

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

SIIMANE MALELU

Appellant

V

KHAFO RAMETSANE

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng  
on the 4th day of November, 1982.

This is an appeal from the decision of the Judicial Commissioner's court in which he upset the decisions of the Local and the Central Courts which were in favour of the Respondent.

I am afraid the previous lower courts viz. the Thabaneng Local Court and Ramokoatsi Central Court saw the wood for the tree. There was no question that the Respondent was the right person to sue according to the Sesotho custom. The heir inherits everything i.e. assets and liabilities. Indeed, the best description of his position is that he steps into the shoes of his predecessor. The question of bohali, although raised by the Respondent (who was the plaintiff) was in my view a ruse. The real basis of the action was as stated by the Appellant (who was the Defendant) and it is this

When Respondent's father died there was still a balance of bohali outstanding. It would appear from the record that the parties had been before the courts where judgment was awarded to the Appellant. Execution was levied and seven (7)

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head of cattle and two (2) horses were brought and one horse was equated to a beast and payment on the balance was recorded as nine (9) head of cattle and one (1) horse as setsiba. A bewys was obtained covering these animals. As Appellant drove them back home, he was advised, by the Respondent, that if he valued his life he should abandon the said animals there and then. Appellant heeded the advice. The outcome of this episode is that Respondent was charged and convicted by a competent Court for contempt of court. He was ordered to bring the animals, he had forcefully removed from the possession of the Appellant, back to him. There is evidence of this fact on record. Respondent brought five (5) head of cattle and two (2) horses and left "three and setsiba behind." Surely there should have remained only two (2) head of cattle to make the initial number of seven (7) head of cattle and two (2) horses. However at a subsequent trial Respondent was returned one beast, but at the same time the court warned him that he still owed Appellant four (4) head of cattle and two (2) horses. For the purposes of this judgment we shall disregard these irrelevant matters being introduced into this different situation. As at the present, the court is concerned with the recovery of Appellant's animals, which were forcefully removed from his possession by the Respondent.

Then execution was levied and three (3) head of cattle and ten (10) small stock equated to setsiba was effected. It is quite clear that this amount, if it relates to the recovery of the Appellant animals forcefully removed from him, as described earlier, is in excess of the number of the animals which were still outstanding from that taken by two (2) head of cattle or one beast and 10 small stock. The fact that Respondent still owed a balance of bohali just simply did not come into it. The question of the missing animals had to be

solved satisfactorily first. The order for recovery of the Appellant's animals was akin to a spoliation against the Respondent.

In my view the judgment of the court of first instance i.e. Thabaneng Local Court ought to have found that one beast and ten small stock were paid in excess of the animals Appellant alleged were forcefully removed from him and it is accordingly so ordered. They should be returned to the Appellant, if not, the animals themselves, their equivalent in money which shall, in the event of the parties' disagreement, be referred to the courts as usual for their determination. The Respondent is ordered to pay the costs in all the courts. He was responsible for much of the confusion in this case by introducing new cases in between, that is, before he had made reparation for his spoliation of the Appellant in his quiet possession.

*M. D. M. M. M.*  
J U D G E

4th November, 1982.

For the Appellant : Mr. Kolisang

For the Respondent : In Person.