CIV/APN/383/91

IN THE HIGH COURT OF LESOTHO

In the Application of :

SEKABATHO MAHAO	**Applicant**
vs	
MAGISTRATE(LENTSOE)	**1st Respondent**
'MASETLOKOANE SETLOKOANE	**2nd Respondent**
NTAHLI MAHAO	**3rd Respondent**
SEKONYELA RAFUBE	**4th Respondent**

R E A S O N S F O R J U D G M E N T

filed by the Hon. Mr Justice M.L. Lehohla on the 31st day of March, 2001

After perusal of the papers, and hearing submissions by Counsel for respective parties in this application the Court dismissed the application with costs and indicated that reasons would follow. Here do they follow below.

The applicant approached the High Court seeking relief against the respondents by means of a notice of motion set out as follows :

.... That the applicant intends to make an application for -

"(a) Condonation of the late filing of an appeal

(b) An order calling upon first respondent to dispatch within 14 days of receipt of this notice to the Registrar of the Honourable Court the Review Order sought to be appealed against and the Record of proceedings allegedly placed before him on which the Review Order was based.

(c) Costs of the application be costs in the cause.

In her founding affidavit the applicant avers that -

On 20th May 1991 she brought an action against the respondents at the Ramokoatsi Central Court in case number CC 203/90.

The result from the above proceeding was quashed by the Learned Magistrate Mr Lentsoe in the Mafeteng Subordinate Court.

The review order was granted in the absence of the applicant around 28th or 29th August 1991.

The applicant went to the Senior Clerk of Court to seek to be furnished with the review order but in vain as the order couldn't be found anywhere.

Several days later around 2nd September the applicant managed to obtain the Review order from the Ramokoatsi Central Court and subsequently went to consult her lawyers.

She states that it was thus impossible for her to file the appeal against the review order timeously.

The application for setting aside the review order is opposed by the 2nd Respondent 'Masetlokoane Setlokoane who avers in her opposing affidavit that some of the facts deposed to by applicant are not true.

The 2nd respondent challenges that if the applicant has failed to show prospects of success on appeal then the application to appeal out of time is ill-advised.

She goes on to indicate that the Minister of the Interior and Chieftainship Affairs and the Attorney General ought to have been joined as interested parties in

this matter in all courts including the court of first instance. I agree with this view and on the basis of non-joinder would regard that the application ought to be dismissed on that ground alone.

The 2nd respondent has correctly observed that the Central Court has no jurisdiction to be seized of the matter in CC 203/90 thus the reviewing Court *a quo* ought to have so ruled in the reviewing proceedings which came before it.

The 2nd respondent further relied on the procedure set out in section 5 of the Chieftainship Act 1968 as (amended) setting out the procedure to be followed where there is a dispute or uncertainty concerning boundaries of the authority of a chief.

The said procedure was set out by Plewman J.A. in C. of A. (CIV) No 17 of 1987 (unreported) at pg 7 onwards in terms whereof the following principles relating to subsections (8), (9) and (10) of section 5 were enunciated :

(a) "That if a dispute arises on the application of a Chief, the Minister must, if it is a genuine dispute, appoint an *ad hoc* committee. In doing so he acts in an administrative capacity and his discretion is limited to determining whether or not there is a dispute"

(b) "where no improper conduct can be shown, the Court has no jurisdiction to pronounce upon the Minister's acts".

(c) "The boundaries could always, on good cause and in a proper case, be reviewed and redefined".

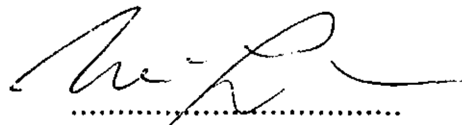
In ***Motsarapane vs Motsarapane*** 1979(1) LLR Cotran CJ as he then was said:

"The law in general is that where a statute provides ways to redress an alleged wrong steps should be taken first under the statute before resort is made to courts". I am in respectful agreement with this dictum.

In C. of A. (CIV) 24 of 1986 ***Posholi Peete vs Celina Ramakoro*** the Court of appeal endorsed the view that courts have no jurisdiction in the matter of the determination and definition of chiefly boundaries. But in C. of A. (CIV) No 17 of 1987 ***The Minister of the Interior & 5 Others vs Chief Letsie Bereng*** (unreported) at p.7 it was indicated that the Court can intervene where the empowered authorities or bodies fail to comply with the requirements of the relevant provisions.

I accept the submission that the applicant lodged her claim before a wrong forum when she approached the Ramokoatsi Central Court as this was clearly a matter within the administrative province of the Minister to determine and not any Court of Law. In my humble view Courts of Law do not lay down boundaries. As the Court

felt there were no prospects of success on appeal it refused the application with costs and it is so ordered.



JUDGE

31st March, 2001

For Applicant : Mr Masiphole

For 2nd Respondent : Mr Mda