Hon Mofokeng J

CIV/APN/25/82

IN THE HIGH COURT OF LESOTHO

In the Application of :

NTSOAKI MAKOALA Applicant

v

TSIKILO MAKOALA Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 9th day of November 1982

This application, which was launched on the 28th January 1982, came up for hearing initially before my brother Mofokeng J on 8th February 1982. The matter was opposed and by consent was postponed to the 18th February 1982. The application was for an order to commit the respondent Tsikilo Makoala to prison for contempt of court for disobeying a Court Order consisting of four paragraphs granted by my brother Mofokeng J, as long ago as 12th November 1981, in consequence of divorce proceedings between Ntsoaki Makoala, now the applicant, and the respondent Tsikilo her former husband in which a decree of divorce was granted. (CIV/T/130/80). The parties had on that day agreed upon a settlement with regard to the custody of two children of the marriage, which was made an Order of Court providing for awarding the elder son Tsele to the applicant, and the younger son Letuka to the respondent on the understanding (not on condition - see the Judge's original manuscript) that the younger child "resides with the respondent's parents in Quthing". The order also provided that in the long and short school vacations, both children will spend alternate school holidays with each of the parents. The separation of the children was perhaps unusual though not of rare occurrence. (See Kennedy v Kennedy 1929 EDL 257). The divorce proceedings

/were

were originally strenuously defended, but eventually went undefended, save as to custody, and the problem of the children which was the bone of contention was not therefore aired or canvassed before Mofokeng J either at the divorce hearings between 31st March 1981 and 22nd June 1981 or on 12th November 1981 although we now know that a lot of haggling had gone behind the scenes, which, with the consent of attorneys of both parties, it was my misfortune to investigate, in addition to the proceedings for contempt. The respondent had denied by an affidavit filed on 17th February 1982 committing an act of contempt and filed a counter application to vary Mofokeng J's order to give him custody of the boy Tsele as well, and the applicant in turn, with leave of the Court, and consent of attorney for respondent, also applied for the variation of the original settlement to vary Mofokeng J's order praying that custody of both children be given to her. The now divorced parents seem to recognise that the two children should be with one or the other parent and that separation, as originally contemplated, would not be desirable. If the dispute was simply between husband and wife the matter would have been resolved a long time ago but the parents of the respondent, especially his mother Mrs. Matsikilo Makoala (DW2) accentuated this tragedy to an extent I have not seen in the annals of Lesotho matrimonial legal history, nor has the time that elapsed between Mofokeng J's original order and today helped matters. The delays that occurred were not one sided but examination of the chronology of the events which commenced on 12th November 1981 and ended on 29th September 1982, and indeed on the evidence heard, the respondent's parents were quite content with the status quo and in no hurry to change it, on the basis I suppose, that as time progresses, the Court will be more reluctant to disturb it. The two children are now one year older than they were in November 1981.

Two attempts were made by the applicant to get hold of her children in furtherance of the Court Order of the 12th November 1981. Paragraph No.1 of the Order was not expressed to take place immediately and thus there was a lacuna, which the applicant resolved in favour of the child

/Tsele's

Tsele's welfare, by delaying to obtain the fruits of the Order until the end of his X - as school term due about mid December 1981. Both children were then with respondent's parents in Quthing, as indeed they had been, on and off, though perhaps more on than off, than with respondent himself, when the relations between husband and wife, which culminated in the divorce, reached its lowest ebb in late 1977 or early 1978. The position then is that except for a brief period of a day or two in 1979 (which evidence I believe) when the applicant saw and spoke to her children and gave them gifts when they were with a woman relative in Morija she had no access to them.

