

IN THE HIGH COURT OF LESOTHO

In the matter between:

MATEKA SAKOANE

APPLICANT

VS

MINISTER OF HOME AFFAIRS &  
LOCAL GOVERNMENT

RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice K.J. Guni  
on the 30<sup>th</sup> day of May 2001

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The applicant in this matter is an ungazetted customary headman of the village of HA SAKOANE, in the ward of LEKOKOANENG, under the principal chief of HA 'MAMATHE, THUPA-KUBU and TEYATEYANENG. This fact appears in the register of names of customary headmen. The said register is kept by the 1<sup>st</sup> respondent in the department of Chieftainship Affairs. [Annexures "MS1" & "MT1"]. In 1945 the headman SAKOANE SAKOANE, as shown in annexure

“MS2” carved off a portion of his domain and allocated the portion so carved out to one chief named MOSIUOA MASUPHA. [See Annexure “MT1”]. The headmanship of HA SAKOANE, was established well before 1945. This is why by 1945 he was already a recognised headman with well demarcated area to which other chiefs placed requests to be permitted to settle and exercise jurisdiction on the areas upon which they were permitted by him to settle. [refer to Annexure “MS2”].

Neither the ward chief of LEKOKOANENG nor the principal chief of HA ‘MAMATHE, THUPA-KUBU and TEYATEYANENG claim to have appointed the headman of HA SAKOANE. These two chiefs are 3<sup>rd</sup> and 4<sup>th</sup> respondents herein. They have, both of them filed no papers indicating their interests if any, in the way this court should determine this case. They are prepared, since they have not indicated which way their interests lie, to abide by the decision of this court. They have no claim nor special interest which they feel needs special protection before this court, in the determination of this matter.

The headman SAKOANE exercises his powers in his own right. He performs the functions of the chief in his own right. There is no ward chief or principal chief who claims that headman SAKOANE is his “eyes and ears”. There are customary

headmen who have inherited their status as such from their predecessors.

There are headman by recent appointment as in the case of JONATHANE V MATHEALIRA 1977 LLR 314. There was evidence that JONATHANE was appointed to his headmanship of that village of TSIKOANE by the predecessor of ward chief of TSIKOANE whose successor terminated the said appointment.

The applicant herein has specifically averred [see paragraphs 9. Founding Affidavit] that the 1<sup>st</sup> respondent together with the headmen and chiefs in the villages and areas in the neighbourhood of HA SAKOANE, including the ward chief of LEKOKOANENG and the principal chief of HA MAMATHE, recognise him as the headman of the said village of HA SAKOANE. This is not denied. The applicant's status as a customary un gazetted headman of HA SAKOANE is, therefore an established fact. Is there any law prohibiting publication for general information, of the said fact? None has been pointed out to me and my research resulted in finding no such law.

With this fact in mind, that the applicant is a customary un gazetted headman of HA SAKOANE, he approached this court and prayed that the court directs the respondents as follows:

- (a) 1<sup>st</sup> respondent to cause the name of the applicant to be published in the gazette for public information that the applicant is the headman of HA SAKOANE in the LEKOKOANENG WARD Subordinate to the chief of LEKOKOANENG.
- (b) 1<sup>st</sup> respondent, 3<sup>rd</sup> respondent and 4<sup>th</sup> respondent to take such necessary administrative steps and action in order to facilitate and effect the gazetting of this applicant.
- (c) respondents to pay costs if they oppose this application. There are alternative prayers which seeks to have certain statutory provisions to be declared unconstitutional as far as the same violates applicant's rights and those of his subjects, relating to their freedom from discrimination and equality before the law as enshrined in article. 4(1)(n) and (o) read with articles 18 and 19 of The LESOTHO Constitution 1993.

The statutory provisions which this applicant pray that they be declared unconstitutional on the ground that they unlawfully discriminate against him and his subjects by excluding them from participating in certain developmental projects, were passed in 1991. It is contended on behalf of the 1<sup>st</sup> respondent, that the applicant has delayed and for that reason his application must be rejected.

The delay, especially such a long one as in this case, is a main factor which must be considered in the determination of this application. In the case of MAQETOANE V MINISTER OF THE INTERIOR AND OTHERS LAC (1985 - 1989) a period of delay totalling approximately nineteen years was said to be gross. The grossness of the delay did not stop the court from considering whether or not there was going to be any prejudice, potential or actual to any party if

application for the declaration of the applicant's right was considered. The applicant in, MAQETOANE's case, first approached the question of the declaration of his right, administratively. He had hoped that the superior chiefs would assist him to resolve it administratively. Similarly, the applicant in our present case wrote letters to the 1<sup>st</sup> respondent with the hope that the matter will be resolved administratively. That has failed to produce the desired result, hence this application. The 3<sup>rd</sup> and 4<sup>th</sup> respondent herein, are the chiefs who are senior to this applicant. The applicant has averred that he serves directly under the Principal Chief of HA MAMATHE THUPA-KUBU and TEYATEYANENG. As I have already pointed out at the beginning of the judgment, those chiefs have filed no opposing papers. In his averments the applicant has gone so far as to allege that they do not oppose this application. This averment is not denied by Mr MAKALO THEKO who deposed to the opposing affidavit on behalf of the 1<sup>st</sup> respondent. Mr MAKALO THEKO does not claim to be acting on behalf of the 3<sup>rd</sup> and 4<sup>th</sup> respondents. He claims no mandate from the 3<sup>rd</sup> and 4<sup>th</sup> respondents. He cannot claim to be acting to protect their interests. In those circumstances there is no prejudice, actual or potential, which is likely to be suffered by any person should the name of the applicant be published in the gazette for general information as prayed. Prayers (a) and (b) must succeed.

Having determined the matter on the basis of the main prayers, it serves no good purpose to consider the alternative prayers. This application therefore succeeds with costs.



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K.J. GUNI  
JUDGE

For applicant: Mr Teele  
For respondent: Mr Masoabi