

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

BETA SETLABA

Applicant

v

MOTLATSI MOTINYANE

Respondent

J U D G M E N T

Delivered by Hon. Mr. Justice F.X. Rooney  
on the 26th day of April, 1982.

Mr. Matsau for the Appellant  
Respondent did not appear.

In 1979 the appellant sued the respondent in the Maja Local Court claiming that the respondent had built a kraal in his yard. He asked for an order that the defendant should take away from his garden the kraal, livestock and aloes which the defendant had planted. In his reply the respondent asserted that he had been allocated the site in question and was not infringing upon the plaintiff's rights.

On the 29th March, 1979, the Maja Local Court found in favour of the appellant and directed the respondent to vacate. The court gave specific directions as to the boundary between the land of the parties. The respondent was ordered to pay costs.

The respondent appealed to the Matsieng Central Court. That court decided in its judgment of the 3rd April, 1981:

"The court finds that this matter of boundaries between the two sites can be well settled by the chief concerned together with his land allocation committee the people who know how much land they had given to each party. On the strength of the foregoing reasons this court forms up a decision

2/ that the disputants .....

that the disputants go back to the person who was acting for chief of Qhomane, to settle the argument of boundaries between these two sites. And any one of the parties who was not satisfied with the decision from the chief and his land allocating committee could take the case to a Judicial Court."

The appellant applied to the Subordinate Court at Maseru for a review of the proceedings in the Matsieng Central Court. He was dissatisfied that the Matsieng Central Court had directed that the case should be referred back to the Chief and the allocating committee. The appellant expressed surprise at this decision and felt that the Central Court should not have disposed of the case in that manner as he had produced in the Local Court witnesses and documents in proof of his claim. The reviewing magistrate made the following decision

" But, having perused the record of Proceedings, I have not found any irregularities or miscarriage of Justice that warrant any variation of the Central Court Judgement, because the matter is to be decided on the merits. So, the applicant should not have asked the Subordinate Court to review the matter. If the applicant is not satisfied with the Central Court's decision she should appeal against such decision to the Judicial Commissioner's Court, in terms of Section 28(3) of Proclamation No.62 of 1938 as amended by the The Law Revision (Reprinting and Correction) Law No.4) of 1964.

But that is not a bar to the applicant, in case she is aggrieved or feel prejudiced by this order, to resort, as for recourse, to Section 26(a) of the said Proclamation (Supra). This allows the lodging of appeal from this Court to the High Court within 30 days from the date of the order."

His order was dated 20th May, 1981. The appellant now appeals to this Court against the refusal of the magistrate to make an order on review which would have the effect of correcting the decision of the Matsieng Central Court. The respondent has not appeared or opposed the appeal.

Section 26 of the Central and Local Courts Proclamation empowers a magistrate in his capacity as holder of a subordinate court to revise any of the proceedings of a central or local court, and make such order therein as the

central or local courts could have made. In particular under Sec. 26(b) a magistrate may order any case to be retried either before the same central or local court or before any other central or local court of competent jurisdiction.

The powers of a central court on the hearing of an appeal from a local court are not defined in the Proclamation. However, it is the normal practice for a central court to hear the parties and having considered the record of the proceedings in the local court decide whether or not it should uphold or reverse the decision of the inferior court.

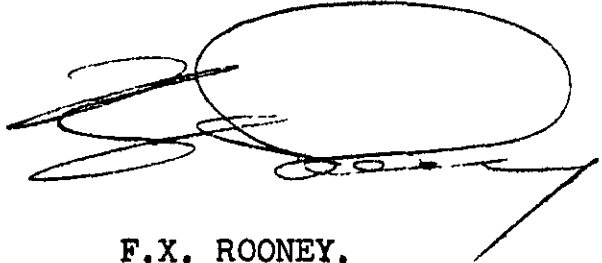
In this case the Matsieng Central Court took neither course but instead it referred the dispute to the chief. It is the appellant's contention that the Matsieng Central Court acted irregularly by failing to decide the matter before it on its merits or indeed at all. It was further contended that there is nothing in the Central and Local Court Proclamation which authorises a Court, either at first instance or on appeal, to refer a matter before it to anyone else for settlement. I consider that the Matsieng Central Court acted irregularly in declining to exercise its proper function of adjudication and that the present appellant was prejudiced by that decision.

The magistrate was wrong in refusing to interfere and correct the irregularity committed by the Matsieng Central Court on the application of the appellant. I propose to allow this appeal and to make in this Court the order which should have been made in the subordinate court.

I set aside the order of the Matsieng Central Court dated 3rd April, 1981 and remit the case back to it with the direction that the Court must reach a decision either in favour or against the appellant in this matter having regard to the evidence recorded in the Maja Local Court and the submissions made by the parties. As the respondent has not opposed these proceedings, I shall not order costs against him. However, the appellant was entitled to apply for review of the decision of the Matsieng Central Court and to make an appeal to this Court. The appellant has thereby incurred considerable legal costs. I direct that

4/ these costs .....

these costs both here and in the subordinate court shall be costs in the cause and shall follow the event in the lower courts.

A handwritten signature in dark ink, appearing to be 'F.X. ROONEY', is written over a large, empty oval shape. The signature is somewhat stylized and overlaps the oval.

F.X. ROONEY,  
JUDGE

26th April, 1982.

Attorney for the Applicant : Mohaleroe, Sello & Co.