

CIV/T/333/94IN THE HIGH COURT OF LESOTHO

In the matter of :

Lebusetsa H.L. Matela

Plaintiff

and

The Principal Secretary - Ministry of Home Affairs	1st Defendant
The Attorney-General .....	2nd Defendant

JUDGMENT

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 26th day of November, 1996.

On 3rd August, 1984, the Plaintiff herein filed, with the Registrar of the High Court, a compound summons commencing an action in which he claimed, against the defendants:

- “(a) Payment of the sum of M33,761-00;
- (b) Interest at the rate of 6% per annum a  
*tempora morae*;
- (c) Costs of suit;
- (d) Further and/or alternative relief.”

The defendants intimated intention to defend the action and duly filed their plea. It is common cause from the pleadings that plaintiff was gazetted, per Government Notice number 106 of 1989, as the chief of ‘Moteng ha Hlakacha, subordinate to the area chief of Ngoajane ha Chaba, with effect

from 21st May, 1987. As a gazetted chief, plaintiff was entitled to a monthly allowance payable from the office of the First Defendant in accordance with the rates fixed by the Government, from time to time. Although his status was that of a gazette chief, plaintiff was, however, paid a monthly allowance commensurate to that of a headman.

According to plaintiff, the allowance paid to him had a shortfall in the amount of M33,761-00 which was the difference between his entitlement as a gazette chief and the actual payment made to him as if he were a headman. Notwithstanding demands, First Defendant refused and/or neglected to pay plaintiff the correct amount of his allowance as a gazetted chief from 21st May, 1987 to date. In his capacity as the Chief Accounting Officer of his Ministry and acting within the scope of his employment, First Defendant was, therefore, indebted to plaintiff in the sum of M33,761-00.

Wherefor, plaintiff claimed for relief as prayed in the summons.

*In their plea, defendants denied plaintiff's allegations that monthly allowances paid to him from 21st May, 1987 to date had a shortfall in the amount of M33,761-00 on the ground that during the period in question he had received incorrect amounts of his monthly allowances. Defendants alleged that before the system of basic tax was abolished, the amount of allowance payable to a chief had depended on the number of basic tax payers in his area of jurisdiction at the end of the year. When the system of basic tax was abolished the amount of allowance payable depended on his status.*

Defendants denied plaintiff's allegation that despite demands First Defendant refused and/or neglected to pay him his correct amount of monthly allowances. They further denied that in his capacity as the Chief Accounting Officer and acting within the scope of his employment, First Defendant was, therefore, indebted to plaintiff in the sum of M33,761-00 being the difference between his entitlement as a gazetted chief and the actual payment made to him as if he were a headman.

Consequently, defendants prayed that plaintiff's claim be dismissed with costs.

Plaintiff himself gave evidence on oath and called one witness to testify in support of his case. In their defence, the defendants called only one witness to testify on their behalf.

Inasmuch as it is relevant, it was common cause from the evidence adduced on behalf of the parties that plaintiff was, per Government Notice number 106 of 1989, gazetted as the chief of 'Moteng ha Hlakacha with effect from 21st May, 1987.

According to him, whilst a chief of his status was paid a monthly allowance of M360, plaintiff was paid only M30 per month as allowance until 1989 i.e. he was underpaid, for a period of about two years, in the amount of M330 per month, being the difference between the monthly allowance actually paid to him and the monthly allowance paid to a chief of his status.

It is significant to observe that, assuming the correctness of his evidence that he was for two years, underpaid by M330 per month, the total amount of arrears owed to plaintiff during that period was M7,920.00. However, as plaintiff did not say until on which date in 1989 he was underpaid by the difference between M30 and M360.00, the amount of M7,920 arrears could only be an estimate.

Be that as it may, plaintiff went on to testify that in 1989 the allowances payable to chiefs were revised and his allowance increased to M60 per month whilst that of a chief of his status was increased to M426 a month. Plaintiff was, therefore, underpaid by an amount of M366 being the difference between the amount of M426 paid to a chief of his status per month and the amount of M60 actually paid to him as monthly allowance. Again, plaintiff did not know the exact period during which he received the underpayment of M366 a month. He only contended himself with an estimation that it could have been until an unspecified date in 1990.

