

IN THE HIGH COURT OF LESOTHO

In the appeal of:

SEPHEKO MAJORO                      Appellant

v

SEKAKE MAJORO                      Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P.  
Mofokeng on the 12th day of July, 1983.

This is an appeal from the judgment of the Judicial Commissioner's Court. In the future, the learned Judicial Commissioners are well-advised to follow the judgment of Rooney, J. delivered in this Court on the 17th December, 1980. (Ntsekele Ramapepe v Bafelile Masupha, 1980(2) L.L.R. 559). The non-compliance of this may lead to unfortunate consequences to the prospective appellant for a fault of which will not be of his making.

The Respondent was the plaintiff and the appellant the defendant respectively, in the Local Court. I prefer to adhere to that nomenclature right through this judgment.

The plaintiff won the case in all the courts viz, Manamela Local Court, Hololo Central Court and the Judicial Commissioner's Court.

The dispute purported to centre around five (5) head of cattle, one donkey, 25 goats and land belonging to the late 'Mantsenk1 but in reality the dispute was about inheritance of the late 'Mantsenk1's property. The defendant retained it and said it was allotted to him by means of a

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written letter.

'Mantsenki and her husband had no children. It would appear that the defendant stayed at their home as a herdboys. He was not brought up as their son.

Concerning succession the heir in this family, it was common cause, was Motsarapane, if late, then his son Sekake. In fact the defendant puts it thus to show the order of Seniority:

"The first sods of 'Mantseki's grave were turned by Sekake (the plaintiff) the son of Motsarapane. The present head of the Majoro family is you Sekake (plaintiff)."

There is general agreement on all sides that the land in dispute did not belong to the late 'Mantsenki. It was never granted to her by the chief. Defendant says :

"As far as I know, 'Mantsenki was never allocated a land by a chief ..... It was given her by my father Majoro."

Concerning inheritance, the defendant, despite conceding that the plaintiff is the head of the Majoro family, produced letters which purported to have awarded him the whole inheritance. (Exhibit "A" and "B"). The family objected to these letters. They knew nothing about Exhibit "A". Sefofane Mofokeng, who lives in Bethlehem, kept the letter and this fact aroused further suspicion. Under cross-examination by the plaintiff, the defendant said :

"We consulted one another when there is anything in the family that is taking place."

Concerning Exh. "A" there is no signature of

/Sefofane

Sefofane Mofokeng nor any other person as a witness. Moreover, we are told she was very ill at the time. There is no signature of the chief nor any indication that the relations had been consulted. Hence he conceded the true position which every self-respecting Mosotho knows:

"The widow may not dispose of anything without consulting the family and their head."

That is the custom of the Basotho. The Judicial Commissioner has tried to change it by emancipating the woman by his remarkable interpretation of Sec. 14(2). The rule is that the male shall include the female. (Sec. 4(2) of the Interpretation Act 1977). But the custom remains. In every Sesotho family there must always be a head. It cannot be other wise as long as Sesotho Custom is the law in this Kingdom. It is part of the life of the Basotho. (See also Molotli Ramontsoe v Molefi Ramontsoe, 1980(2) L.L.R. 438 at 439).

Coming back to Exh. "A" the defendant further says:

"Sefofane's name does not appear on this letter and I do not know how it may be accepted without his name."

and a little while later:

"I do not know why 'Mantsenki wrote this when she knew I had been allocated to her house. Being allocated did not mean I had been given away."

So he did not belong to that house. Exh. B is a bewys authorising the sale of animals by Sepheko Majoro for 'Mantsenki Mohlohlo. It is dated 16. 4. 75.

Defendant called his chief who blatantly lied to the Court. He said:

/"In my opinion

"In my opinion 'Mantsenki was justified to allocate her property without consulting the family."

Setsoto, another defence witness, lied by saying:

"The rest of the family agreed that Sepheko was rightful heir."

Under cross-examination he conceded that only a few individuals did. But then to display his ignorance, he did not know the law governing the widow having to consult the family before selling anything nor whether Sepheko was ever introduced before the chief as the heir.

'Makhafa, also a defence witness, teaming up with her chief stated the law as she knew it and not as the custom required it which are two different things.

After making appropriate reference to Sections 11(2), 12(2) and 14(2) of chap. 1 of the Laws of Lerotholi (see Duncan: Sotho Laws and Custom pp. 119 - 120), the learned President proceeded:

"It was stated by both sides that 'Mantsenki did not have a male issue in her house. It was stated before this Court that the quarrel started with respondent on the occasion of the removal of mourning of the late 'Mantsenki Mohlohlo Mohlohlo. Respondent appears to have objected to plaintiff being heir at this ceremony when the family had met but he did not choose to go to Court. Plaintiff has by himself and through his witnesses satisfied this Court with his evidence on all points. Now therefore by judgment the Court accepts his plea as correct.

Respondent (Sepheko Majoro) is ordered by judgment to hand over to plaintiff all property belonging to the late 'Mantsenki Majoro being 5 head of cattle, 1 donkey and a foal, 25 goats which he refuses to release as inheritance due to plaintiff."

In the Hololo Central Court the learned President found no insuperable difficulty in dismissing the

/defendant's appeal.

defendant's appeal. He said, inter alia :

"The court finds that there is common cause that respondent's father is senior to appellant Sepheko.

"In accordance with custom in this country the property is due to the heir who is respondent.

"If it had been awarded to appellant, respondent should have been present lest his rights were encroached upon.

"Appellant's representative admits that the other property is still in his custody except the goats were bought by him Motleke the son of Sepheko as legal because it encroaches on to the rights of the heir."

The defendant, not being satisfied with the judgment of this Court, appealed to the Judicial Commissioner's Court. That Court did not and could not in my view find any serious misdirections nor could the plaintiff's witnesses be described as anything but fair and candid with the Court. On the other hand, the defence witnesses were clearly biased. In the absence of any misdirections on the facts, on the part of trial court, its findings cannot be disturbed and consequently the appeal ought to be dismissed with costs. It is ordered that the judgment of Manamela Local Court with ~~progenies~~ where present since the start of this matter in that Court, is hereby confirmed.



J U D G E

For the Appellant : Mr. Matsau

For the Respondent : Mr. Kolisang.