

IN THE HIGH COURT OF LESOTHO

In the application of:-

MAKHOOA THAMAHANE	1st Applicant
MASHOESHOE THAMAHANE	2nd Applicant
BOLOKANANG BASOTHO	3rd Applicant

vs

MOEKETSI KOKOTELA	1st Respondent
MATEBOHO KOKOTELA (duly assisted by her husband)	2nd Respondent
MAMALESHOANE MOKOMA (duly assisted by her husband)	3rd Respondent
KEKETSO SAKOANE	4th Respondent
TSOKOLO MAJORO	5th Respondent
MAMOTHAMO MOKAFO (duly assisted by her husband)	6th Respondent
MALETLAMA NKOE	7th Respondent
LESOTHO BANK	8th Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 13th day of February, 1989

The application is for an order that a Rule Nisi be issued calling upon the respondents to show cause why:-

- "1. (a) Respondents shall not be directed to account for all the money collected from 3rd February 1987 for Bolokanang Basotho up to the hearing of the application.
- (b) An auditor approved by the Registrar shall not be appointed to examine the books of account and membership of Bolokanang Basotho in order to determine the financial standing of Bolokanang Basotho.

- (c) The Respondents shall not be restrained from collecting money for and on behalf of Bolokanang Basotho and administering the funds of Bolokanang Basotho pending the finalisation of these proceedings.
- (d) Bank account of Bolokanang Basotho shall not be frozen in the Lesotho Bank or any other bank where they might be deposited.
- (e) Respondents shall not be restrained from expelling or terminating the membership of the members of Bolokanang Basotho who are striving for financial accountability of Bolokanang Basotho.

2. That Prayer 1 of this Rule operate as an interim interdict."

The 2rd applicant is a burial society duly registered in terms of The Societies Act of 1966 under No. 87/43 on the 22nd July, 1987.

In his affidavit the 1st applicant avers that he became chairman of the 3rd applicant in February, 1987 when he was elected with other members of the committee. He alleges that this committee has never been changed nor has there been any elections since then. He states that the troubles started in April, 1987 when the 1st respondent quarrelled with the secretary, the 2nd applicant, for reasons he did not explain. From April, 1987 the 1st and 2nd respondents and the 3rd respondent did the work of the secretary and treasurer. The 1st respondent said he was the founder of the 3rd applicant and as such he was entitled to expel the secretary and the treasurer.

The 1st applicant states that in October, 1987 he convened a committee meeting to settle the affairs of the 3rd applicant. The

1st respondent refused to reinstate the secretary and to give the money to the treasurer on the ground that the society belonged to him. He states that he and the majority of the founding members of the committee are concerned about the society because they do not know the number of members. When they ask for this information the 1st respondent says members should not know each other because they will quarrel. As receipts are not issued for the M2.50 that is contributed whenever a member has died, they can never know the amount of money collected. He states that he estimates the membership of the society to be at one time about 1500.

He deposes that without reference to the committee the 1st respondent increased the joining fee from 50 lisente to M20, then to M28 and it is now M50. The 1st respondent charges M80 enquiry fee whenever a member's relative has died. He states that in terms of clause 13 of the constitution of the society an auditor has to audit the books every time a member has died or twice a month during the meeting of the committee, but this has never been done. He states that the 1st respondent informed him that all people who are asking him to account for the money of the Society should take themselves as having forfeited their membership of the Society.

The 2nd applicant, in her affidavit states that the 2nd and 3rd respondents told her that as she could not write she could not do the work of the secretary of the Society. They did the writing. She states that when 'Mapitso Mabaso had died, her family was given only M500 instead of M1,000. She and the treasurer, 'Mathabo Majoda, asked for the books and found that over 1,000 members had contributed M2.50 each and yet the total amount collected

was reflected as only M600. No satisfactory explanation was given.

The 1st respondent, in his opposing affidavit, has put in issue the membership of the 1st and 2nd applicants to the Society. He avers that the 1st applicant is no longer a member of the Society because he has not paid his subscription fee for 1988 contrary to Articles 3, 4 and 6 of the Society's constitution. He stopped paying contribution on the 17th August, 1988 for the death of one Mosola Nkoe and ever since there have been nine more deaths for which he has not contributed. He denies that he ever said members should not know each other because they will quarrel. There are books in which the names of members who have paid their contributions are shown so it cannot be true that because receipts are not issued for the M2.50 contributions then it can never be known how much money has been collected. He deposes that the Society's membership stands at 500 and not 1,000 as alleged by the applicants.

The issue of whether the 1st and 2nd applicants are still members of the Society or not, can be resolved without much ado by reference to specific articles of the Society's Constitution. Article 4 provides that any person wishing to join the Society may do so if he is co-operative. He must first pay 50 cents registration fee and then membership fee and be prepared to comply with the rules of the Society. But a member who does not meet his obligations, especially payment of the membership fee, will have his membership terminated.

