CIV/A/28/2008

IN THE HIGH COURT OF LESOTHO

In the matter between:

'MAMORAPELI THAELE **PLAINTIFF**

V

'MATHABO NKOMO **DEFENDANT**

JUDGEMENT

Coram : **Hon. Monapathi J.**

Date of hearing : **26th March, 2012**

Judgment Delivered : **25th April, 2012**

***Summary*:**

A well appointed loco inspection had rightly influenced the Local Courts' decision. On appeal it was futile to argue that piece of evidence which did not bear any evidential weight should be considered as leading probability to Appellants' case against the finding of the Local Court. One of the pieces of evidence which did not influence the Local Court was the Local Chief's letter, the Chief having not testified.

CASES CITED:

Marsdorp's Institutes of South African Law Vol II (Juta + Co. 1960) pages 65-66 and ***Mohanoe v Relekhokhothile LAC 1985-89 (citing Laws of Lerotholi***, part I section 7 (7).

[1] This appeal is on certificate from the Judicial Commissioner. The dispute is about a field at Ha Mapetla, Masianokeng in the District of Maseru. It originated at Matela Local court where Plaintiff ('Mathabo Nkomo) claimed the field as hers and the Defendant ('Mamorapeli Thaele) pleaded that the field belonged to her. And as Plaintiff said:

> "The Defendant has taken my field and claims it is hers, she has a field there at Ha Mapetla and now she takes mine and leaves hers, I arrived here in Lesotho in 1959. I have since been ploughing that field at all time. I am surprised that today she says the field is hers".

The parties were represented by Mr. Seotsanyana for Applicant and Mr. Ntema for Respondent.

[2] The court at Matala Local Court found for Plaintiff because amongst others, following its *loco* inspection it said:

> "According to explanation by Defendant and her witnesses her field is below that of Plaintiff, so that it is clear that since the court found that there were two (2) fields at the area being the Plaintiff's field and that of the Defendant."

See Judgment – page 11

[3] After the judgment of Matala Local Court, which was as aforesaid, against the Defendant the latter appealed to Matsieng Central Court. The court dismissed that appeal. There in the judgment the learned Court President said at page 18:

> "… These fields of these disputants are adjacent according to the evidence of the two sides and according to the finding of Matala Local Court since that court has made an inspection of the disputed field and it satisfied itself that indeed this field belongs to the Respondent and this court of Matsieng accepts the decision of the Local Court."

Indeed the Matsieng Central Court might not have been very elaborate nor ideally touched on the issues of probability as raised by Mr Seotsanyana for the Appellant before the High Court in the appeal before me but it confirms the findings of he lower court.

[4] Again the Appellant (Defendant) filed an appeal to the Judicial Commissioner. While confirming the decision of the two lower courts if elaborated as follows:

> "Firstly, the Plaintiff had used the field for a long time of over thirty years, secondly, such lond peaceful occupation without interference has given right to Plaintiff through prescription. He cited ***Marsdorp's Institutes of South African Law Vol II (Juta + Co. 1960) pages 65-66, Mohanoe v Relekhokhothile LAC 1985-89 (citing Laws of Lerotholi, part I section 7 (7***). Thirdly, that: courts do not allocate

land as such but if courts say that they are satisfied that land has been allocated lawfully to a party, that is the end of the matter".

Unfortunately the court referred to an issue where it did not develop sufficiently by saying:

> "It is true that those soil samples were taken of the mentioned field. The court is aware that they were taken in 2001 the purpose of which was to cultivate asparagus which is not yet cultivated."

I say so because Mr. Seotsanyana in his argument made a submission that this was significant in the way I will discuss later in the judgment. He said this worked probabilities in favour of the Applicant.

[5] I had earlier complained that the grounds of appeal must be clear in indicating the real substance of the complaint. This was ignored because we remained with the following statements:

1.

"The learned Judicial Commissioner misdirected himself and/or erred in holding that the Respondent had proven his case.

2.

The learned Judicial Commissioner misdirected himself and/or erred by confirming the judgment of the Central Court which was not in accordance with the evidence before court.

3.

……..”

So that we had grounds which were clearly lacking in precision and clarity lending themselves to ambiguity, leading to obfuscation which could only be argued later. That is what happened.

[6] Mr. Seotsanyana appeared to argue, later and more about what is suggested in grounds 2 above. I noted that, about the inspection *in-loco,* Mr. Seotsanyana did not argue that it was unnecessary, imprecise and except that it led to a wrong conclusion and persuaded the court to reach a wrong conclusion on probabilities or led to the court to ignore vital evidence which should have persuaded the court otherwise. Mr. Seotsanyana submitted that this inspection-*in-loco* by Matala Local Court was intended or did have the effect of sidelining every evidence which if relied upon properly, would show that the probabilities favoured the Appellant.

