CIV/APN/53/95

IN THE HIGH COURT OF LESOTHO

In the matter between:

KHAUOE THABANG KHAUOE — **Applicant**

and

THE ATTORNEY GENERAL — **1st Respondent**
MOHATO BERENG SEEISO — **2nd Respondent**

J U D G M E N T

Delivered by the Honourable Acting Judge Mr Justice Enoch Dumbutshena on the 12th day of September, 1995

This application was brought to Court by Notice of Motion praying for a declaratory order in the following terms:

1. That the Act No.10, The Office of King (Reinstatement of Former King) Act, 1994 be declared null and void.

2. That any act which may have been made pursuant to this Act No.10 of 1994 be declared null and void.

3. That the Respondent be ordered to pay the costs of this application.

4. That the applicant be granted such further

and/or alternative relief".

Briefly the facts of this case are as follows: The King of Lesotho was King Moshoeshoe II. During March 1990 the ruling Military Council removed him from the office of King and Head of State. This was done in terms of Order 14 of 1990. There was a vacancy. The College of Chiefs designated Prince Mohato as King of Lesotho. He became King Letsie III. Meanwhile the Military Council had exiled his father to England. In mid 1992 King Moshoeshoe II returned to Lesotho.

In the meantime King Letsie III had, from his enthronement, decided to give up the throne on the return of his father to Lesotho.

In December 1994 King Letsie III became away that the College of Chiefs had designated his father King of Lesotho and Head of State. At the same time the National Assembly had passed a law "The Office of King (Reinstatement of former King) Act 1994." (Act No.10 of 1994) It was for the reinstatement of the King and it made provision for King Letsie III's succession to the throne. On 25 January 1995 King Letsie III left the throne and his father was reinstatd to his former position of King of Lesotho and Head of State.

Subsequent to the filing of the Notice of Motion the Law Society of Lesotho applied for the Society to be joined as an applicant in these proceedings. The application was refused. This application was followed by two others. Prince Mohato

Bereng Seeiso's application was allowed but that of Chieftainess Mantoetse Lesaoana Peete was rejected. Prince Mohato Bereng Seeiso was joined as second respondent. Chieftainess Peete a member of the College of Chiefs was said to have no locus standi. The Court was informed from the Bar that she appealed against that decision. On 7 July, 1995 this matter was set down for hearing on 7 and 8 September, 1995.

Mr. Tampi, with him Mr Makhethe, for first respondent, applied for the postponement of the hearing to 14 and 15 September 1995. Both Mr De Bruin, with whom Mr Olivier appeared for second respondent and Mr Matooane, for the applicant, objected to postponement. Mr. Matooane told the Court that the applicant had no prior notice of first respondent's intention to apply for a postponement. Mr. De Bruin indicated that his client had been advised by the first respondent of his intention to apply for a postponement of the hearing. The reasons for wanting postponement given to second respondent's legal representatives were different from those advanced in Court. Second respondent's attorneys wrote a letter to first respondent asking for substantial reasons for wanting to postpone the hearing of the case to 7 and 8 September. Second respondent did not reply to that letter. Now new and different reasons from those indicated when first respondent first expressed his desire to apply for a postponement have been advanced in court.

It is now said that first respondent briefed senior counsel in the Republic of South Africa. He cannot attend to day's

hearing because he is engaged in another matter in South Africa. Mr. Tampi informed the court from the Bar that he had sent fax messages to the said senior counsel and no replies had been received. On 5 September Mr Tampi telephoned the said senior counsel two days before the hearing of the matter. Counsel advised him to apply for a postponement. It is doubtful that counsel would have informed Mr Tampi of his inability to attend the hearing on 7 and 8 September and his desire to have the matter postponed to a convenient day had Mr Tampi not telephoned him.

The second reason for seeking a postponement was that Chieftainess Peete had filed a notice of appeal in the Court of Appeal. She is appealing against this Court's refusal to join her in these proceedings. Mr. Tampi contended that it would be inconvenient to hear and determine the application before her application was heard and determined by the Court of Appeal. This would have been a good and substantial reason for applying for a postponement. However the Court was informed by Mr. De Bruin that Chieftainess Peete was in the process of withdrawing her Notice of Appeal.

