

of the Central Court, but in any event such proceedings, as much as the documents pertaining to the decisions of the Principal Chief would not constitute evidence before this Court, that is,

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as to the truth of the contents thereof. Further the first respondents' own evidence on the point would seem to be hearsay.

One aspect which emerges from the above extract, is that the first respondent therein and throughout her affidavit laboured under misconceptions that a Headman is appointed by his immediate Chief. In this respect the applicant regards the reference to his being "appointed" by Chief Mopeli Hlasoa as a "pointing" or nomination under section 11 of the Act, but nonetheless avers in his replying affidavit that,

"In any event, I wish to categorically make the point clear that I had not been pointed by Chief Mopeli but I succeeded to the headmanship of Ha Maieane as of right".

There is no doubt that the applicant could have silenced all opposition with the production of the relevant gazette notice, (see e.g. the case of Molapo vs Teketsi (3) per Jacobs C.J. at P 238) but the point is, the first respondent concedes, as I have said, that the applicant held the post of Headman under her husband. Thereafter, under section 12 (1) of the Act, the post being hereditary, the tenure is for life. The Act provides for

the discipline to be exercised over Chiefs in default of their duties, I indeed provides under section 21 that wilful dereliction of duty is a criminal offence. But only a Disciplinary Committee appointed under section 15 of the Act can "deprive (a) Chief of

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all or some of the powers and duties of his office." Such deprivation or suspension, however, could not, it seems, be permanent, the Act providing in section 18 thereof that any such order would have effect "to an extent and for a period specified in such order ". There is no such evidence before me of any such disciplinary proceedings and there can therefore be no question that "in his (the applicant's) place second Respondent had been appointed" as Headman. Indeed, under section 13 (2) (b) of the Act had the applicant ever been deprived of his powers and duties by a Disciplinary Committee, his customary successor would exercise such powers and duties.

The second respondent makes no claim to Headmanship by the customary law of succession. The applicant does. The first respondent concedes that the applicant at one stage held the Headmanship of Ha Maieane. There is no evidence that he was lawfully deprived thereof, to any extent nor for any period. The applicant does not seek a declaration that he is statutorily recognized as Headman, which would raise the issue of a gazette notice. For the purpose of this application, therefore, on the

basis of the papers before me, the applicant has a clear right to protect. In all the circumstances therefore, the application is granted and the rule is confirmed with costs to the applicant.

Dated this 16th Day of January, 1995.

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(B.P. CULLINAN)

CHIEF JUSTICE