[7] I noted that the attitude of the Respondent had always been that the Appellant did indeed possess or own a field but it was another field which was different from the Respondent. Appellant’s witnesses were probably believed that indeed Appellant had a field that formerly belonged to her mother or to her husband as a re-allocation after inspection by Chief, as the two versions were suggested by Mr. Seotsanyana.

[8] The following are those factors which the Matala Local Court as said by Mr. Seotsanyana were ignored. Firstly, is exhibit “A” which is a letter dated the 16th May 2007 addressed to the Principal Chief of Thaba-Bosiu. It was written by the

Chief of Masianokeng Chief Frank Motheo Mapetla. It suggests that the Appellant and Respondent having appeared before him about the disputed field he made a decision that the field belonged to the Respondent. But he also suggested in the letter that:

> " I plead Sir, that you call the parties before you about their matter which you will hear and give a proper decision". (My underlining).

Mr. Seotsanyana contends that this decision by the Chief of Masianokeng pointed at the Appellant being the proper owner of the field. That it was wrong for the courts to have ignored this letter. He agreed, however, that ideally the Chief himself should have been called to testify.

[9] Mr Ntema for Respondent answered to the issue of the letter of the Chief of Masianokeng that there was no value in the said letter for the same reason that the Chief had not testified. That the court has properly not placed any evidential value on the letter more especially because the Chief himself says that the Principal Chief has to give a "proper decision". I concluded outright that even if the Chief's opinion would be correct inasmuch as he was not called as a witness the letter would have no value and the Matala Local Court, most correctly, was not persuaded by the letter.

[10] The second issue was to do with exhibit "B", which was a request for soil analysis by the Appellant. Indeed this may have been in relation to the disputed field. The problem is that much as the person who was requested to do the soil analysis did not testify to point at the particular field, it might have been at/or for another or different field. It was regrettably not demonstrated how this should

have indicated probabilities to this court as against other factors that the court considered. I would not agree with Appellant's Counsel, with respect. The Matala Local Court was quite entitled not to have placed any weight on the aspect of the soil analysis report, exhibit "B".

[11] Perhaps the last issue to consider is how the evidence of the Appellant is consistent with the report of the inspection in *loco*. Mr. Ntema was able to demonstrate this consistent with what I pointed out *infra* that the Respondent's attitude was that it has always been two (2) different fields involved. That one belonged to Appellant and the other to Respondent. This starts from the statement of the Respondent. Secondly, the questions: on page 2 and 3:

> "Q. Where is this field?
> A. At Ha Mapetla.
> Q. Near which field is it separate?
> A. It is adjacent to your field."

Again DW1 Kotoana Rammina Mohlomi says on page 5 of record:

> "This field which is spoken about I have practiced ploughing on it, it is at the back of the village, up to now I am ploughing it. It is 'Me' 'Mamorapeli's field, on the west of it is that of the Plaintiff, on the South is that of Ntate Kuena Malebo, on the west is fallow land."

DW2 'Mamokhethi Phatang adds on page 7 of record of proceedings; that

> "The fields of those disputing parties are adjacent to each other, at just when going out of the village of Ha Mapetla is that of the Defendant,

> of the Plaintiff is above to each other, I do not know who is claiming whose."

When DW3 testified he said:

> "This field is of the Defendant I know it because I have ploughing it and I have grown up at Ha Mapetla."

When questioned he said:

> "Q. You say whose field is this?
> A. It is that of 'Me' 'Mamorapeli."

This was the evidence before court.

[12] It is in those circumstances where the President of Matela Local Court, most wisely in my view, ordered for an inspection-*in-loco*. It was in these circumstances where it was suggested, in evidence, that there were two (2) fields involved. One belonged to Appellant and one to the Respondent and the Appellant is claiming a field that does not belong to her. As it is when speaking about an inspection in ***Rex V Holland 1950 (3) SA 37*** at ***40A***: It is said:

> "… the object of that is not merely as the magistrate suggests to get a general idea of the terrain to enable him to understand the evidence but it is also to enable the presiding officer to see and note what the parties wish him to see and note in regard for matters which either might be agreed upon or be in controversy as the case might be …."

As I said before nothing really came out as a challenge to the way the inspection was done. See ***Kruger v Ludik 1947 (3) SA 23 (A***) at ***31***.

[13] I am satisfied that the challenges on issues, about probability, raised by Mr. Seotsanyana do not hold water. Again I observe, that the Local Court President not only held the inspection, her observation as well as the conclusions were consistent with the case of the Respondent and actual evidence rendered and tested in court. The evidence proved credible and truthful. The probabilities favoured the Respondent.

[14] In the circumstances the appeal must fail with costs.

T. E. MONAPATHI
JUDGE

For Appellant : Mr. Seotsanyana
For Respondent : Mr. Ntema