

C. OF A. (CIV) NO.14 OF 1996

IN THE LESOTHO COURT OF APPEAL

In the matter between:

IKETSETSENG PRIVATE SCHOOL
'MASECHELE KHAKETLA

1ST APPELLANT
2ND APPELLANT

AND

BALE MALEE
M.M. SECURITY (PTY) LTD
IKETSETSENG PRIVATE SCHOOL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

HELD AT MASERU

CORAM:

STEYN AP
KOTZE JA
VAN DEN HEEVER AJA

J U D G M E N T

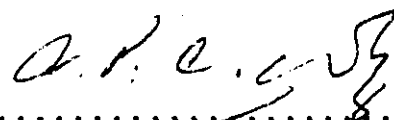
KOTZE' J A

In the High Court Mrs Khaketla purporting to be the "proprietor" of Iketsetseng Private School (the school) applied for a spoliation order against one Bale Malee and M.M. Security on the strength of allegations that the said respondents were replacing locks to portions of the school building. A rule nisi originally granted was not confirmed - hence this appeal. The ownership (or proprietorship) claimed by Mrs Khaketla is seriously in doubt and indeed unproven. It is undisputed that after protracted litigation this Court, during 1993 placed the ownership of the school property in the hands of two trustees and

divested Mrs. Khaketla thereof. In her founding affidavit in the present matter she admitted that she "did not make the said handovers." It follows that her claim of ownership cannot be sustained. Small wonder therefore that confusion set in: the school at one stage became both "applicant" and "respondent" in the formal pleadings and affidavits filed in the High Court, the school and Mrs Khaketla featured as applicant and respondent respectively and Mr. Phoofolo could, despite repeated enquiries by members of the Court, not dispel the conclusion that a determined effort was afoot to obscure the identity of the person responsible for initiating the proceedings and whose possession was allegedly disturbed. I hasten to stress that no impropriety by Mr. Phoofolo is suggested.

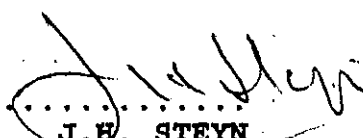
It is clear from the above introductory remarks that the failure to establish whose possession, if any, was disturbed justified the discharge of the rule albeit on a different ground and precludes this Court from upholding the appeal.

It follows that the appeal must be dismissed. It remains to deal with the question of costs. Mrs. Caroline 'Masechele Khaketla has been identified as the initiator of the abortive application for a spoliation order. Regard being had to the Court order of 1993 which divested her of the school property, the absence of merit and resultant abuse of the process of the Court, I am of the view that an order of costs on the appropriate scale between attorney and client should be made against Mrs Khaketla.



G.P.C. KOTZE
JUDGE OF APPEAL

I agree.



J.H. STEYN
ACTING PRESIDENT

The appeal is dismissed. Costs are awarded against Mrs Caroline 'Masechele Khaketla on the appropriate scale between attorney and client.

I agree



L. VAN DEN HEEVER
ACTING JUDGE OF APPEAL.

Delivered at Maseru on 29th June, 1996.