CIV/APN/254/01

IN THE HIGH COURT OF LESOTHO

In the matter between:-

SETOFOLO LINTŠA	APPLICANT

and

MAHLATSI MAHLOKO	1ST RESPONDENT
LOCAL GOVERNMENT (Chieftainship)	2ND RESPONDENT
D.S. MOHALE'S HOEK	3RD RESPONDENT
THE CHIEF OF LIKUENENG	4TH RESPONDENT
THE ATTORNEY GENERAL	5TH RESPONDENT

Ruling on Points in Limine

Delivered by the Honourable Mrs Acting Justice A.M. Hlajoane
on the 27th August, 2002

The matter concerns the disputed right to succession to the chieftainship of Sefateng - Ha Kobotšoeu in the Mohale's Hoek district. Applicant is applying for an interdict restraining the 2nd and 4th Respondents from inaugurating 1st Respondent as headman (chief) of Sefateng - Ha Kobotšoeu.

Both parties have files their necessary papers and the matter was duly set for hearing. It is worth mentioning at this stage that only the first Respondent showed his intention to oppose the matter and accordingly filed his answering affidavit. In his answering papers, the 1st Respondent has raised the following points *in limine*;

(i) On jurisdiction
(ii) Urgency
(iii) Dispute of facts
(iv) Interdict

Applicant on the other hand in reply indicated also that he was going to raise his points *in limine* on jurisdiction, dispute of fact, urgency and interdict, but the ruling is going to be on the first points *in limine* raised by the 1st Respondent.

Jurisdiction

First Respondent is asking this court to dismiss this Application for want of jurisdiction. He is saying that the High Court is not the proper forum for entertaining dispute of this nature as a court of first instance. The decision in **Nko v Nko** 1991-92 LLR & LB 5 is the authority for the proposition that matters of succession to chieftainship fall within the jurisdiction of the Subordinate Court and such matters should only be brought to the High Court on leave of Court in terms of Section 6 of the **High Court Act**, 1978. This point *in limine* succeeds on that score.

Urgency

Applicant's justification for approaching court *ex parte* is that he wanted to stop the inauguration of somebody else other than him.

First Respondent is saying, there is no urgency in this matter as the dispute over chieftainship at Ha Kobotšoeu has a long standing history. He is borne out on this point by the Applicant himself in his founding affidavit and also under his heads. Applicant himself says, that this struggle for chieftainship has a very long history emanating from both their late great grandfathers as the founding papers demonstrate.

It is trite law that urgency must be made out in the founding papers and grounds for such urgency should also be clearly stated. This Court and the Court of Appeal have always demonstrated their displeasure to legal practitioners who abuse this procedure resulting in the dismissals of their Applications with an appropriate order of costs. **Sea Lake (Pty) Ltd vs Chung Hwa Trading Yu Shing Sui** 1999-2000 LLR & LB 391. This is one such a case

Dispute of fact

It is clear from the record that the Applicant foresaw and realised when launching this application that a serious dispute was bound to arise. This became evident from his affidavit where he says;

"The issue of chieftainship of Ha Kobotšoeu in the district of Mohale's Hoek has been a 'tug of war' between the family of Lintša and that of Mahloko. This matter has a very long legal history traceable in the following judgements:- CC64/82, JC250/82, CC11/89 and JC242/89."

As was said in the case of **Garment Workers' Union v De Vries and others** 1949 (1) SA 1110 that, "it is becoming a habit to bring applications to court on controversial issues and then to endevour to turn them into trial actions, thereby obtaining a great advantage over litigants who have proceeded by way of action", this Court is lately experiencing the same kind of thing. Cases seem to be brought before this Court on Urgent basis when in fact the proper procedure ought to have been action proceedings. The reasons might be to jump the queue, which then calls for the courts to be vigilant and stick to the rules of procedure. **Room Hire Co. (Pty) Ltd vs Jeppe Street Mansions (Pty)** Ltd 194 (3) SA 1155. Because of the glaring dispute of facts the Application falls to be dismissed.

Interdict

This is an Application for an interdict, that 4th Respondent be restrained from accepting the proposal of succession to the headmanship of Kobotšoeu. It is not a temporary interdict, but has a final effect. **Setlogelo vs Setlogelo** 1914 AD 221 has clearly laid down the essential requirements which have to be satisfied in granting that remedy.

As was stated in the case of **Sykes vs Lethole** 1997-98 LLR 247, the Applicant in our case seeks a final interdict together with ancillary relief on the papers and without resort to oral evidence. The general rule as stated in **Stellenbosch Farmers' Winery Ltd vs Stellenvale Winery (Pty) Ltd** 1957 (4) SA 234 is not applicable in this case as there are numerous dispute of facts on the papers. Each of the litigants claims to have won the case for succession for the same place in the lower courts and or before administrative bodies. Also that their predecessors in title were gazetted.

In instances of this nature where there are serious dispute of facts, the court is inclined to assume the correctness of Respondent's version, resulting in the dismissal of Applicant's case, **Supreme Furniture vs Molapo** 1995-96 LLR & LB 377.

First Respondent having succeeded in all the points in limine, the Application is dismissed with costs.

A.M. HLAJOANE

ACTING JUDGE

For Applicant : Mr Mokatse

For 1st Respondent : Mr Phafane