

IN THE HIGH COURT OF LESOTHO

In the Application of :

TSEPO MOLATO

Applicant

v

SETENE LEBOTSA  
SEBABATSO MAKHATE

1st Respondent  
2nd Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S.  
Cotran on the 13th day of August, 1982

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On 10th August 1982 I dismissed this application with costs and said reasons will be filed later. These now follow :

The applicant Tsepo Molato is the elder brother of Setene Lebotsa (1st respondent) and heir to his father Molato Molato who died either in the year 1968 or in the year 1970. The applicant was out of the country at the time and is said to have removed and gone to the Republic to live and work before the beginning of the 2nd World War and returned to Lesotho in 1971. The 1st respondent disputes that he had left Lesotho for that long period and maintains he was away for only a few years.

The applicant is seeking an order from this Court to direct the headman of the village Sebatatso Makhate (2nd respondent) to allocate to him three arable fields that had once belonged to his late father. He avers he is entitled to such an order in terms of Part I s. 7(5)(b) of the Laws of Lerotholi. This provides :

"(b) In the re-allocation of lands which have reverted to the Chief or Headman on the death of the previous occupier and after the needs of any minor dependants have been satisfied as in the previous subparagraph (a) prescribed, the Chief or Headman shall give priority, as regards the allocation of the remaining lands should there be any, to the requirements of any adult son or sons of the deceased provided such son or sons reside in the village of the deceased."

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The applicant's first approach was made to the superior chiefs in terms of s. 7(5)(c). He was unsuccessful. He then sued his brother the 1st respondent in the Tsoaloane Local Court. He was unsuccessful there. He then appealed to the Likueneng Central Court where he was also unsuccessful. Both courts decided they had no jurisdiction to entertain the 1st respondent's (and plaintiff there) suit.

The applicant left the matter there. He had of course a right of appeal to the Court of the Judicial Commissioner and from there to the High Court, either with leave of the Judicial Commissioner, or if this is refused, with leave of the High Court. He did not pursue these remedies. He launched this application in 1980 long after the time for appeal had elapsed.

In my opinion this application must fail because :-

1. As the law then stood arable lands could not be bequeathed and reverted to the chieftainship. The heir does not have special advantages in this type of property under Sotho Law and Custom on the principle "tsimo hase lefa" (See Poulter Family Law and Litigation in Basotho Society pp 249-253). The repercussions, if any, of the Land Act 1980 on the above Rule has not yet been administratively or judicially determined.
2. It is true that in the reallocation of arable land the chieftainship must take into consideration the rights of the widow or widows and minor children. The heir may of course make representations on their behalf and indeed on his own behalf and of his brothers, but as heir, he has no vested legal interest to the property or to any part of it.
3. The above principles are probably not sacrosanct. If the chief had acted capriciously and in bad, and had deprived the sons of their father's lands completely then it may be possible for the Court to intervene, but then it is incumbent on the aggrieved party to demonstrate that what the chieftainship has done was so flagrantly against morality and fair play, that the High Court ought to redress an obvious wrong.
4. The onus of proving this is on the party who alleges it either on the papers if he proceeds by way of application, or on viva voce evidence if he proceeds by way of action.
5. Looking at the papers no case has been made out justifying intervention because apart from the applicant's failure to appeal, on balance of probabilities :
  - (a) Two of the fields had already passed one

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to the 1st respondent and one to his younger brother during their father's lifetime. (See Poulter, supra, p. 251 and cases cited).

- (b) The third field which fell to the chieftainship after applicant's father's death was legitimately swapped by the applicant surrendering a field of arable land he had previously acquired in his own right which transaction is common place and it would not be equitable to disturb it.
- (c) The applicant has now returned home for good but at the time these allocations were made he was not resident in the village.

It was my view that the application was misconceived and, as I indicated earlier in my Judgment, it was dismissed with costs. The applicant of course is still at liberty, now that he is resident in Lesotho, to apply for an allocation in the normal way.

CHIEF JUSTICE  
13th August, 1982

For Applicant: Mohaleroe Sello & Co. (Att. Mr. Matsau)  
For Respondents: Webber, Newdigate & Co. (Att. Mr. Moiloa)  
(with copy of Judgment)