

IN THE HIGH COURT OF LESOTHO

In the Application between :

JEREMIA CHAKE MAIEANE

APPLICANT

v

CHIEFTAINNESS 'MAPIUS M. HLASOA

1ST RESPONDENT

and

THAPELO SEPHULA

2ND RESPONDENT

Before the Honourable Chief Justice B.P. Cullinan

For the Applicant : Mr K.K. Mohau  
For the Respondents : Mr S. Peete

Judgment

Cases referred to :

- (1) Leihlo vs Lenono (1976) L.L.R. 171;
- (2) Lefojane vs Regina (1960) L.L.R. 99;
- (3) Molapo vs Liketso (1991-93) L.L.R. 235.

The applicant avers that he has all along been "a customary Chief and or headman of the village of Ha Maieane, Tsime, Butha-Buthe district." The first respondent, however, since she took over the chieftainship of Tsime in 1981 from her ailing husband. Chief Mopeli Hlasoa, has refused to recognise the applicant as Headman of Ha Maieane, and has instead recognized the second respondent as such. The Court has granted a rule nisi in the matter calling upon the respondents to show cause why *inter alia*

they should not be "restrained from disturbing and or interfering with the Applicants' Headmanship of his area except for lawful cause. "There are other prayers ordered under the rule, but they are, I consider, covered by the terms which I have quoted. The order under the rule covering such terms, operated as an interim interdict with immediate effect.

It is clear that Chief Mopeli Hlasoa recognized the applicant as Headman. On 4th July, 1980 he wrote to the applicant thus :

"Headman Jeremia Chake,

I greet you amidst storms Chief. Chief please inform ..... to report here on Tuesday 8/7/80 to answer charges laid against him by ..... for ..... He should bring his witness along with him.

Yours

(Signature) Mopeli Hlasoa  
Chief of Tsime"

In September, 1981 the first respondent took over as Acting Chieftainess of Tsime. She avers that since then "I have never worked with him (the applicant) in that capacity (of Headman), instead I have always recognized the second Respondent as Headman of Ha Maieane." That obviously led to much friction. On 2nd September, 1985 the first respondent wrote to the District Secretary requesting him "not to accept the names of the purported Headmen of Tsime whose names have been submitted to you

because I as Chief of Tsime, have not appointed them."

Your names followed, including that of the applicant and one Mafa Potomane. The first respondent also observed in her letter that, "Those whom I appoint, you do not accept."

On 20th September, 1985, however, the Principal Chief of Butha-Buthe, M.K. Mopeli, decided a claim in his court as to the Headmanship of Ha Maieane thus,

"MONEUOA VS JEREMIAH CHAKE

CLAIM: THE RIGHTS OF CUSTOMARY HEADMANSHIP OF HA MAIEANE

I have heard the evidence of both sides together with statements made by both parties and I have found the evidence of the family given on behalf of Jeremiah Chake to be very strong and it states that your Moneuoa your father belongs to the Lehloara and even your mother still resides there presently and I find the rightful customary headman of Ha Maieane to be Jeremia Chake. This is the decision."

Apparently the first respondent resisted that decision, as two years later, on 21st September, 1987, the Principal Chief of Tsime wrote to the Chief of Tsime in the following terms:

"The Chief of Tsime,  
Tsime.

I greet you Chief,

Chief,

I hereby order you to publicly announce JEREMIA MAIEANE as the headman of Ha Maieane. This is according to the decision of the Principal Chief of 1985.

This should be done within five days. This order should be complied with without mistake.

I will be grateful for your understanding."

That order was apparently not complied with. It seems the applicant thereafter issued proceedings against the first respondent in the Court of The Principal Chief. The latter's decision in the matter on 16th December, 1988, reads thus :

"The Chief of Tsime is advised of my decision of the 20/09/1985 in which one Moneuoa Tefo was suing Jeremia Chake the headmanship of Ha Maieane and in which in accordance with the evidence of the family the Principal Chief made a decision to confirm Jeremia Chake to the headmanship of Ha Maieane.

