

CIV/APN/124/84

CIV/A/5/80

JC/290/77

IN THE HIGH COURT OF LESOTHO

In the Application of :

MOHLOUOA PULE Applicant

v

SECHABA MAKHAOLA Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice Mr. Justice  
T.S. Cotran on the 11th day of September 1984

-----

This is an application for leave to appeal against the Judgment of the Judicial Commissioner who had dismissed the applicant's/appellant's appeal from the Judgment of the President of Matsieng Central Court, who in turn had dismissed the applicant's/appellant's appeal from the Judgment of the President of Matsieng Local Court.

After the usual vicissitudes the Judicial Commissioner (there is some confusion) apparently refused to certify that the case was fit for appeal. It was agreed by Mr. Kolisang for the applicant/appellant, and the respondent in person, that the case be finalised, i.e. the application for leave, and the appeal on the merits, be heard and dealt with together. It was argued on this basis. I will henceforth call the applicant/appellant Mohlouoa Pule and the respondent Sechaba Makhaola.

The papers revealed, in so far as anything can be revealed in papers from Basotho Courts, that the dispute concerns two arable fields at Tlapaneng and Ha Ma-Willie both falling within

/the overall

the overall administrative jurisdiction of the Principal Chief of Matsieng even though the primary land allocating authority over these two fields was Chief Leutsoa S. Leutsoa who was subordinate to the Principal Chief of Matsieng. It is clear that the arable fields subject matter of the dispute had originally been allocated to one Mapolo who used them until her death apparently in 1972 or 1973. Pule and Sechaba are relatives, i.e. they come from the same family, but it is impossible on the papers to define this relationship and even more difficult to define who had a prior claim to be allocated the fields after the death of Mapolo. In those days (up to 1979) the law was that after the death of the allottee of land, the land, in theory at any rate, fell to the chieftainship but the chieftainship, in the great majority of cases, reallocated the land to the deceased's family, if he had a family, usually to his heir or one of the deceased other sons.

Even before the death of poor Mapolo there was a dispute between Pule and his branch of the family on the one hand, and Sechaba and his branch of the family on the other, on who should "inherit" Mapolo's fields when she dies. The names of the litigants were however different. It does not seem that Mapolo had an heir or very close relatives.

The legal position was governed by sections 6, 7, and 8 of the Land Act 1973 (Vol. XVIII Laws of Lesotho p.181). After Mapolo's death Pule and Sechaba, or for that matter any person, could have applied to Chief Leutsoa and his development committee for allocation of Mapolo's fields in terms of s.6 of the Act.

Sechaba Makhaola duly applied to Chief Leutsoa and his development committee for the allocation of the two fields to him. There was, it seems, another applicant one Potiane Potiane. It is clear that Chief Leutsoa and his development

/committee

committee refused to allocate the fields either to Sechaba or to Potiane. Sechaba was thus an aggrieved person in terms of s.7 and he had a right of appeal to a superior chief who happened to be the Principal Chief of Matsieng, and he did so successfully, as is clear from a copy (rather battered) of the proceedings Exhibit A. The Principal Chief and his Ward Committee considered the matter fully in the presence of the junior chief Leutsoa. For some reason or the other Sechaba was not given a form C by that appellate tribunal but appears to have utilised the two fields until at least 1975/1976 season when he was challenged by Pule. Pule and Sechaba went to Court and the decision of that Court, Exhibit C, which was on 7th November 1975, was that since neither Pule nor Sechaba had a form C the fields were never allocated to either of them and that the matter was fit for the administration. That decision was of course just nonsense. The fields were allocated in accordance with the law whether or not a form C was given. In accordance with s.18 of the Land Act 1973 the decision of the Principal Chief and his Ward Committee "shall be conclusive for all purposes and shall not be questioned in any Court", unless the aggrieved party is able to bring himself within the ambit of s.18(2)(a) - (f). Neither Pule or Chief Leutsoa assuming they were aggrieved, invoked the law. Instead Pule went to Chief Leutsoa who gave him a form C on the 11th November 1975, four days after the Judgment. Pule then started interfering with the two fields and their crops from 1976 onwards.

Sechaba complained to the Principal Chief of Matsieng who issued him with a form C on 6th May 1976 but with retrospective effect from the date that he and his Ward Committee overruled Chief Leutsoa, i.e. 13th August 1973.

/The case

The case was then contested in the Courts.

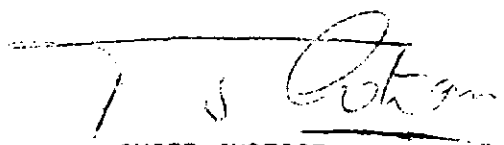
1. The Matsieng Local Court gave Judgment in favour of Sechaba on the basis
  - (a) of the Principal Chief's allocation and
  - (b) because Sechaba's blood relationship to Mapolo was closer than Pule's.
2. On appeal to the Central Court, the Local Court's Judgment in favour of Sechaba was confirmed on the ground that the Principal Chief was more senior than Chief Leutsoa and his decision must prevail.
3. On appeal to the Judicial Commissioner's Court, the Judicial Commissioner confirmed the Judgment of the two Courts below in favour of Sechaba. His reasons were clear, viz, that Sechaba followed the proper procedure, i.e. he applied for the allocation of the fields to the primary authority and when he failed there he appealed to the proper appellate authority successfully. The fact that the appellate authority did not give him a form "C" over the two fields until after Pule got a form "C" from the primary authority does not change the legal position, because the form "C" to Pule is null and void.

I entirely agree with the learned Judicial Commissioner.

The decision of the Principal Chief on 13th August 1973 was final in terms of the Land Act 1973 unless challenged in terms of s.18 which it was not.

Pule with Chief Leutsoa continue to flout the law to this day. S.8 of the Chieftainship Act 1968 (Vol. XIII) was applicable by the way since the allocation to Sechaba was lawful.

For these reasons there is no prospect of success and the application for leave to appeal is dismissed with costs. Pule must leave the lands immediately. There will be no stay of execution even if an application for leave to appeal to the Court of Appeal is contemplated. He will also pay the costs in the Courts below.

  
CHIEF JUSTICE

11th September 1984

For Applicant : Mr. Kolisang  
For Respondent : In Person