

CIV/A/01/2011

IN THE HIGH COURT OF LESOTHO

In the matter between:

‘MAMORATUOA SEBOPHE

Appellant

and

SECHABA SEBOPHE

Respondent

JUDGMENT

Coram:

Hon. Hlajoane J

Dates of Hearing:

23rd August, 2012.

Date of Judgment:

14th September, 2012.

Summary

The widow alleging to have been allocated some two fields by her husband as a second wife – The first wife and his son having been excluded from the meeting when such allocation was done – Yet were still present at home – The second wife having been allocated some other two fields as thite by her husband – Appeal dismissed as such allocation deprived the heir of greater share of the estate - Section 14 (1) Laws of Lerotholi.

- [1] This is an appeal against the decision of the Judicial Commissioner's Court. The trial commenced at Manamela Local Court in Butha-Buthe. The appellant was the defendant and the respondent was the plaintiff.
- [2] At the trial stage, the appellant was to be ejected from some two fields, one at Paqoeng and the other at Ha Tlali. The fields belonged to respondent's grandfather, Phutheho Sebophe.
- [3] Appellant's husband being the father of the respondent and appellant being the second wife of respondent's father.
- [4] At the trial stage before Manamela Local Court judgment was given in favour of the present respondent. On appeal to Hololo Central Court, the trial Court's decision was set aside in favour of the present appellant. But on appeal to Judicial Commissioner's Court the trial Court's decision was re-instated in favour of the present respondent hence the appeal to this Court.
- [5] It was not in dispute that the father of the respondent had married two wives by customary rites, and the appellant being the second wife.
- [6] The father of the respondent had inherited some three fields from his father Phutheho. The three fields being one at Paqoeng, the second at Ha Tlali and the last one at Ha Dalmait.

[7] It has been the appellant's case that since her husband inherited the three fields from his father Phutheho her husband Ntseke had allocated two of the three fields to her. The two fields being one at Paqoeng and that at Ha Tlali. Appellant only has a Form C in respect of the field at Paqoeng and claimed that the Form C in respect of the one at Ha Tlali got lost.

[8] There were two questions to be asked here. The first being whether the allocation of the two fields to the appellant was properly made? Again whether such allocation deprived the heir of the greater part of his father's estate?

[9] Before the Local Court the appellant clearly stated that when she was allocated the fields by her husband as the second wife, the first wife 'Masechaba was not even there in that meeting though she was still present at home. To quote the appellant she had said;

“Masechaba was present at home when the allocation was done, it was just that she was never called to come and sign.”

[10] Appellant further showed that even the respondent was not present during the allocation yet he was still at home. The respondent being the first male issue in the first house.

[11] Appellant had been asked in cross examination as to whether a man in a polygamous set up when allocating his estate, should do so in consultation with his first wife and the answer from the

appellant was that he has to do so in consultation with his first wife.

[12] It has therefore been clear from the evidence that the first wife was never consulted when allocation to the appellant as alleged was done. This even came from the appellant herself. Not only was the first wife and her son absent in that meeting for allocation to the appellant, but also one Simon Sebophe as head of the family of Sebophe.

[13] Appellant wanted the Court to believe that if the two fields were to be taken away from her, she was going to be left with nothing. But in cross examination to the respondent, he pointed out that besides the two fields subject matter of this appeal appellant has always been ploughing two other fields, one at Letsoapong and the other at Sekhutloaneng. That was never challenged by the appellant.

[14] From what could be gathered from the evidence in this case, it became evident that when appellant was so allocated the first wife, as it ought to have happened was never consulted and her son as the first male issue. Instead it would seem that they were deliberately left out in that meeting yet they were still at home. So that the allocation was not proper.

[15] Again from the evidence it came out that the appellant had been allocated two other fields by her husband at areas where there had

been no prior allocation (thite) and that was never disputed by the appellant.

[16] The respondent showed that he had only been allowed to use one field at Dalmait whilst the appellant would remain with four fields if not more.

[17] Both parties relied on **section 14 (1) of the Laws of Lerotholi** which clearly stipulates that the heir must not be deprived of a greater share of his father's estate. So that the respondent being the first male issue in the first house remained the heir in the Sebophe family after his parents demise.

[18] Again even the form C that the appellant referred to was criticized in that it appeared to have bear written or issued on the 26th October, 1984 but the date stamp was for 15th August, 1996, some ten years and more later.

[19] The appellant had further argued that the allocation to her had to be considered as the deceased's instructions and therefore to be carried out. But the respondent argued otherwise, showing that such instructions could not be honoured as were in sharp contrast with the provisions of **section 14 of the Laws of Lerotholi** as shown above.

[20] From the evidence therefore it became clear that the appellant had not been left without any field as she alleged. Evidence has shown

that she was still left with some two fields at Sekhutloaneng and Letsoapong where she had been allocated thite. That if she were to be allocated the other two fields at Paqoeng and Tlali, the respondent as the heir would then be deprived of the greater share of his father's estate.

[21] For the reasons shown above, this Court finds that the grounds of appeal are without merit. The appeal is thus dismissed, but there will be no order as to costs, this being a family dispute.

A. M. HLAJOANE
JUDGE

For Appellant: Mr Molise

For Respondent: Mr Masiphole