The first attempt at enforcing the Order came on 17th December 1981. The applicant went to fetch both children from Quthing. Tsele in terms of paragraph No.1 and Letuka in terms of paragraph No.4 of the Order for by then this had also come into operation. The respondent's parents allegedly refused to release the children and asked the applicant to "come on another day when the respondent is present". The applicant went back to her former husband (in Maseru) and procured from him a letter addressed to his parents in Quthing to release the children to their mother. Armed with this letter the applicant made her second attempt on the 20th and 21st December 1981. The respondent's parents again allegedly refused to release the children. The parents (Mr and Mrs Makoala senior) testify that the children refused to go. The applicant (who was accompanied by her own mother) then proceeded to the chief of the village to complain about her parents-in-law's none compliance with the Court Order. The chief sent his messenger to the respondent parents' house with a letter. He was rebuffed by a reply from the respondent's father Mr. Bennett Makoala (DW1) the text of which is as follows:

" "Annexure C"

P.O. Box 3,
Alywanskop
21.12.81

Chief of Paballong,
Paballong.

Chief,

I have received your letter of 21/12/81.

/I have

I have no daughter-in-law in the name of Ntsoaki Makoala.

As for Ntsoaki Matsela who demands that the children of Makoala should be forced to visit her is a problem. I will not allow my children to be dragged to a place they do not want to go to.

This matter will therefore be attended to by the rightful persons.

Thank you.

Sgd. B. Makoala "

The second attempt of the applicant to obtain the fruits of the Order in her favour took place on January 7th 1982. On this occasion the two children were in Maseru and they had been brought from Quthing by Mrs Makoala senior, for what reason no one knows, presumably to see their father the respondent, on one of her periodic visits to Maseru to consult her own doctor about some ailments she suffers from, and no doubt to visit her daughters. The respondent was an only son. The children were in a house at Thamae near Maseru. The applicant having been apprised of their thereabouts, accompanied by a deputy sheriff Mr. Masienyane (PW2) proceeded with a messenger (detailed by the chief of Thamae) Mr. Lehlohonolo Moloi (PW3) - to get one of the children Tsele. There are some variations as to what happened on this occasion. It is common cause that the deputy sheriff did not possess a "writ of execution" issued from the office of the Registrar at the instance of the applicant in terms of Rule 46 of the High Court Rules. He had however a copy of the Court Order. He says that when he saw respondent at Thamae he asked him to hand over the younger child Letuka. He says the child Letuka showed no reaction and when he said "Let us go" the boy did actually begin to move. The respondent himself however, calling his wife a 'nyatsi' (in front of both children) told the deputy sheriff "a person can die". He would not let the child go. The deputy sheriff denied on cross examination that the child refused to go or that he ran away. The witness Lehlohonolo the chief's messenger says the child to be taken was not Letuka but Tsele and when they came to the house respondent sent for his mother who was then inside. She

/told

told them "There are still matters to be settled about the children". This witness continues by saying that when the deputy sheriff said his order was to take Tsele, the boy was called. He confirms the respondent called his wife a 'nyatsi'. The boy Tsele made no movements. Now the word 'nyatsi' in Sesotho does not necessarily mean a harlot or a prostitute as the word has been translated to me. It means actually a "concubine", i.e. a woman who is not married to the man she lives with or the men who, from time to time, she had lived with. What is quite clear is that it is by no means a complimentary word to a man's former wife, unless she was sleeping or had slept, at one time or the other, with another man or men, and there was no suggestion throughout the proceedings that she ever had. On the contrary all speak of her highly. Although the decree of divorce was granted on the grounds of the applicant's desertion, that desertion was more technical than real. As usually happens when a marriage had irretrievably broken down, the niceties of our archaic matrimonial laws are used to get through with the question of status by consent leaving important matters regarding the children and their welfare to another day. My impression of the applicant is that she is a caring mother of decency and integrity. Her fault, if it is a fault at all, was her inability to get along with a powerful mother-in-law. To resume the narrative the respondent stood between Tsele and the witness and said he would rather die if the witness should touch the child and explained that when the applicant went to fetch them from Outhing they had "run away" from her. This latter statement was based on what respondent's mother (Mrs Makooala senior) or his father (Mr. Bennett Makoala) had told him, for the respondent was not present then.

