

IN THE HIGH COURT OF LESOTHO

In the Matter of : NTSEKELE RAMAPEPE APPELLANT

v

BOFELILE MASUPHA RESPONDENT

REASONS FOR JUDGMENT

Filed by Hon. Justice F.X. Rooney on the 17th
day of December, 1980.

When this appeal came up for hearing before me on the 5th of December, 1980, I made an order referring the case back to the Judicial Commissioner's Court to enable that Court to (a) certify that this is a fit case for appeal and (b) specify the grounds which appear to the Judicial Commissioner to be sufficient and which are set out in the reasons of appeal filed by the appellant. I also ordered that the appellant should pay the wasted costs which were agreed between the parties in the sum of M5.00.

While I shall not deal here with the merits of the dispute, I take note of the fact that the litigation commenced on the 23rd of May, 1975 when the present appellant brought before the Pitseng Local Court a claim for damages against two persons one of whom is the respondent arising out of the felling of seven trees at the end of 1973. The amount of the claim is R3.50. It may well be that the dispute is more important to the parties than this trivial amount.

The Judicial Commissioner's decision was pronounced on the 8th of November, 1977. Any system of justice which permits such an inordinate delay in the settlement of disputes, however great or small, is failing in its purpose. I can only express the hope that reforms will be introduced as soon as possible to speed up the process of justice in

the Local and Central Courts and in the Courts exercising appellate jurisdiction in these matters.

The problem which confronted me arises out of section 28(3) of the Central and Local Court Proclamation 1938 (as amended)

"Any person aggrieved by any order or decision of a Central Court, whether in the exercise of its appellate or its original jurisdiction may within thirty days from the date of such order or decision appeal therefrom to the Courts of Judicial Commissioners established under the Basutoland Judicial Commissioners' Courts Proclamation, 1950.

There shall be no appeal to the High Court from the decisions of the Courts of Judicial Commissioners except in the following cases:

- (a) Upon any question of law or of native law and custom reserved by the Judicial Commissioner at the instance of either party or of his own motion; or
- (b) upon the certificate of the Judicial Commissioner that it is a fit case for appeal on any other ground which appears to him to be a sufficient ground of appeal:

Provided that nothing herein contained shall in any way affect the right of the High Court to make such order as may seem just upon the motion of any party aggrieved by the refusal of a Judicial Commissioner to allow an appeal under the preceding paragraphs."

It will be seen from the above that the right of appeal to this Court from a decision of the Judicial Commissioner is severely limited. In the present instance the matter does not fall under (a) but it purports to fall under (b) above.

The certificate of the Judicial Commissioner dated the 9th of February, 1979 contains the following :

" With reference to application by Appellant leave to appeal to the High Court is allowed on the ground whether the public who planted the trees lost the right to them on the evidence of Tumaki Ramapepe, that he had earlier allowed Mojalefa to plant willow trees at the area regard being had to the fact that no marked plot of land was made by Tumaki in the said earlier allocation."

It is clear from the statute that the Judicial Commissioner has no

general power to grant leave to appeal. If he acts under Sub-section (3)(b) he must first certify that it is fit case for appeal and then go on to specify the grounds which appear to him to be sufficient. His certificate is undoubtedly defective as it stands.

The reasons of appeal are contained in an undated notice signed by the appellant which reads.

"I beg leave to appeal in J.C. 88/76 between me and Bofelile Masupha which was heard by the Judicial Commissioner at Ts'ifalimali on 8th November, 1977 in the matter of compensation of R3.50 which I demanded from Appellant for authorising one Mahlomola Mafahlang to cut seven of my wattle trees. I had demanded compensation jointly and Respondent No. 1 has already paid a portion.

My first reason is that your judgment says that they can cut their trees and leave those of Mojalefa on the same site because no two people can be allocated one site.

2. It was made clear before the Court that the site belonged to Mojalefa and that he was placed in 1933. Respondent did not deny that the site belonged to Mojalefa and their witnesses also agree that the site is Mojalefa's.

3. I disagree with the allegation in the judgment that Tumaki once allotted people to plant wattle trees over Mojalefa's area. Tumaki said before the Court that he never allocated any people to plant trees over Mojalefa's site.

4. Tumaki goes on to say that he allotted a site for tree planting along side that of Mojalefa and that formed a boundary.

5. Respondents have no witnesses because their so called witnesses say that they were allocated the site by Tumaki and they say that Tumaki said they should plant over Mojalefa's site. Tumaki contradicts them and there is no other evidence.

6. Makhoa Ramapepe and Nteba Mofane have been good witnesses on my side. They saw when the wattle trees were planted, and there were already willow trees. Laws of Lerotholi section 31 (1) refers.

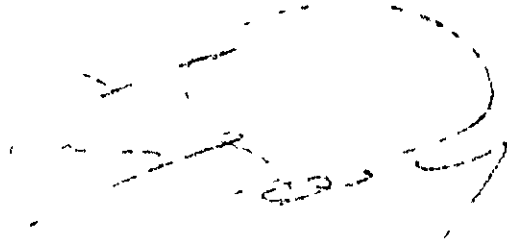
7. For these reasons I object to costs as awarded.

Sgd. Ntsekele Ramapepe."

Making due allowance for the fact that the appellant drew up the grounds for appeal without professional assistance and that they are in consequence a little vague, I am not satisfied that they can be condensed

3/ or transliterated

or transliterated into the formula which appears in the Judicial Commissioner's certificate. However, there are certain passages in the Judicial Commissioner's judgment which suggest that the Judicial Commissioner was concerned to find an answer to the proposition set out in his certificate. It is not apparent that the matter so raised by the Judicial Commissioner was an issue between the parties which required decision. It is because of this uncertainty that I deemed it necessary to refer the matter back to the court below. What is certain is that in the absence of a proper certificate from the Judicial Commissioner, this Court has no jurisdiction to entertain the appeal. The appellant may have recourse to the proviso which concludes the sub-section, but, I do not think that this proviso may be invoked unless the Judicial Commissioner refuses to allow an appeal under either (a) (b) above.



F. X. ROONEY

JUDGE

17th December, 1980.

For the Appellant : Mr. G.N. Mofolo instructed by Messrs. O.K. Mofolo & Co.
For the Respondent : In Person.