According to him, plaintiff was, from an unspecified date in 1990, paid a monthly allowance of M84 whilst a chief of his status received M511 a month. He was, therefore, underpaid in the amount of M427 per month. As usual, plaintiff no longer remembered for how long he was underpaid in the amount of M427 from 1990. He only estimated that it could have been until an unspecified date in 1992.

Be that as it may, plaintiff went on to testify that, in his estimation, in 1992 his monthly allowance was increased from M84 to M98 whilst that of a chief of his status was increased from M511 to M600. Plaintiff was, therefore, underpaid in the amount of M502. He did not, however, recall the exact period during which he was underpaid in the amount of M502 a month.

In his testimony, plaintiff told the court that on a date he no longer remembered, the chiefly allowances were subsequently revised and his allowance increased from M98 to M107 a month. The allowance paid to a chief of his status was, however, increased to M660 per month. Plaintiff was, therefore, underpaid in the amount of M553 a month. As he could not remember when the latest increase in chiefly allowances was made, plaintiff only contended himself with the estimation that it could have been in 1994.

It is significant to observe that it is a matter of common knowledge that plaintiff's allowance, like the allowances of all other chiefs was paid by Government from the National Treasury Department which kept a record of such payments. The court is, in my view, entitled to take judicial notice that whenever his allowance was paid from the treasury, plaintiff was furnished with an advice slip of such payment. The Treasury records and advice slips evidencing the exact amounts and periods during which he was paid the various increases in his monthly allowances were, therefore, readily available to plaintiff. Instead of giving the court that evidence plaintiff contended himself with estimation of how he had arrived at the specific amount of M33,761-00 arrears. Where he claims specific amount of arrears, Plaintiff must, in my view, specifically prove his claim. Plaintiff has failed to do this.

In his evidence, plaintiff told the court that he came to know that he was paid an allowance commensurate to that of a headman and not a chief by comparing the amount of the monthly allowance paid to him with the amount of the monthly allowance received by a certain chief Hlatsoane Matela, who like himself was a gazetted chief responsible to the area chief of Ngoajane ha Chaba. Chief Hlatsoane Matela was, however, not called as a witness to substantiate the evidence of plaintiff in that regard.

In his testimony, plaintiff then told the court that he had obtained the information that chief Hlatsoane Matela was paid more allowance than him from Government gazettes which were in the possession of his (plaintiff's) attorneys of record. The gazettes were, however, not handed in as exhibits in

this trial. The inference that such gazettes, if any at all, would not bear plaintiff out cannot be avoided.

58 years old Malebusetsa Matela testified as P.W.2 and told the court that she was the gazetted area chief of Ngoajane ha Chaba. She confirmed that Plaintiff was, since 1987, the gazetted chief of 'Moteng, subordinate to her. To her recollection, there were five(5) villages falling under Plaintiff's area of jurisdiction. The villages were each under a headman who was, however, not gazetted as such.

In 1988, plaintiff addressed, per his letter of 6th December, 1988, a complaint to her, as his immediate superior chieftainness. The gist of his complaint was that the monthly allowance paid to him was less than the monthly allowance received by gazetted chiefs of his status.

P.W.2 was not aware of the amount of monthly allowance received by plaintiff at the time. She, however, referred under cover of her letter of 9th December, 1988, plaintiff's letter dated 6th December, 1988 to her immediate superior chief viz. the Principal Chief of Makhoakhoa. Copies of the letters of 6th December, 1988 and 9th December, 1988 were handed in as exh. "A" and exh "B", respectively. There was no response from the Principal Chief. On 19th January, 1989 and 7th August, 1992, P.W. 2 again wrote to the Principal Chief about plaintiff's complaint. Copies of her letters dated 19th January, 1989 and 7th August, 1992 addressed to the Principal Chief were handed in as exh "C" and "exh "D", respectively.

