

IN THE HIGH COURT OF LESOTHO

In the Appeal of:

PAUL MONKOE - Appellant

v

MOKHITLI NTHOLI - Respondent

JUDGMENT

Delivered by the Hon. Acting Mr. Justice  
J. L. Kheola on the 22nd day of November, 1984

This is an appeal against the judgment of the magistrate of Leribe in the exercise of his revisionary powers under Section 26 of the Central and Local Courts Proclamation No.62 of 1938.

The appellant sued the respondent in Tsikoane Local Court alleging that respondent had been ploughing a field situated at a place called Sea-Rekoa which belonged to him. In support of his claim the appellant called three witnesses, viz. Alphonces, Chief Mohale and 'Majane Lesia. The gist of their evidence is that the appellant inherited the field after the death of his parents.

The Respondent stated that after the death of his parents the Appellant left the country for a very long time and went to live in the Free State. The land remained unused for a long time. The Respondent, who is a headman, consulted his senior chief and they came to the conclusion that all the fields which formally belonged to the parents of the appellant should be re-allocated to other people. The field now in dispute was allocated to Respondent. He called no witness to confirm his evidence.

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The Local Court President found that the appellant had proved his case and entered judgment in his favour. The Respondent appealed to the Central Court but before the appeal was heard he withdrew it and applied to the Magistrate to review the case under the power conferred upon him by Section 26 of the Proclamation. The learned Magistrate found that the President had failed to admonish the parties to speak the truth in terms of Rule 17 of the Basuto Courts (Practice and Procedure) Rules which appear in Government Notice No.21 of 1961. He set aside the proceedings and ordered a re-trial. In reaching this decision the learned Magistrate did not give the Appellant an opportunity to be heard. I have no doubt in my mind that the order of re-trial was to the prejudice of the appellant who had been awarded the field by the trial court.

Now the first proviso to Section 26 makes it quite clear that before the Magistrate can make an order in any civil proceedings to the prejudice of any party in such proceedings, he shall first of all give such party an opportunity to be heard. The provision is peremptory. The order made by the learned Magistrate was therefore irregular.

It is not the first time that parties appearing before our local courts have not been admonished to speak the truth as provided by Rule 17. In Tsoeli Lepota v Lephethephe Morai, CIV/A/28/74, unreported, it was held that the mere fact that a witness has not been admonished to speak the truth is not such an irregularity that would make the proceeding of the Court of first instance invalid. I must emphasize that in a case where the Plaintiff or the Defendant gives evidence he must be admonished to speak the truth in terms of Rule 17 and that fact must be recorded immediately after his name. There are a few Court Presidents who are under the

wrong impression that the parties themselves need not be admonished.

For the reasons I have stated above the appeal is upheld and the order of the learned magistrate is set aside. I make no order as to costs. The position is that the judgment of the court of the first instance is revived. Whoever is aggrieved by that judgment may either appeal against it or apply for its review within thirty days from the date of this judgment.

Will the Registrar make sure that a copy of this judgment is sent to each of the legal representatives of the parties as soon as possible.

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ACTING JUDGE  
22nd November, 1984

For the Appellant : Mr. Monaphathi

For the Respondent : Mr. Ramodibeli