

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

KOPANO MAKEPE

Appellant

vs

STANLEY LENOHLA

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lenonla
on the 24th day of June, 1991

The appellant having been dissatisfied with the Judgment of the Judicial Commissioner's Court granted on 26th April 1985 appeals to this Court for reasons set out as follows :-

- (a) The learned Judicial Commissioner erred in finding for the Respondent and dismissing the appeal when there was no evidence that he was ever allocated the lands in question.
- (b) The courts below erred in awarding the land in question to the respondent on the sole basis that he is a Chief although it is clear that even a Chief has to have the land allocated to him.
- (c) Chief Marakabei has no power to allocate lands in the Letuka Area as Letuka had power to allocate land.
- (d) The court erred in disregarding the fact that the respondent at one time recognised appellant's rights to the land inasmuch as they have ploughed half-shares.

Further that :

- (e) The learned Judicial Commissioner misdirected himself on a point of Law in terms of Section 7(5)(5) (sic) the authority "shall" give priority in the re-allocation to any adult son or sons of the deceased.

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In the original pleadings the then plaintiff who is now the respondent Stanley Lerotholi told the Local Court that he prayed that Court to order the then defendant who is now the appellant Kopano Makepe to stop using three fields ploughed by the defendant without the plaintiff's consent.

In reply, the defendant indicated that the fields below the Letuka village on the left side of the path leading to Ma Makepe and the one above the plots on the other side of the stream are his. The third one being the one at Lithoteng he stated still belongs to the plaintiff thus implying the plaintiff should not have sued him for it.

The plaintiff outlined his manner of acquisition of these fields as follows :

That in 1958 when he first came to Letuka's one old man Khaile Kopung surrendered two of his fields to the chieftainship. Consequent upon this surrender Khaile Kopung's fields were allocated by Chief Marakabei and Chieftainess 'Mabatho to the plaintiff. These two chiefs were land allocating authorities.

When Chieftainess 'Mabatho died and her lands fell due for re-allocation the plaintiff reported this to Chief Marakabei and expressed some interest in acquiring one of the late Chieftainess's fields in exchange for one of his. Chief Marakabei approved this as well as the fact that the rest of the late Chieftainess's lands could be re-allocated by the plaintiff to the public at large. The plaintiff accordingly picked the field below the village.

The position of the plaintiff vis-a-vis the fields acquired by him after Chieftainess 'Mabatho's death remained undisturbed and enjoyed the confirmation of Chief Marakabei until 1974 when the defendant started ploughing these fields without the plaintiff's consent.

Apparently this new form of disturbance was resolved

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by one Chief Sekete in 1977; and the plaintiff enjoyed some respite from the defendant's trouble for the defendant didn't, according to the plaintiff, challenge Sekete's ruling.

Although from the pleading referred to above it seemed the defendant did not claim the field at Lithoteng as his it seems however, from reading page three of the record that he had obstructed the plaintiff's agents from ploughing it.

Chief Sekete testified that because Chieftainess 'Mabatno had no child she appealed to Chief Thabo Lerotholi to give him one. Accordingly, Qaba Lerotholi was granted the Chieftainess in response to her request. However after Chief Thabo Lerotholi's death Qaba frustrated 'Mabatho's hopes by resigning from the position he had been placed at in relation to 'Mabatho. The Chieftainess appealed to Chief Marakabei who allocated some fields in the area of Chieftainess 'Mabatno because Qaba had refused the invitation to that place. When 'Mabatno died her fields reverted to the Chieftainship and Chief Marakabei re-allocated them to the general public. It was by this means that the plaintiff was allocated the field below the village in exchange for the one surrendered by the plaintiff to Motupu at Ha Rammalo. The plaintiff is corroborated in his evidence by Sekete who testified that the other field allocated to the plaintiff was one at Tnoteng while, the next other was the one lying along the path leading to Ha Molapo. The importance of this witness's evidence consists in the fact that he testified that the litigants appeared before his administrative office. He made a decision confirming the plaintiff on these fields. The defendant did not appeal against this decision to the Chief of Matsieng.

In cross-examination Sekete expressed his knowledge that the plaintiff was sent not as a new subject or resident to Ha Letuka but as a ruler. This throws some

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light on the question alluded to earlier that Qaba had refused to fill up the position that was vacant due to the childlessness of 'Mabatho.

The defence case as outlined by Chief Kopano Makepe was that the fields in dispute belonged to Chief Letuka. The defendant came to Ma Letuka in 1974 to take or assume the rights of his predecessor Letuka. The defendant concedes that he came to Ma Letuka after the death of Chieftainess 'Mabatho. The defendant was not able to produce documentary evidence to show that the fields in dispute belonged to Letuka. He had already compromised the stand he had initially taken in respect of the field at Lithoteng by subsequently saying he had not placed any claim to it. Significantly he never denied that he obstructed the plaintiff's use of that field at one stage or another.

It is significant that it was only when giving his evidence in chief that the defendant informed the Court that the plaintiff went to Ma Letuka as a new resident. Impliedly by this he sought to gainsay the evidence which indicated that the plaintiff was allocated the fields belonging to 'Mabatho the wife of her predeceased husband Letuka because Qaba had made little of the arrangement Chief Thabo Lerotholi had made in response to 'Mabatho's plea that she had no child. Significantly this arrangement was not challenged by the defendant during the life time either of Chief Thabo Lerotholi or of Chieftainess 'Mabatho herself.

The defendant makes a merit of the fact that he and the plaintiff went half-shares regarding the field which he found the plaintiff having ploughed part of the way when the defendant came to assume rights at Ma Letuka after 'Mabatho's death.

Regarding this field he makes an explanation why he did not answer Sekete's questions regarding the

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defendant's use of that field. Of significance is the fact that it does not seem that in cross-examining Sekete he put the story that he wished the Court of first instance subsequently to believe namely that

"I was summoned by Chief Sekete and on arrival I found the subject was again on the same field and I told the chief that I would not answer the case if he presided over it because he had been the chief witness of the plaintiff".

So how can an agreement to go half-shares with a man in respect of the field he is found ploughing be regarded as proof that the field belongs to the proposer who finds the other ploughing that field.

In my view the judgment of the Court of first instance ought not to be disturbed. Consequently the appeal is dismissed.

J U D G E

24th June, 1991

For Appellant : Mr. Maqutu

For Respondent: Mr. Moorosi