I am certain that deputy sheriff Masienyane was mistaken when he said the order involved taking the boy Letuka not Tsele. The order was clear: it was Tsele who was to go to his mother's custody for by 7th January 1982 schools were about to start so that paragraph 4 of the Court Order with regard to Letuka spending X-mas holidays with his mother was superannuated or soon to be.

Both the deputy sheriff and the messenger of the chief

/testify

testify that the respondent's mother Mrs Makoala after initially attempting to hinder the execution of the Order or to delay it (her remarks previously referred to indicated this) finally advised the respondent to let the child Tsele go. It was the respondent on this occasion who refused and stood between the deputy sheriff or the chief's messenger (it does not matter whom) and Tsele and called his wife names and uttered his threats. I reject the respondent's evidence to the contrary and I am of the view this was an act of contempt. I do not subscribe to Mr. Sello's submission that before contempt can be committed there need be a "writ of execution" in an order of this nature. It was executable immediately, certainly by that date, if a court officer was present. There was no question of the applicant and the deputy sheriff using force. I did mention that respondent's mother had somewhat relented. She would not have relented if Tsele refused to go.

The boy Tsele was then without a shirt on (it was mid summer and probably a hot day) and according to the messenger, when he and the deputy sheriff were about to go with Tsele, the latter told the boy to put "a shirt on" but respondent's mother interjected by saying he could go as he is, i.e. without a shirt because his clothes belong to her or that she had paid for them. Mrs. Makoala senior denies this but the chief messenger is an independent witness, well outside the arena of conflict, and had no axe to grind. There is no doubt whatsoever in my mind that he is a truthful witness.

I should point out that the dispute about custody of the two children had been going on between the parties since their final de facto separation in late 1977 or early 1978, and came to a peak in March 1981, when their respective attorneys became involved as well. In all fairness the attorneys did try and persuade the parties, for the sake of the children, to find a modus vivendi, without a costly court process. They thought they succeeded in the settlement of the 12th November 1981 which, as we have seen, was not to be.

The applicant and respondent marriage by civil rites in community of property on the 4th January 1971 was

/preceded

preceded by kemariso or chobeliso converted later into a customary law union by the parents of both parties agreeing on the sum of M73 in lieu of bohali. If this was the whole bohali to be paid, the price of cattle ruling on that date (1969/1970) amounted to four heads, which was rather below the average, so the applicant was not really a very expensive bride.

The boy Tsele was born on 11th March 1970 and the boy Letuka was born on 11th July 1971 according to the divorce papers. By November 1981 they were 11.8 years old and 10.4 years respectively. They lived with the applicant and respondent some 7 years and 6 years of their lives before the final breach. The relationship between the applicant and respondent was not all honey, at any rate, not in the last two years between 1975 and 1977, whilst between the applicant and her mother in law Mrs. Makoala senior it was not honey at all from inception - a period of some 11 years. Mrs. Makoala senior gave us her reasons for this. She cited three reasons, and if Mr. Sello had allowed her a little more rein, I would have listened no doubt to a lot more. I shall presently go over these but the position today is this: the two boys had been living with their grandparents in Quthing for the last 5 years or so, the respondent husband having no physical custody (he worked in a Maseru casino) but unlimited access or as much access as his own mother was disposed to allow him, and the applicant mother none (except for their accidental encounter at Morija for a couple of days or so in 1979) - leaving Mrs. Makoala senior in supreme command of the situation. There was, I might add, one brief attempt, which lasted about a year, between applicant and respondent, of making a go of the marriage. The respondent had rented accommodation for the applicant in Morija in 1977 where she and the children lived. She says their relations were not out of the usual and he sent her and the children money and clothes. At the end of the year respondent came to Morija and took the children away to his own mother telling the applicant that if she wanted them she herself had to go to Quthing, i.e. to his mother's and live there, i.e. she must submit. The applicant was in the meantime, according to respondent and his parents, roaming the sub-continent and so they did not

/know

know where to send the children to if she wanted to see them, an allegation which incidentally I find to be devoid of truth, made only during the trial, in an effort to show that Mrs. Makoala senior was a reasonable lady. What happened was that having no support after the children were taken away she had to fend for herself. Apart from help from own parénts she now makes her own living as a seller of food at Maputsoe an important and expending industrial area in Lesotho. She has reached the stage where she could support and maintain both children.

