CIV/T/53/92

IN THE HIGH COURT OF LESOTHO

In the matter between:

SEMPE TAU	**Plaintiff**
and	
SETSOMI JONATHAN TAU	**1st Respondent**
KHETHISA JONATHAN TAU	**2nd Respondent**
MINISTRY OF INTERIOR AND CHIEFTAINSHIP AFFAIRS	**3rd Respondent**
ATTORNEY GENERAL	**4th Respondent**

For the Plaintiff : **Mr. Matooane**

For the Respondents : **Mr. Nteso**

Judgment

Delivered by the Honourable Mr. Justice T. Monapathi on the 22nd day of July 2002

Because there is confusion in this case I have treated it in a special way. I have made a point that these litigants will hear and understand what is happening. This I did by asking Counsel to deal more elaborately with the long history of the case. It is because it speaks for itself that these litigants have come to this Court so many times and I have seen them so many times about this case. The case does not seem to end.

Sometime ago there was a default judgment in favour of the deceased old man Tau (Applicant's father) who was Plaintiff in this case. And there was even evidence which was led by Mr. Phoofolo. It was not the present Counsel. I made order in favour of the Plaintiff of that day. That order was later rescinded I suppose it was by agreement between Counsel.

The case was later enrolled for hearing and there was argument before me on points of law. Judgment was reserved afterwards. There was plenty of submissions and all along involving a matter that this Court takes seriously. It was a matter about dispute of an area of chieftainship, which has been serious all along.

It was serious if a chieftainship is disputed in this country because it affects ordinary people who get confused as Mr. Nteso has said to me. If there is that confusion which results there will be disorder. More often than not there will be bloodshed. And this is the kind of situation that this Court will not view with any kind of happiness as the Court is duty bound to bring a stop to situations like that once its attention is brought by way of cases brought before it.

At one stage in the past, which is important in these proceedings, this case was withdrawn by the late plaintiff. Here is the application before me today filed by the son of the late plaintiff, now Applicant. He is asking for the three prayers which are as follows:

1. That the case which was withdrawn must be reinstated.
2. That the Applicant be substituted as Plaintiff in the trial case.
3. That the Respondents pay the cost of this application if they oppose this application.

The present application is an instance of a case that this Court cannot only have discretion to deal with. By saying that I have got a discretion is putting it at a high level. The reality is that there are technical objections made by Mr. Matooane that I have got to contend with. Strictly technical objections they are.

Firstly, once the case was withdrawn it was thereby removed from the register of the High Court. The application becomes untenable for that reason. It is very different if a case has been struck off or removed from the roll. It is because as far as I am concerned this case died the time it was withdrawn. The situation is compounded by its owner having died afterwards. Furthermore somebody else, not the owner now seeks to reinstate the case in the register and

be substituted as plaintiff. It would make sense if it is said the case was to be reinstated in the roll. This would be so if the case had not been removed from the register by withdrawal. I respectfully agreed

The basis of the present claim is that Applicant is heir of the deceased former Plaintiff. If the case has been dismissed, as the other side argued, why is it difficult for Applicant to institute his own case because he is an heir of his father's rights. But he cannot be an heir over a virtually dead case. Applicant remains an heir over his father's rights but not over the case that does not exist.

Secondly, Applicant wants to be substituted a Plaintiff. Why would he be substituted because if he were to be substituted there is no cause for whom he would be substituted when that case does in reality not exist. I thought Respondent's submission was valid.

I was tempted to debate this question of the error that Mr. Nteso speaks about. He said someone who was sent by the deceased plaintiff to represent him before his lawyer erroneously expressed intention to have the matter withdrawn while judgment was reserved. Even if as a factual matter was not being opposed because no answering affidavit was filed, it remained inherently improbable and difficult to imagine that a person could go to an extent of withdrawing a case

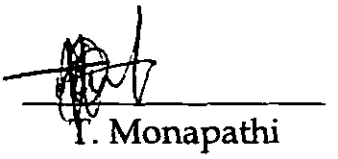
when his instructions was just to speak to a lawyer to convey that the Plaintiff was unwell. I noted that it was after judgment was reserved when the withdrawal was made. How could he go to that extent of saying the case must be withdrawn? It must have been with the understanding of this vital distinction between withdrawal from the roll of a claim as against withdrawal of a claim from the register. The latter situation meaning also that no indulgence is sought by the plaintiff from the Court for doing so. See **Levy v Levy** 1991(3) 614.

My inclination was that this for Plaintiff's representative must have been influenced by the technicality that the other side took. The technicality was that this High Court had no right to hear the case because it had no jurisdiction. Former Plaintiff must have been influenced by that point and then he felt that he might as well withdraw the case because it was still going to be filed in another Court that had jurisdiction. That is what must have influenced him. That is he probably believed that the technical point was valid that a subordinate court had jurisdiction. This was a sound reason. Not that the deceased's representative was on a frolic of his own. In any even, in my opinion, this has become a moot point.

I was not pleased in my feeling that this poor Applicant must have been

misadvised because the best thing he should have done was to institute his own case in this High Court or in a subordinate court. If he says he is an heir of his own father's rights he ought not to be fighting over this case that is not in the register.

It was for these reasons that I thought it wise to give an instant ruling. That is to say that the application is dismissed with costs.



T. Monapathi
Judge