In the exercise of my discretion I dismissed the application and indicated that I would give reasons in this judgment. Here are the reasons:

(1) It appeared to me that the first respondent was not serious about wanting the

postponement of the hearing to a later date. He did not have substantial reasons. First respondent should have realised that the senior counsel he was briefing was not interested. He did not reply to fax messages sent to him. Had Mr Tampi not telephoned him on 5 September 1995 he may not have informed first respondent of his inability to attend the trial on 7 and 8 September 1995.

(2) The dates of the hearing of this matter were announced to the parties on 7 July 1995. All parties knew on that day that the matter had been set down for hearing on 7 and 8 September. It seems to me, assuming everything went wrong, that not much effort was taken to engage the services of senior counsel timeously.

(3) The fact that the applicant was not advised of first respondent's intention to apply for postponement and that he was only informed on the day the matter was heard is a factor I considered in rejecting the application.

(4) The Parties are all in Maseru and their legal practitioners are in Maseru. It would

have been easy for first respondent to inform them of his intention to ask the Court for postponement or to agree on suitable dates convenient to all the parties. In this case first and second respondents are on the same side. I believe first respondent would have readily cooperated with second respondent. And the fact that senior counsel was only contacted on 5th September makes me to believe that the application was not bona fide.

(5) Having read the papers it did not appear to me that first respondent would suffer any prejudice were the application refused. The first respondent was represented by Mr. Tampi and the second respondent was represented by Mr. De Bruin. The two respondents were more or less arguing the same points. The two respondents will benefit from each others' submissions.

(6) Although it is proper to allow an application for postponement especially the first time it is made, I was of the view that the first respondent would not suffer any prejudice while the applicant could be prejudiced by the postponement and that no

> order of costs would adequately compensate him. Besides the matter was causing uncertainty in the country.

See Myburgh Transport v Botha +/a S.A. Truck Bodies 1991 (3) S.A. 310 at 314 G-315J.

In this case the question of locus standi is paramount. The respondents allege that applicant has no locus standi. In his founding affidavit the applicant says he has locus standi and describes himself as follows:

14

> "I am a citizen of Lesotho by birth and I am at present forty-six years of age. As at the time of making this affidavit I have not been disqualified to register as an elector in terms of Section 57 (3) hence I qualify to vote or to be registered as an elector in elections of the National Assembly as envisaged by section 57 and 85 (3) of the Constitution.

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> I have a Constitutional right under section 85 (3) of the Constitution to vote for the approval of the bill, now Act No.10 of 1994.

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As a private citizen, apart from the Constitutional right vested upon me by section 85 (3) of the Constitution, it is my duty and right to uphold the Constitution, of this Country and to do everything legal to protect the same.

17

In my capacity as an attorney of the Courts of Lesotho, I have taken an oath to uphold the laws of this Country and to protect the Constitution.

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If the declaratory order, as prayed is not granted, not only that I will be allowing the infrigment of the Constitution, the Supreme Law, which I have to uphold and protect, but as an attorney, I will be allowing myself to be in alignment with illegal acts contrary to my oath."

In his written heads of argument Mr. Matooane submits that in order to determine whether applicant has locus standi or not

the Court should first determine whether Act 10 of 1994 should have been passed in accordance with the provisions of ;Section 85 or not. He argued that if the Act was not passed by Parliament in terms of section 85 (3) of the Constitution then Act No.10 of 1994 infringed upon applicant's rights as a qualified voter as envisaged by section 85 of the Constitution. This fact alone would be sufficient to entitle applicant to come to Court.

Applicant asserted in his affidavit that he had a constitutional right to vote in order to approve the passing of Act No.10 of 1994. In terms of section 85 (3) of the Constitution if a Bill amends any of the provisions mentioned in paragraph (a) of subsection (3) including section 45, before the Bill is submitted to the King for his assent it must be submitted to the vote of the electors. The applicant alleged that at the time of making his affidavit he was not disqualified to register as an elector in terms of section 57 (3) so he qualified to vote or to be registered as an elector in elections of the National Assembly as envisaged by sections 57 and 85 (3) of the Constitution.

Section 57 (3) reads:

"(3) No person shall be qualified to be registered as an elector in elections to the National Assembly who, at the date of his application to be registered -

(a) is, by virtue of his own act,

under any acknowledgement of allegiance, obedience or adherence to any foreign power or state; or

(b) is under sentence of death imposed on him by any court in Lesotho; or

(c) is, under any law in force in Lesotho, adjudged or otherwise declared to be of unsound mind."

