

CIV/A/14/2000
IN THE HIGH COURT OF LESOTHO

In the matter between:

TAOLI LESETLA	APPLICANT
and	
MMATLHORISO MATSOSO	RESPONDENT

JUDGMENT

Delivered by the Honourable Mr. Justice M.M. Ramodibedi on the 22nd day of November 2001

The Applicant just won't let up on this Court's ruling of the 15th day of August 2001 to the effect that the Central and Local Courts have no jurisdiction to administer the common law or common law claims and that their jurisdiction in terms of what law to apply is circumscribed within the four corners of Sections 6, 9 and 10 of the Central and Local Courts Proclamation 62 of 1938. Undaunted in his spirited determination that customary law has developed sufficiently for the Central and Local Courts to

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administer the common law (self defeating and contradictory as it is) he has once more come before me and this time he applies for a certificate for leave to appeal to the Court of Appeal in terms of Section 17(1) of the Court of Appeal Act 1978.

Indeed since the decision of this Court as set out above was a decision given in the Court's civil appellate jurisdiction, Section 17(1) of the Court of Appeal Act 1978 requires that any person aggrieved by any such judgment of the High Court may appeal to the Court of Appeal with leave of that Court or upon the certificate of the Judge who heard the appeal on any ground of appeal which involves a question of law but not on a question of fact.

The facts giving rise to the application before me lie in a narrow compass and are to be found in the main judgment which should be read together with the instant one herein in order to avoid unnecessary repetition. Suffice it to say that Applicant sought and obtained damages against Respondent's late husband

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(the deceased) in the Central and Local Courts for injuries sustained by his wife in a motor vehicle accident. The latter had been given a lift by the deceased at her own special request. The deceased appealed against the aforesaid award of damages and while the matter was pending in the Judicial Commissioner's Court he applied on legal advice to the Magistrate's Court for review on the ground that the Central and Local Courts had no jurisdiction in the matter, a view that was upheld by both the Learned presiding Magistrate and this Court as previously stated.

It will no doubt be sufficient for me to say at this stage that the main consideration in an application for leave to appeal is whether the Applicant has a reasonable chance of persuading a Court of Appeal that no reasonable court could have come to the conclusion

arrived at by the lower court. This is generally referred to as prospects of success on appeal. I take comfort in the view that I take of the matter from the principle laid down by the Court of Appeal per Van Winsen JA in *Letsoela and Another v Letsoela*

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1980-84 LAC 275 at 277 wherein the Learned Judge of Appeal stated the following:

"The application for leave to appeal can only succeed if this Court were satisfied that the Applicants have a reasonable chance of persuading a Court of Appeal that no reasonable court could have come to the conclusion arrived at by the trial Court."

I observe at once that Adv Teele for the Applicant did not peach his submission at the level that no reasonable Court could have come to the conclusion that the Central and Local Courts have no jurisdiction to administer the common law as in casu. If I understood him correctly he urges the Court to find that customary law is not static and that it has developed sufficiently to adequately cater for the common law in the strict sense.

In my view Adv, Teele's submission falls to be rejected for a variety of reasons but it shall no doubt suffice to mention only two:-

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- (1) Conferment of jurisdiction on Central and Local Courts is clearly not the function of the courts but is the sole preserve of the Legislature in terms of Section 6 of the Central and Local Courts Proclamation which provides as follows:

"Every Central and Local Court shall have and may exercise civil jurisdiction, to the extent set out in its warrant and subject to the provisions of this Proclamation, over causes and matters in which the defendant is ordinarily resident within the area of the jurisdiction of the Court, or in which the cause of action shall have arisen within the said area: Provided that notwithstanding anything contained in this or any other Proclamation, such jurisdiction shall be deemed to extend to the hearing and determination of suits for the recovery of civil debts due to His Majesty under the provisions of any law, where such jurisdiction has been expressly conferred upon a Central or Local Court under section nine : Provided further that civil proceedings relating to immovable property shall be taken in the Central or Local Court within the area of whose jurisdiction the property is situated."

