

IN THE HIGH COURT OF LESOTHO

In the matter between:

CHIEF MOEKETSI SEKOATI

Plaintiff

and

CHIEF TŠELISO RAMATLEPE

1st Defendant

THE PRINCIPAL CHIEF OF LIKHOELE

2nd Defendant

**MINISTRY OF LOCAL GOVERNMENT
AND CHIEFTAINSHIP AFFAIRS**

3rd Defendant

ATTORNEY-GENERAL

4th Defendant

RULING

Coram : Hon. Hlajoane J

Dates of Hearing : 2nd June, 2014.

Date of Judgment : 12th August, 2014.

SUMMARY

Special pleas on Prescription and failure to exhaust local remedies – that there cannot be a claim for prescription under Chieftainship Act 22 of 1968 – The matter started from office of the Principal Chief and issue of exhaustion of local remedies cannot stand – Special pleas dismissed and matter to go for trial.

Annotations

Statutes

- 1. Section 5 (8) of the Chieftainship Act No.22 of 1968**

Books

Cases

- 1. Lehlola Mofoka v Lineo Lihanela C of A (CIV) No.6 of 1988**
- 2. ‘Makoenehelo Seitlheko v Sekhobe Ramatlepe CC91/1974**

[1] This case is about Plaintiff asking this Court to make a declaratory order and order of interdict in the following terms:

- (a) Declaring that the village of Ha Phepheng in the district of Mafeteng falls within the area of Ha Seitlheko.
- (b) Declaring that Ha Phepheng falls within the jurisdiction of the Plaintiff.

- © An order interdicting and restraining the defendant from exercising any powers of Chief over Ha Phepheng.
- (d) An order interdicting and restraining the defendant from interfering with plaintiff's exercise of chiefly rights over Ha Phepheng.
- (e) Costs of suit.

[2] It is worth noting that initially the parties were Chief Moeketsi Sekoati as plaintiff and Chief Tšeliso Ramatlepe as defendant. Defendants' counsel applied for joinder of the 2nd to 4th defendants. Both parties came to an agreement that the Application for joinder be granted and it was so granted. Their agreement was thus made an order of this Court.

[3] 1st and 2nd Defendants have raised special pleas on exhaustion of local remedies and prescription. On prescription, the 1st defendant has shown that he has been the Chief of Ha Phepheng and has been in that office since 1993. That since this claim was brought in 2006, which happened to be more than two years of prescription period, the claim has thus prescribed.

- [4] In response to the above point plaintiff argued that there is no prescription under chieftaincy. Relying on the decision in **Lehlola Mofoka v Lineo Lihanela**¹ the Applicant argued that gazettelement is not the creation of the office of Chief. Of importance is the question of fact of whether indeed one has such a right.
- [5] What was decided in the above case was that one can be allowed to act in the office of Chief for many years but that length of time in the office of Chief would never confer on him the right which he otherwise does not have. He may have been gazetted in that office for years in acting capacity beyond the period of two years but still remain to be without a title.
- [6] So that even if 1st defendant as he said has been Chief of Ha Phepheng since 1993 and action only brought in 2006 if he has no right of title in that office the length of period in the office would not qualify him or confer any right to him to be declared the Chief of Ha Phepheng. This special plea is therefore without merit and has to be dismissed.

¹ C of A (CIV) No.6 of 1988

[7] On exhaustion of local remedies. Here the 1st defendant is saying that this matter ought to have first been dealt with by the Principal Chief of Likhoele in terms of **Section 5(8) of the Chieftainship Act**². The section further allows that there be formed a committee which would investigate into the matter.

[8] In response to this point plaintiff's counsel showed that this point was decided in the case of '**Makoenehelo Seitlheko v Sekhobe Ramatlepe**'³ a dispute over the area of Ha Seitlheko.

[9] In order to understand what this case is all about I will refer to the pleadings. Plaintiff in his declaration has shown that under para

4.1 That Ha Seitlheko comprises several villages including Ha Phepheng.

4.2.1 That Ha Phepheng falls under the jurisdiction of the plaintiff.

[10] The 1st defendant in his plea has denied all the above. Instead he contended that he is the Chief of Ha Phepheng. This therefore means that both the plaintiff and the 1st defendant

² Chieftainship Act No.22 of 1968

³ CC91/1974

claim to be each one of them Chief of Ha Phepheng. But it cannot be possible to have two chiefs for one particular area.

[11] The Court was referred to the copy of judgment by Ramokoatsi Central Court in 3 above where the parties were different from the present but the area in dispute being Ha Seitlheko. In this case we are concerned about the area of Ha Phepheng. It has not been established on the papers whether Ha Seitlheko comprises of areas which also include Ha Phepheng.

[12] But looking at the decisions attached to the bundle of documents dated 26th May, 2014 it appears that similar dispute over the area of Ha Seitlheko were dealt with from the office of the Principal Chief up to the High Court, though parties different from the present. So that it cannot be true that there has been failure to exhaust local remedies. This point also fails and the parties to come before me for arguing the merits of the trial.

A. M. HLAJOANE
JUDGE

For Plaintiff:

Ms Motsamai

For Defendants: Ms Hlauli