CIV/A/32/2013

IN THE HIGH COURT OF LESOTHO

In the Matter Between:-

KOSE HLASA **Appellant**

And

MORENA MOTJOTJO PATSI **Respondent**

Summary

Appeal from judgment of Judicial Commissioner's Court - Bela-Bela Local Court having set aside decision of Principal Chief on dispute over tree plantation – Whether the Local Court had jurisdiction over the matter.
Held - Court a quo competent to hear the matter – Chief's decision not legally binding on the parties – parties not barred from taking matter before the Local Court - Appeal dismissed with costs.

ANNOTATIONS

STATUTES
1. The Basotho Courts Proclamation 23 of 1958
2. The Chieftainship Act 22 of 1968

CASES
1. Hoohlo v Hoohlo 1967 – 70 LLR 318

[1] This is an appeal from the judgment of the Judicial Commissioner's Court which was handed down on the 9th April 2013.

The dispute arose over a forest plantation located at Tuke village within Bela-Bela in the district of Berea. On the one hand, the appellant claimed before the Bela-Bela Local Court that the forest used to belong to his late grandfather Moahloli Hlasa and he inherited it from him. On the other, the respondent contended that the forest belongs to the Tuke Community. The record of the Bela-Bela Local Court reveals that the matter was from the office of the Principal Chief of Berea for arbitration where the Principal Chief ruled in favour of the appellant.

[2] Post that ruling, the respondent took the matter before the Local Court of Bela-Bela and the judgment was handed down in his favour i.e. to the effect that he had sufficiently proved that the plantation belongs to the Tuke community. Being dissatisfied with the decision, the appellant noted an appeal before the Judicial Commissioner's Court and having lost it, before this Court.

[3] He relies on two grounds namely, that the Bela-Bela Local Court was not competent to preside over the matter and secondly, that a Local Court cannot adjudicate over matters that have already been decided by an entity exercising administrative and/or quasi-judicial functions.

[4] In connection with the issue of jurisdiction, **Mr. Tlapane** contended on behalf of the appellant that the Local Court had no jurisdiction to entertain the matter because the office of the Principal Chief is a creature of Statute and its function are clearly defined by the Chieftainship Act[1] and that the Judicial Commissioner erred and misdirected himself by failing to decide this question.

[1] Act No. 22 of 1968

[5] To this end, Counsel for the appellant referred the Court to section 8(2) of the Act and added that in terms thereof, where a Principal Chief has exercised his powers or performed his duty, only a superior Chief or the Minister can revoke, withdraw, amend or otherwise deal with the act or omission in terms of his powers or duties as may be lawfully specified. It was thus his submission that the Local Court misdirected itself by handling the matter as that runs contrary to the provisions of the Act.

[6] It was **Adv. Tlapana**'s further argument that if the respondent was not satisfied with the decision of the Principal Chief, he ought to have taken the matter before the Minister or alternatively, the High Court because these were the only remedies available to him.

[7] He added that the Local and Central Courts came into existence by virtue of Proclamation 62 of 1938 which clearly articulates their powers. It was his contention that these courts are authorised to administer Sesotho law and certain specified statutory provisions but may not entertain disputes under the common law. He added that decisions of a Principal Chief are administrative or quasi-judicial in nature and for that reason can only be subject to review by the High Court in terms of Rule 50 of the High court Rules.

[8] In this regard, **Mr. Tlapana** referred the Court to the case of **Hoohlo v Hloohlo**[2] in support of his argument that the office of the chief executes quasi- judicial functions. He urged the Court to set aside the decision of the local court on the basis of lack of jurisdiction.

[2] 1967 – 1970 LLR 318

[9] On behalf of the respondent, **Mr. Masoabi** made the contention that the matter that was taken before the Bela-Bela Local Court was a fresh one because the Principal Chief was only acting as an arbitrator and his decision was not binding upon the parties and according to the respondent, the issue of jurisdiction does not arise in this case. That alternatively, even if it could be argued that the decision of the Principal Chief was valid, it was not made by the Chief but a certain lady that works in that office. It was thus **Mr. Masoabi**'s submission that the said lady has no powers to entertain this matter and as such this appeal should be dismissed for lack of merit.

[10] It is against this background that I now turn to deal with the question whether the Local Court had the jurisdiction to review the decision of the Principal Chief and set it aside. It is trite that chiefs are custodians of peace within their communities and their decisions are purely administrative. As such they are expected to administer peace at all times.

[11] Thus, where there is a dispute, they act as mediators or arbitrators but their decisions are not legally binding on the parties. For that reason, where a party is not satisfied with the decision, he is within his right to seek recourse in the Courts of law. In other words, I do not accept the submission that Chiefs exercise a quasi-judicial function that is only reviewable by the High Court.

[12] In addition, a reading of the other provisions of the Act, especially those relating to the general functions of the office of the Chief, does not reveal any specific provision that can properly be interpreted to mean that

chiefs exercise quasi-judicial functions whose decisions are not challengeable before the Basotho Courts.

[13] As far as the powers of the Basotho Courts go, the relevant provisions are sections 26 and 27 of the Proclamation. [3] The provisions cloak these Courts with civil and criminal jurisdiction over any persons that are Africans and in areas that are specified in the first Schedule of the Proclamation.

[14] Thus, in the present matter, the fact that the appellant and the respondent went to the Principal Chief to seek for his intervention as an administrator does not mean the decision had a legally binding effect that would preclude the aggrieved party to seek recourse in the Bela-Bela Court.

[15] Therefore when the respondent lodged his complaint in the Bela-Bela Local Court, it was not by way of review but was institution of a fresh matter necessitating that a trial be fully conducted. In my view, Counsel for the appellant misconstrued the import of section 8 (2) of the Chieftainship Act. In its heading the section reads; **'Power to regulate Chiefs' functions'**.

[16] In my view, the section regulates the functions of chiefs in terms of their hierarchy in their respective offices. Thus its application should be understood within the context of where a chief has performed or failed to perform a duty as directed or expected to do under the Act. Its purpose is more to limit and regulate chiefs in order to prevent them from abusing their powers when adjudicating their administrative functions in their

[3] Proclamation 28 of 1958

respective offices. Thus, it does not preclude an aggrieved party from seeking a legal remedy. I accordingly find that is has no relevance to the present case.

It is for all the foregoing reasons that I dismiss this appeal with costs.

N. MAJARA
CHIEF JUSTICE

For Appellant : Mr. Tlapana

For Respondent : Mr. Masoabi