

**IN THE HIGH COURT OF LESOTHO**

**In the matter between:-**

**THE PRINCIPAL CHIEF OF LIKHOELE**

**Applicant**

**And**

**ZULU KHOTLE**

**1<sup>st</sup> Respondent**

**MAGISTRATE OF THE SUBORDINATE  
COURT MAFETENG (MR MOLAPO)**

**2<sup>nd</sup> Respondent**

**MINISTER OF LOCAL GOVERNMENT  
AND CHIEFTAINSHIP**

**3<sup>rd</sup> Respondent**

**ATTORNEY GENERAL**

**4<sup>th</sup> Respondent**

**JUDGMENT**

**Coram: Hon. Hlajoane J**

**Date of Hearing: 9th December, 2013**

**Date of Judgment: 20<sup>th</sup> February, 2014**

## Summary

*Application for review of proceedings by the Magistrate denying the Principal Chief to be represented by Counsel of his choice and not the office of the Attorney General – Attorney General’s office having showed no interest except filing appearance to defend after close of pleadings – Application granted with costs.*

## **Annotations**

## **Statutes**

### **1. Government Proceedings and Contract Act 1965**

## **Books**

## **Cases**

[1] This is an application for review of the proceedings of the Mafeteng Magistrate’s Court. The order for the dispatch of record of such proceedings was made and it was complied with.

[2] A brief synopsis of what transpired before the Magistrate’s Court being that the 1<sup>st</sup> Respondent instituted an action before Mafeteng Magistrate Court. He was claiming from the Applicant an amount of money for unlawful impoundment of his cattle and for *contumelia*. After the Applicant was served with the summons, he

instructed a private practitioner to defend the matter. The other defendants were not served.

- [3] The return of service show that the summons was served personally on the Applicant and no other person despite the fact that present 3<sup>rd</sup> and 4<sup>th</sup> Respondents were other Defendants. Applicant then engaged services of a private lawyer who duly filed notice of appearance to defend. In that notice Applicant's counsel mentioned the office and address of service for receiving process in the matter. 1<sup>st</sup> Respondent has always been sending process to that given address till the close of pleadings in the matter. It was only after the pleadings were closed that the office of the Attorney General filed Notice of Appearance to defend which in terms of the Rules was way out of time.
- [4] 1<sup>st</sup> Respondent's counsel set the matter down and also notifying Applicant's Counsel of same. The matter was postponed several times due to absence of Presiding Officer on some occasions and on other occasions due to absence of Applicant's Counsel.
- [5] On one last date of hearing 1<sup>st</sup> Respondent's counsel in the presence of Applicant's counsel raised a point that Applicant ought to have been represented by the office of the Attorney General as

he was being sued in his official capacity as the Principal Chief. The Court upheld that point thus on that point denied Applicant's counsel an audience and postponed the matter, despite insistence by Applicant's counsel to proceed with the matter.

- [6] 1<sup>st</sup> Respondent's counsel prepared a fresh notice of set down which this time was served at the Applicant's office. On the set date there was no appearance by Applicant himself or his counsel and default judgment was thus granted against the Applicant. The argument being that Applicant was being sued in his official capacity hence why he has been referred to as Principal Chief without citing his personal names.
- [7] It has been the Applicant's contention that he had not even been served with the order indicating that he should not have been represented by Counsel of his choice but the office of the Attorney General. Even the relevant counsel's chambers were not served with such an order.
- [8] Applicant's counsel argued that 1<sup>st</sup> Respondent's counsel had all along, during the filing of pleadings been aware that Applicant was being represented by T. Hlaoli & Co and had raised no objection. In upholding the point that Applicant's counsel had no right of

audience but office of the Attorney General, the office of Attorney General had not been served and 1<sup>st</sup> Respondent's counsel failed to refer to any authority to support his point that Applicant had to be represented by Attorney General's office.

- [9] 1<sup>st</sup> Respondent's counsel in this matter has correctly identified two issues for determination;
- (a) Whether or not Applicant has made out a case for review?
  - (b) Whether the Applicant had to be legally represented by a private firm of legal office of his choice or by the office of the Attorney General.

- [10] Attacking the summons, Applicant's counsel showed that even in the summons it was never stated that Applicant was being sued in his official capacity. The Court can safely take a judicial notice of the fact that there is only one Principal Chief for a particular area. So that one can never mistake a Principal Chief of one area with that of the other areas.

[11] Applicant's counsel relied on the provisions of **section 3 of the Government Proceedings and Contract Act<sup>1</sup>**, which stipulates as follows:

*“In any action or other proceedings which are instituted by virtue of the provisions of section 2 of Act, the Plaintiff, the Applicant or the Petitioner (as the case may be) MAY make the Principal Legal Adviser the nominal defendant or respondent”,* thus giving a litigant a choice of whether to be represented by office of the Attorney General or not. Section 2 being about the competent court to deal with the matter.

[12] The Court in answer to the first issue for consideration finds that it was irregular to have not allowed the Applicant to be represented by counsel of his choice more particularly where the office of the Attorney General had not been served with the summons yet were cited as defendants and even when they had come to know of the matter they showed no interest in the matter until the close of the pleadings. Applicant properly exercised his choice by deciding to engage services of the private firm to represent him.

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<sup>1</sup> Government Proceedings and Contract Act No.4 of 1965

[13] The application thus succeeds in terms of prayers 3(a), (b), (c), (d) and (e) of the Notice of Motion.

**A. M. HLAJOANE**  
**JUDGE**

For Applicant: Ms Kao

For Respondents: Mr Tsenoli