

IN THE HIGH COURT OF LESOTHO

In the Application of :

CHIEF RETS'ELISITSOE JAMESON QHOBELA      Applicant

and

THE ATTORNEY-GENERAL      1st Respondent

CHIEF BERENG NATHANAEI QHOBELA      2nd Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice B.K. Molai  
on the 15th day of August, 1989.

The applicant herein has filed, with the Registrar of the High Court, a notice of motion in which he moves the court for an order framed in the following terms:

- "(a) Declaring the revocation of Instrument  
INT/INVEST/6/79 dated 20th August,  
1979 approving the boundary between  
second Respondent and Chief Qamaka  
Qhobela null and void;
- (b) Directing Respondents to pay the costs of this  
application;
- (c) Granting applicant such and/or alternative  
relief as this Honourable court may deem  
fit."

The second Respondent has intimated intention to oppose this application. No notice of intention to oppose has, however, been filed by the first Respondent and it may be assumed, therefore, that he is prepared to abide by whatever decision will be arrived at by the court.

2/ In support of .....

In support of their case the parties have duly filed affidavits. It would appear from the facts disclosed by the affidavits that both the applicant and the second Respondent are chiefs in the areas of 'Muela and Ha Ntlaba, respectively. The latter is a junior chief responsible to the former.

Since 1971, and following the death of her husband, Chieftainess 'Mabereng Qhobela, the mother of the second Respondent, had been acting for the latter as the chief of Ha Ntlaba in the district of Butha-Buthe. In 1977 she lodged a complaint with the Senior District Administrator, Chief Qamo Molapo, that Chief Qamaka Qhobela, the then applicant's predecessor in the office of chieftainship, was interfering with her chiefly powers in the villages of Mosolotsoana and Likotsi both of which fell within her area of jurisdiction. He was not, therefore, respecting the boundary between their areas of jurisdiction. In support of her contention that the villages of Mosolotsoana and Likotsi fell within her area of jurisdiction, chieftainess 'Mabereng handed over to the Senior District Administrator certain documentary evidence according to which the boundary between her area of jurisdiction and that of Chief Qamaka Qhobela was depicted and the abovementioned two villages fell under her jurisdiction.

Apparently the attention of the Ministry of Interior and Chieftainship Affairs was drawn to the complaint lodged by chieftainess 'Mabereng. However, Chief Qamaka Qhobela disputed the correctness of the allegation that the abovementioned two villages fell within the area of Ha Ntlaba. The matter was, for that reason, referred to an ad hoc boundary committee to investigate and make appropriate

3/ recommendation. ....

recommendation. When the committee subsequently sat in the District of Butha-Buthe to hear the dispute, the Senior District Administrator had already been transferred to another district. The documentary evidence which chieftainess 'Mabereng had handed over to the Senior District Administrator were misplaced and could not be made available to the boundary committee.

In the absence of the documentary evidence the boundary committee made a report in which a new boundary was recommended to the Minister of Interior and Chieftainship Affairs for approval by His Majesty the King. The new boundary excluded the villages of Mosolotsoana and Likotsi from the area of Ha Mtlaba. On 20th August, 1979 Her Majesty The Queen acting in Her lawful capacity as such in the absence of His Majesty The King, pursuant to section 5(10) of the Chieftainship Act, 1968, by Instrument No. INT/INVEST/6/79 approved the Boundary Committee Report which had determined the boundary dispute in favour of Chief Qamaka Qhobela.

After the Boundary Committee Report had been approved by Her Majesty The Queen, the Senior District Administrator, Chief Qamo Mlapo, was transferred back to the District of Butha-Buthe where he was able to trace the misplaced documentary evidence. When this came to her knowledge, Chieftainess 'Mabereng informed the Minister of Interior and Chieftainship Affairs that, due to the carelessness of Government officials in his Ministry, her documentary evidence which was important for the determination of the boundary dispute between herself and Chief Qamaka Qhobela could not be placed before the Boundary Committee which consequently decided the dispute against her.

4/ As a result .....

As a result of that information, the minister proceeded to Butha-Buthe to mount an enquiry into the matter. Present at that enquiry were, amongst others, the headman of Mosolotsoana and Likotsi villages and Chief Qamaka Qhobela himself who, as it has already been mentioned, was the applicant's predecessor. The documentary evidence consisting of letters written by the late Chief Jameson Qhobela, the father of Chief Qamaka Qhobela, was produced at the enquiry and examined by all who were present thereat.