- (2) Various considerations obviously come into play in conferring jurisdiction on any court such as for example the training, skill and competence of the court to deal with the cases for which jurisdiction is conferred. It was no doubt for this

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reason that the Legislature in its own wisdom found it fit to confer jurisdiction on Central and Local Courts only for those matters appearing in the courts' warrants and to those specifically mentioned in Sections 9 and 10 of the Central and Local Courts Proclamation. I consider therefore that if customary law has developed sufficiently as submitted by Adv Teele this is a matter for the Legislature and not for the courts of law regardless of how desirable and expedient it may be.

Be that, as it may, it is also true to say that central and local courts' presiding officers are not trained in common law and are therefore not competent to deal with cases involving the common law or interpretation of statutes as in *casu*. Needless to say that in motor accident cases common law concepts such as negligence, the duty of care doctrine and contributory negligence etc come into play. Experience will show that those are difficult complex issues requiring formal training and skill. They are therefore best left to

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the forensic experts in the field namely the common law courts.

In my view, and leaving aside considerations of sympathies and emotions as submitted by Adv Teele, it requires to be stressed that the Central and Local Courts have no jurisdiction to administer any law other than that which is expressly set out in Sections 9 and 10 of the Proclamation.

It is no doubt useful at this stage to reproduce Sections 9 and 10 in order to highlight what I have endeavoured to state above. The two sections provide as follows:

- 9) Subject to the provisions of this Proclamation a Central or Local Court shall administer –
 - a) the native law and custom prevailing in the Territory, so far as it is not repugnant to justice or morality or inconsistent with the provisions of any law in force in the Territory;
 - b) the provisions of all rules or orders made by the Paramount Chief or a Chief, Sub-Chief or Headman under the Chieftainship (Powers) Proclamation, and in force within the area of jurisdiction of the Court;

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- c) the provisions of any law which the Court is by or under such law authorised to administer; and
 - d) the provisions of any law which the Court may be authorised to administer by an order made under section ten. (Emphasis added).
- 10) The Minister, with the concurrence of the Chief Justice, may by order confer upon all or any Central or Local Courts jurisdiction to enforce all or any of the provisions of any law specified in such order, subject to such restrictions and limitations, if any, as the Minister, with the concurrence of the Chief Justice, may specify."

The word "shall" used in Section 9 is clear proof of the peremptory nature of the section. It means therefore that central and local courts have no discretion but are obliged to administer customary law. See *Robert P. Ntle v Khubelu Khaketla* 1985-90 LLR 213 at 216 per Goldin JA.

Faced with the stark reality of the above quoted sections and admittedly pressed by myself Adv Teele was unable to point to any section that confers jurisdiction on Central and Local Courts to administer common law. He did suggest out of sheer desperation,

as I observed, however, that Section 6 of the Laws of Lerotholi confers jurisdiction on the Central and Local Courts to administer common law. With respect counsel has completely misconstrued the true import of that section which reads as follows:-

"No African shall be liable for a wrongful act or debt of his adult relative or friend, but the head of the family may be held liable for a wrongful act or debt of his minor children."

In my judgment this Section must be read in conjunction with Sections 9 and 10 of the Central and Local Courts Proclamation. Viewed in that light the words "wrongful act" used in the section refer to customary law wrongs and not common law. In this regard it must always be remembered that what Paramount Chief Lerotholi did in attempting a codification of customary law as he did in the Laws of Lerotholi was to focus attention solely on Basotho customs. It was never his intention to prescribe for common law which was a foreign concept to him and in which he was not trained for that matter.

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In the light of the foregoing considerations this Court was constrained to hold as follows on page 9 of its judgment in the appeal in question (if I may be permitted to quote from my own judgment):-

"As I see it, it is in the very nature and scope of the proclamation that the Central and Local Courts are empowered to deal only with native law and custom and such provisions of law as are specifically conferred on them under the proclamation or by the Minister acting with the concurrence of the Chief Justice. As creatures of statute they have no power to operate beyond this clearly defined jurisdiction."

It is my considered view that on a conspectus of all the foregoing factors the Applicant has no reasonable prospects of success. Put differently there is no reasonable chance of Applicant being able to persuade a Court of Appeal to that effect.

In the result the application is dismissed. In view of the fact that the application was unopposed, there shall be no order as to costs.

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MM. Ramodibedi
JUDGE
22nd November 2001

For Applicant : Adv. Teele
For Respondent : No Appearance