Mrs. Makoala's senior episodes which she held against the applicant can now be summarised :

1. The first visit by the applicant to her in laws in Quthing was sometime in 1970 or perhaps early in 1971. We know that the child Tsele was born. When the applicant made her visit Tsele was suckling his mother's breasts. Mrs. Makoala senior noticed that Mrs. Makoala junior was expecting another child. It was traditional in the old days, and indeed in many families until this very day, not to wean a child early and two or three years might go by before this is done. During the breast feeding period husband and wife are not supposed to have sexual intercourse. Mrs. Makoala senior, being traditionally minded, thought this was improper and asked the applicant if she was pregnant and the latter replied in the negative. That was the applicant's first sin. Mrs. Makoala senior, however, was sure that her intuition was right, and having been apprised of the birth or impending birth of Letuka, repaired to Maseru ostensibly to look after Mrs. Makoala junior during the period of her confinement and thereafter, but after hearing and seeing her in the box, she went there probably to prove that she was right and the applicant had lied. She testifies that that visit was one of extreme kindness to Mrs. Makoala junior. She added that apart from looking after her needs, Tsele was sleeping in her own blankets to allow Mrs. Makoala junior to rest and concentrate on the newly born baby Letuka. However the married couple had only one room and perhaps Mrs. Makoala's senior visit was not welcome especially because Mrs. Makoala's junior mother (Mrs. Mathabo Matsela - PW4) lived and had a home a

/stone's

stone's throw away at Morija and may be the applicant preferred her own mother which was of course not possible in view of the accommodation.

2. It was traditional according to Mrs. Makoala senior, after what she thought her sterling job at Maseru for the confinement, that Mrs. Makoala junior should travel to Quthing to pay her a visit which traditionally takes place two or three months after the birth. This Mrs. Makoala junior failed to do. This was sin number two.

3. Thereafter all pretences were shed away and communication ceased altogether except for a visit made by Mrs. Makoala junior to Quthing to offer Mrs. Makoala senior her condolences on the death of a daughter in 1975. We do not know to what extent the applicant's and respondent's marriage had deteriorated by then, probably not quite on the rocks, but this visit was a flop. Mrs. Makoala senior testifies that Mrs. Makoala junior did not speak to her one word. She expected her to stay for 3 days, according to custom, but packed up and went after one day. I am not in the least surprised. This was sin number three. If no words were exchanged between them during that one day it was probably because Mrs. Makoala senior did not herself initiate any conversation. If Mrs. Makoala junior did not wish to make amends, or at least an attempt at a raproachment, she need not have gone to Quthing after the lapse of 4 years, and it is impossible to believe that she did not at least offer greetings on her arrival.

We thus see in this case a clear instance of a weak husband torn between a commonsense attitude to his former wife on the one hand, and on the other, his blind loyalty especially to his mother, whose influence upon his family life, when she was around (and she made it a point to be frequently around) he was unable to shake off and in my view will never be able to shake off. I will give examples in a moment but it is conceded by Mr. Sello that if custody was given to the respondent father, although he might be able to find accommodation and to employ a domestic servant to look after the boys, they would in effect live at Quthing with the grandparents. These are the examples :

1. the respondent seems to have acted rationally and reasonably when he rented a home for his wife,

/when

when she was still his wife, and supported her and the children in Morija in 1977.