It was contended on behalf of the applicant that the fact that applicant was qualified to vote or was an elector gave him locus standi because he is also an attorney and a protector of the Constitution which was infringed by the passing of Act No.10 of 1994.

It is difficult to understand how a person, if I am to believe the sworn facts in his affidavit, who is not yet registered as a voter can be deprived of his constitutional right to vote and how that fact alone gives him locus standi in this case.

Mr. Matooane, however, contended that if Act 10 of 1994 received royal assent contrary to section 85 (3) therefore any qualified voter may seek relief from the Court. He asserted that

Act 10 of 1994 was not submitted to voters and yet it altered section 45 (1) and (2) of the Constitution. I fail to understand how Mr. Matooane comes to that conclusion without the benefit of evidence of non-submission of the Act to the voters and without a clear understanding of what was altered or amended by Act No.10 of 1994. The facts in the founding affidavit do not lend support to this submission.

Besides there is nowhere in applicant's affidavit were reference is made to the proviso to subsection (3) of Section 85 which reads:

> "Provided that if the bill does not alter any of the provisions mentioned in paragraph (a) and is supported at the final voting in each House of Parliament by the votes of no less than two-thirds of all the members of that House it shall not be necessary to submit the bill to the vote of the electors."

Mr. Matooane argued that if an amendment was made by Parliament to section 45 of the Constitution without complying with section 85 (3) any qualified voter may seek relief from this Court. To support his contention he referred to the Minister of Interior and Another v Harris and Others 1952 (4) S.A. 769 (AD). He submitted that the sections considered by the Appellate Division in that case were similar to section 85 (3).

Section 152 of the South African Constitution at that time provided that: "Parliament may by law repeal or alter any provisions of this Act" The second proviso to section 152 however stated:

> "No repeal or alteration of the provisions contained in this section .... or in secs. 35 and 137 shall be valid unless the Bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed upon by not less than two-thirds of the total number of members of both Houses."

There was at that time in South Africa the struggle by government to remove coloured voters from the common roll in the Cape Province. The coloured voters resisted government attempts. The Courts were called upon to protect the interests of the coloured voters. Their rights as voters were constitutionally protected. They could not be removed from the voters roll unless through a method prescribed by the second proviso to section 152 of the South African Constitution. Parliament passed the High Court of Parliament Act, 35 of 1952. It was passed bicamerally instead of the Senate and the House of Assembly sitting together as required by law. It was wrong for Parliament to infringe the prescriptions in the second proviso to section 152.

In Minister of the Interior and Another v. Harris and Others, supra, at 779 E-G Centlirres C.J. remarked as follows:

"It is clear from secs. 35,137 and 152 of the Constitution that certain rights are conferred on individuals and that these rights cannot be abolished or restricted unless the procedure prescribed by sec. 152 is followed. In construing these sections it is important to bear in mind that these sections give the individual the right to call on the judicial power to help him resist any legislative or executive action which offends against these sections or, to put it in another way, these sections contain constitutional guarantees creating rights in individuals, the duty of the Courts, where the question arises in litigation, being to ensure that the protection of the guarantee is made effective, unless and until it is modified by legislation in such a form as under the Constitution can validly effect such modification."

I agree with Mr De Bruin that the above passage tends to support respondents' case. In Minister of the Interior and Another v Harris & Others, supra, Parliament acted contrary to the second proviso to section 152 cited above. In the instant case the applicant did not tell the Court how Act No.10 of 1994 was passed. Parliament might have complied with the proviso to section 85 (3). What is clear is that Act 10 of 1994 did not amend or repeal section 45 of the Constitution.

The South African Parliament by acting unlawfully infringed constitutionally guaranteed rights given by section 35, 137 and 152 of the South African Constituion. The Courts were called

upon to protect those rights. In the instant case no rights were infringed by the passing of Act 10 of 1994. There is therefore no justification for bringing an action to court asking for relief for something that did not happen.

It is difficult to come to the conclusion that the applicant was a registered voter or just a person qualified to be registered as a voter. He did not reply to allegations made by second respondent in his answering affidavit. The allegations were neither denied nor explained by applicant. The question whether he was qualified to be registered or was a registered voter remains unanswered.

