CIV/APN/A/108/001
IN THE HIGH COURT OF LESOTHO

In the matter between

TS'EPO NKUEBE APPLICANT
Vs
HLABATHE NKUEBE SEMPE RESPONDENT

JUDGEMENT

Delivered by the Honourable Mrs. Justice K. J. GUNI On the 15th March. 2002.

The parties in this matter are a father and son. The father is the applicant. The son is the respondent. Sometime in the past, the applicant who is the Principal Chief of Quthing was suspended from performing his duties as such; (The son- respondent herein was appointed to act as the principal chief of Quthing during his fathers period of suspension).

It would appear that the respondent did not only take over the responsibilities of the office of the chief principal chief of Quthing, but he also took the position of the head of the family. The extend of his assumption of the responsibilities as the head of the family is not clearly shown. Amongst other things, he ploughed the fields which belonged to his father. This he claims he did for the benefit of the family, including his father, the applicant.

When the period of suspension from the office of the principal chief of Quthing ended, the respondent stopped cultivating one of the fields of this applicant, but continued to cultivate the other.

According to the applicant he approached the respondent and asked him to stop cultivating that field. The respondent denied that he was approached and asked to discontinue ploughing that land. He goes further to claim that it is, in fact ,his field which he inherited from his grandmother - the applicant's mother. The applicant denies that the respondent inherited that field. He claims that he inherited it himself from his mother. What is at issue between the parties seems to be whether or not the field in question belongs to the applicant or the respondent.

The respondent did not file any opposing papers to the application in which his father sought a restraining order against him for cultivating his fields. The respondent continued cultivating the other field on the ground that it was his as he claims he inherited it from his grandmother. This he did despite the fact that the applicant had obtained the court order restraining him from continuing to plough those fields.

The applicant had to come back to court where he then asked for the following order:-

a) A warrant shall not be issued for the apprehension of Respondent so as to be brought before court in order to be dealt with in accordance with the law;
b) The Respondent shall not be committed to jail for contempt of an order of Court by continuing to plough the fields belonging to Applicant;
c) Respondent shall not be directed to pay the costs hereof;
d) Applicant shall not be granted such further and/or alternative relief.

It was after the service upon him of this order that the respondent appeared in person before this court. He filed no papers. He addressed the court and in that address he claimed to have not been served with the notice of the application whose order it is now being claimed that he is in contempt of. He then indicated to the court that he does not know which field his father - the applicant is referring to in his application. The notes made by the court at the time the respondent addressed it were referred to the attorneys of the applicant who together with their client endeavoured to draft and subsequently file a replying affidavit. The court had ordered that the applicant should be given an opportunity to address the issues raised by

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the respondent in his address to the court in the contempted proceedings.

In the papers filed of record, there is no doubt in my mind, that the applicant, as the first male issue of the deceased allottee - MAHLOLI NKUEBE, is entitled to inherit her interest in that land which she occupied and used during her lifetime. (SECTION 8 (1) (2) (a) THE LAND ACT 1979 as Amended by LAND (Amendment) ORDER 1992. (ELIZABETH LIKELELI THATHO V MANNETE FLORENCE NTSANE CIV/T/357/1997). Since the respondent had not filed any papers, his claim, that the deceased allottee's family allocated him that field cannot be sustained without proof. The applicant in his replying affidavit, denies that there was ever a family meeting in which the family decided to allocated the respondent the fields of MAHLOLI NKUEBE.

During the contempt of court order proceedings it transpired that the respondent may have understood the court

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order properly. He pointed out to this court that he does not know which fields the applicant was referring to in that court order. The respondent claimed not to have been served with the Notice of the papers relating to the court order in question. For the applicant to discharge the onus resting upon him to show that the respondent failed to comply with the court order, he must establish that the respondent was served personally or the court order came to his notice. (Estate Scholtz V Carroll (1906) 23sc 430.

The attorney for applicant was making an application for inspection in loco of the fields in question in order to determine the exact fields referred in this application. Then when the description of the suspected fields was made, that appeared to be adequate when coupled with exact location of the fields in question. The parties agree that the field which the respondent continues to plough is that of MAHLOLI NKUEBE who is his grand mother and the applicant's mother.

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This court does not find the respondent to be in contempt because he appeared not to be certain about the identity of the fields. The applicant has also not established on the balance of probabilities that the respondent was personally served with the order or was made aware of it. The application to have him committed to prison must fail. But his claim that the field of MAHLOLI NKUEBE belongs to him has no support and cannot be sustained. The main

application in which he showed have contested the applicant's claim of having inherited that field from his mother was granted unopposed. The applicant obtained a restraining order against himself for ploughing his fields including this one which the respondent claims.. That court does is still in force until it is successful appealled against or set aside. The respondent must now respect it. It has become aboundantly clear to him that that those are the fields in question. He should refrain from ploughing both of them not just one of them.

Both parties have partly succeeded in their cases.

Therefore there is no order as to costs.

K. J. GUNI
JUDGE

For applicant Mr. Tsenoli
For respondent In person