2. after the split, he agreed to divide the children, one to go to his mother, and one to his wife to keep them both happy I suppose, or so he thought but

3. he endorsed the arrangements for alternate holidays thus allowing access to his former wife and was not oblivious of her needs as a mother; and indeed gave the applicant a letter of authority to collect the children for the holidays, an indication surely, that he did have some respect for the agreement to which he had subscribed his signature, respect for the law which he undertook to obey and some respect for his former wife's ability to look after the children.

Mr. & Mrs. Makoala senior testify that when the boys saw their mother at Quthing they refused to go and ran away from her. The applicant and her mother testify that the boys were aloof and reluctant, not that they rejected the applicant nor did they run away. My assessment of this evidence is that the boys were shy and to some extent confused by the tug of war. They seem to have been, if not terrified of Mrs. Makoala senior, at least very much under her domination considering the history of the relationship which I have attempted in the previous pages to outline.

The evidence alleging that the two children did not "know or recognise" their mother cannot be believed. Dr, Mohapeloa, the Government Mental Health specialist who was given the opportunity to interview the children with their parents in my chambers alone (i.e. without the grandparents or the Court or attorneys) discounted this theory.

The stand taken by Mr. and Mrs. Makoala senior is perhaps best reflected in Mr. Makoala's senior letter to the chief of 21st December 1981. The implications are clear :-

1. That applicant's rights as a mother ceased to apply for after the divorce he "has no daughter-in-law" in the name of Ntsoaki Makoala.

2. In so far as the woman Ntsoaki Matsela (applicant's maiden family name) he is not going to allow his children to be "dragged" to a place they do not want to go to.

The old traditions regard the children as belonging as of right, in the fullest sense of the word, to the father and his parents since "children are begotten" from the cattle paid for bohali, but to accept this as a universal criterion for determining the best interests of the children must be rejected. These no longer form part of customary law and certainly not of the civil law.

In the second attempt at Thamae on 7th January 1982 two witnesses testified that the boy Tsele was about to go with them. Mrs. Makoala senior was around. No doubt she told the respondent about the so called dragging of the children at Quthing. She was lying or exaggerating, but, as usual the respondent believed his mother and it was in her presence that his courage at defying his own commonsense and the law occurred. As far as Mrs. Makoala senior was concerned if the boy Tsele had to go to his mother, so be it, but his shirt must remain with her.

Sometime late in January 1982, the boy Tsele had a nervous breakdown as a result of which he was admitted to Mohlomi Mental Health clinic on the 29th January 1982 and remained there until the 5th February. He was attended to on 1st February by Dr. Mohapeloa the Director of Mental Health. The boy was brought by his father the respondent and Mrs. Makoala senior after being referred to him by Dr. Tlali of Queen Elizabeth II. The doctor heard their version of the cause of the boy's trauma. On the boy's discharge Mrs. Makoala rang him up soon after to say that the boy had a "relapse" when the respondent was "presented with a subpoena demanding that child be handed over to the mother". The doctor did not see the "subpoena" or "Court Order" or know the "details". This may have been a reference to the application to commit the respondent for contempt which was set down for hearing on the 8th February 1982. On the same day the doctor formally reported (Annexure B) that in his opinion the boy's condition was most probably caused by "an encounter with his divorced mother" and was convinced that the child's mental disturbance is "attributable to the

/efforts

efforts that his divorced mother had made directly or indirectly to repossess the child". Whilst it is clear that the child Tsele was ill it is equally clear that the stories that the doctor heard were all one sided and he was not in a position to judge, apart from the fact of illness, if what he was told were exaggerations, or a pack of lies, designed to satisfy the vanity of Mrs. Makoala senior that Mrs. Makoala junior was so rotten in her custody demands to the extent of making her child sick. The doctor attended Tsele as an outpatient twice after his discharge between February and September but on both those last two occasions Mrs. Makoala senior alone was in attendance. Unfortunately the recording machine had broken down before the doctor was called to testify. For the sake of completeness I shall quote the notes I made ·

Examination in Chief:

"I first saw the child on 1st February 1982. He was referred to me by Dr.Tlali on 29. 1. 1982. I have my report (Annexure B). I discharged him on 5. 2. 1982.

