

IN THE HIGH COURT OF LESOTHO

In the Application of :

ANDREAS MAFISA

Applicant

V

SEFATSA MAFISA  
'MAMAFISA MAFISA

1st Respondent  
2nd Respondent

REASONS FOR JUDGMENT.

Filed by the Hon. Acting Judge Mr. Justice  
J.L. Kheola on the 13th day of June, 1984.

In this application the applicant is asking for an  
order in the following terms:

- (a) Restraining the Respondents from disposing of or in any way alienating or destroying the vehicle, TOYOTA VAN E. 0961 with engine number 12R0656670 and chassis number RN20040096, pending the finalization of CIV/T/272/83;
- (b) Directing Deputy Sheriff to have the said vehicle removed from the possession of the Respondents and keep it in his custody pending the finalization of CIV/T/272/83;
- (c) Directing Respondents to pay the costs of this application in the event of opposition of this application;
- (c) Granting applicant further and/or alternative relief.

/In

In CIV/A/2/83 the present Applicant (Andreas Mafisa) was ordered to return the vehicle E. 0961 to the present Second Respondent. At the hearing of this application both counsels, Mr. Khauoe for the Applicant and Mr. Moorosi, for the Respondents, explained to me that in an attempted compliance with the order in CIV/A/2/83 the Applicant returned only the body of the vehicle E. 0961 to the Second Respondent because at the relevant time the engine was in the Republic of South Africa undergoing repairs. I was informed that the engine is still in the Republic of South Africa. I find it rather strange that Mr. Khauoe drafted prayer (a) of the application in such a way that it gives the impression that the whole vehicle is still intact. His client has not fully complied with the order in CIV/A/2/83 which ordered him to return the vehicle E.0961 to the Second Respondent. In my view the body without the engine cannot be regarded as the vehicle E. 0961. Be that as it may, the Second Respondent has apparently never complained to anybody that the applicant has not fully complied with the order.

It is common cause that the dispute in CIV/T/272/83, which is pending before this Court, is the ownership of the vehicle E. 0961. I think it is in the interests of all the parties that when the case is finalized the vehicle should still be intact and of some use to whoever is going to be the winner.

The applicant is the elder brother of the Second Respondent and heir to his father John Thabo Mafisa who died

/on

on the 27th March, 1982 The first Respondent is the wife of John Thapo Mafisa and mother of the Applicant and Second Respondent The Applicant is not founding his claim on the fact that he is heir to the estate of his father (late father) but on a document made by his late father as a will donating the vehicle and site at Ha Seoli to him. To me the document appears to be ambiguous and superfluous. I say it is superfluous because as heir the Applicant is entitled to succeed to his father's property as of right. In Choolo v. Choolo 1976 L.L.R. 250 at p. 254 Mofokeng, J., stated the law as follows.

"The cardinal principle in the Sesotho law of inheritance is that "the heir shall be the first male child born of the first married wife, and if there is no male in the first house then the first born male child of the next wife married in succession shall be heir." See s 11 (1) of Part 1 of the Laws of Lerotholi. In the case before me where there was no polygamous marriage, the heir will be the first male born of the marriage, and it is not disputed that the applicant is that person. As such he is entitled to all the deceased's property He has acquired the status of being an heir by right of birth. He does not have to satisfy any requirements in order to qualify for his position."

The learned judge went on to say that even if the younger brother had assisted the father during his lifetime and was therefore largely responsible for the erections on the site that would not disqualify the heir from succeeding to his father's estate.

/I said

I said the document is also ambiguous because it purports to give only custody of the vehicle and the site at Ha Seoli to the applicant. It does not say for how long these properties should remain in his custody. Its English version reads:

P O. P.G. 2155 Lower Seoli

WILL.

If I die suddenly I ask that the site at Ha Seoli and the vehicle should remain in the custody of A. Mafisa as gratitude for nursing me when my wife had deserted me and gone to 'Masekoal and I remained with him and 'Ma-Esaea Mafisa all this time and she never turned up to see me. All the property that may be damaged should be under the control of Mafisa. This is my prayer to you chief.

I, John Thapo Mafisa,

Thank you.

I do not wish to say anything more about this document because it purports to take care of what the law of inheritance has already provided for.

The first Respondent is also basing her claim on a document purporting to be a resolution made by ten members of Mafisa family on 29th May, 1982 which appointed her as the heiress to the estate of her late husband assisted by the Applicant. This document is also null and void because the heir is not appointed by members of one's family but is a status acquired by right of birth.

/As heir

As heir to his father's property the Applicant has every right to see that the property is not disposed of or in any way alienated or destroyed by those who have it in their possession. I granted the application as prayed in prayer (a) but on the understanding that the engine is not in the possession of the Respondents. The order is in respect of the vehicle E 0961 minus the engine.

As this is a family dispute I ordered that each party must bear its costs. I also declined to place the vehicle in the custody of the Deputy Sheriff because the fees for towing the vehicle and keeping it for an indefinite period would be too high. I think that the interdict I have granted will serve the purpose.

ACTING JUDGE.

13th June, 1984.

For the Applicant : Mr. Khaueo

For the Respondents · Mr. Moorosi