

IN THE HIGH COURT OF LESOTHO

In the matter between:-

TLALA SELAHLA Appellant

and

MALIMABE MOROLONG Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. KHEOLA  
on the 7th day of August, 1991

The appellant was the plaintiff when these proceedings started at Mapoteng Local Court in CC. 39/84 on the 20th March, 1984. He sued the respondent for ploughing two arable lands which he claimed to be his. The evidence of the appellant was that the respondent first ploughed the two lands in question on the 1st November, 1983. The fields originally belonged to his grandfather Ramarungoana who died a long time ago. After Ramarungoana's death he and his two other brothers namely Masala Ramarungoana and Matebello Ramarungoana were introduced to the chief and they used the fields without any disturbance. Masala died in 1963 and Matebello died in 1969. He used the fields after the death of Matebello from 1969 to 1983 when the respondent unlawfully ploughed the fields. The appellant testified that his father was adopted by Ramarungoana. He was a Mokoena while Ramarungoana was a Mofokeng.

If I may be allowed to digress at this juncture I wish to point out that according to Basotho customary law adoption of a child from outside the family is unknown. All cases of adoption are in the nature of the transfer of a child from one branch of a family to another. See Duncan: Sesotho Laws and Customs, p. 8. I do not understand how a stranger could be adopted <sup>by</sup> Ramarungoana's family when he had his own son Masala. It seems to me that the appellant ought to have given more cogent evidence that he has done concerning the adoption of his father into Ramarungoana's family.

The appellant called Moferefere Ramoza who testified that the fields in question originally belonged to Ramarungoana who used them with the appellant. He did not know what happened to the fields after the death of Ramarungoana.

The respondent stated that the two fields in question were allocated to him by Chief Mopeli Lejaha under whose area of jurisdiction the fields fall. Chief Mopeli Lejaha and Headman Kekane Lejaha gave evidence in favour of the respondent and stated that the respondent was brought before the chief by members of Ramarungoana family and the Land Committee had considered the matter the allocation was made to the respondent. The Chief brought a minutes book dated the 2nd March, 1984 when the Committee discussed the matter of Ramarungoana's sons to confirm the respondent on the fields of the late 'Matebello. The Chief said that despite the allocation of the fields to the respondent the Form C has not been issued to him.

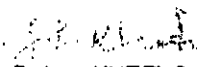
The Central and Local Court came to conclusion that because the appellant was in occupation of the two fields when they were allocated to the respondent he had to be given a notice in terms of section 13 of The Land Act 1979. The learned Judicial Commissioner was of a different view and held that the appellant had failed to prove that the disputed fields were ever allocated to him by a proper authority i.e. a chief or headman who had the right to allocate land in Majaheng area. The appellant merely used these fields without any proper allocation and there was no need therefore for the Chief of Majaheng to act in terms of section 13 of The Land Act 1979.

I entirely agree with the learned Judicial Commissioner that section 13 of The Land Act 1979 had no application in the present case. A careful look at subsection (1) of section 13 will reveal the use of the words "the power <sup>to</sup> of revoke an allocation". (My underlining). The Chief of the area knew that after the death of 'Matebello the two fields in question were not re-allocated to the appellant in terms of section 8 (2) (a), (b) or (c) of The Land Act 1979. In other words there was no allocation which the Chief had to revoke. The appellant had been in unlawful occupation of the two lands contrary to the law.

If 'Matebello died in 1969 the provision of section 9 of the Land (Procedure) Act of 1967 were almost identical with those of section 13 of The Land Act 1979. They both refer to revocation of an existing allocation or grant. A person who is in unlawful occupation of land is not entitled to any notice in terms of the two sections referred to above.

The evidence of the appellant that after the death of Ramarungoana he, Masala and 'Matebello were introduced to the Chief does not seem to be true because he has called no chief or any person who was present when they were introduced to the chief. In any case he does not say that the fields in question were re-allocated to them. It is improbable that two fields could be shared by three people. The three people referred to were all adults when Ramarungoana died and the chief could have then and there asked the family of Ramarungoana to introduce the heir. He could not have accepted three people because when Ramarungoana died it was incumbent on the family to choose the heir as they did when they introduced the respondent.

In the result the appeal is dismissed with costs.

  
J.L. KHEOLA  
JUDGE

7th August, 1991

For Appellant - Mr. Nthlhoki  
For Respondent - Mr. Moorosi