CIV/APN/304/94

IN THE HIGH COURT OF LESOTHO

In the matter between :

MAPEPE RAMAPEPE	APPLICANT
Vs	
'M'AKHETHISA RAMAPEPE	1ST RESPONDENT
'M'AMOLAPO MOTS'OENE	2ND RESPONDENT
MOABI MOABI	3RD RESPONDENT
MINISTER OF INTERIOR AND CHIEFTAINSHIP AFFAIRS	4TH RESPONDENT
ATTORNEY GENERAL	5TH RESPONDENT

JUDGEMENT

Delivered by the Honourable Mrs Justice K.J. Guni
On the 19th day of November 2002

This is a matter concerning a boundary dispute between two chiefs:- Chief MAPEPE RAMAPEPE, the applicant herein and

chieftainess 'M'AKHETHISA MOLAPO – the 1st respondent in this matter. Both these two chiefs claim to have jurisdiction over one and the same area – of HA LETSEKA . Applicant claims that himself and his predecessors have always administered that area. The right of administration over the disputed area was exercised – not personally by the applicant and/or his predecessor. Applicant claims that the said rights of administration over that area were exercised by one TUMAKI RAMAPEPE who represented both the applicant and his predecessor.

The 1st respondent also claims that the area is under her jurisdiction. She avers that at all the material time that area has been administered by her predecessors. Her knowledge of this fact goes back at least their generations – starting with chief MOKHACHANE KHETHISA followed by chief MAKHOBALO KHETHISA who was succeeded by chief MAROALA KHETHISA –the predecessor of this 1st respondent.

According to the 1st respondent on the one hand, the jurisdiction over that disputed area of HA LETSEKA has been at all times been in their control. It seems there was no time when it fell under the administrative control of the applicant. The applicant on the other hand seems to suggest that there was a disruption of their administration over that disputed area. But he dies not say what caused the disruption. Applicant does not place even the time when their administrative powers in that area, were interrupted. Could this dispute have bee going on since ancient times well beyond their memories ? This applicant does not even suggest the probable cause of the said dispute over their boundary.

In 1986, at the special request and instance of this applicant, the boundary dispute committee was set up by the Ministry of INTERIOR AND CHIEFTAINSHIP AFFAIRS. The sole objective of the said committee was to determine the boundary dispute between this applicant and the 1st respondent's predecessor. The committee consisted of the principal chieftainess of LERIBE within whose administrative area of jurisdiction, the disputed area falls. She is the

second respondent in this matter. The committee chairman was Mr MOABI MOABI an official from the department of Chieftainship Affairs of the Ministry Interior. He is cited as the third respondent in this application. The committee when determining that dispute found for 1st respondent. The applicant herein is suing five respondents. Only three of these five respondents played any significant part in the making of the decision reached in the proceedings, which he seeks to have this court review, correct and set aside. Of these five respondents only the 1st respondent has filed the opposing papers to this application. The rest of the respondents have no interest in this dispute. They have filed no papers.

The grounds upon which this applicant wishes this court to review the proceedings of the boundary dispute committee are; Gross irregularities:-

The applicant claims that he was denied the benefit of having his representative make the outline of their case, while the other party – 1st respondent was accorded the benefit of having her representative outline their case. The second irregularity occurred when the

boundary committee proceeded with the case to its finality not withstanding the fact that the applicant's is representative had withdrawn their case.

The 1st respondent in opposing this application raised a point ***in limine***. The point ***in limine*** raised, concerns the delay in bringing the said proceedings under review. The determination of this question of delay disposes with this whole matter. There has been in-ordinate delay of approximately ten (10) years at the time this application was filed and served upon some of the respondents because not all of them were served.

There is no stipulated period within which the review proceedings may be commenced. The court before which such review proceedings are brought may refuse to entertain such proceedings on valid grounds. RECEIVER OF REVENUE VS SADEEN 1912 AD 339, KLIPRIVER LICENSING BOARD V EBRAHIM 1911 AD 458. There are some of those early cases where the distinction which hither had been non-existent between review and an appeal because very clear. The

right to bring the review proceedings exist both under common law and statute. The parties resort to review proceedings in most cases, as in the present case, where their right of appeal against the decision which they want the court to set aside has been restricted or completely denied.