To be an elector one must be a registered voter. Section 57 (5) reads:

> "57(5) Subject to the provisions of subsections (6) and (7), every person who is registered in any constituency as an elector in elections to the National Assembly shall be qualified to vote in such elections in that constituency in accordance with the provisions of any law in that behalf; and no other person may so vote".

In any event being an elector, an attorney who swore an oath to uphold the constitution and being a holder of any right claimed in terms of section 85 (3) of the Constitution do not

qualify one for locus standi.

A person who wants to institute an action must only sue on his own behalf. The right or interest which he seeks to enforce or to protect must be available to him personally. In the instant case the person who wants to institute an action must personally have an interest in the succession to the kingship. In AAIL (SA) v. Muslim Judicial Council 1983 (4) S.A. 855 (CPD) at 863H - 864A Tebbutt J remarked:

> "It is clear that in our law a person who sues must have an interest in the subject-matter of the suit and that such interest must be a direct one (see Dalyrymple and Others v. Colonial Treasurer 1910 TS 372). In P E Bosman Transport Works Committee and Others v. Piet Bosman Transport (Pty) Ltd 1980 (4) SA 801 (T) at 804B, Eloff J states that:
> 'It is well settled that, in order to justify its participation in a suit such as the present, a party.... has to show that it has a direct and substantial interest in the subject-matter and outcome of the application'.
> The learned Judge cited with approval the view expressed in Henri Viljoen (Pty) Ltd v. Awerbuch Brothers 1953 (2) SA 151 (O), approved by Corbert J in United Watch & Diamond Co (Pty) Ltd and Others v. Disa Hotels Ltd and Another 1972 (4) SA 409 (C), that the concept of a 'direct and substantial interest'

connoted 'an interest in the right which is the subject-matter of the litigation'. Corbertt J went on to say at 415H:

'This view of what constitutes a direct and substantial interest has been referred to and adopted in a number of subsequent decisions, including two in this Division... and it is generally accepted that what is required is a legal interest in the subject-matter of the action which would be prejudicially affected by the judgment of the Court'."

See also Lesotho Human Rights Alert Group v. The Minister of Justice and Human Rights; the Director of Prisons and the Attorney-General C. of A. (Civ) No. 27/94 at 8 - 9.

The fact that applicant is an attorney, a citizen of Lesotho and whatever does not give him a direct or substantial interest in the succession to the Office of the King of Lesotho. This is not a case where the liberty of the subject is involved in which an action can be brought by a person who has no direct or substantial interest in the subject-matter. The subject-matter in this case is the succession to the Office of the King. See Lesotho Human Rights Alert Group v. Minister of Justice and Others (supra) at 9., Wood & Others v. Ondangwa Tribal Authority and Another 1975 (2) SA 294 (A) at 306G - 307C.

I agree with Mr Tampi in his contention that the interest in the case must be recognised by law. In the instant case

second respondent or any other person in the line of succession could have objected, had there been justification for objecting, to the designation of the King. In fact section 45 (5) specifies the person with the right to object. It provides:

> "45 (5) Where any person has been designated to succeed to the office of King in pursuance of subsection (1) or (2), any other person who claims that, under the customary law of Lesotho, he should have been so designated in place of that person may, by application made to the High Court within a period of six months commencing with the day on which the designation was published in the Gazette, apply to have the designation varied by the substitution of his own name for that of the first mentioned person, but save as provided in this Chapter, the designation of any person for the purposes of this section shall not otherwise be called in question in any court on the ground that, under the customary law of Lesotho, the person designated was not entitled to be so designated."

It is clear from a reading of subsection (5) of Section 45 that the person entitled to object to a succession to the office of the King of Lesotho has himself a right to succeed the King. He must have an interest or substantial interest in the succession. His interest is his entitlement to the succession to the Office of the King of Lesotho.

