

IN THE HIGH COURT OF LESOTHO

In the Application between:-

KELIBONE E. NTSANE' Applicant

and

CHAKA NTSANE Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 7th day of July, 1989.

The applicant is the stepmother of the respondent. When her husband died they had a house on plot No.33 Maseru West in the district of Maseru. The applicant deposes that in or about December, 1985 the respondent wrongfully, unlawfully and intentionally changed the locks at the said residential premises and by so doing denying her access to the said premises and is presently occupying the said premises exclusively and deny her right of occupation thereto.

The applicant is seeking an order directing the respondent to restore to her the occupation of the said premises, directing the respondent to restore to her her personal property locked in the said premises, an interdict against the respondent restraining him from

interfering and/or denying the applicant the rights of occupation of the said premises and costs of this application.

As the widow of the late Kem Ntsane the applicant is entitled to remain in occupation of the said plot until her own demise.

In his answering affidavit the respondent denies that when he changed the locks of the house his intention was to deny the applicant access to the premises. He avers that during September, 1985 he noticed that the applicant was no longer living at the said plot no.33 Maseru West. The only time she came back to the premises was when she came and took away some household property including a television set and a bed. She had not informed him or any member of the family of her departure to Thaba-Nchu be it permanently or temporarily. In her presence the house was locked and she took the key with her and left a spare key with applicant's sister Sentle who was living in one of the out-buildings within the premises.

During September, 1985 the applicant convened a meeting of the elders of the family and reported to them the state of affairs at the said premises. On the 2nd October, 1985 a certain Mr. Sello Ntsane, who is one of the elders in the family, wrote a letter to the applicant (Annexure "CN1" to the answering affidavit). In that letter Mr. Ntsane invited the applicant to attend a meeting on Sunday the 13th October, 1985 at 9.30 a.m. at the premises mentioned above. It was stated in the letter that the respondent and his sister Sentle had some complaints against her.

In her letter of the 13th November, 1985 the applicant stated that she did not want to attend the proposed meeting (See Annexure "CN3" to the answering affidavit).

The applicant avers that he became aware of Annexure "CN3" in November, 1985. It was only after he had read the contents of the said letter and seeing the applicant carrying two suitcases from the house that he decided to change the locks of the main house so that he could be able to monitor the movement of property in and out of the house. During December, 1985 the applicant was no longer living in the said premises and the applicant decided to change the locks at the end of December, 1985. He denies that by so doing he acted wrongfully and unlawfully in the light of the foregoing circumstances. The applicant never approached him in any manner whatsoever to demand access to the premises. In terms of the lease that is now in the name of the respondent the applicant is entitled to remain in occupation of the premises until she dies.

The respondent denies that he is in the process of selling any property in the house or anywhere in the premises. He is presently living in the premises and has no intention of selling anything. The applicant is free to have access to her personal property.

In her replying affidavit the applicant admits that at some time - she does not say when - she left the said premises and went to look for work in Bloemfontein leaving the minor children in the

house as they were attending school. She also left her personal property in the house. She denies that she received the letter from Mr. Sello Ntsane. She alleges that by changing the locks the respondent denied her access to the premises. She has a statutory right to occupy the said premises and has no duty to approach the respondent in order to enjoy her said right.

The parties were allowed to lead Viva Voce evidence to resolve some of the disputed facts. In her evidence the applicant says that when she returned to the house in December, 1985 she found that the locks of the house had been changed and Sentle was living in the house. She denied her access to the house by locking her out. In September, 1985 the police arrested her and reported to her that they had been ordered by the respondent to harass her in order to force her to leave the country. After her release she went to her maiden home or to the home of her first husband Motsemme.

I am of the opinion that the applicant has not been honest with this Court on a number of issues. The first such issue is her denial that she ever received the letter written to her by Mr. Sello Ntsane. She is not telling the truth because her letter, Annexure "CN3" is obviously a reply to that letter. In the letter of Mr. Ntsane inviting her to a family meeting reference is made to a complaint by Sentle. In her reply (paragraph 6) she denies that she was troubling Sentle or making life for her difficult. She asks whether by saying her other sisters Betty and Semakaleng were still living with their husbands amounts to troubling Sentle who is not prepared to tolerate difficulties

arising from her marriage. This statement clearly shows that the applicant had received Mr. Sello Ntsane's letter. I am surprised that in paragraph 5 7.2 of her replying affidavit the applicant denies that she ever received the letter.

In paragraph 2 of her letter to Mr. Ntsane (Annexure "CN3") the applicant says "I think Chaka enjoyed himself over me by having 101 discussions, I am no more interested in discussions, thank you Rangoane. I am just worried by Matalis Tombstone and my husband's welfare and well being, thank you." This paragraph of her own letter proves beyond any shadow of doubt that she received the letter of Mr. S. Ntsane. She has deliberately attempted to mislead the Court by telling untruths.

The applicant says that she left Maseru after she had been arrested by the police through the instigation of the respondent who was very influential in the previous government. What the police told her after they had arrested her and taken her to the charge office is hearsay and the applicant has no personal knowledge that the police were instructed by the respondent to arrest her. After her release she never contacted the respondent to confirm what the police had told her. I am of the opinion that the applicant has failed to prove on a balance of probabilities that her departure in September, 1985 was caused by the respondent.

As early as the 13th October, 1985 the applicant told Mr. S. Ntsane that she was no longer interested in anything in Lesotho except the tombstone of Matalis. She stated in no uncertain terms

that she had had enough from Ntsane's family. That the Motsemme family had accepted her back and she was then living in their house. The impression one gets from the letter is that she was not prepared to come back to Lesotho except for the tombstone. She had got a job in Bloemfontein and was already on a three-month probation.

The respondent avers that he changed the locks because the applicant was returning to the house and removing some property. In any case she had indicated her intention never to return to Ntsane's family because Motsemme family had accepted her. The question is whether the respondent was entitled to change the locks of the house in order to stop the applicant from removing property and taking it to Thaba-Nchu where she is now living. I think the answer must be in the affirmative. As the heir to his deceased father's estate the respondent has a right and duty to protect the property of the estate for the benefit of himself, of the applicant and all the children of the late Kem Ntsane. The applicant's right is that of occupying the premises and the use of the property within the premises. She is not entitled to remove the property and go and use it at Motsemme's house. If she has had enough like she alleges in her letter, she is entitled to her personal belongings especially her clothes.

I agree with the applicant that she and the children mentioned in the lease have a right of occupation but that right should not be exercised to the exclusion of the heir and other children of the late Kem Ntsane. Under Sesotho customary law divorced daughters have a right to return to their late father's

house and be supported by the heir. If Sentle has problems at her marital home, she has a right to run away (ngala) and come to her maiden home. The applicant is under an obligation to live with her in the house or to provide any suitable accommodation for her until such time that she is reconciled to her husband.

I come to the conclusion that the applicant has failed to prove on a balance of probabilities that in September, 1985 when she left Lesotho it was because the respondent had caused the police to arrest her. She has also failed to prove that the respondent acted unreasonably and with the intention of denying her access to the said premises when he changed the locks of the house.

In the result the application is dismissed. As this is a family matter each party must pay its own costs.


J.L. KHEOLA
JUDGE

7th July, 1989.

For the Applicant - Mr. Pheko
For the Respondent - Mr. Sello.