

IN THE HIGH COURT OF LESOTHO

In the matter between:

MAKHOTSO RAMAHLOLI	APPLICANT
AND	
JACOB RAMAHLOLI	RESPONDENT

JUDGMENT

Delivered on the 11th April, 1994 by the Honourable Mr.
Justice W.C.M. Maqutu, Acting Judge.

This application was brought *ex parte* by the applicant
for an order in the following terms:

"1. That a rule nisi be issued returnable on a
date to be determined by this Honourable
Court calling upon the Respondent to show
cause, if any, why,

(a) The Respondent shall not be
interdicted from interfering with
Applicant's piece of land situated
at Boinyatso Khubetsoana in the
District of Maseru.

(b) The Respondent shall not be

/...

ordered to refrain from harassing people who have been employed to work on the abovenamed site.

(c) The Respondent shall not be ordered to pay Costs of Suit.

2. That prayer 1(a) and b shall operate with immediate effect as an interim order."

On the 10th February 1994 the Court directed that Respondent be served. After several postponements the matter was heard on the 29th March, 1994.

There was no need to get an order against Respondent before Respondent was heard. There were no special circumstances making such an order necessary.

This was an application for *mandament van spolie* which was not couched in proper terms.

Respondent queried the fact that Applicant claimed the piece of land as hers. Quite correctly there is no individual ownership of land. What is allocated is the right to use and occupy land because land belongs to the Basotho people. Nevertheless it was clear what Applicant meant. Applicant meant he owns the right to use and occupy

/...

the land in question and Respondent was interfering with that piece of land and Applicant's right to use it by harassing Applicant's employees through whom Applicant uses the land.

There is no doubt if Applicant could substantiate his claim then he had a clear right which Courts ought to protect.

It seems on the face of JC 271/87 (a judgment of the Judicial Commissioner's Court) that Applicant and the late Sello Ramahloli successfully represented the Ramahloli family against Elliot Mokhethi Matlakeng. In that case Applicant is styled as the wife of the late Sello Ramahloli. See page 2 of the judgment JC 271/87.

Respondent defence is a strange one. At paragraph 4(b) of his Answering Affidavit he claims the land in question was allocated to him by his late father Mokhele Ramahloli on the 07/07/1981. This is unheard of because land can only be allocated by a chief. He produces a letter "JM1" that does not seem to have an endorsement from the chief to show the chief is aware of it. It is now a very common practice that documents with a testamentary effect such as "JM1" should pass before the chief.

In this letter "JM1" the position of the late Sello as

/...

heir is emphasised and that he claims this land as heir. There is also another letter "JM2" where the late Mokhele is said to give a directive that all land under his control should be given to his children and grand-children. A man is permitted according to Section 11 of the Laws of Lerotholi Part I to leave written instruction distributing his property provided he does not deprive the heir of a greater part of the estate. "JM1" and "JM2" as they stand seem to deprive the heir of a greater part of the estate. None of them have been before the chief as it is customary so to do. "JM1" is a letter to Respondent, that is not how a document with a testamentary effect is written.

It seems to me that Respondent should have approached courts of law to enforce his rights against Applicant. At paragraph 8 he makes a general bare denial of specific allegations against him. In application proceedings affidavits constitute both pleadings and evidence. It is trite law that bare denials are unacceptable. As Murray A.JP said in Room Hire Co. (Pty) Ltd. v Jeppe Street Mansions (Pty) Ltd. 1949 (3) SA 1155 at 1162 to 1163:

"The crucial question is always whether there is a real dispute of fact ... it does not appear that a respondent can defeat the applicant merely by bare denials such as he might employ in pleadings ..."

/...

What follows this bare denial of Respondent sums up the self-help attitude of Respondent when he says:-

"I do aver that I have each and every right to protect my property against trespassers and concubines like applicant. Even if it may be at all costs I am prepared to suffer, fighting over my rights when same are infringed by concubines."

It is against people such as Respondent or people with a similar attitude that the remedy of *mandament van spolie* was devised. These are days of the Rule of Law not the violent times where might was right and people were expected to fight to prove the justice of their cause. Applicant is a woman, (even if she was a man as strong as Respondent) she was obliged to come to court to protect her right of possession.

Far from it being the applicant to approach court, it is in fact the Respondent who ought to approach Court. Respondent is obliged to prove the concubinage of Applicant and wrest from her by due process of law what she came to possess by virtue of the marriage that Respondent now challenges. If indeed he believed "JM1" and "JM2" constitute a will (which they are not) Respondent was obliged to come before court to claim what he considers as a bequest in his favour. I have already said what every man

/...

in Lesotho know (namely) that only a chief can allocate soil, an individual cannot.

Even if a chief has allocated a piece of land to an individual, such an individual cannot take such a land from those who are in possession. He must come before courts of law to vindicate his right. The attempts by Respondent to secure a lease do not help Respondent at all. He cannot or could not enforce his rights under the lease-so-called without the aid of the courts. "JM3" has nothing to do with this site. It is improper to use the process of registration of sites as a means to take away sites that are in other people's possession.

The concubinage of Applicant is a strange one. "JM1" treats her child Khotso as legitimate. Everybody including Respondent accepted her as the wife of the late Sello while she was being sued for this land. See page 2 of the Judgement JC 271/87. To suggest that Applicant was a mere concubine (merely because the late Sello had a wife known as Manapo) in a country that permits polygamy does not help. Similarly to claim no *bohali* was given after Sello's death seems also futile. A man who was once married can marry as many women as he wishes without informing his parents or even brothers. Respondent does not even attempt to explain why Applicant not him represented Sello and the Ramahloli family in JC 271/87. Respondent only wants the benefits of

/...

Respondent's labours.

As already stated Respondent's reply consists of bare denials of specific allegations against him. It seems to me that Applicant asks for protection of her existing rights.

I therefore make the following order:

- (a) Respondent is interdicted from interfering with the piece of land in the possession of Applicant which is situated at Boinyatso Khubetsoana, Maseru except by due process of law.
- (b) Respondent is ordered to refrain from harassing people who have been employed by Applicant to work on the above-mentioned site.
- (c) Respondent is directed to pay costs of this application.

Delivered at Maseru This 11th Day of April, 1994.


.....
W.C.M. MAQUTU
ACTING JUDGE

For the Plaintiff : Miss M. Ramafole
For the Respondent: Mr. M. Mafantiri