I saw the child on 2 subsequent occasions. I prescribed some treatment. I cannot remember the dates now. I saw him again today. His condition fluctuated but there is an improvement.

I usually take the history of the illness. I had heard his father Tsikilo and his grandmother on the first occasion and on other two subsequent occasions from his grandmother alone.

The state of health the child was consistent with the story I heard, i.e. that his mother, who was divorced, was trying to regain control of the child.

It was only today that I had occasion to see the children with both parents alone for the first time in the Judge's chambers.

Q : Were you able to form impressions?

A : Within the limitation(of time) Tsele's reaction to his mother is one of fear and he reacts more positively to his father.

Q : What about his reaction to his grandmother?

A : She seems to play a domineering part over him; but he seems to have a close relationship with her.

The younger child(Letuka) seemed to me more relaxed than the elder child.

Q : What opinion would you form if the child Tsele was given to the mother?

/A : I think

A : I think it will have an adverse effect on his health.

Q : What do you mean by domineering?

A : I say the relationship is close, and she carries influence with the child.

XX : When I composed the report I had only the father and the grandmother's words but also I had my own professional observation.

Q : You were told that the divorced mother wanted to regain possession?

A : I have been told but I have no direct knowledge. I have not come to Court to give evidence in a case of this nature in Lesotho before though I am familiar with traumas of children of divorced parents from other places where I had studied.

I agree in Lesotho the families, and not only the couple, play a part in the upringing of children and the tendency is more disruptive than otherwise it might have been.

I agree that children are impressionable and delicate creatures.

Q : Would you say a child can be influenced by the custodian?

A : Yes children follow their age group - i.e. peers and their custodian.

Peers are other children, even within the family, but with younger children the situation may be different. At age 12 and 11 the influence of the younger child on the older child is not usual though I can conceive of occasions where it is possible.

Q : Children do not like to be separated?

A : Yes I think so, but there is no scientific evidence to support this in the literature I have read.

Q : In general would you say brothers like to stay with each other.

A : Not necessarily. I cannot generalise. It is difficult to make a conclusive statement. There is the question of rivalry.

I agree I did not know the mother's story.

Q : Has not failure to see the mother put you at a disadvantage?

A : Yes there is such disadvantage.

Q : Did anything emerge from your interviews with the father and his mother to the applicant wife?

A : Yes I gathered that the grandmother had considerable hostility towards the applicant wife.

Q : Can you say if the domination and hostility by the grandmother to the children's own mother could have been transferred to the children?

A : It is within the realms of the possible, yes.

/Q : From the

Q : From the literature you read, and other information, would you say children from broken homes are more susceptible to nervous breakdowns?

A : Yes. I gave the child tranquilisers and removed him from the atmosphere he was in for a while.

Q : Could children have forgotten their mother from 1979?

A : This morning the child Tsele's attitude to his mother was negative. I understand that marriage broke down in 1975.

Q : The other side they say children have not seen their mother since 1975 and only saw her in 1981. If that was the situation would the negative reaction surprise you?

A : It is all hypothetical, but it would not be an unexpected reaction. The mother however showed me photos she had of the children in 1977 though they were not date stamped.

Q : Our story is that the children were only taken away in December 1977 or early 1978, and spent a day or two pleasantly with their mother in 1979. Would you have expected the negative reaction?

A : If that was the case I would not have expected a negative reaction.

Q : I like you to tell the Court, the applicant mother suggested that the children were put under pressure. If true, would they have been influenced?

A : Yes she could reasonably suspect that.

Q : In Tlali v Tlali a child reacted negatively, but when the court awarded custody to the mother all went well and there were no complaints since.

A : It depends on the sex of the child, and if she was a girl I will not be at all surprised.

I say Tsele, on balance of probabilities, would be affected adversely.

