

IN THE HIGH COURT OF LESOTHO

In the matter between:

LETLAKA TSEPA

APPLICANT

AND

MAKENEUOE TSEPA

1ST RESPONDENT

MOHLAPISO TSEPA

2ND RESPONDENT

THE PRINCIPAL CHIEF OF QACHA'S NEK

CHIEF MAKOTOKO THEKO

3RD RESPONDENT

THE MINISTER OF LOCAL GOVERNMENT

4TH RESPONDENT

THE ATTORNEY GENERAL

5TH RESPONDENT

JUDGEMENT

Delivered by the Hon. Mr. Justice G. N. Mofolo

On the 11th day of December, 2002

This case is unfortunate for it appears the file got misplaced being discovered after quite some time. The delay is regretted.

The applicant has approached this court praying for an order in the following terms:

1. That a Rule Nisi be issued returnable on the date to be determined by the above Honourable Court calling upon the 1st, 2nd, 3rd, 4th and 5th Respondents to show cause, if any, why an order in the following terms shall not be made:
 - (a) The forms and period of service provided for in the Rules of the above Honourable Court be dispensed with on the grounds of urgency of this application.
 - (b) Declaring 1st Respondent's appointment as acting Chief of Maseepho null and void and of no effect and consequences in law
 - (c) Applicant be re-instated to his position as Acting Chief of Maseepho forthwith until his appointment has been revoked by due process of law.
 - (d) Directing the 4th Respondent to cause Applicant to be paid his monthly remuneration from February, 2001 until his appointment aforesaid has been revoked by due process of law.
 - (e) Directing 4th and 5th Respondents to pay costs on Attorney and Client scale and 1st, 2nd and 3rd Respondents to pay costs jointly and severally only in the event of contesting this Application.
 - (f) That Applicant be granted further and/or alternative relief as this Honourable court may deem just.

It is to be noted that the application was urgent and for an interdict. The application was lodged with the office of the Registrar on 1st June, 2001 and moved before my brother Ramodibedi J. on 11th June, 2001 when prayer 1(a) was granted with immediate effect and the Rule extended to 6 August, 2001. Service having been effected on respondents Mr. Putsoane had, on 31 July, 2001 opposed the application on behalf of the Attorney-General and on 1 August, 2001 Mr. Hlaoli had done the same on behalf of 1st and 2nd respondents.

On 18 October, 2001 Mr. Mda had lodged with the Registrar's Office another Notice of Motion. 'In the matter of application for Amendment of the Notice of Motion' and served the same on the Attorney-General and Mr. Hlaoli. The reason for the amendment, it would seem, was to draw the court's attention to the fact that when the application was lodged the applicant was not aware of the fact that the 1st respondent had been gazetted as far back as 27 April, 2001. The applicant has also alleged that when the 1st Respondent attested to her Answering Affidavit in the main application she was not aware that she had been gazetted as such. In any event, I am not aware that the amendment was

opposed.

As usual, there had been several postponements up to and including 26th November, 2001 to which the matter was postponed and the rule extended. I am not aware of other postponements except that the matter was finally heard on 14th March, 2002. In view of the fact that there is no record of postponements, this court has caused counsel on either side to see me in Chambers to explain the omissions. No counsel appeared except Mr. Mda who told the court although the rule was not extended hearing the matter on 14th March, 2002 three months after the rule had expired amounted to extension of the rule. I am far from satisfied with Mr. Mda's explanation.

As far as this court is concerned, it does appear that when the applicant lodged his application he was unaware of the fact that the 1st respondent had been gazetted way back in April, 2001 when the application was lodged with the Registrar of this court on 18 October, 2002 almost six (6) months after the first respondent was gazetted.

Applicant's case is that he be reinstated to his former position as Acting Chief of 'Maseepho. Since 1st Respondent is gazetted and *de jure* chief exercising lawful duties of a chief, I do not see how the applicant can be re-instated and it would seem the only course to be followed by the applicant is to ask for the degazettment of the 1st respondent if there is good cause for the action. This court has had occasion to look at applicant's amendment of the Notice of Motion and find the amendment reads:

- (a) That prayer 1(b) be amended by adding the words and/or gazettment" immediately after the word 'appointment'.
- (b) That Respondents pay costs of this application only in event of contesting same.
- (c) That Applicant be granted further and/or alternative relief.

Now prayer 1(b) of the Notice of Motion reads:

Declaring 1st Respondent's appointment as the acting Chief of 'Maseepho *null* and *void* and of no effect and consequence in law.

The prayer as amended would then read as:

Declaring the 1st Respondent's appointment and/or gazettement as Chief of 'Masepho *null* and *void* and of no effect and consequences in law.

While I have said that it does not appear that the application for amendment was opposed, I am also of the view that since the 1st respondent is a gazetted chief, it would be necessary, if that is the intention, to apply for her degazettement. However, since this application is not decided on this basis, it will be up to the applicant to decide what cause to follow.

I have said that the rule was extended to 26/11/02 and on this date it does not seem to have been extended. When, however, on 14 March, 2002 the application was heard, the rule had long expired and having not been revived when the application was heard on 14 March, 2002, there was no rule to confirm or discharge.

I take the view that since on 26 November, 2001 neither the application or rule

was postponed or extended to a definite date, the rule having expired when the application was heard, there was no rule to confirm or discharge. Accordingly, the matter is struck off the roll with costs to the 1st respondent and 2nd respondent.



G. N. MOFOLO

JUDGE

For the Applicant	:	Mr. Mda
For the 1 st and 2 nd Respondents	:	Mr. Hlaoli
For the 4 th and 5 th Respondents	:	Mr. Putsoane