

CIV\APN\153\90IN THE HIGH COURT OF LESOTHO

In the matter between:-

LEROTHOLI SEEISO	1st Applicant
MALUKE LELUMA	2nd Applicant

and

CHIEF SEEISO MOHOLOBELA	1st Respondent
THE MINISTER OF INTERIOR	2nd Respondent
CHIEF MAKHAOLA MOJELA	3rd Respondent
VICTOR MOLELLE	4th Respondent

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 18th day of November, 1991.

This is an application for an order reviewing the proceedings and setting aside the decision of the ad - hoc boundary committee on the grounds of failure to follow the principle of audi alteram partem rule fully and the exclusion of vital evidence.

In his founding affidavit Chief Lerotholi Seeiso avers that when he assumed office as Principal Chief of Likhoele in 1989, he found an on-going boundary dispute between the Principal Chiefs of Likhoele and Matelile. He was advised that Chief Maluke Letuma who is a gazetted chief under him was

the real litigant because the area of Ha Majara over which he is chief is adjacent to the ward of Matelile. However, it was decided that the boundary dispute should be treated as a dispute between the ward of Likhoele and the ward of Matelile.

The second applicant Chief Maluke Leluma avers that at the hearing of the dispute before the Ad-Hoc Boundary Committee he acted for the first applicant. He is a gazetted Chief in his own right. There has been an on-going boundary dispute between himself and the Principal Chief of Matelile. The first applicant did not know the boundary nor was he directly involved, for this reason he asked him (second Respondent) to conduct the investigation on his behalf. He avers that he expected to be allowed to give his own evidence as a witness and to produce documents in support of his claim as a complainant is entitled to give evidence. During the enquiry the Ad-Hoc Boundary Committee refused to allow him to give evidence of his own knowledge of the area and the boundary although he was born and brought up in the area. The reason for the refusal being that he could not be a witness and also represent the Principal Chief of Likhoele at the same time.

In terms of Government Notice No.21 of 1964 the second applicant is the gazetted Chief of Ha Majara. He has been the Chief of Ha Majara since 1954. As he had been using the area

personally as chief since 1954 he considers his evidence was vital to the boundary enquiry. He avers that he had been using this area and had in his possession evidence from the National Archives showing the boundary line confirmed by the Resident Commissioner J.R. Sturrock between Ramathalea and Maphoma Leluma whose successor he is. He avers that he was unable to hand in this evidence of the boundary which was made in 1927. (See Annexure "A")

The second applicant avers that because of the exclusion of the evidence from him the Ad-Hoc Boundary recommendation is incomplete evidence and violated the provisions of section 5 (11) and (12) of the Chieftainship Act of 1968. He avers that the proper natural boundary on the Matelile side of his area are the precipice of Lilesong to the White Kranze opposite Makoe Thabaneng.

In his opposing affidavit Chief Sentle Mojela, the Principal Chief of Tebang, avers that he was the Chairman of the Ad-Hoc Boundary Committee which was nominated to settle the dispute between the Principal Chiefs of Likhoele and Matelile. He denies categorically that the second applicant was never given a chance to be heard. The second applicant was the one who conducted the case for the first applicant, and in so doing he called one Mohaea Posholi as a witness who described the boundary. When an inspection in loco was

conducted, the second applicant was the one who pointed out the boundary. He even tendered a document relating to a boundary that was made in 1894 and the committee considered it. He further tendered a map drawn by himself which was also considered.

Chief Sentle Mojela further avers that the second applicant never made any attempt to hand in Annexure "B". In any event that document could not have advanced his case in any manner as the document refers to a different boundary dispute between Ramathalea and Maphoma Leluma, both subjects of the Principal Chief of Likhoele. It has no relevance to the boundary dispute between Principal Chiefs of Likhole and Matelile. He further avers that the evidence of the second applicant was considered. He denies that any area of the second applicant was transferred to the Principal Chief of Matelile.

In a supporting affidavit the 4th respondent avers that he was the Secretary of the Ad-Hoc Boundary Committee which was nominated to settle the boundary dispute between the applicants on the one side and the first respondent on the other. The second applicant was given all the opportunity to conduct his case and he in fact did. He was given a hearing. Annexure "A" was never adduced as evidence. He avers that it is an afterthought and it is only produced in these

proceedings to mar the efficient and smooth manner in which the inquiry was conducted. The boundary-line referred to herein has no relevance to the boundary dispute with which the Ad-Hoc Boundary Committee was seized.

In his replying affidavit the second respondent gives the names of a number of villages which have been cut from the ward of Likhoele by the new boundary. He insists that Annexure "A" is not irrelevant because it clearly shows that the Resident Commissioner and the Paramount Chief recognized the place as being in the ward of Likhoele.

The issue before this Court is not to go into merits of the dispute which was before the Ad-Hoc Boundary Committee appointed by the Minister of Interior in terms of section 5 (10) of the Chieftainship Act of 1968. The issue is whether at the hearing of the dispute the Committee gave the second applicant an opportunity to be heard. In terms of section 5 (12) (b) of the Chieftainship Act of 1968 (the Act) 'on the appointed day the committee shall receive such representations, either oral or written or both, as the Chief and his witnesses, as well as any other Chief who has a direct interest in such determination, and his witnesses, may wish to make.'

Annexure "B" which is the decision of the Committee

reveals at page 2 that after the first applicant (in fact it was his late father Chief Leshoboro Seeiso) had given a short explanation he introduced the second applicant as the person who would prosecute his case. The first thing the second applicant did was to call his first witness, Mohaeea Posholi. He gave his evidence and described the boundary. After that the second applicant handed in Exhibit "A" which is a document describing a boundary which was determined on the 12th and 13th days of July, 1894. It is also alleged that the second applicant handed in a map he had drawn to indicate the boundary.

In paragraph 3 of his replying affidavit the second applicant does not specifically deny that he handed in the two documents mentioned above. He merely avers that he insists that he was not given a full hearing. He was allowed to hand in two documents and I see no reason why the Committee could refuse to accept another document and elect to accept only two documents. The truth of the matter seems to be that he made no attempt to hand in that document. He either did not have it in his possession at the relevant time or he decided that it was irrelevant to the proceedings. The second applicant has himself to blame for concealing from the Committee what he now regards as vital evidence in the proceedings. I reject entirely his allegation that the Committee refused to allow him to hand in that document.

The decision shows that after he handed in the document evidencing the boundary which was determined in 1894 the second applicant was cross-examined by members of the Committee as well as the Chief of Matelile. His answers were evidence which the Committee considered.

At the inspection in loco the second applicant took it upon himself to point out the boundary. The pointing out was real evidence given by the second applicant (See R. v. Sewpaul, 1949 (4) S.A.978). The applicant cannot be heard to say that he was not allowed a chance to be heard when he not only handed in documents but he also attended an inspection in loco and pointed out the boundary.

I shall avoid to go into the merits of this case because all what I am called upon to decide is whether or not the *audi alteram partem* rule was infringed. For the reasons I have given above I am of the view that it was not infringed.

In the result the application is dismissed with costs.

J.L. KHEOLA

JUDGE

18th November, 1991

For Applicants - Mr. Maqutu

For Respondents - Mr. Letsie.