow Milida subsisted from the land until she died in 1967. Thereafter, the respondent obtained a title to the land from Morena Qefate, but, he continued to allow the appellant to use the land until 1978.

The Local Court decided in favour of the appellant and the respondent appealed to the Ramokoatsi Central Court. The Central Court set aside the judgment of the Local Court and restored the land and the crops to the present respondent. The appellant's appeal to the Judicial Commissioner against that decision was not successful

He was given leave to make a further appeal to this Court.

Much of the time and attention of the courts below appears to have been concentrated on the allocation made by Chief Qefate in 1968. There was considerable discussion as to the legality of that allocation. Insufficient consideration was given as to what took place in 1940. The appellant maintains that in that year, the land was allocated to him and not to his father Manko. He called a witness, Mahlahle Rankhobe (then aged 55) who confirmed that the land had been allocated to the appellant. He said that Manko was present at the time. Another witness, Maphelle Letele (then aged 78) said that he was instructed by Morena Tsela Lerotholi to allocate the land to the appellant. He said that, he was one of the observers. Further evidence on this point was supplied by Ts'abo Ntho (then aged 74) who claimed that he was also one of the persons requested by the Chief to allocate the land.

The respondent himself was a child of three in 1940. He could not give direct evidence in regard to the allocation of the land. The respondent's witnesses included Morena Qefate who admitted that he was not present when the original allocation was made. However, he maintained that he had seen Manko ploughing the land and that he knew that he was the owner because he was a Chief. He agreed that he was still at school when Manko died. A man called Rantsatsaile Rankhobe purported to confirm the respondent's claim, but, he admitted that he was not present in 1940. The only other witness, Ts'episo Mphamo said that he had been secretary to Morena Tsela Lerotholi. He had to confess that he was not present when the appellant's land were allocated. He said that the plaintiff had surrendered the land to the respondent.

In his judgment, the Judicial Commissioner said

"It seems to me that the parties tell of two different allocations of the same land by two different chiefs at different times. The trial court was not simply convinced that the allocation was made by chief Tsela in 1940 but it also believed that Chief Qefate had no land committee".

3/ He went on

He went on

"While the judgment of the Central Court may be criticised for holding that the chiefs and not the courts award the land and for overlooking the fact that the trial court might have believed that Chief Tsela had made the allocation, I however lean to the view that Chief Qefate's story was probable and the fact of long user makes no difference as appellant brought the respondent up and the respondent did not immediately take over when he became of age."

At the original hearing the appellant brought before the court direct evidence of the allocation of the land to him. This evidence was not contradicted. All that was said in reply was that the respondent had been granted the same land by Chief Qefate in 1968. Chief Qefate's purported allocation would be valid only if the appellant was not entitled to the land.

Chief Qefate may be expected to justify his action even if he was in error. I take the view that in the face of the uncontradicted testimony of the appellant and his witnesses, the Thabana Morena Local Court was entitled to decide in his favour. It is unfortunate that the Local Court based its decision on the wrong reasons. In the result the appellant has had to endure prolonged litigation. He was fully justified in taking his case to this Court on appeal.

This appeal is allowed and the judgment of the Local Court is restored. The appellant is awarded his costs in this and in all lower courts.

F.X. ROONEY

JUDGE

5th April, 1982.

Attorney for the Appellant :Mr. W.C.M. Maqutu,
Attorney for the Respondent: Mr. A.P.S. Mda.