The same decision of 20/09/1985 is therefore hereby confirmed. This is the decision and it must be respected."

Matters did not rest there, approximately one year later again, on 6th October, 1989 the matter once more came before the Principal Chief in his Court. His decision in the matter

reads thus :

"BEFORE PRINCIPAL CHIEF KUINI H. MOPELI ASSISTED BY THE  
EXECUTIVE OFFICER MR RAMOTSABI S. RALETHOLA AND THE CHIEF OF  
TSIME ON THE 6TH OCTOBER, 1989.

DECISION:

ON THE HEADMANSHIP OF HA MAIEANE AND HA POTOMANE

According to the evidence of both sides and particularly the  
letter of Chief Mopeli Hlasoa the Chief of Tsimé dated  
04/07/80 together with the oral evidence of Chief Mopeli  
Hlasoa the headmanship of Ha Maieane belong to the Maieane's  
and  
it is the inalienable right of the sons of Maieane which  
cannot  
be taken away by anybody.

Therefore Jeremia Chake is the headman of Ha Maieane according  
to the recommendation of the Maieane family.

As for Chief Napo Potomane, there is no dispute that he is the  
headman and it must be respected.

It is the decision of the Principal Chief of Butha-Buthe and  
it must be respected."

All of the above documents were received, not as evidence  
of their contents, but as evidence of their making, in other  
words of the fact that as early as 1980 the Chief of Tsimé,

Mopeli Hlasoa, recognized the applicant as Headman of Ha

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Maieane and that thereafter, if not before that, the Principal Chief did likewise, that is, two successive Principal Chiefs judging by the signatures and names on the documents before me. The first respondent contests only the latter document ("annexure 'C'"), that is, of 6th October, 1989.

She contests it on the basis that,

"I had never seen this annexure 'C' before. Secondly, if it had been through Chief Mopeli's letter (of 4/7/1980) and oral evidence that applicant be appointed Headman of Ha Maieane, in 1980, than the Principal Chief would not have written annexure 'E' (letter of 21st September, 1987) in 1987"

But it is the first respondent's own evidence that she took over the duties of Chief in 1981. Indeed there is her letter of 2nd September, 1985 addressed to the District Secretary, in fact quoted above: though she did sign the letter "*for the Chief of Tsime*", it was she who apparently wrote the manuscript letter, in which she used the words, "I, as Chief of Tsime: Certainly by 1990 she was writing and signing letters as the Chief of Tsime. All of this accords with the applicants averment that,

"during the Chieftainship of Chief Mopeli Hlasoa, before he became ill and his wife, the first Respondent, acted in his office, my portion had been made very clear, but since the first Respondent assumed office of the Chief of Tsime, there has been copious and endless problems and disturbances emanating from

the Respondents ....."

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The evidence, in particular that of the first respondent herself, indicates that from 1981 onwards she carried out the duties of Chief. The Principal Chiefs' letter of 21st September, 1987 was then addressed to the first respondent, and there is therefore nothing inconsistent between that document, whose admission the first respondent does not contest, and the document dated 6th October, 1989. Indeed three letters of protest written by the first respondent to the Principal Chief, on 23rd July, 1990, on 20th November, 1990 and again the 20th May, 1991, confirm the fact that two successive Principal Chiefs continued to recognize the applicant as Headman of Ha Maieane.

The contests of those letters are contrary in places to the first respondents' opposing affidavit. In the letter written in May 1991 she said :

"Further with due respect Chief, may I inform you that chief Mopeli Hlasoa was appointed headman of Ha Maieane by his grand-father, Hlasoa Molapo in 1930, and even to dates, that villages is still known as Lifefong Ha Mopeli. Secondly neither Jeremia's father nor his grand father have ever been appointed headmen of that village.

