

IN THE LESOTHO COURT OF APPEAL

C. OF A. (CIV) NO. 32\94
CIV\APN\401\93

In the matter between :

CHIEFTAINNESS MAQAJELA LEBONA

Appellant

and

MAPHOHLOANE LEBONA
MINISTER OF HOME AFFAIRS MASERU
ATTORNEY GENERAL

1st Respondent
2nd Respondent
3rd Respondent

Coram : Mahomed P
Browde JA
Kotzé JA

J U D G M E N T

Kotzé JA

The appellant is the widow of the late Chief Lebona Lebona who was the chief of the Thaba-Tsoeu ("the tribe"). Following on the death of her husband, the appellant was appointed as the Regent and the acting chief of the tribe, because her son Qajela, who was the lawful successor to the chieftainship was and still is a minor.

In May of 1993 the appellant was appointed to the Senate in Lesotho, by the King. Following that appointment, the

appellant purported to nominate the one Morena Mojalefa Ntena ("Ntena") as acting chief of the tribe in her place.

The Lebona family, however, decided to nominate the first respondent to the position of acting chief of the tribe. That nomination was accepted by the second respondent.

The appellant was dissatisfied with the purported appointment of the first respondent as acting chief and therefore brought an application in the court a quo for an order directing the respondents to show cause why the purported appointment of the first respondent as acting chief of the tribe should not be set aside and why the first respondent should not be restrained from exercising the powers of an acting chief without the permission of the appellant. A rule was granted in those terms but discharged on the return day by Kheola CJ substantially on two grounds -

The first ground was that the appellant's purported appointment of Ntena was irregular because she had failed to inform the Chief Officer of this fact in terms of Section 5(6) of the Chieftainship Act of 1968 ("the Act").

The second ground was that on an interpretation of Section 13 of the Act, the appellant was not free to nominate any person she choose to the position of acting chief in her place, that the person so nominated had to be the person who was next in the line of succession to the chieftainship after her son

Qajela and that one Taelé Nkhahle Phakiso Lebona ("Taelé") and not Ntene was the person so qualified to be appointed as acting chief. This reasoning is supported on behalf of the first respondent as acting chief.

Even assuming in favour of the first respondent that the interpretation of the Act favoured by the Court a quo was correct, it does not follow that the rule nisi should have been discharged, because the issue raised by the order prayed for by the appellant in the Court a quo, was not whether her nomination of Ntene as acting chief was regular and lawful, but whether the purported appointment of the first respondent was. Even if the nomination of Ntene was irregular, this would not assist the first respondent if his own appointment was not lawful.

The real difficulty with the purported appointment of the first respondent as acting chief, is that on his own admission he was not the person next in the line of succession to the chieftainship after the appellant's minor son Qajela. The person who was next in the line of succession was Taelé. On the first respondent's own argument, therefore Taelé and not the first respondent was entitled to the appointment as acting chief.

Counsel for the first respondent sought to meet this difficulty by Taelé's affidavit to the effect that he was not in a position to accept appointment as acting chief, and for this reason he had consented to the nomination of the first respondent as acting chief by the Lebona family on the 3rd of July 1993.

Counsel for the first respondent was understandably unable to contend that "the Lebona family" had any authority to appoint the first respondent as acting chief of the tribe. He was therefore driven to contend that Taele as the next person in the line of succession had nominated the first respondent as the acting chief. This however, is not what Taele himself says or what the evidence discloses as to what transpired at the meeting of the Lebona tribe on the 3rd of July 1993. What appears clearly from the evidence is that the Lebona family made the decision to nominate the first respondent as the acting chief. Taele was present at the meeting but did not purport to make the decision himself.

It therefore follows that the purported appointment of the first respondent was on the evidence irregular and that the appellant was entitled to the relief prayed for in the Court a quo.

I therefore make the following order :

1. The order made by the Court a quo is set aside and substituted by the following :

"The rule nisi is confirmed with costs"

2. The first respondent is directed to pay the

appellant's costs on appeal.

Dated at Maseru this 28th day of July, 1995



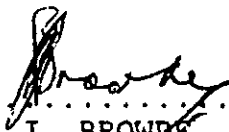
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G.P.C. KOTZE
JUDGE OF APPEAL

I concur



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I. MAHOMED
PRESIDENT OF COURT OF APPEAL

I concur



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J. BROWDE
JUDGE OF APPEAL