

IN THE HIGH COURT OF LESOTHO

In the matter of .

LEROTHOLI THEBE MASUPHA - Applicant

v

SEKHONYANA LETLATSA MASUPHA - Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M. P. Mofokeng on  
the 20th day of January, 1984.

This is an application to this Court for an  
Order .

- " 1. Restraining SEKHONYANA LETLATSA MASUPHA  
from exercising, either personally or through  
the agency of his wife 'Maletlatsa Masupha  
or anyone else, any chiefly powers, rights  
or functions in and over the area of Ha  
'Malehi in the Berea district.
2. Directing the Respondent to pay the costs  
of this Application."

The applicant avers that he is the chief of  
Thuathe and he exercises jurisdiction over an area  
known as Ha 'Malehi (hereinafter referred to as Khaohano).  
The respondent, through the agency of his wife and  
Khaohano has exercised chiefly powers over Ha 'Malehi

/including ...

including allocating land. He refuses to desist from doing so despite demand.

Respondent denies that applicant is the proclaimed chief of Thuathe. He avers that he is the gazetted chief of Ntloana-tsoana and not a reputed headman of the same area. He denies that the applicant is the chief of Thuathe because the latter is lawfully suspended and has since not been reinstated and therefore he has no right, in law, to exercise jurisdiction over the area known as Ha 'Malehi. If the applicant has been reinstated, it is denied that he has been lawfully exercising jurisdiction over Ha 'Malehi in as much as the said area has been lawfully placed under the respondent's jurisdiction by the Principal Chief of Ha 'Mamathe on the 25th November 1976. This decision, it is averred, was confirmed by the Motjoka Central Court in CC 45/80. The said case was instituted during the suspension of the applicant by the person who was exercising the powers of his office.

In his replying affidavit the applicant admitted that the respondent was a gazetted chief and that both the applicant and respondent fell under the jurisdiction of Mahlomola Masupha. The applicant admits that he had been suspended but had been reinstated in November 1981 and has been exercising the powers of that office ever since. However, even if he were still suspended, that would not preclude him from the relief he was seeking.

/He further ...

He further averred that the Principal Chief of Ha 'Mamathe has no power, in law, to deprive a proclaimed chief of his land and to give it to someone else or even to delineate boundaries of areas of jurisdiction of proclaimed chiefs.

It is further denied that the decision of the Motjoka Central Court confirmed the decision of the Principal Chief of Ha 'Mamathe.

Chief Mahlomola Masupha, in his affidavit attached to the replying affidavit, confirms that the applicant has been re-instated. He confirms also that both parties, to this application, are gazetted chiefs directly under him. He further confirms that the area of Ha 'Malehi falls directly under the applicant. He says that he has no knowledge that the said area has been given to the respondent by the Principal Chief of Ha 'Mamathe and that he disputes the right of the latter to do so as the said area falls directly under him, chief Mahlomola Masupha and that the respondent is under his jurisdiction.

It is now common cause that the area in dispute did fall under the jurisdiction of the applicant. This is also confirmed by the judgment referred to as CC 45/80 which was handed into the Court by consent.

The thrust of Mr. Pheko's argument was that since the applicant was suspended he, therefore, lacked the capacity (as he preferred to call it) or Locus Standi because he had not been re-instated. Since it was  
/the ...

the respondent who raised the issue the onus shifted to him to show on balance of probabilities that that was so. He failed to do so. However, the applicant not only denied that he lacked such capacity but annexed the affidavit of the senior chief to both of them who confirmed what the applicant had averred in his affidavit, that is that he had been re-instated. The respondent had failed by evidence to show the contrary.

In the alternative it was argued that if the deprivation of the said area was effected during the period when the applicant was suspended that situation, by itself, did not render him incapable of entitling him to protect his area. He still had a vested interest in it. His children who have a right to succeed him are entitled to find the area intact. The suspension is merely in connection with performing chiefly functions. The Court is inclined to agree with this argument. Moreover, the suspension is of a certain duration and once the period of suspension is over, the Chief ought automatically to assume the status of a Chief. That is why during the period of suspension he has to be vigilant about the protection of his rights and also those of his children.

Reading the judgment in CC 45/80 the Court does not get the impression that it confirms the fact that the area under dispute has been given or awarded to the respondent as the latter avers in his affidavit.

/The ...

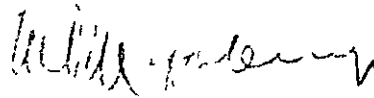
The case was dismissed solely because the same matter where the same subject-matter is raised was still pending before the Ministry of Interior (Administrative action).

It is strange that the Principal Chief of Ha 'Mamathe placed the area in dispute under the jurisdiction of the respondent and thereby increasing his area without the latter's immediate chief (Mahlomola Masupha) being informed. The senior chief, as mentioned earlier, has denied any knowledge of this. In the ordinary course of events of good administration Chief Mahlomola Masupha would not only have known but would have been informed by the Principal Chief of Ha 'Mamathe. The Court is inclined to agree with him therefore, when he avers that legally the Principal Chief of Ha 'Mamathe could not have done what it is purported he did. This is, in fact, borne out by the judgment in CC 45/80 (which both Counsel so kindly allowed the Court to read and refer to) in which it is stated the dispute concerning the very area has been referred to the Ministry of Interior, almost certainly pursuant to the provisions of Section 5(8) of the Chieftainship Act 22 of 1968. It is not clear at whose instance it had been so referred. This tends to show that there is much to be said for Mr. Sello's argument that what the Principal Chief of Ha 'Mamathe had purported to have done was illegal. He could not exercise a portion of an area from one chief and give it to another nor change *its* boundaries. He is precluded from so doing by Sec. 5(8) (supra).

/The ...

The respondent has not revealed any defence except to say that the applicant lacked capacity without more, and that the Central Court (Motjoka) confirmed that the Principal Chief of Ha 'Mamathe had given the disputed area to the respondent, which it did not.

In the Court's view, on a balance of probabilities and the balance of convenience the order ought to be granted as prayed in the application and it is so ordered.



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J U D G E

For the Applicant : Mr. K. Sello

" " Respondent : Mr. Pheko