The second article which is relevant to termination of membership is article 6 which provides that if a member is not paying

well, he is given three months within which to put right his obligations. After writing to him to remind him of his obligations and he fails, he shall be struck off because he shall be deemed to have undermined the Society.

It is common cause that the respondents have not complied with the provisions of Article 6, supra, by writing letters to the applicants warning them that if they fail to pay their membership fees and contributions within three months, their membership would be terminated. The constitution requires that a three-month warning should be given before the name of a defaulting member can be struck off the register. The respondents, having not followed the procedure prescribed by their own constitution, cannot be heard to say the applicants are no longer members of the Society.

Moreover, there is a dispute as to whether the applicants have ceased to pay their membership fees. The applicants allege that the 1st respondent refused to accept their fees for last year (1988). This allegation is denied by the 1st respondent and this dispute of fact is not something that I can resolve on paper. However, it seems to me that even if the applicants have not paid their fees, their membership of the Society has not been terminated in terms of the constitution; therefore they are still members until the proper procedure is followed to expel them from the Society.

The fear expressed by the applicants that there are no books kept reflecting the Society's moneys is not without foundation. The respondents have not annexed to their affidavit any bank statements showing the balance of the Society's account or accounts. If the respondents were honest with the Court, they would have disclosed

what accounts the Society has with which banks and the balances in such accounts. They would have asked their banks to provide them with copies of bank statements. It seems to me that they are not prepared to disclose, even to this Court, the financial affairs of their Society. Annexures "A1", "B1" and "A2" to 1st respondent's answering affidavit are not enough to show the funds of the Society. These annexures show contributions made by members of the Society in only two villages, namely, Mabekenyane and Maritintsi. They do not show contributions from members from several other villages. Nor do they show the money coming from annual membership fees and registration fees.

If Annexures to 1st respondent's affidavit are all what the respondents regard as proper books of account, then I am left in no doubt that no proper books of account are kept and that there is a likelihood that the funds of the Society may be misused or actually stolen.

According to the figures given by both parties: five hundred by the respondents and 1,000 to 1,500 by the applicants - it seems to me that the membership of the Society is very large indeed and that proper books of account must be kept to avoid loss and misuse of the Society's money. Article 13 provides that the Society shall have its own auditor. The auditing of the books shall be done immediately following the death of a member or twice a month when the committee is sitting for its deliberations.

It is common cause that ever since its formation or registration in July, 1987 the books of account of the Society have never been audited in terms of the constitution. This state of affairs could not be a concern of this Court if all the members of the Society

were happy about the way books are kept. But that is not the case now because the 1st and 2nd applicants have well founded suspicions that the Society's money is being misused. The respondents have hopelessly failed to show that proper books are being kept. Their main objection is that the applicants have no locus standi because they have ceased to be members of the Society. I have already shown above that they are still members of the Society though they are no longer committee members. It must be remembered that most of the members of a society like the present society are ordinary villagers most of whom cannot read and write. The chances of their being exploited by dishonest people are very high. I am not by any means implying that the respondents are dishonest and that they are exploiting the members of the society. What I am saying now is that the information they have placed before this Court to refute the allegations against them is too vague.

Mr. Mohau, counsel for the respondents, submitted that the Society is still so young and financially weak that it is not in a position to employ an auditor. This submission is not supported by any evidence before this Court. We do not know how much money is in the bank and his clients have deliberately omitted to tell the Court the balance in their bank. All we have been told is that there are 500 members, and if that is true, it means that annual membership fees amount to M1,000-00 plus registration fees for new members which range from 50 cents to M50 depending on how many members died before the new member joins. I am of the opinion that substantial money is involved and that proper keeping of the books is necessary. Several villages are now involved unlike the normal village burial societies which usually involve one village with

round about 100 families for a small village. The practice of such small societies was that contributions of as little as 10 cents or 25 cents are paid direct to the bereaved family on the spot and no books of account were necessary for such a small society. The present society is a different giant which requires the services of an auditor from time to time.

I agree with the submission that the third applicant was wrongly joined by the 1st and 2nd applicants because the resolution passed by the applicants pretending to be the committee members of the society, is null and void. They knew very well that they were no longer members of the Committee. However, as ordinary members of the society they have locus standi to bring these proceedings to protect their rights.

In the result therefore I come to the conclusion that the 1st and 2nd applicants are entitled to the order prayed for. I make the following order:

- (a) The respondents are ordered to account for all the money collected from 3rd February, 1987 for Bolokanang Basotho up to the date of this order.
- (b) An auditor approved by the Registrar should be appointed by the respondents at the expense of Bolokanang Basotho to examine the books of account and membership of Bolokanang Basotho in order to determine the financial standing of Bolokanang Basotho.
- (c) Respondents are restrained from expelling or terminating the membership of applicants who are striving for financial accountability of Bolokanang Basotho.

(d) The respondents shall pay costs of the application.

J.L. KHEOLA
JUDGE

13th February, 1989.

For the Applicants - Mr. Maqutu
For the Respondents - Mr. Mohau.