

IN THE COURT OF APPEAL OF LESOTHO

Held at Maseru

**C of A (CIV) NO.60/2013
CIV/APN/275/2011**

In the matter between:

SEKHOBE JOSHUA LETSIE

APPELLANT

And

**MINISTER OF LOCAL GOVERNMENT
AND CHIEFTAINSHIP**

1ST RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

**THE CHIEF OF SEROOENG,
MAKHALANENG**

3RD RESPONDENT

**PRINCIPAL CHIEF OF ROTHE,
KOLO, SEROOENG AND
THABA-TSEKA**

4TH RESPONDENT

CORAM: HOWIE JA
 LOUW JA
 CLEAVER AJA

HEARD: 14 APRIL 2014
DELIVERED: 17 APRIL 2014

SUMMARY

Appeal from High Court which dismissed a claim for nomination as chief – serious dispute of fact – matter referred back to court for hearing of oral evidence.

JUDGMENT

CLEAVER AJA

[1] This is an appeal against a judgment of the High Court which dismissed the application by the appellant to have his nomination as the Chief of Koung, Makhalaneng as a subordinate chief under the third respondent confirmed by the court.

[2] An order in the following terms was sought in the court *a quo* –

1. Confirming and ratifying the nomination of applicant by the predecessor of fourth respondent Chief Mohlalefi Bereng, as the rightful and lawful Chief of Koung Makhalaneng, Maseru and a subordinate chief under third respondent.
2. Directing first and second respondents to cause to be published in a government gazette for general information the appointment of applicant as a Chief of Koung, Makhalaneng under third respondent and in hierarchical order, the Principal Chief of Rothe, Kolo, Serooeng and Thaba-Tseka and His Majesty the King of Lesotho.

3. Directing first and second respondents to cause to be paid to applicant his arrear salary from the date of his nomination to date of payment and thereafter be paid his salary on a monthly basis.
4. Directing first and second respondents to pay costs of this application and other respondents to pay same in the event of opposition.
5. Granting applicant further and/or alternative relief.

[3] The application was opposed by the respondents. There were no affidavits by the third and fourth respondents and surprisingly their views were not made known.

[4] The appellant's case is that that at the instance of the third respondent, on 25 September 1987 the fourth respondent presented him to the villagers of Ha Mpakoana, Ha Mokheseng, Ha Kobeli, Ha Lehlasele, Ha Nkoko, Ha Chere and Ha Leholi as their chief subordinate to the third respondent. Thereafter he approached "the relevant government authorities" to approve this decision, gazette it for public information and to cause to be paid to him his monthly salary as a chief. There was no response to his request, and no reason was given to him for the negative attitude to the request.

- [5] The appellant goes on to say that from the time he was presented as chief he exercised all powers of the chief in the seven villages concerned with the knowledge and tacit, alternatively implied, authority of the government of Lesotho and that there has never been any adverse or rival claim against his appointment. In support of this he attaches to his reply a copy of a payslip from the Lesotho Government Payroll reflecting payment to him of M676 which is reflected on the payslip as being for “Chief’s allowance” with the payment date of 25/08/11.
- [6] The deponent for the first respondent who is the chieftainship officer of Local Government and Chieftainship commences his answering affidavit by averring that the application is “mugged” by a serious dispute of facts and that the appellant should have foreseen that there would be a serious dispute of fact pertaining to his appointment as Chief of Koung, Makhalaneng and as to whether indeed he acted as such. The allegation as to the appellant’s presentation to the villagers concerned is not denied but simply “noted”.

[7] The rest of the answering affidavit is brief and terse to say the least. The deponent denies that the respondents were obliged to gazette the applicant as chief for by doing so, he contends, the publication would be contrary to the provisions of Basutoland Government Gazette No. 3413 of 1964 which prohibits further gazettelement and the creation of new chieftainship offices. He denies that the appellant has exercised all powers of chief in the villages concerned, pointing out that the appellant was at one point imprisoned for a lengthy period and was a member of the military council. The deponent also denies that the appellant is entitled to draw the salary of a gazetted chief as he avers that the appellant was and is not the gazetted chief and has not exercised the powers of a chief at the villages in question.

[8] Before us it was argued that the appellant's case is really that he was entitled, by customary law, to succeed his late father as chief subordinate to the third respondent in respect of a restructured ward comprising the villages referred to in the notice of motion. Although the affidavits filed by the parties are unnecessarily terse the respondent's deponent made it clear that there were serious disputes of fact concerning the appellant's appointment as chief.

[9] Issues of chieftainship are important in this Kingdom and because of the disputes of fact in the papers the court *a quo* ought, in my view, to have referred the matter to the hearing of oral evidence.

[10] Counsel for the respondents submitted that in the event of this court ordering such a referral, the costs of the appeal should be borne by the appellant. However, since the appellant has achieved a measure of success by having the matter referred to evidence, it will be more appropriate to make no order as to costs.

[11] In the result the following orders are made

1. The dismissal of the application and the award of costs by the court *a quo* is set aside.
2. The application is referred back to the court *a quo* for the hearing of oral evidence as to whether the alleged presentation by the predecessor of the 4th respondent of the appellant as Chief of Koung, Makhalaneng, Maseru as a subordinate chief under the third respondent

constitutes a nomination in accordance with customary law.

3. The hearing before the trial judge is to take place at a time to be arranged by the Registrar in consultation with the judge.

4. The evidence shall be that of any witness whom the parties may elect to call, subject to the following:

No party shall be entitled to call any witness unless:

(a) The party has served on the other party at least 14 court days before the date appointed for the hearing (in the case of a witness called by the appellant) and at least 10 court days before such date (in the case of a witness called by the respondent) a statement wherein the evidence to be given in chief by such person is set out; or

(b) The court at such hearing permits such person to be called despite the fact that no such statement has been served in respect of his or her evidence.

5. The fact that a party has served a statement in terms of para 4(a) hereof shall not oblige such party to call the witness concerned.

6. Within 30 court days of the making of this order each of the parties shall make discovery, on oath, of all documents relating to the issue referred to in para 2 hereof which are or have at any time been in the possession or under the control of such party. Such discovery shall be made in accordance with Rule 34 of the High Court Rules and the provisions of that rule with regard to the production and inspection of documents discovered shall be operative.
7. Save for the costs of the appeal in respect of which no order is made, the incidence of costs incurred in the court *a quo* thus far shall be determined by the court *a quo* after the hearing of oral evidence.

R.B. CLEAVER
ACTING JUSTICE OF APPEAL

I agree

C.T. HOWIE
JUSTICE OF APPEAL

I agree

W.J. LOUW
ACTING JUSTICE OF APPEAL

Counsel for the applicant: M. Ntlhoki

Counsel for the first and
Second respondents: R. Motsieloa