Subsection (5) of Section 45 provides an answer to Mr. Matooane's reasons for claiming locus standi in this case. He contended that Act 10 of 1994 had altered Section 45 (1) and (2) of the Constitution by amending Customary Law. Therefore his client as an attorney had to uphold the Constitution. And that constitutes an interest entitling him to bring a case to this Court. His being an attorney creates an interest in the matter of succession, as any other citizen of Lesotho will have that interest. There was no merit in that argument

Act 10 of 1994 did not amend or alter Section 45 (1) and (2). In fact subsection (5) of Section 45 makes it clear that a designation cannot be challenged on the ground that "under the customary law of Lesotho, the person designated was not entitled to be so designated".

The applicant's contention that the former King Moshoeshoe II, in terms of section 45 (1) and (2) could not succeed to the office of the King of Lesotho because the only successor to the office of the King of Lesotho is his son, King Letsie III, falls away because the designation of any person for the purpose of section 45 "shall not otherwise be called in question in any court on the ground that, under the customary law of Lesotho, the person designated was not entitled to be designated."

Even if I were to assume that the applicant, for the reasons that he advanced in support of his claim is able to bring an action in Court challenging the designation of the former King,

had locus standi, the Constitution which he claims to defend and protect does not support his contention.

It was submitted on behalf of the applicant that the former King could only ascend to the throne in accordance with the provisions of section 45 of the Constitution, that is, through designation by the College of Chiefs if there was a vacancy in the office of King and not by Act No.10 of 1994.

The circumstances that led to the designation of King Moshoeshoe II by the College of Chiefs and the succession of the King to the throne are well documented in the answering affidavit of second respondent and supported by the affidavits of Chieftainess Peete, Annexure "A", the affidavit of Chief Lehloenya, Annexure "B" and those of other chiefs whose allegations the applicant did not deny or reply to in any manner.

The total effect of the case put up by the second respondent is that everything was done in terms of Section 45 (1) and (2) of the Constitution. There is ample supporting evidence.

Section 45 (1) and (2) provides:

"(1) The College of Chiefs may at any time designate, in accordance with the customary law of Lesotho, the person (or the persons, in order of prior right) who are entitled to succeed to the office of King upon the death

of the holder of, or the occurrence of any vacancy in, that office and if on such death or vacancy, there is a person who has previously been designated in pursuance of this section and who is capable under the customary law of Lesotho of succeeding to that office, that person (or, if there is more than one such person, that one of them who has been designated as having the first right to succeed to the office) shall become King.

(2) If, on the death of the holder of, or the occurrence of any vacancy in, the office of King, there is no person who becomes King under subsection (1), the College of Chiefs shall, with all practical speed and in accordance with the customary law of Lesotho, proceed to designate a person to succeed to the office of King and the person so designated shall thereupon become King."

In my view this case must be decided on the undisputed facts in the answering affidavit of second respondent and the supporting affidavits sworn to by members of the College of Chiefs. I summarise below some of the undisputed facts deposed to by second respondent and some members of the College of Chiefs.

In paragraph 3.2 of his answering affidavit second respondent deposed to having taken a decision that he held the throne for his father during his father's absence and urged the Military Council and the present Government to reinstate his father to the throne. And he abdicated the throne on 25 January 1995 on the basis that his father would be reinstated in terms of the law of the land including Customary Law.

In paragraph 4.1 he said the College of Chiefs designated his father, King Moshoeshoe II, as King of Lesotho. At the same time the National Assembly had passed Act No.10 of 1994.

As mentioned above these averments were supported or corroborated by members of the College of Chiefs, Chieftainess Peete, deposed in paragraph 7.1 of her affidavit to knowing second respondent's desire to abdicate the throne upon the return of his father. In paragraph 6.1 she said: "We were in agreement that whenever King Moshoehsoe II returns to the country, he would resume his functions as holder of the Office of King, All chiefs were in agreement".

It was argued on behalf of the applicant that Customary Law was not followed in the designation of King Moshoeshoe II. Chieftainess Peete said it was as did many other members of the College of Chiefs. (I remark as follows that even if it were not followed it would not entitle the applicant to locus standi).

She said in paragraph 7.2 of her affidavit: "In November

1994, the College of Chiefs resolved as per annexure "MPLI" according to which we designated in accordance with section 45 (1) and (2) of the Constitution, King Moshoeshoe II to the throne as King and Head of State. This document where my signature appears next to number 14 is a true copy of the original that was afterwards handed to the Minister of Home Affairs (responsible for Chieftainship and Local Government Affairs), for the purpose of informing government of the designation, and to have it published in the Government Gazette." Chief Lehloenya age 78 years deposed in his affidavit in similar terms.

