

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

FUSI SEQOKO

Appellant

V

MOTSOALELI MAPOTA

Respondent

J U D G E M E N T

Delivered by the Hon. Mr. Justice M. P.
Mofokeng on the 20th day of June, 1983.

This is an appeal from the Judicial Commissioner's Court. It had gone the usual rounds and I shall not repeat what happened in each Court. When granting the certificate to the appellant the reason for so doing was expressed as follows:

"Whether the church having been lawfully using land since 1912, it could when that right is terminated be terminated in the way the church in this case was terminated i.e. without proper notice of deprivation etc."

But who were the parties before Court? They were simply two people, namely Motsoaleli Mapota (now Respondent) and Fusi Seqoka (now Appellant). They were then plaintiff and defendant respectively and I shall keep that appellation in this judgement.

What was the nature of the dispute? It is put simply (as always) thus "Land of Evangelical Church which respondent (i.e. defendant) ploughed without the consent of the plaintiff." This immediately gives the impression that the plaintiff is suing the defendant on behalf of

"1 Responsibility to sue you about this land was given to me by Reverend Winfred Sebetoane who is at Qholaghohe and the consistory."

But later he says:

"15 Between me and Rev. Winfred Sebetoane the land is mine."

16 It was given to me by the consistory and the church."

He had therefore been lying to the Court a shortwhile previously.

He had previously vehemently denied when the defendant put it to him that the present case had previously being heard and that this was the second time. Now, later he says:

"12 In the case that was before this Court (Local) about this land, I was the Complainant.

13 I did not accept the decision of Makhunoane Local Court (Before which the present proceedings were being conducted).

.....

18 The decision that dismissed the case of this land was reached in 1979."

So he had lied yet again until he was pressed to tell the truth.

Once more he had to concede that he lacked the capacity to sue the defendant. In his own words he says:

"17 The consistory and the church do not have power to allocate land."

That is the truth and yet he had attempted to lie and thought he could get away with it.

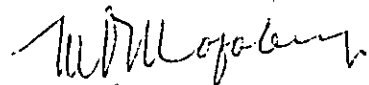
It has been held by this Court that 'Circulars' do not have the force of law. As Counsel for the

Appellant has put in his argument before me, Circulars are administrative and not judicial injunctions and need never be followed by the Courts of Law. Referring to a circular issued by the Secretary to the Cabinet, he purports that the land in question was allocated to the church by Chief Topi and "it was written by the Honorable the Prime Minister and his Cabinet on 13th August, 1971 and it was signed by Secretary J. T. Mapetla....." In any event, the circular was warning the chiefs against depriving the churches of their lands granted to them long time ago. However, that circular did not advance his case one inch. It confers no rights on him in respect of the land in question.

It does not matter to me, therefore what his witness said in his hearsay evidence. It was of no consequence.

A party was asserting rights which in law he, in his own words said he did not have. But above-all, the matter between the same parties had been dismissed; no appeal noted and no self-respecting Court ought to have entertained the second action between the same parties, before the same court. It is now res Judicata (Thabo Makebe v. Napo Peapeanea, (Civ/A/8/82)).

The appeal is therefore upheld with costs.



J U D G E
20th June, 1983

For the Appellant : Advocate G. N. Mofolo

For the Respondent : In Person