

C. Of A.(CIV) NO.10 OF 1997

IN THE LESOTHO COURT OF APPEAL

**In the Appeal of :**

**CHIEF LECHESA MATHEALIRA                      Appellant**

**Vs**

**PEETE MOLAPO    Respondent**

**Held at : MASERU**

**Coram :**

**BROWDE, JA  
BECK, AJA  
GAUNTLETT, AJA**

**J U D G M E N T**

**BECK, AJA**

The appellant, who was the second respondent in the court *a quo*, is the principal Chief of Tsikoane, Peka and Kolbere. The first respondent in the court *a*

*quo* is the Chief of Linots'ing, Leribe, and he is subordinate to the appellant. He did not oppose the application in the court *a quo* and he is not a party to this appeal.

The respondent in this appeal, who was the applicant in the court *a quo*, was granted an order in the following terms:-

- “1. Respondents are directed to consider and deal with Applicant's formal objection within fourteen(14) days after service of this order, which objection concerns the introduction and placement of the current holder of office of chief of LENYAKOANE, LINOTS'ING, LERIBE.
2. Respondents must advise applicant in writing of their decision, after due consideration of his objection, within seven (7) days of such decision having been arrived at.
3. 2nd Respondent to pay the costs of this application”.

In his founding affidavit the present respondent averred that on 6 October 1995 one Ntholi Ramatekoa was formally introduced by the Chief of Linots'ing to the public of Lenyakoane as the Chief of Lenyakoane. He went on to aver that on 16 October 1995 he wrote to the Chief of Linots'ing objecting to this introduction and that he sent a copy of his letter to the appellant. He annexed to his founding affidavit a fair copy of the letter that he wrote, which reads as follows :-

“

**Lenyakoane Ha Setho**  
P.O. Maputsoe  
October 16 1995

Chief Mokokoana M Jonathan  
Linots'ing  
Leribe  
Lesotho

Chief

Re: Objection to the placement of Ntholi Ramatekoa to the  
Chieftainship of Lenyakoane

It has come to my knowledge that on Friday 6\10\95 you introduced Ntholi Ramatekoa before the people of Lenyakoane whereupon you placed him as a successor to the Chieftainship of that village after the death of his father Selebalo Ramatekoa.

By this letter I raise an objection for the following reasons :-

- 1 - I waited for a long time due to some confusion in the Ramatekoa family concerning nomination of a successor to the Chieftainship of the village. Other than the family problem, the people of Lenyakoane informed you by actions and in writing that they would not accept Ntholi Ramatekoa as their chief. They showed you clearly that they wanted to be ruled by the son of Chief Setho Mokokoana, being I Peete S. Molapo for the reasons stated in their letter. Instead of acting in accordance therewith, you placed Ntholi Ramatekoa regardless of the wish of the people and the magnitude of the possible administrative problems thereby caused in the area under your jurisdiction.

Since by virtue of placing Ntholi Ramatekoa you have demonstrated that there is a successor to the Chieftainship of Lenyakoane, much as I am not aware that the family agreed on this matter, I hereby object to that placement on the ground that, chief, you should take it that I ought to be the chief of Lenyakoane on the basis that my father was placed on the area by Chief Mokokoana I.

I attach herewith a letter addressed to me by the people of Lenyakoane, which I believe its contents to be clearly self-explanatory, especially on my second point concerning the placement of my father in the area of Lenyakoane.

I shall be grateful for your co-operation in this matter.

Yours

**PEETE S. MOLAPO**

C.C. Chief Lechesa Mathealira  
Tsikoane  
Leribe.”

The present respondent then concluded his founding affidavit by stating his grievance as follows :-

“ -6-

Respondents have simply ignored my objection and have not even seen fit to accord me a courtesy of an acknowledgement of receipt thereof.

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I am prejudiced by the actions of Respondents as public authorities who are failing to take the necessary measures to deal with my objection where I have resorted to correct procedures. I am of the view that I ought to have assumed the office of chief of Lenyakoane in place of **Ntholi Ramatekoa**. My prejudice is further exacerbated by the fact that no prior notice was issued of First Respondent's actions to enable me to act prior thereto or timeously.

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WHEREFORE I am making this affidavit in support of the prayers

contained in the notice of motion”.