Following exh "C" and "D" the Principal chief addressed to the District Secretary for the district of Butha-Buthe, the letter of 9th September, 1992 which was, on the face of it, copied to plaintiff and the Ministry of Interior (Home Affairs). In her testimony P.W.2 told the court that although, on the face of it the letter of 9th September, 1992 was not copied to her, the Principal Chief did give her a copy thereof. She handed in the copy as exh, "E" and part of her evidence in this trial. The gist of exh. "E" was a recommendation by the Principal Chief that certain villages be placed under the area of jurisdiction of the plaintiff so that the number of his subjects could be increased and his monthly allowance brought in line with the

allowances paid to gazetted chiefs instead of headmen. It can reasonably be deduced from exh "E", therefore, that the ground on which plaintiff was paid the allowance he was receiving was because his subjects were not sufficient to warrant a higher rate of allowance. There is, however, no indication that the recommendation made by the Principal chief has as yet been acceded to by the relevant authority viz. the Ministry of Interior (Home Affairs) or the Government. Indeed, according to her, P.W. 2 was not aware of any response by the Ministry of Interior (Home Affairs) to Exh. "E". Plaintiff's complaint about the inadequacy of his allowance had to date not been resolved. Hence the institution of the present proceedings for relief as prayed in the summons.

D.W. 1, Molai Moeketsi Lepota, testified that he had been the Executive Officer in the Ministry of Interior (Home Affairs) since 1980. His duties included attending to complaints lodged by the chiefs and members of the public. He remembered that in 1994 the plaintiff came to his office with a complaint that the amount of chiefly allowance paid to him was not correct inasmuch as he was paid as if he were a headman whereas he was in fact a gazetted chief. Plaintiff's request was, therefore, that the anomaly be rectified by paying him the allowance payable to a chief instead of a headman. His request was, however, not acceded to for the following reasons: Since 1946 chiefly allowances paid to Principal Chiefs were not based on the number of basic tax payers in their area of jurisdiction. All other gazetted chiefs and/or headmen below the rank of Principal chief were, however, paid allowances on the basis of the number of basic tax payers in their area of jurisdiction.

The *modus operandi* for payment of allowances to chiefs and/or headmen was that a chief and/or headman kept a register in which the number of his basic tax payers was recorded. At the end of every year, the register was sent to the office of the Principal chief who would verify the number of basic tax payers the chief or headman had in his area of jurisdiction. The office of the Principal chief would then make a covering letter by which it referred the register to the office of the District Secretary. After checking the number of basic tax payers in the register, the District Secretary would send the register to the office of the sub-accountancy where the chief or headman would be paid 5% of the total amount of the basic tax collected. The chief or headman who was found to have 250 basic tax payers

was, however, not paid 5% of the basic tax collected. He indeed was paid a monthly allowance of M100.00.

According to D.W. 1, at the end of 1984, the system of paying the chiefs or headmen allowances on the basis of the annual basic tax they had collected in their areas of jurisdiction was abolished and replaced by a new system whereby a chief or headman who, at the end of 1984 had a number of basic tax payers below 250 was paid a monthly allowance of M30, whilst the chief or headman who at the end of 1984, had 250 or more basic tax payers in his area of jurisdiction was paid an allowance of M100. The new system operated with effect from 1st January, 1985 and that was the position obtaining at the time plaintiff took over the administration of 'Moteng from his predecessor in 1987. The position had not been altered to dated. Defendants denied, therefore, plaintiff's suggestion that chiefly allowances were paid on the basis of whether a person was gazetted as a chief or headman. In the contention of D.W.1, the allowances of chiefs or headmen below the rank of Principal Chiefs were paid on the basis of whether or not, as of the end of 1984, the chief or headman had 250 basic tax payers in his area of jurisdiction. As of 1984, the number of basic tax payers in the area of jurisdiction of plaintiff who is quite a junior chief was below 250, The rate of his allowance was, therefore, the same as that of a headman viz.M30 a month. In the circumstances D.W.1 denied that there was anything wrong in the rate of monthly allowance paid to plaintiff.

It is worth noting that although he claims that the old system of paying chiefly allowance was, in 1984 abolished and replaced by a new one which came into operation in 1985, D.W.1 could not hand in any documentary evidence to substantiate his claim. The *onus* was on D.W. 1 to proof that in 1984 the old system was abolished and a new put in place in January, 1985. I am not convinced that he has satisfactorily discharged that *onus*.

Considering the evidence as a whole, I am not persuaded that, by and large, sufficient evidence has been placed before this court to decide the case either way. Justice of the case will, in the circumstances, be met by granting absolution from the instance. It is accordingly ordered.



**B.K. MOLAI**  
**JUDGE**

26th November, 1997.

For Plaintiff: Mr. Ntlhoki  
For Defendants: Mr. Mapetla.