

IN THE LESOTHO COURT OF APPEAL

In the Appeal of :

THUSO MOTLALENTOA	1ST APPELLANT
MAPHILLIMON MOTLALENTOA	2ND APPELLANT

and

MOTSOALIPAKENG TLOKOTSI	RESPONDENT
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HELD AT MASERU

Coram:

MAHOMED P.  
ACKERMANN J.A.  
KOTZÉ J.A.

J U D G M E N T

KOTZÉ J.A.

In the High Court Lehohla J. on the 11th July, 1991 granted to the present respondent a rule nisi calling upon the present appellants to show cause why

- (a) they should not be arrested by the Morija police and committed to prison for contempt of Court;
- (b) they should not be interdicted and\or restrained from harvesting the present respondent's field situated at Ha Leutsoa;
- (c) they should not be ordered to desist and\or refrain from interfering with the present respondent's rights to the said field;
- (d) the present respondent shall not be permitted to harvest the said field; and

- (e) they should not be ordered to pay the costs of the application.

Paragraphs (a) and (b) were decreed to operate as an interim order with immediate effect.

On the 14th November 1991, Kheola J. notwithstanding argument in opposition to the confirmation of the rule did confirm the rule and committed the present appellants to prison for "contempt". The present is an appeal against the said confirmation inter alia on the ground that Kheola J. erred in law in holding that under the circumstances of the case the present appellants were guilty of contempt of court. The learned Judge did not furnish written reasons for his decision.


It is doubtful whether, in granting the rule nisi on 11th July, 1991, Lehohla J. was justified in incorporating therein paragraph (a) since the original ex parte application contained no such prayer. Be that as it may, it is unnecessary in the view that I take of the matter, to consider this feature of the appeal.

The affidavit in support of the relief sought by the present respondent alleged that the appellants were "ploughing and cultivating" the disputed field at Ha Leutsoa. It is upon

this allegation that the application to the Court a quo was based. The activity which the appellants were restrained from conducting with immediate effect was that of harvesting the said field. The application is devoid of any factual allegation that the appellants harvested the field at any relevant time. There is an allegation that a court order declared ownership of the field to vest in the present respondent. It does not follow from a mere declaration to this effect that a person other than the owner may not plough and cultivate the field in question.

Contempt of court flowing from disobeying its order requires a wilful disregard and a deliberate flouting thereof. There is no question in the present case of the field at Ha Leutsoa having been harvested in defiance of the order. Nor can it be successfully contended, as Counsel endeavoured to do, that "ploughing and cultivating" the field constitutes interference with the present respondent's rights in defiance of paragraph (c) of the rule. This portion of the rule does not form part of the interim order which was put into immediate effect.

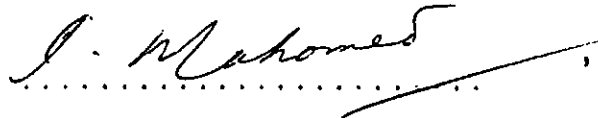
Having regard to the foregoing I am of the view that the appeal should be upheld with costs and the confirmation of the rule nisi set aside with costs.



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G.P.C. KOTZÉ

JUDGE OF APPEAL

I agree. It is ordered accordingly



I. MAHOMED

PRESIDENT

I agree



L.W.H. ACKERMANN

JUDGE OF APPEAL