The matters and allegations of facts in second respondent's answering affidavit and supporting affidavits were not disputed by the applicant or contradicted. The applicant for some reason regarded them as matters of law. There was, therefore, no replying affidavit. Those facts must in my view be accepted by the court. They are in my view overwhelming and compelling. It would be wrong in notice of motion proceedings to grant the relief prayed for by the applicant under these circumstances. See Pascon - Evans Paints v. Van Riebeeck Paints 1984 (3) SA 623 at 634 E-H where Corbett JA, as he then was, said:

> ".... the affidavits reveal certain disputes of fact. The appellant nevertheless sought a final interdict, together with ancillary relief, on the papers and without resort to oral evidence. In such a case the general rule was stated by Van Wyk J (with whom De Villiers JP and Rosenow J

concurred) in Stellenbosch Farmers' Winery Ltd v. Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (C) at 235E-G, to be:

'.... where there is dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order .... Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted.'

This rule has been referred to several times by this Court (see Burn-kloof Caterers (Pty) Ltd v Horseshoe Caterers (Green Point) (Pty) Ltd 1976 (2) SA 398 A-B; Tamarillo (Pty) Ltd v. B N Aitkin (Pty) Ltd 1982 (1) SA 398 (A) at 430-1; Associated South African Bakeries (Pty) Ltd v. Oryx & Vereinigte Backereien (Pty) Ltd en Andere 1982 (3) SA 893 (A) at 923G-924D). It seems to me, however, that this formulation of the general rule, and particularly the second sentence thereof, requires some clarification and, perhaps, qualification. It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order."

Mr. De Bruin pointed out in his argument that popularis actio of the Roman Law which recognised the right of a private citizen to bring an action to Court on behalf of other people without injury to himself was no longer recognised both in Roman Law and in our law. The person who sues must himself have an interest in the subject matter of the action and that interest must be a direct and substantial one. The exception is where the liberty of an individual is involved when the Court allows a relation or a friend to bring an action on his behalf. See Wood and Others v. Ondangwa Tribal Authority and Another, 1975 (2) SA 294 at 306G - 307C, Lesotho Human Rights Alert Group v. The Minister of Justice & Human Rights & others, supra, at 9.

To be fair to the applicant there was no claim made on his behalf that he was bringing the action on behalf of an association or the nation at large. He claims his entitlement to prosecuting his action on the ground that he is a citizen of Lesotho, a voter and an attorney sworn to protect the Constitution. He has failed to make a case that entitles him to bring an action to this Court on the ground that he has a direct interest in the subject-matter of the suit. Where in proceedings on notice of motion the only reliable evidence, uncontradicted or otherwise, is by the respondent an order cannot be granted.

There is one more matter I would like to attend to before closing this judgment. Mr. Matooane argued that it was a disregard of the Constitution to modify or alter Customary Law. Was he right? Should customary law never be modified or altered?

I think not. Customary law by its very nature is subject to modifications. It is a body of growing law which expands its perimeters as civic society develops and expands. In any event Parliament's duty is to make, amend and repeal laws. The making of laws is in the domain of the Legislature.

The Constitution of Lesotho provides for the modification of customary law. Section 154 (1) of the Constitution defines customary law in these terms:

> ".... 'customary law' means the customary law of Lesotho for the time being in force subject to any modification or other provisions made in respect thereof by any Act of Parliament".

If Act No.10 of 1994 had amended customary law, which it did not, the Constitution empowers it to modify or amend it. The modification of customary law cannot entitle the applicant to bring an action in this Court. It does not give him locus standi. No right of his has been ignored or infringed. He remains in this case without a substantial interest.

Accordingly the applicant does not have locus standi in judicio to bring an action or claim relief declaring Act No.10 of 1994 or any act which may have been made pursuant to Act No.10 of 1994 null and void.

In the result the application is dismissed with costs including the costs of employing two counsel.

ENOCH DUMBUTSHENA
ACTING JUDGE

12th September, 1995.

For Applicant - Mr. T.M. Matooane
For 1st Respondent - Mr. K.R.K Tampi and Mr. T. Makhethe
For 2nd Respondent - Mr. De Bruin and Mr. W.H. Olivier