

IN THE HIGH COURT OF LESOTHO

In the matter between:-

THUSO MOKOLOKOLO

Appellant

and

MOTSOALIPAKENG TLOKOISI

Respondent

J U D G M E N T

DELIVERED BY THE HONOURABLE MR. JUSTICE J.L. KHEOLA
ON THE 16TH DAY OF JULY, 1990

This is an appeal against the judgment of the learned Judicial Commissioner delivered on the 25th October, 1985. He set aside the judgment of the Matsieng Central Court and reinstated the judgment of the Matsieng Local Court which had awarded the land in question to the present respondent.

The arable land in question falls within the jurisdiction of headman Leutsoa S. Leutsoa who is subordinate to the Principal Chief of Matsieng. It is common cause that the land in question

was originally allocated to one Tintane Philemon Lethibelane who used it until her death in 1972 or 1973. According to the law that was in force at that time the land of a deceased person became vacant on his or her death and it reverted to the chief or headman for reallocation.

The facts of this case are set out by the learned Judicial Commissioner on pages 33-34 of the record of the proceedings as follows:-

"The legal position was therefore governed by section 6, 7 and 8 of the Land Act 1973 (vol. XVIII Laws of Lesotho p. 181). In terms of sec. 6 of the Act the respondent Motsoalipakeng Tlokotsi applied to headman Leutsoa and his Development Committee for allocation of Tintane's land to him. His application was refused and in terms of sec. 7 the respondent appealed to (there being no other superior chief) the Principal Chief of Matsieng who after consultation with a Ward Development Committee (established for the Ward) acting in terms of section 8 (2) of the Act upheld the appeal and without issuing a Form "C" the Principal Chief of Matsieng ordered headman Leutsoa to confirm respondent on the land in question. The decision of Principal Chief of Matsieng and his Development Committee is contained in Exh. "A" and it is dated the 25th February, 1976. Acting in terms of Exh. "A" headman Leutsoa is alleged to have confirmed the respondent on the late Tintane's land and issued a Form "C" marked Exh "B". This form "C" was issued on the 21st August, 1976. After that the respondent ploughed the land and in 1977 one 'Makoali Mokolokolo the appellant's mother sued the respondent and his father Tlokotsi Motloli now representing the respondent in this case, and claimed the same land. In

fact 'Makoali alleged that the respondent and his father were using the land in question without her consent. In other words she claimed the land as her property. 'Makoali's case was CC 23/77 Matsieng Local Court and its judgment is contained in Exh. "C".

According to appellant's version the land was allocated to him by headman Leutsoa who issued a Form "C" dated the 4th July, 1976 and marked Exh. "E" in these proceedings."

Section 18 (1) of the Land Act 1973 provided that:-

"Every decision given under sections 4,6,7,8,9, or 10 shall include a statement of the ground or grounds upon which that decision was given and that statement shall, subject to the provisions of subsection (2) (f) and (3) (g), be conclusive for all purposes and shall not be questioned in any court."

In his decision, which appears on page 18 of the record of the proceedings, the Acting Principal Chief of Matsieng states that before he reached his decision he studied or considered written statements and the advice of his Ward Development Committee. This decision is conclusive for all purposes and cannot be questioned in any court of law unless it can be shown under section 18 (2) (f) and (3) (g) that the decision was given in bad faith, that is to say, with the intent to defeat or evade or otherwise to avoid giving effect to any provision of any law. The decision of the Acting Principal Chief of Matsieng has not been challenged on any of the grounds shown above.

The only ground argued before this Court was that in terms of section 82 of The Land Act 1979, the appellant has a better title to the land than the respondent because he has been using the land and has developed it by building a house on part of it. Section 82 reads as follows:

"Where at the commencement of this Act any land or part thereof has, whether by error or otherwise, been the subject of two or more allocations, the allottee who has used the land and made improvements thereon shall hold title to the land in preference to any allottee who left the land unused and undeveloped."

It is common cause that the decision of the Acting Principal Chief of Matsieng was delivered on the 25th February, 1976 and that is presumed to be the date on which the land was allocated to the respondent (See Mohlouoa Pule v. Sechaba Makhaola, CIV/A/5/80 (unreported)). Headman Leutsoa was apparently unwilling to comply with the decision of the Acting Principal Chief of Matsieng because he only issued a Form C to the respondent about five months later on the 21st August, 1976. In the mean time Headman Leutsoa had on the 4th July, 1976 allocated the same land to the appellant. At that time he knew very well that the same land had been allocated to the respondent by the Acting Principal Chief of Matsieng. He did this because he was convinced that land was inheritable and that members of the family of the late Tintane were entitled to inherit the land. This was a clear misconception of the law which was in force at that time.

Regarding section 82 of The Land Act 1979 I am interested in the words: "any allottee who left the land unused and undeveloped." (my underlining). Do these words mean that where a piece of land is subject to two allocations the allottee who has been unlawfully stopped from using or developing the land should be regarded as having left the land unused and undeveloped? The word "leave" means to abstain from dealing with or to let remain in a specified state. I do not think that in the instant case it can be said that the respondent left the land unused and undeveloped because after the land was allocated to him in August, 1976 he immediately ploughed it. In 1977 the appellant started ploughing this land despite the fact that his mother who was claiming the land on his behalf in CC 23/77 (See exhibit "C" at page 19 of the record) had lost the case. It seems that ever since 1977 the appellant has been making it impossible for the respondent to plough the land. At page 10 of the record the respondent has this to say:-

- "1. If I remember well, Tintane died in 1972.
2. I first ploughed this field in 1976 after I defeated 'Makoali and respondent no.1 ploughed it.
3. He ploughed it from 1977 and I appealed to the Principal Chief's Committee.
4. He ploughed it from then till now and he always ploughs and then go to the mines so that I have no one to dispute with."

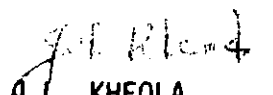
In a case of agricultural land improvement must mean stopping dongas that may be present on such land or building contour

furrows or growing some grass that will stop soil erosion etc. However, building a house on agricultural land is not an improvement of such land and it is even against the law. The appellant cannot claim that he has improved the land by building a house on it.

The appellant has been very clever because every year he ploughed the land just before the respondent could do so and left for the mines in the Republic of South Africa. I am of the opinion that the respondent cannot be accused of having left the land unused and undeveloped because the appellant cannot claim to have developed the land and his use of the land was intended to stop the respondent from using it.

I do not think that the intention of the Legislature in enacting section 82 of The Land Act 1979 and using the words "left the land unused and undeveloped" was to include an allottee who is stopped or prevented from using the land by the actions of the other allottee. In any ^{case} agricultural land (arable land) remains unused as soon as harvest has been made and in spring the ploughing takes place at different times depending on what crop one intends planting.

For the reasons I have stated above the appeal is dismissed with costs.


Q.L. KHEOLA
JUDGE

16th July, 1990.

For Appellant - Mr. Pheko
For Respondent - Mr. Maqutu.