

CIV/A/19/2011

CC1085/2009

IN THE HIGH COURT OF LESOTHO

In the matter between:

THABO NTSANE

1st Appellant

KHETHENG KHETHENG

2nd Appellant

NTSOAKI RAMOLAHLOANE

3rd Appellant

PHALATSI KHECHANE

4th Appellant

MOTS'OANE MOFOLO

5th Appellant

'MATUMELO MOTOSOLA

6th Appellant

LEFU LEHLOKA

7th Appellant

ABEL KHOLOPO

8th Appellant

MOTA

9th Appellant

And

INVESTMENT TRIANGLE (PTY) LTD

Respondent

JUDGMENT

Coram:

Hon. Hlajoane J

Date of Hearing: 10th June, 2013.

Date of Judgment: 29th August, 2013.

Summary

Whether it was proper for the King's Counsel to have been granted relief by the High Court to have his name removed from the Roll of Advocates so as to enable him revert to his position as Attorney – Whether involvement of the King necessary for that purpose. Also challenging representation by Counsel at the appeal stage who had been representing same client at the trial stage.

Held: It was absolutely in order for the King's Counsel to have exercised his choice of opting to revert to the Roll of Attorneys by approaching the High Court for relieve and not the King.

Held: Also that Counsel ought to have challenged representation by Counsel of a juristic entity at the trial stage and not on appeal.

Annotations

Statutes

1. Legal Practitioners Act No.11 of 1983

Books

Cases

- 1. Law Society v Thetsane & Others C of A (CIV) NO.13 of 2010**
- 2. LEC v Mohlomi CIV/APN/111/2009**
- 3. Karim v Law Society of Lesotho 1979 (2) LLR 431**

[1] This is an appeal before the High Court against the decision by the Magistrate's Court. But before dealing with the merits of the appeal the Appellants raised some two preliminary points of law.

[2] The first point being that Mr Matooane who represented the Respondent has no title to appear in the matter without having been instructed by an Attorney as an Advocate. Also that there was no resolution authorizing his company to defend the Respondent before this Court.

[3] It is common cause that Mr Matooane had all along been practicing as an Attorney of the Courts in Lesotho. It is also common cause that Mr Matooane by virtue of having been conferred with the honour and dignity of King's counsel by the King, his name was struck off from the list of Attorneys and became an Advocate.

[4] The relevant section in the Legal Practitioners' Act¹ (The Act) is **Section 7 (5)** which reads thus;

“A person who has been appointed as King’s Counsel shall practice exclusively as an advocate and may have the assistance of junior Counsel.”

[5] The Court of Appeal in the case of **Law Society of Lesotho v Thetsane and Others**² stated the position of the law by saying,

“It will be observed that the decision to confer the status of King’s Counsel is that of the King. The input of the Chief Justice is limited to making recommendation.”

[6] Appellant’s Counsel referred to the **Thetsane** matter in support of his argument that, to the extent that this Honourable Court attempted to remove the name of Mr Matooane from the Roll of advocates, to the roll of attorneys so as to enable him to practice as an attorney while at the same time wearing the Glory, honour and dignity of king’s counsel that order should be regarded as *pro non scripto* as a violation of provisions of **section 7 (5) of the Act**.

[7] What in essence counsel was saying was that once the king has conferred the honour and dignity of King’s Counsel the Court

¹ Legal Practitioners Act No.11 of 1983

² Law Society v Thetsane & Others C of A (CIV) 13 of 2010

would be precluded from dealing with such an individual on an application for being removed from the roll of Advocates to that of Attorneys. That because the conferment was by the King his permission had to be sought when decision to become or revert to being an attorney was sought.

[8] Respondent's counsel in response argued that it was correctly in order that Counsel first applied to the High Court for his name to be removed from the roll of Advocates to revert to being an Attorney.

[9] Respondent's counsel referred to **section 36 (1) of the Act** which reads:

“The High Court may, for any reasonable cause shown order the suspension or removal of any Legal Practitioner from the Roll.”

The section indeed in referring to Legal Practitioner includes also the King's Counsel who has been so honoured by the King. And as argued by Counsel, both Advocates and Attorneys being basically officers of the Court who by no means can never carry on with their practice until they will have been admitted to do so by the High Court.

[10] This case is distinguishable from the case of my sister **Majara J** in **Lesotho Evangelical Church v Mohlomi**³ where counsel who had been conferred the honour and dignity of King's Counsel represented client without having been instructed by an Attorney. That was clearly wrong as Mr Sello KC unlike Mr Matooane, had never applied to have his name removed from the roll of Advocates to enable him to revert to his position as an Attorney.

[11] In demonstrating that the Court has the inherent jurisdiction over the admission, removal and conduct of the Legal Practitioners, Respondent's Counsel referred to the case of **Karim v Law Society of Lesotho**⁴. So that the Court in terms of **Section 7 (5) of the Act** has not been curtailed from its inherent powers of removing legal practitioners from the role on account of misconduct or transferring from one roll to the other.

[12] What Mr Matooane did was perfectly in order to have applied to be removed from the roll of Advocates to that of Attorneys. The involvement of the King was only relevant in the conferment of the honour and dignity to Mr Matooane and when Mr Matooane wished to revert to the roll of Attorneys he was at liberty to have acted as he did.

³ CIV/APN/111/2004 LEC v Mohlomi

⁴ Karim v Law Society of Lesotho 1979 (2) LLR 431 at 437

[13] A question was asked in Court to distinguish the position of the appointment of a Judge by the King and conferment of honour and dignity of King's Counsel by the King. Applicant's counsel showed that being a Judge is an act of employment and a Judge ceases to be one according to the prescribed provisions as to retirement and / or resignation.

[14] The argument went further to show that once a Judge has been appointed by the King it would be wrong for the High Court Judge to be removed from a roll of Judges to the roll of Magistrates.

[15] Such argument would not hold water because it is not a prerequisite that before being appointed a Judge one must have first been a Magistrate. That can only happen by chance.

[16] The Court can safely take a judicial notice of the fact that civil rites marriages are solemnized in church or before the District Administrator. But when such couples want to dissolve their marriage they approach the High Court to get a decree of divorce. One cannot go before the Priest or Minister of Religion to divorce or to the District Administrator.

[17] So that since Mr Matooane who was once conferred with the honour and dignity of King's Counsel had approached the High Court for relief, to have his name removed from the Roll of Advocates and revert to his position of being an Attorney, it would be wrong to consider that he needed to be instructed before representing the Respondent in this matter. He is now an Attorney.

[18] Mr Matooane has exercised his constitutional right of choosing where he wanted to be as a Legal Practitioner.

[19] On the second point of lack of resolution authorizing company to defend the appeal before this Court, Applicants' counsel pointed out that the Respondent being a juristic person ought to have resolved that Mr Matooane represent them, and such resolution must have been filed.

[20] In response Mr Matooane argued that it was enough to have just said he has been duly authorized to represent client. Also that this point ought to have been raised before the Magistrate's Court and not on appeal. True enough same Counsel had been representing Respondent from the trial stage and such point was not raised. Appellants' Counsel has confined lack of authority on Appeal but did not say as to what happened at the trial stage. This point is

therefore to be considered as a non starter because of its being raised on appeal.

[21] For the reasons shown above the two points *in limine* raised must be dismissed, and they are so dismissed with costs.

A. M. HLAJOANE
JUDGE

For Appellants: Adv. Mosito KC

For Respondent: Adv. Matooane KC

