

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/145/17

In the Matter Between:-

KHAKETLA MATELA

APPLICANT

AND

MINISTRY OF LOCAL

1ST RESPONDENT

**GOVERNMENT
AND CHIEFTAINSHIP AFFAIRS**

**PRINCIPAL CHIEF OF
MAKHOAKHOENG**

2ND RESPONDENT

THE AREA CHIEF OF NGOAJAE

3RD RESPONDENT

ATTORNEY GENERAL

4TH RESPONDENT

JUDGMENT

CORAM : MOKHESI J

DATE OF HEARING : 03rd MAY 2020

DATE OF JUDGMENT : 28TH MAY 2020

Summary: *Application to have the applicant gazetted as a Chief **for general information**, in terms of s. 14(2) of the Chieftainship Act no.22 of 1968*

Annotations :

STATUTES :

Chieftainship Act No. 22 of 1968

Chieftainship (Amendment) Act No. 12 of 1984

Cases :

*Plascon – Evans Paints Ltd v Van Riebeeck Paints (PTY)
Ltd 1984 (3) SA 623 (A)*

*Ministry of Home Affairs and Local Government v Sakoane
LAC (2000 – 2004) 332*

Mofoka v Lihanela LAC (1985 – 1989) 326

Per Mokhesi J

[1] The applicant, who is a hereditary headman, has approached this court for an order;

1. Directing and/or ordering the 1st Respondent to publish or cause to be published the name of the Applicant in the gazette for public information that he is the Headman of Qobella, Sentelina and Ha Moteuli subordinate to Chief Ngoajane Ha Chaba.
2. Directing the 1st Respondent to take such necessary administrative action to facilitate the gazetting of the applicant.
3. Costs in the event of opposition hereto.

[2] It is common cause that the applicant is a hereditary chief. What, however, is disputed by the 1st respondent is that the applicant is the Headman over the three areas of Qobella, Ha Moteuli and Sentelina respectively. It is the 1st respondent's averment that the applicant's authority covers only the village of Ha- Ramahotetsa. In terms of the hierarchy, the Principal Chief sits at the top, followed by the Area Chief, with the customary chief appearing below. Significantly, in this matter, despite the Area Chief of Ngoajane and the Principal Chief being served with this application, neither deemed it necessary to oppose it. Non-

opposition of this matter is not as a result of sheer coincidence, but a deliberate act in acknowledging the applicant as the hereditary of Ha Moteuli, Sentelina and Qobella. This stance is supported by the following surrounding circumstances: On the 03rd January 2012 the Area Chief of Ngoajane Ha Chaba wrote a letter to the Principal Chief of Makhoakhoeng requesting the gazettelement of the applicant as the Chief of Qobella, Sentelina and Ha Moteuli. Although the said letter sought gazettelement of the applicant as Area Chief not a customary chief, what is important for the present purpose is that the applicant's immediate superior recognized and acknowledged the applicant's chieftainship purview over the areas of Ha-Moteuli, Sentelina and Qobella, and even sought his gazettelement over the said areas. The Area chief even wrote a letter to the Principal Chief towards the attainment of this goal.

[3] The said letter was couched as follows; (fair translation)

“

Ngoajane Ha Chaba

03/01/2012

To the Chief of Makhoakhoeng

I present to you Chief Khaketla Letsika Matela as the Chief of Qobella, Sentelina and Ha Moteuli. He is subject to my jurisdiction as the Area Chief of Ngoajane Ha Chaba. His grandfather was demarcated an area upon which to exercise authority in 1960 and it would seem he was erroneously excluded from gazettelement in 1939 as well as 1964.

This demarcation was done by Chief Chaba.

It was a mistake to appoint him as headman when in actual fact his designation is that of a chief.

Regards.

Signed: Lekopa L. Matela

PS: I present him as a successor to Chief Seotsa Matela because his father Letsika Matela did not rule because of his mental ailment and later died on the 10. 06. 1970."

[4] In furtherance of the request contained in this letter the Principal Chief of Makhoakhoeng on the 15th May 2012 authored a letter directed to the District Administrator Botha-Bothe, couched in similar terms. Although the

Minister seems to deny the applicant's chieftaincy over the said three areas, his denial to me is untenable as the applicant's superiors on the ground acknowledge that indeed he resigns over these areas. The denial by the 1st respondent ought to be rejected on the basis of the exception that his version is untenable (***Plascon – Evans Paints Ltd v Van Riebeeck Paints (PTY) Ltd 1984 (3) SA 623 (A) at 635C***).

[5] The basis of the applicant's case is based on section 14 of Part V of the **Chieftainship Act No. 22 of 1968** which provides as follows;

"14(1) Until such time as the Minister has, by Notice in the Gazette under subsection (2), amended or replaced them, the following Notices have effect as giving public notice for general information of the names of each person who holds an office of chief or who is authorised to exercise the powers and perform the duties of an office of chief, that is to say each High Commissioner's Notice and Government Notice in force immediately before the commencement of this Act relating to offices of chief, to the extent that each such Notice is not inconsistent with the provisions and principles of this

Act, and to the extent that a person to whom any such Notice applies had not been deprived according to law of the right to exercise the powers and perform the duties of an office of chief.

(2) The Minister may from time to time, by Notice in the Gazette give public notice for information of the names of persons who hold the office chief, or who are authorized to exercise the powers and perform the duties of the office of chief, and may amend, revoke and replace a notice specified in subsection (1) or a notice made under this subsection, for the purpose of giving public notice of anything affecting those offices or the holders thereof, including any punishment under the provisions of Part VI relating to discipline and anything done under the provisions of Part VII relating to the emolument of an office of chief.

(3) The provisions of this section are in addition to, and not in derogation from, the other provisions of this Act, and do not affect any remedy that may exist, or may have existed at the material time, in respect of holding or succeeding to, or exercising the powers and performing the duties of, an office of chief, and accordingly a Notice referred to in addition to in subsection (1) does not affect any such remedy.

(4) The Minister shall, in publishing a Notice under this section, give effect to the provisions of this Act and to those provisions of the customary law that have effect under section 3, and to the orders of courts relating to offices of chief.”(emphasis added)

[6] Significantly, in terms of Chieftainship Act 1968 as amended by section of the **Chieftainship (Amendment) Act No. 12 of 1984**, the word “chief” includes a headman. The issues which arose for determination in this matter are not novel, they have been raised and definitively determined in **Ministry of Home Affairs and Local Government v Sakoane LAC (2000 – 2004) 332**, and **Mofoka v Lihanela LAC (1985 – 1989) 326**. Upon a closer scrutiny of the papers I did find nowhere where the 1st respondent is seriously objecting to the gazettelement of the applicant *for general information*, given, of course that he is the chief of Qobella, Ha Moteuli and Sentelina, and even earns a monthly stipend for it.

[7] The 1st respondent, in his supplementary heads of argument sought to argue that the order which the applicant was seeking is tantamount to asking this court to create an office of chief over areas which the applicant

does not reign over, however, as I said earlier, the applicant as a matter of fact reigns over these three areas, and therefore, the only issue being whether this court can order gazettelement of the applicant, *for general information*, as the chief of these areas. In my considered view nothing bars this court from doing so.

[8] In the result the following order is made:

- a) The application succeeds with costs.

M. MOKHESI
JUDGE

FOR THE APPLICANT : ADV. K. NYABELA
INSTRUCTED BY K.D. MABULU &
CO. ATTORNEYS

FOR THE RESPONDENTS : ADV. MOLISE FROM
ATTORNEY GENERAL'S
CHAMBERS