

IN THE HIGH COURT OF LESOTHO

In the Application

MALEFETSANE MAJARA

Applicant

v

TUMO MAJARA
MINISTER OF THE INTERIOR

1st Respondent
2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr Justice J L., Kheola
on the 14th day of March, 1986

The application is for an order in the following terms

- "1. Directing the second Respondent to revoke, in terms of section 14 (2) of the Chieftainship Act number 22 of 1968, the Government Notice numbered 17 of 1974 in Government Gazette 3 of the 18th January, 1974.
2. Declaring the Applicant herein to be the rightful successor to the Chieftainship of Khopane in the Berea district.
3. Granting the Applicant such further or alternative relief as to this Honourable Court may seem just. .
4. Directing the 1st and 2nd Respondent to pay the costs of this Application jointly and severally only in the event of their opposing the same "

In his founding affidavit the Applicant deposes that he is the eldest son of the late Dinizulu Foso Majara who was proclaimed in the High Commissioner's Notice No 171 of 1939 as the Chief of Khopane under the Principal Chief of Majara's in the Berea district. When his father died his father's mother 'Madinizulu Majara acted as chief of Khopane as per High Commissioner's Notice No.170 of 1950. She died in 1960 and after her death the Applicant claims that he made representations to

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the Principal Chief of Majara's to have him proclaimed as chief of Khopane by virtue of his being the heir and lawful successor to his deceased father. He deposes that the Principal Chief told him to wait as he was attending to the matter.

He further states that in 1982 it was brought to his attention that the Second Respondent had caused the First Respondent to be proclaimed as chief of Khopane in Government Notice No.17 of 1974. He claims that the Government Notice mentioned above is inconsistent with the provisions and principles of the Chieftainship Act No. 22 of 1968 in that the chieftainship of Khopane is not a new one first created immediately prior to the publication of the said Notice.

In his answering affidavit the First Respondent deposes that the Applicant never showed any interest in the chieftainship of Khopane because he knew very well that he was illegitimate and had no rights of succession. When he was presented as chief of Khopane to the people at a "Pitso" on the 28th May, 1973 the Applicant was present and did not object despite the fact that the Principal Chief invited any person who had an objection to raise it. As Applicant's mother was not legally married to the late Dinizulu Foso Majara she and her children were not considered for the succession to the chieftainship ^{of} Dinizulu whose office was at Khopane. When Chief Dinizulu died the rightful successor was one Bolise the younger brother of the deceased and that was the reason why their mother and not the Applicant's mother acted as chief of Khopane for her minor son Bolise.

I may mention at this stage that on the 19th August, 1985 Sebōlai Majara who is the eldest son of the Applicant applied that he should be substituted as the Applicant because his father had died in November, 1984 after the proceeding in this case had been instituted. The application was granted. It is also common cause that the First Respondent has also passed away. He died towards the end of 1985.

No one has applied that he should be substituted as the First Respondent.

Rule 8 (14) of the Rules of the High Court 1980 where a dispute of fact should have been foreseen the Court may dismiss the application. In the present case the Applicant should have foreseen when he launched this application that a very serious dispute of fact is going to arise. He must have known that the validity of his mother's marriage to the late Dinizulu F. Majara was challenged by the family of Majara. He must have known why his own mother did not act as chief of Khopane when his father died. The Second Respondent was proclaimed as chief of Khopane in 1974. On the 28th May, 1973 when he was presented as chief of Khopane to the people at a "Pitso" the Applicant was present but made no objection. For the next ten years the Applicant did nothing until on the 26th September, 1983 when he instituted these proceedings. No valid reason has been given why the Applicant delayed so long when he was well aware that the Second Respondent was to be proclaimed as the chief of Khopane. The only irresistible inference to be drawn from the Applicant's lack of interest in the chieftainship of Khopane is that he knew he was illegitimate. He must have known that his mother was not legally married to the late chief Dinizulu from the fact that his grandmother and not her mother acted as chief of Khopane.

Even where a dispute of fact has arisen from the affidavits, the Court still has a discretion to hear oral evidence if the issues can be speedily determined by viva voce evidence (Van Aswegen and another v. Drotskie and another, 1964 (2) S.A. 391 (0)). In the instant case no issues can be speedily determined by oral evidence because the two litigants, i.e. the Applicant and the First Respondent are late. They are the people who could give evidence on the issue of the validity of the marriage between the late chief Dinizulu Majara and the mother of the Applicant.

The application is dismissed with costs.

J. L. KHEOLA
J U D G E .

24th March, 1986.

For Applicant - Mr. Matsau

For Respondents - Mr. Maqutu.