Q : Would the child, mentally and emotionally, be happy in a place where he is constantly influenced against his own mother?

A : It is difficult to answer.

I would say custody is better with either one or other of the parents, rather than with the grandparents - it all depends on the age of the children. There is a large gap in age between grandparents and their grandchildren which may not be conducive to their welfare. When children are young there is attachment to the mother, but as they grow older, they become independent and the closeness that once existed is bound to decrease gradually.

/Re-Examination

Re-Examination:

Q : Would you have been involved if the child was not referred to you?

A : I don't know but when he was referred to me I examined him.

I think the doctor was giving us an honest opinion of how he viewed the problem - but it was clear to me that his opinion, which was formerly based upon the story of one side, has somewhat shifted after his last interview with both children and their parents, but it is the Court that must decide finally on what are the best interests of the children.

Mr. Sello's main argument is that it is much too late in the day to award custody of the children to the mother. He says if there was some trauma at one time, this will be repeated again, much to the detriment of the children, so let them stay where they are. The only point in favour of the respondent's parents is that they are more affluent than either the applicant or respondent. The children may benefit materially but money is not the be all and the end all. In fact it may have the reverse effect on the children's welfare. Tsele's alleged nightmares and constant illnesses are attributed to the applicant's attempts to take him away, but this is what Mrs. Makoala senior says(and also Mr. Makoala senior) but there is no proof of that at all. Mrs. Makoala's senior allegation that Tsele has forgotten how to write the alphabet was disproved in my own chambers.

In my opinion custody of both children should be awarded to the applicant. Grandparents cannot be given preference over the mother and the father, and in this instance the father, as we have seen, if granted custody, is going to send them back to Quthing. I am sure, on balance of probabilities ,that their ultimate benefit and welfare demand a complete break with the existing atmosphere. Mrs.Makoala senior, I am afraid, cannot look after the children as a mother would. I am satisfied she did attempt, and will always attempt, to alienate them from their mother. If Mr. Sello's contention is that she had already succeeded and that a change will do the children more harm than good, I say this is pure speculation. The two children were

/interviewed

interviewed by me. They are of average intelligence but a brief conversation revealed poor schooling. I must add that I did not seek their preferences. The responsibility for the decision is mine alone. I think they will fare much better without Mrs. Makoala senior around.

I make the following orders :

1. Custody of both children Tsele and Letuka will be given to applicant with immediate effect.

2. The respondent will have access to the children at Maputsoe at the applicant's home once every two weeks on a Saturday or Sunday afternoon. He shall not be allowed to take the children away for the next 13 months.

3. The grandfather of the children (Mr. Bennett Makoala) may visit them at Maputsoe once every month on a Saturday or Sunday.

4. The grandmother of the children Mrs. Makoala shall not visit or have access to the children for 13 months.

5. A social worker (or other person nominated by the applicant and respondent) shall submit a report to the Court once every three months about the progress the children are making at Maputsoe, with copies to attorneys of applicant and respondent. Expenses of the social worker(or that other nominated person) to be borne equally by applicant and respondent.

6. If, after the elapse of 13 months, and assuming the social worker's (or other person nominated by the applicant and respondent) reports are not adverse, the respondent satisfies the Court by affidavit or by other means, that he has acquired a home of his own in Maseru with adequate facilities to look after the children, they shall spend alternative school holidays with him commencing in the X-mas school holidays in December 1983.

7. Subject again to the social worker's (or the nominated person) report the prohibition imposed in paragraph 4 of this order will be reconsidered.

With regard to the application to show cause why respondent should not be committed for contempt I find the offence proved. He is sentenced to one month imprisonment, which will be suspended for 13 months on condition that he does not commit an act of contempt involving the children's custody and current orders as to access during the period of suspension.

/The

The respondent to pay the costs.

CHIEF JUSTICE
9th November, 1982

For Applicant : Mr. Maqutu
For Respondent: Mr. Sello