

IN THE HIGH COURT OF LESOTHO

In the Appeal of .

'NEANG MOABI

Appellant

V

CHABANA MOSALALIJA

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 Judicial Commissioner's Court. The dispute is: "Fencing inside the plaintiff's yard and to grow trees there." as respondent (plaintiff) put it before the trial Court.

The appellant's (who was defendant) defence was simply that the yard was given to him by the Chief.

After going through the evidence the trial court came to this conclusion:

"In this case I find that 'Mamapatle who is said to have just died was the owner of this yard who never complained at any time when this yard was fenced and planted some trees inside by the defendant. It was long ago fenced and planted trees in, so that in questions of the defendant, the plaintiff and his witnesses do not remember how long it is except only to say it is long time."

The case was dismissed with costs.

The present respondent appealed to MOTjoka Central Court. He advanced above five (5) grounds in support thereof. After hearing argument on both sides the learned

President held:

"This Court in its's examination concerning this case finds no argument that the respondent has fenced inside the yard of aloes except that the respondent's main argument is that he was allocated by Chief Motjoka by his land allocators Malefetsane, Mapena and others who are dead now. Yet the other witnesses of the respondent are ordinary men, so their evidence cannot be relied upon so much. While the evidence on the side of the appellant in the Lower Court has shown to have not been repudiated. (ref. J.C. 186/75 Matlala Khabanyane vrs M. Molemane.)

When the facts are like this appeal is upheld. Judgment of the Lower Court and the costs are set aside. The yard in dispute belongs to the appellant."

Then the appellant appealed to the Judicial Commissioner's Court. After hearing a lengthy argument from Counsel from both parties, he proceeded as follows:

"I wish to say according to custom the residential sites are inheritable and although the trial Court relies on the fact that no complaint was raised during Mapetla's life-time when the chief allocated the site the question is was the chief right to allocate that inheritable site or did he just take advantage of the presence of this woman which the sons or descendants of Lekhotla were away. There is no shred of evidence that the chief took the site because he believed the descendants of Lekhotla had removed. I think there is abundant evidence that an allocation was made to the appellant but it does not seem to me that the place was vacant even if the owners were away for a while. The chief could only have taken the site for a specific public purpose. We only have to look at the first finding of fact by the trial Court to satisfy ourselves that the allocation was made where there was no removal. In the circumstances I find such allocation void and the appeal is dismissed with costs to respondent."

I entirely agree. The appeal is dismissed with costs.  
The appellant is to remove his fence and the trees that  
he planted inside the disputed yard.

J U D G E

For the appellant : Adv. Monaphathi  
For the Respondent : Mr. Kolisang