The applicant in our present case, was definitely out of time to appeal in 1994 against the decision that was made final in 1986. The period within which to appeal against the judgement or decision of a court or a tribunal is, a maximum of one month. All matters of dispute are expected to finally come to rest. So the period within which the party aggrieved by the decision, is allowed to appeal or have the proceedings reviewed is not indefinite. The resurrection of the long dead and buried matters must not be allowed, otherwise there will be no point in trying to resolve any dispute if after a long period such as ten years the dispute is allowed to raise its ugly head and cause havoc while some degree of tranquility is being enjoyed. Despite the complaints, representations and protestations by his subjects against the rule of the 1st respondent and presumably that of her

predecessors, the applicant for approximately ten (10) years ignored them. Consequently those subjects of the applicant endured the pain or pleasure of being under the administrative powers of the 1st respondent and her predecessors. Is this court entitled to disturb this status quo ? On what grounds ?

Because the applicant and his legal adviser were ignorant of the law, that ignorance gives them the right to interrupt and disrupt other people from enjoying those rights which they have forgone and allowed other people to acquire and enjoy for a very long time? JULIA MONYANE VS THE MANAGER, MAFETENG L.E.C. PRIMARY SCHOOL CIV/APN/29/2000. Even if there was evidence that this applicant and his predecessors administratively ruled over that disputed area, by allowing the decision to prevail for over ten years, they have forgone whatever rights they ever had of administering that area. The 1st respondent traces within her memory three generations on her side, administrating that disputed area. That state of affairs cannot be disturbed because for some reasons the applicant has without good cause found it desirable to disturb.

The delay *per-se* is not sufficient ground for the court to refuse to entertain an application for review. SILBERT VS CITY OF CAPE TOWN 1952 (2) SA 113 © AT 119. There are two requirements or steps that must be satisfied before the court can refuse the application for review. Firstly that delay must be unreasonable. The delay can be unreasonable by its mere length – for example six months – or less depending on the circumstances of each case. Secondly there must be prejudice (actual or potential), likely to be suffered by respondent and any interested parties.

The length of the period taken by this applicant to bring this proceedings for review, approximately ten years – compounded by further delays to serve the respondents with the notice of the said application, is by itself extremely unreasonable and warrants refusal to entertain this application.

Although the determination on the point of law has disposed of the whole matter I want to deal briefly with the merits.

The irregularities on which the application for review is based are denied by the 1st respondent. The applicant as the party to that dispute was required to outline his case. This is a legal requirement in any litigation e.g. the local and central court..... The other party in that dispute was absent due to his ill health. His representative was allowed to outline their case in his absence. It was not for the purpose of discrimination that the representative on the other side outlined and conducted the respondent's case. The applicant was present. He did not indicate to the committee any affliction or illness which will prevent him from outline his case. His ignorance might be classified as a form of illness. But it did not prevent him from attending although it affected his presentation of his case adversely according to him. It is difficult to imagine what case this applicant had if he was totally ignorant of its facts ? He had his own case before that boundary dispute committee. His representative had his own case before the same committee. This is his and his representative's fault. They created two different cases before the committee.

The refuse by the chairman to recuse himself should have been dealt with promptly and not so many years after. The applicant must have nevertheless participated after his application was refused correctly or wrongly. That act was a condonation of the alleged irregularity. It seems to me that the chairman was correct by refusing to recuse himself if the letter asking for his recusal was addressed to the Ministry. The same applies if the Notice of withdrawal was addressed to the Ministry. They could not assume (i.e. the committee or its members) the position of the Ministry without its authority.

Most importantly the net effects of the withdraw by the party who is the dominus litus is the same as the finding by the boundary dispute committee decision. The status quo was allowed to prevail. This applicant cannot be heard to say that after such long time after his withdrawal this court must now allow the disturbance. The civil wrongs have a time limit. He has allowed such an extremely long period to lapse he cannot be heard again raising the same issue.

For these reasons this application must fail. It is dismissed with costs.

K.J. GUNI
JUDGE

FOR APPLICANT - MR SELLO
FOR RESPONDENT - MR FOSA