Further, Jeremia and one Moneuoa Tefo once appeared before Hololo Central Court disputing the Headmanship of the said village and the Court's ruling was that, since the village

belongs to Chief Mopeli, he is the only one who knows his

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buggle in the village".

That letter does not of course constitute evidence of its contents. Nowhere in her opposing affidavit does the first respondent refer to the village in question as other than Ha Maieane. Again, nowhere does she refer to the portions involved as that of a 'phala' (bugle). As Mofokeng J. observed in Leihlo vs Lenono (1) at page 174.

"A phala is nothing else but a village head. This position, moreover, is not hereditary. A phala is a servant of the superior headman or chief and he can be dismissed at any time (see Duncan, *Sotho Laws and Customs*, 1960 Ed. P.55)"

Throughout the opposing affidavit the first respondent refers continually to the first involved as that of "Headman of Ha Maieane". Quite clearly Chief Mopeli Hlasoa did not regard the applicant as a bugle. He addressed his letter of 4th July, 1980 to "Ramotse (Headman) Jeremia Chake" and then proceeded twice to address him as "Chief". Again, the first respondent herself in her correspondence with the District Secretary and the Principal Chief, continually referred to the post as that of Ramotse (Headman), as did the Principal Chief himself.

At this stage I observe that the word "Chief" is used in the



Chieftainship Act to describe "a Principal Chief, a Ward Chief and a Headman and any other Chief." I have difficulty in

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appreciating the import of the words, "any other Chief," but in any event they serve, if nothing else, to emphasise the fact that a Headman is regarded as a Chief. That no doubt is why the applicant was so addressed by the Chief of Tsime. It will be seen that under sections 10 and 11 of the Chieftainship Act that appointment to the post of Chief, or Headman, is a matter of hereditary succession : see Lefojane v Regina (2) per Elyan J. at p. 102 & Leihlo v Lenono (1) per Mofokeng J. at P.176.

In this respect the applicant, in his replying affidavit, states that.

"I inherited my headmanship from my parents and grand parents who were headmen long before the 1st Respondents acted for her husband. Before she acted, I had already been working in this capacity with Chief Mopeli, her husband."

Mr Peete points to the fact that the applicant has not produced any Gazette to show that he, or his father, have, under the Act, been recognized as a Headman : he submits that the onus is upon the applicant to show that he is a gazetted Headman and it is not for either of the respondents to show otherwise : he submits in particular that the appointment previously held by the applicant was no more than that of a bugle, which could be terminated at any time by the immediate Chief, that is, the Chief

of Tsime, under the direct authority contained in the provisions of section 5 (4) of the Act.

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But that, as Mr Mohau submits, in contrary to the case made out by the first respondent in her opposing affidavit, and indeed by the second respondent, who has contented himself with swearing an affidavit in which he deposes that "I hereby verify that whatever she says about me in her affidavit is true and correct", namely, that he was appointed Headman in place of the applicant. The point is, that the first respondent conceded in her opposing affidavit that at one stage the applicant was Headman of Ha Maieane. It seems to me that thereafter she is estopped from submitting, through her Attorney, that the applicant held the post of no more than a bugle. In her opposing affidavit she overs.

"It is true that at one stage during the Chieftainship of Chief Mopeli Hlasoa applicant worked as a Headman of Ha Maieane having been appointed by Chief Mopeli, but when I started acting as Chief of Tsime. Applicant had abandoned his duties and in his place second Respondent had been appointed. The evidence pertaining thereto had been given by Chief Mopeli Hlasoa in CC 77/85 Hololo Central Court dated the 14th March, 1986."

The applicant contests the allegation that he had "abandoned his duties". The first respondent did not annex the proceedings

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 apposition 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 writ is confirmed with costs to the applicant.

Dated this 16th Day of January, 1995.

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(B.P. CULLINAN)

CHIEF JUSTICE