In those letters the late Chief Jameson Qhobela had apportioned parts of his area of jurisdiction to his sons (one of whom was Nathanael Qhobela, the late husband of 'Mabereng and father of the second Respondent) as headmen directly responsible to him. The boundaries of the apportioned areas were described in the documentary evidence according to which the above-mentioned two disputed villages fell within the area of Ha Ntlaba. The headman of the two villages confirmed that his villages had, since the apportionment made by the late Chief Jameson Qhobela, always been under the administration of Ha Ntlaba. In the light of the documentary evidence, Chief Qamaka Qhobela told the people who were present at the enquiry that as it was clear from the letters that the boundary had, indeed, been drawn by his late father, Jameson Qhobela, he no longer had a quarrel with it.

Thereupon the Minister of Interior and Chieftainship Affairs promised that he would bring to the attention of the members of the Ad hoc boundary Committee the documentary evidence which, for reasons already explained, could not be made available to them at the hearing of the dispute and seek their advice in the matter. On 30th September, 1981 the Minister accordingly met the

5/ members of the .....

members of the Boundary Committee who expressed the view that if the documentary evidence had been made available to them at the hearing of the dispute, they would not have made the new boundary. They would have certainly confirmed and recommended the boundary made by the late Chief Jameson Qhobela. The members of the Boundary Committee then advised the Minister of Interior and Chieftainship Affairs to set aside the boundary they had earlier made and recommended, substitute therefor the boundary made by the late Chief Jameson Qhobela and accordingly make a recommendation for the approval by his Majesty The King.

In exercise of the powers conferred upon Him by S.37 of the Interpretation Act No. 19 of 1977 and on the advice of the Minister of Interior and Chieftainship Affairs, on 11th March, 1982 His Majesty The King revoked Instrument INT/INVEST/6/79 and approved, as advised, the recommended boundary made by the late Chief Jameson Qhobela. The boundary includes within the second Respondent's area of jurisdiction, Ha Ntlaba, the villages of Mosolotsoana and Likotsi. It is described as follows:

"The Boundary begins where Manepeng stream joins Ngoae river, it goes up Manepeng stream towards 'Muela mountain. It goes up the ridges past Joalaboholo and Thaba-Chitja up to Molopi cave, then along the edges on the East to Ngoae river down to Likotsi below Tarapane river, down Likotsi's up to where it began at the confluence of Ngoae river and Manepeng stream."

In the contention of the applicant the Instrument of Revocation issued on 11th March, 1982, inter alia, deprived him of the area over which he had jurisdiction without affording him the


6/ opportunity .....

opportunity to be heard. It was, therefore, contrary to the rules of natural justice and, for that reason wrongful and unlawful. Wherefor, he prayed for an order as aforementioned.

It is to be observed, however, that when in 1981 the enquiry leading to the revocation of Instrument INT/INVEST/6/79 on 11th March, 1982 was held, the chief of 'Muela was Chief Qamako Qhobela, applicant's predecessor in the office of Chieftainship. Indeed, this court is entitled to take judicial notice of Government Notice No. 94 of 1983 by which the applicant was gazetted the chief of 'Muela only on 2nd June, 1983, following the death of Chief Qamaka Qhobela, his predecessor. Chief Qamaka Qhobela himself attended the enquiry, was afforded the opportunity to be heard and expressed the view that, as it was clear from the documentary evidence that the boundary had been drawn by his father, the late Chief Jameson Qhobela, he was satisfied with it.

Assuming the correctness of the averment that at the time the enquiry leading to the revocation of Instrument INT/INVEST/6/79 was held, the applicant's predecessor, and not the applicant himself, was a party to the dispute, the subject matter of that enquiry, it must be accepted that the applicant could not properly claim the right to be heard. In the circumstances I am unable to agree with the contention that the revocation was contrary to the rules of natural justice and, for that reason, wrongful and unlawful.

That, in my view, is sufficient to dispose of this matter and I would accordingly dismiss the application with costs.

  
B.K. MOLAI  
JUDGE

For Applicant : Mr. Pheko  
For Second Respondent ; Mr. Maqu+u.

15th August, 1989.