CIV/APN/113/82

IN THE HIGH COURT OF LESOTHO

In the Application of :

STEWART PETROSE MQEDLANA	Applicant
V	
MINISTER OF INTERIOR	1st Respondent
SEFATSA DANIEL SELANE	2nd Respondent
'MAPOLO 'MAQEFATE NKUEBE	3rd Respondent
TLHABI MAKOKO	4th Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 20th day of September, 1982.

On the 19th July 1982 the applicant made an application (which had also been served on the respondents) to Court for an order :

1. Setting aside the decision of the Minister of Interior and Chieftainship Affairs, the 1st Respondent herein, in a dispute between Sefatsa Selane and Tlhabi Makoko the 2nd and 4th Respondents respectively regarding a certain area referred to in the said decision as "Sehlaba sa Mabitseng" situate in the district of Quthing.

2. Interdicting the Respondents from interfering in any manner whatsoever except by due process of law with Applicant's use of the said area.

3. Directing the 1st Respondent to cause the order of this Honourable Court setting aside the said decision to be read at a public meeting of the residents of Paballong in the Quthing district.

4. Directing the 1st Respondent to pay the costs of this application and the 2nd, 3rd and 4th Respondents to pay the said costs jointly and severally with the 1st Respondent only in the event of their opposing this application.

5. Granting the applicant such further or alternative relief as this Honourable Court may deem just.

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However, it was not heard on that day as Miss Moruthane informed my brother Cotran, that she had received no instructions. Why she appeared in court then it's not quite clear. The court ordered that the Solicitor-General be joined as a co-respondent. In my view this was not absolutely necessary as the government had been sued. (See Solicitor-General v Dhlamini & Another, CIV/APN/157/81).

The gist of the applicant's allegation is really twofold; the first is that the first respondent could not set aside the decision of His Majesty the King regarding the area that the first respondent had decided, unilaterally, to give to somebody else without even inviting the applicant or otherwise giving him an opportunity to make representations. Secondly, the first respondent had no power to set aside the findings of a Commission appointed to resolve the dispute.

There was a dispute between headman (Ramotse) Sefatsa D. Selane and headman (Ramotse) Tlhabi Makoko. A committee was appointed to examine this dispute. Then the Minister of Interiod submitted its recommendations for approval to His Majesty. In fact, the Minister advised His Majesty to act according to that recommendation (Annexure 'D'). His Majesty's decision simply states that both parties were disputing a place over which they had no "status nor rights" because it has long been allocated to headman (Ramotse) PETROSE MQEDLANA "to use it as his". The important point to note is that His Majesty had been advised by the Minister of Interior,

/in accordance

in accordance with section 5 of the Chieftainship Act 1968.

In his opposing affidavit the first Respondent says that it was not necessary for applicant to make representations as everything which was done was not valid and the action of His Majesty was void ab initio. What he, in fact proceeded to do, was to study the proceedings of the Commission and finally decided, to set such findings aside. Counsel for the first Respondent could not refer me to any authority which could support the proposition that the first Respondent had the power to do so nor could I find any. Counsel, quite rightly in my view, conceded that the first Respondent had usurped the functions of a Court of law. This issue had been specifically raised by the applicant in his founding affidavit and the first Respondent has not even replied to it. (See paragraph 6). It is not revealed by the first Respondent why he embarked upon this exercise. It does not appear as though he had received a complaint from anybody about the decision of that Commission. It would therefore seem he started the exercise moro motu.

The first Respondent could not be heard to challenge what he had advised His Majesty to do, for he was surely a party to it. He had been in a position of a state official. Where a State official gives a wrong advice to an ordinary person (His Majesty in this case is) and that person acts on it, and the advice turns out to be wrong the person so advised cannot be faulted. (See Matime v Rex 1971 - 73 L.L.R. 49 at 51). In that case an official of the State advised a person not to renew his residential permit.

/That person

That person was arrested and was convicted by a Subordinate courtfor residing unlawfully in the country. He appealed. He was successful. In the course of his judgment, Jacobs, C.J. pointedly said at p. 52B .

> ".... to punish a man for acting on the advice which he had received from what can be described as a law-declaring official of the State would seriously undermine confidence in the State itself."

I entirely agree. These words are apposite in the present case. The first Respondent is estopped. In any event how does the mistake made by two remote persons affect a third person who was not even involved in the dispute? It is alleged by the first Respondent that the award to the applicant was uncalled for since he was not disputing anything. Precisely. His Majesty said the disputed land had long been allocated to the applicant. The parties were disputing over property which belonged to neither of them. His Majesty did not make any new allocation. He just maintained the status quo. But legally speaking that was a decision. In his decision he drew attention to the allocation which had already been made to the applicant by the principal chief of Quthing in 1959.

I do not think what has happened, in this case, can be justified Constitutionally. In any ... .. Ministry personalities come and go - personalities change but the Ministry remains. What is done by a Minister, official of the State, is done by the Ministry and ultimately by the Government. How is it possible then

/that the

that the Government can fight itself? The Government is a persona. How, therefore, can it be seen dismembering itself into various contesting parties? It is inconceivable. So argued Mr. Sello and the court agrees with him. Counsel for the first Respondent could give me no authority nor could I find any to support this proposition If the first Respondent did not like what his predecessor had done the best way would have been, perhaps, to have had necessary legislation passed through parliament. If the first Respondent wishes to have more powers than at present, there are more legitimate ways of going about that too but not to take away the powers of the Courts of law.

In my view, even assuming that the first Respondent's approach is correct, surely the presumption of omnia praesumuntur rite esse would apply. The applicant was entitled to assume that the Minister of Interior would not have advised His Majesty to act if every formality had not been complied with. But His Majesty merely pointed out that the disputing parties were disputing over land which had previously been allotted to the applicant by the principal chief of Quthing. On the other hand the first Respondent mentions recommendations of a certain commission which were stolen. They could have had no bearing on the decision taken by His Majesty after being duly advised by the Minister of Interior.

There are certain cases (depending on the wisdom and foresight of the parties involved) which should never be allowed to go beyond the steps or corridors of the Court.

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It is unfortunate that did not happen in this case.

Costs on attorney and client were requested. I gave this matter my fullest consideration. But in the final analysis I decided to grant costs as originally prayed for.

The order is granted as prayed.

J U D G E E.

For the Applicant · Mr. K. Sello

For 1st Respondent · Mr. Mafisa.