The Central Court dismissed the case without making any finding that the Principal Chief had already made a decision on the boundary. I have carefully studied the judgment of the Central Court and have come to the conclusion that the third respondent or his predecessor never made a decision on the boundary in question. The allegation that he did has no basis at all. At best it can be said that the complaint that was put before the third respondent or his predecessor was never finalised until the matter was taken to the Central Court. There is nothing in Annexure "A" to show that the third respondent sat as a judge in the boundary dispute in question and that he made a decision.

The respondents have failed to show that there was a decision and deliberately refrained from disclosing to this Court in whose favour that decision was. The reason for their failure to disclose this point is that there was never any decision.

Section 5 (11) of the Chieftainship Act, 1968 provides that the committee shall consist of not less than two members, one of whom shall be the Principal or Ward Chief of the area of authority in which the boundary concerned is situated. There is a proviso that if the boundary dispute is between two Principal or Ward Chiefs such Principal or Ward Chiefs shall not be appointed to the committee. The third respondent cannot be disqualified under the proviso because he is not a party to the dispute.

I come to the conclusion that the appointment of the third respondent as a member of the ad hoc boundary committee was proper

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and in accordance with the provisions of section 5 of the Chieftainship Act, 1968. The respondents have failed to show that the third respondent had already made any decision in the matter. The decision of the three-member boundary committee appears to have been unanimous.

The respondents have alleged that there was interploughing between the applicant and the subjects of the first, second and sixth respondents. They have not stated when and how the interploughing started. Interploughing is defined by Patrick Duncan in his book, Sesotho Law and Custom on pages 72 - 73 in the following terms:

> "Interploughing is a word coined in Basutoland to describe the state of affairs described in Sotho as mekopu e namelane (the pumpkins have intertwined). When no boundary has been made between two chiefs there is often an area in which both chiefs allot lands, and in which the subjects of both chiefs are mixed up. This is not a form of paballo, but is similar enough to it to find a place in this chapter. With paballo there is a boundary, but a loan of rights has been made across it; but with interploughing there is no boundary. Some times interploughing leads to trouble, and the remedy is to define a boundary. When the boundary has been defined all the lands on one side are under one chief; and all on the other side to the other. The people are then given the opportunity of choosing. A land occupier who finds that the boundary has been drawn between himself and his lands may either (a) give up his lands and remain under his chief in his dwelling-site, or (b) give up his site and his chief, and follow his lands, becoming a person of the chief under whom lie the lands."

If the respondents claim that there was never any boundary between the applicant and the second respondent, they are wrong because according to the evidence of the applicant before the

ad hoc boundary committee and this Court was that the trouble started only in 1966 when the subjects of the sixth and the first respondents suddenly seized the arable lands by force. It cannot be said that before 1966 there was no boundary between the applicant and the chiefs under the second respondent. The boundary had been there and was violated by the sixth and the first respondent only in 1966. The ad hoc boundary committee found that the boundary between the applicant and the second respondent was as defined by the applicant and made their recommendation accordingly. They did not say they were determining a new boundary because they impliedly found that the arable lands in question were seized by force by the subjects of the second respondent. I say impliedly because the second respondent's evidence was that when he was placed as a chief over the area, the third respondent never showed him the boundary. Even the sixth respondent who was second respondent's witness before the ad hoc boundary committee did not contradict what the applicant said. He never told the committee what he regarded as the boundary between himself and the applicant.

I have stated above that the suggestion that there had been no boundary between the applicant and the second respondent is not supported by any evidence. It seems that prior to 1966 the subjects of the applicant were in peaceful and undisturbed possession of the arable lands in question and that means that the second respondent and the sixth respondent accepted that the area was on the side of the applicant. I am of the opinion that there has never been any interploughing between the applicant and the sixth respondent.

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The respondents, i.e. sixth to twelveth inclusive, complain that the ad hoc boundary committee never gave them the chance to be heard before it deprived them of their arable lands. They depose that on this ground alone the application should be dismissed because the decision of the committee is invalid as far as it concerns them. I do not find any substance in this argument because the respondents in question have never applied to any court of law to have the decision set aside.

Secondly, the dispute was between chiefs and concerned a boundary between those two chiefs. It follows that the allocations which were made by the chief who lost the case are invalid and have to fall away automatically when the decision is against the chief who made them. Because the dispute was not between the subjects of the applicant and the subjects of the sixth respondent, the argument that they were not given the chance to be heard cannot stand. They derive their titles from the allocation by a person who did not have the right to allocate land over that area.

In a recent case between the Minister of Interior and others v. Chief Letsie Bereng, C. of A. (CIV) No. 17 of 1987 (unreported) dated the 20th July, 1988 Plewman, J.A. said

> "I will assume . for present purposes that if an appointment were made (let us say) for an improper purpose the court could intervene in an application to review the Minister's action. But where no improper conduct can or had been shown, in my view, the court has no jurisdiction to pronounce upon the Minister's acts. Again if the Minister appointed a committee which did not comply with the requirements of subsection (11) the court could intervene. If however, the Act is complied with no court can concern itself in the matter. The committee acts administratively and for the same reason (and subject to compliance with subsection 12) the committee may come to its own conclusion and the court may not substitute its findings, on the evidence before the commission for those of the commission."

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In the present case the respondents have failed to show that there was non-compliance with the provisions of section 5 of the Chieftainship Act, 1968 and this Court cannot concern itself in the matter.

In the result the application is granted as prayed in terms of prayers (a), (b) and (c) of the Notice of Motion.

J.L. KHEOLA
JUDGE

10th January, 1990.

For the Applicant - Mr. W.C.M. Maqutu
For the Respondents - Mr. Pheko