

CIV/APN/466/99

IN THE HIGH COURT OF LESOTHO

In the matter between:-

MAKUENA SEKHONYANA

APPLICANT

and

MOHANOE LENKOANE
PRINCIPAL CHIEF OF BEREA
MINISTER OF LOCAL GOVERNMENT
ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Acting Justice A.M. Hlajoane
on the 12th August, 2002

In this application which was moved on urgent basis, the papers were duly filed in terms of the Rules of Court and the matter eventually set for hearing. On the date of hearing parties filed their heads of arguments which they submitted were sufficient for the court to make a determination on the matter.

The facts of this case are that the Applicant 'Makuena Sekhonyana is the widow of the late Matjotjo Sekhonyana who passed away in 1939. Applicant alleges that the deceased was the customary headman of a place called Pitsaneng Ha Sekhonyana in the Berea district, though first Respondent also alleges to be the headman of the same area. What is common cause is the fact that Applicant is a widow of the late Matjotjo Sekhonyana who passed away in 1939. Also that in succession the 1st Respondent's family is junior to that of the Applicant and that the 1st Respondent is the next one to succeed to the headmanship of Ha Sekhonyana as Applicant has no male issue.

It has also been common cause that when Applicant's husband died in 1939, Applicant became the headman of Ha Sekhonyana, acting for Jobo. Jobo was Applicant's brother's son who was always away in the Republic of South Africa and only came back home in 1964. I must mention here that Applicant and 1st Respondent differ when it comes to the year of Applicant's husband's death. Applicant says it was in 1989 when 1st Respondent on the other side says it was in 1991.

It is the Applicant's case that after Jobo's death the Sekhonyana family met and entrusted her with the Ha Sekhonyana administration, and that she only used 1st Respondent as her right hand man. In her own words she says " I used 1st Respondent as my right hand man whom I was training in the process."

Applicant goes further and shows that around 1997 government introduced at her area the payment of chiefs' monthly stipends and she instructed 1st Respondent to ensure writing a letter to the 2nd Respondent (through the area chief) for onward transmission to the District Secretary, T.Y., and then to 3rd Respondent introducing her name as the future payee. She says, instead, 1st Respondent replaced her name with his and on realizing that, Applicant started administering personally though 1st Respondent was resisting the move. She says she was only successful in January 1999 when she started receiving the monthly stipend until September 1999.

First Respondent on the other hand shows that since his grandfather Jobo could no longer administer Ha Sekhonyana due to ill health he allowed him to take over in 1989 and has been there to date. He goes further to show that from 1989 he has never been removed from office or suspended by anybody. 1st Respondent denies any knowledge of the letter styled 'MSI' which introduced Applicant as the successor to the headmanship after Jobo. In his affidavit 1st Respondent says "I deny categorically that the Applicant was ever entrusted with the administration of Ha Sekhonyana." He criticizes the authenticity of the letter 'MSI'.

1st Respondent goes further and states that Applicant only managed to steal his stipend for the months of September and October 1999 because of the decision which appears in an annexure styled 'MS2' to the founding papers. I will briefly explain what 'MS2' was all about. It is a decision by the Principal Chief of Berea dated 14th June 1999, in which 1st Respondent was Applicant and the present Applicant was the Respondent. The issue for determination was still the headmanship of Ha Sekhonyana. I may mention

here that the decision before the Principal Chief was in favour of the present Applicant.

Attached again to the founding affidavit is annexure 'MS3'. This annexure is yet another decision which was made by the same Principal Chief of Berea on the same issue, between the same parties. The decision is dated 27th September 1999, but this time found for the 1st Respondent in this case, who incidentally was the one complaining before the Chief as in the previous decision. It is Applicant's prayer at paragraph 14 of her founding papers, that she is asking the Court to review annexure 'MS3' as she concedes was the basis for withholding her stipend.

As can be learned from the submissions by the Applicant, the main issue for determination is not so much who the customary headmanship of Pitsaneng Ha Sekhonyana is, but, is seeking a pronouncement on whether or not her monthly stipend had been lawfully withheld on the basis of annexure 'MS3'. In the case of **Nqojane v NUL 1985-89 LAC 369**, the court made a pronouncement of an invalidity of a decision on the ground that the enabling statute was *ultra vires* because it makes the Respondent's council a judge in its own cause by providing that an Appeal against the Council's decision must be made to council, thus breaching the rules of natural justice. In the same vein, the Principal Chief of Berea made a decision, 'MS2' in which she declared the Applicant to be the headman of Pitsaneng and three, four months later as appears to be on appeal, reversed her own decision and found for the Respondent. Both Annexures 'MS2' and 'MS3' have the same ending, thus done by me Principal Chief of 'Mamathe.

I have not been told on what piece of legislation the Principal Chief relied on in making her two decisions, but on the basis of what I have shown above, without necessarily reviewing the decision of an administrative body on succession, find that there has been a breach of rules of natural justice which therefore means that the decision in 'MS3' is null and void. On that point alone, the Application succeeds with costs.


A.M. HLAJOANE
ACTING JUDGE

For Applicant : Mr Fosa
For Respondents : Mr Nteso