In his opposing affidavit the appellant confirmed that he received a copy of the above-mentioned letter of complaint. He further stated that in March 1995 he was advised by the Chief of Linots’ing that Ntholi Ramatekoa had been nominated by the Ramatekoa family as the successor to the headmanship of Lenyakoane following the death of his father, headman Selebalo Ramatekoa, and that he had duly approved of the nomination and had “placed” Ntholi Ramatekoa as the headman of Lenyakoane with effect from 26 January 1995. He raised three preliminary arguments against the application brought by the present respondent, one of which was that “The application is irregular in that it does not comply with the provisions of Section 11(2) of the Chieftainship Act 22 of 1968 as regards the prayers it seeks”.

Section 11 of the Chieftainship Act falls in Part III of the Act which deals with succession to the office of Chief. Sub-sections (1) and (2) of section 11 are in the following terms :-

“(1) The person (or persons, in order of prior right) entitled to succeed to an office of Chief may at any time be nominated by that Chief during his lifetime (or by his family if he is deceased or if he is unable, by reason of infirmity of body or mental incapacity or other grave cause, to make such a nomination) by means of a public announcement

of the nomination of that person (or those persons, in order of prior right) by that chief or by a senior member of his family if he is unable as aforesaid to make that nomination. The public announcement shall be made at a pitso representative of all Chiefs and other persons in respect of whom the person (or any one of the persons) nominated would, if he succeeded to the office of Chief, exercise the powers and perform the duties of that office.

(2) If the nomination of a person has been duly announced in pursuance of the provisions of subsection (1), and any other person claims that the person nominated is incapable of succeeding, or that some other person who is capable of succeeding should have been so nominated instead of the person who was nominated, the person so claiming may apply to a court of competent jurisdiction to have the nomination set aside or varied accordingly.”

It is apparent from the letter that the respondent sent to the appellant and from paragraph 7 of his founding affidavit that the respondent claims that he is capable of succeeding to the headmanship of Lenyakoane and that he should have been so nominated instead of Ntholi Ramatekoa. The matter is therefore one that falls squarely within the provisions of section 11(2) of the Chieftainship Act. That being so, the forum appointed by the Act to deal with the respondent's claim is a court of competent jurisdiction, and not the Chiefs to whom he addressed his claim. It seems obvious that section 11(2) of the Act is conceived as much in the interest of the person nominated as in the interest of a dissatisfied claimant by stipulating that claims of this nature are to be brought before a court of competent jurisdiction for adjudication.

*Mr Ntlhoki*, who appears for the respondent, accepts that his client's claim is one that falls within the provisions of section 11(2) but he has submitted that before such a claim may be brought before a court of competent jurisdiction it must first be raised before the Principal Chief of the area and that the latter has a duty in law to decide whether or not to uphold the claim. That duty, he submits, is created by implication by section 6 of the Chieftainship Act. Section 6 falls in Part II of the Act, which Part deals with the office of Chief, the functions of that office and the power to regulate those functions. The section reads as follows :-

“6(1) It is the duty of every Chief to support, aid and maintain the King in His Government of Lesotho according to the laws of Lesotho, and subject to their authority and direction, to serve the people in the area of his authority, to promote their welfare and lawful interests, to maintain public safety and public order among them, and to exercise all lawful powers and perform all lawful duties of his office impartially, efficiently and quickly according to law.

(2) A Principal or Ward Chief has the power and the duty to order any other Chief in his area of authority who is immediately subordinate to him to do or omit to do anything that it is lawful and necessary to do or omit to do, in the interests of the matters mentioned in the preceding subsection, and it is the duty of that Chief to comply with that order.”

Section 6, as is apparent, is a general section and it is in a part of the Act that is not concerned with matters that are germane to succession to the office of Chief, which are separately governed by Part III of the Act and with regard to which, in a

situation such as the present, section 11(2) spells out what must be done. The implication that *Mr Ntlhoki* contends should be read into section 6 would conflict with the procedure that is enjoined by section 11(2) and his submission is untenable.

In effect therefore, after Ntholi Ramatekoa had been formally nominated, the appellant and his co-respondent in the Court *a quo* were *functus officio*, and in addressing his claim to them instead of applying to a court of competent jurisdiction for its adjudication, the respondent chose the wrong forum. His application for a *mandamus* upon them to deal with his claim and to give a decision on it was thus misconceived. Not only was there no duty in law cast upon them to do what he required them to do, but they were actually precluded from doing so by the provisions of section 11(2) of the Chieftainship Act.

Accordingly the appeal must be allowed with costs and the order of the Court *a quo* is set aside and is substituted by an order dismissing the application with



costs.

C.E.L. BECK  
Acting Judge of Appeal

I agree :

J. BROWDE  
Judge of Appeal

I agree :

J.J. GAUNTLETT  
Acting Judge of Appeal

Delivered this <sup>20<sup>th</sup></sup>.....day of June, 1997