

CIV/A/17/88

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

TEFO MAKENETE

Appellant

v

TAELO MATHAPOLANE

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 25th day of September 1990  
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In this case the dispute between the Plaintiff and the Defendant involves a piece of land which the Plaintiff claims belonged to his parents, and it is common cause that before his parents died they used this land.

However, the custom is that when the parents die, the land reverts to the chief for re-allocation either to the members of the household or anybody else who might require use of the land. But in doing so, the chief has to see to it that the needs of the particular household are taken care of.

The defendant doesn't deny depriving the Plaintiff of this land. The question that remains is whether in doing so he acted lawfully. The onus is on the defendant, in my view to prove that he did so lawfully. The defendant laid his case on the fact that he had caused letters to be sent to the Plaintiff, warning him of the fact that he had been deprived of this land. But from the very outset, in the statement that the Plaintiff supplied before the local court, he denied that he received any such letters and his denial persisted even in the central court where he stated affirmatively that he had never received any letters purportedly written by the defendant.

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There was also the evidence of one Chalane who gave evidence in support of the defendant and this is the witness who, at the close of his evidence stated before the local court that all that he had said in support of the defendant's case was untrue. It should be noted therefore that Chalane did, in that regard parade himself as a self-confessed liar who purveyed lies in favour of the defendant. In his prayer to have the court dismiss his evidence, he made no exception of the writing of the letter of the 2nd June, 1970 purportedly inviting the Plaintiff before the defendant, nor did he make an exception of the testimony that Plaintiff was to appear before the defendant on 11th June, 1970. Chalane said all the evidence he gave was false.

This is the evidence corroborating the defendant's evidence in its material respects, thus when thrown out, no how can the defendant's evidence in those respects remain. I read at once the learned Judicial Commissioner's Judgment which in my view summarised the facts of this case, fairly satisfactorily, contrary to what is contended in the appeal that he didn't address his mind properly to the evidence that was before the courts below. His Judgment strikes me as one which was well considered.

The learned Judicial Commissioner at page 2 of his Judgment had this to say:

"The onus was upon the defendant in this dispute to show to the court on the balance of probabilities that, what he did was lawful or was done in accordance with the law relating to revocation of the interest or rights over land. He could have sufficiently done so by calling the evidence of Kokoana Mathapolane and Thahathe to say they did hand over their alleged letters to Plaintiff, or left them with someone as required by law then in force in regard to notifying the person to be deprived of his right over land."

I endorse entirely what the learned Judicial Commissioner had to say there because the defendant pointed out that he had sent his messengers, one of whom was Thahathe, to notify the Plaintiff of the fact that he had been deprived

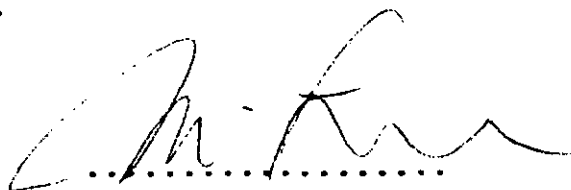
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of this land, but there wasn't any such letter and failing that letter, one would have expected that Thahathe would come and give evidence showing that he supplied Plaintiff with the letter, but this was never done.

The evidence of Chief Lechesa Mathealira in a sense, supports the claim by Plaintiff to this land, namely that, it had been allocated to his parents. And the chief goes further to say that he was not aware of the manner in which this land was removed from the Plaintiff who remained after his parents died, even though there were some children who needed support from farm produce from this land.

It is significant that Chief Mathealira is the present incumbent of the area of Tsikoane, and in his evidence has shown that the defendant has his own area where he has his subjects; and the chief pointed out that the defendant had no right to deprive people of the fields which had been allocated to them, as these people are not subject to him, but to Tsikoane. From this, one would tend to think that since it is common cause that the land which was allocated to Plaintiff's parents was done by the Chief of Tsikoane, who is the chief of the area that is above a number of chiefdoms including the chiefdom of the defendant, where Plaintiff's parents had been placed by the direct act of the chief of Tsikoane, then when they died this land should have, by rights, reverted to the Chief of Tsikoane and not to the defendant so that when it remained vacant, then it was for the Chief of Tsikoane to see what to do about it, and regard being had to the fact that of paramount importance in re-allocating land which has been reverted to the chief, the children of the household of the deceased persons are to be supported from that land, then that land should have reverted to the chief who had in the first place, allocated it to the deceased parents of the Plaintiff.

Having said that much, I do make a finding in favour of the Plaintiff with costs.



J U D G E  
25th September, 1990

For Applicant : Mrs. Kotelo

For Respondent: Miss Tau