

IN THE HIGH COURT OF LESOTHO

In the matter of :

MATEBOHO KHIBA

Appellant

V

MATAU-EA-KHALE MAIMANE

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng  
on the 29th day of October, 1982

The appellant sued the Respondent in Mapholaneng Local Court (on 3.11.77) for ploughing a piece of land without her permission. In this judgment the appellant will simply be referred to as the plaintiff and the Respondent as the Defendant.

The plaintiff through corroborative evidence was able to show that after the death of her husband all his lands, in accordance with the law, were handed over to the chieftainship. It was this authority which allocated the disputed land to the plaintiff.

In 1977 the present defendant instituted an action. Judgment was given in favour of the plaintiff. It confirmed that the previous allocation had been in order. The defendant appealed to Salang Central Court and in that court the matter was referred back to the Mapholaneng Local Court and the order was that defendant was to proceed with the matter within a period of thirty (30) days. Apparently that court had wished to have the views of the present witness, chief Semai Sekonyela. However, the said period expired the defendant having done nothing. Then the present case before Court, was launched and it is not without

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significance to note what the defendant said in his statement (in part) :

"The reason that this case (the present) is being renewed was ..... " (My underlining).

In my view this is the first mistake which the learned President of Mapholaneng Local Court allowed to happen. The defendant had failed to carry out an order of Court. The result of this failure is that the judgment of the trial Court was revived. The whole case, therefore, at the start of the present case was now res judicata. That ought to have been the initial finding of the Mapholaneng Local Court. This seems to be aluded to in the judgment of the learned President but it is far from being clear, bold and explicit.

There is yet another way of approaching this case. It is clear that both the Mapholaneng Local Court and Salang Central Court found in favour of the plaintiff viz, that her allocation had been in accordance with the law. It had been authorised by the rightful authority. The administrative action taken by chief Semai Sekonyela who gave evidence at the trial, merely set aside what Mosamelo Sekonyela purported to do namely, to deprive unlawfully the plaintiff of her lands. He did not allocate any land to anybody at that stage. If, therefore, any procedure pertaining to deprivation of land was necessary to be applied but was not so followed, it was at the stage when Mosamelo Sekonyela, (a mere self-confessed Court messenger) took the plaintiff's lands away. The whole attitude of the defendant shows clearly that she has no respect for chief Semai Sekonyela. She does not accept his decisions as authoritative and hence the attitude of Mosamelo Sekonyela. Indeed, when questioned, revealing answers are given

- "2. I appealed in 1976 when the decision was made in 1972.
3. P.W.1 is (Morena Semai Sekonyela) decision was that the two terraced portion belonged to Mateboho Khiba (the plaintiff).
4. Land is allocated by the chief who has legal authority to do.
5. Chief Semai Sekonyela has no final say in the land allocation in his area. The final decision lies with Judicial courts.
6. The land is in area of the chief and not in the area of the Court.
7. The land is allocated by the chief and not by the courts."

Answers six (6) and seven (7) disposes of the nonsense stated in answer five (5).

Mosamelo Sekonyela, in his evidence for the defence, states inter alia when being questioned by the Court :

- "3. I have no power to reverse chief Semai's decision in regard to land allocation."

Well, what did he purport to do then if not just that? When he purported to award the land in dispute to the defendant, previously chief Semai Sekonyela had allocated it to the plaintiff and he had not undone that deed yet. So his answer is an unashamed confession that what he purported to do was utterly shameful; disgraceful and deceitful in harassing the plaintiff in the manner he and others did.

I have no doubt in my mind, whatsoever, that this appeal must succeed with costs. The judgment of Mapholaneng Local Court is hereby confirmed and the plaintiff must start ploughing forthwith, without any hindrance from the defendant.



J U D G E.

29th October, 1982.

For the Appellant : Mr. K. Sello

For the Respondent : Mr. C. Maqutu