

IN THE HIGH COURT OF LESOTHO

In the appeal of:

✓ MOLATOLI RAMONTSOE Appellant

v

MOLEFI RAMONTSOE Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M. P. Mofokeng  
on the 10th day of November, 1980

This is an appeal brought on the certificate of the  
Judicial Commissioner who gave leave to appeal to this Court  
on the following ground:

"Whether plaintiff (Appellant) was  
lawfully allocated the site or not."

In this judgment the appellant and the respondent shall, for  
convenience simply be referred to as plaintiff and defendant  
respectively.

According to the evidence on record there is no dis-  
pute that the father of the parties had died leaving their  
mother (hereinafter referred to as Mamolefi) alive. It is  
also common cause that the plaintiff is the heir to his late  
father's estate by virtue of his being the eldest son. It  
is further common cause that the deceased had contracted a  
monogamous marriage. All the witnesses are agreed that the  
plaintiff was a very sickly person. For all intents and  
purposes the plaintiff supported both defendant and Mamolefi.  
He, in fact, performed all the rituals of burying his father.  
Then later Mamolefi is purported, by the plaintiff, to have  
awarded all her estate "i.e. the site and all her inheritance"  
to him because he was her "helper." At another stage she is

2/alleged to.....

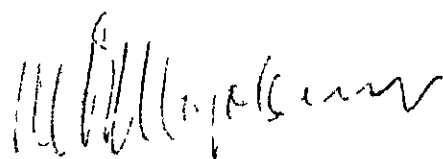
alleged to have "made a request that plaintiff should not be interfered with on the site and all her lands." The family is alleged to have blessed this request. Hence the land allocation committee, together with the chief, confirmed the transfer of ownership by issuing a Form "C" to the plaintiff. It was when defendant and another began to build the foundation of the house on the purported allocated site that the plaintiff objected and this began this case which has now reached this Court.

The legal position in similar situations has been dealt with fully in the case of Lesotho Chomane v Mabeli Tankiso (*Supra*) CIV/APN/5/78-(unreported) at page 5. Briefly, the position is that residential sites are inherited by the heir and not the widow. However, the widow remains in occupation and the heir will only enjoy the right to possess such land after the widow's death. During the widow's occupancy of such land she has no "right to disposition either by allocation during her lifetime or by testamentary instrument." per Prof. Poulter in his invaluable work Family Law and Litigation in Basotho Society (1976 Ed.) pp. 291-2. Mamolefi, therefore, tried to dispose of the site by allocating it to the plaintiff. This she could not do. It is contrary to the law. This of course, presupposes that the plaintiff was an heir. In his particular instant he is not. The heir was entitled to assert his rights when he regained his health. There was much force in Mr. Mda's argument that even if the family had supposedly met, it was highly doubtful if it could seriously be said that defendant had legally ( in the sense of free will ) consented to the transaction taking place. It was not his wish that was being given effect to but rather that of Mamolefi. That much is quite clear from the record of the evidence.

Mamolefi could not, therefore, confer any right which she did not, in law possess.

The question posed by the learned Judicial Commissioner must be answered in the negative and that is that the allocation was not in accordance with the law and was therefore unlawful.

In the result the appeal is dismissed with costs.



J U D G E

10th November, 1980

For Appellant: Adv. Ramodibedi  
For Respondent: Mr. A. P. Mda