

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/40/2018

In the matter between:

CHIEF MAKOANYANE LETSIE

APPLICANT

AND

PRINCIPAL CHIEF OF TEBANG

1st RESPONDENT

CHIEF OF LEBOHANG AND SELESO

(CHIEF MAAMA MOJELA)

2nd RESPONDENT

CHIEF OF SELESO HA SENG

(CHIEF MATHE LETSIE)

3rd RESPONDENT

MINISTRY OF LOCAL GOVERNMENT

4th RESPONDENT

ATTORNEY GENERAL

5th RESPONDENT

JUDGMENT

CORAM:

HON. J. T. M. MOILOA

DATE OF HEARING:

04 NOVEMBER 2019

DATE OF JUDGMENT:

16 NOVEMBER 2020

ANNOTATIONS

Legislation

1. Chieftainship Act 1968

Books

1. Baxter: Administrative Law 1984
2. Wade and Forsyth: Administrative Law (1994) 7th ed.

Cases

1. Plascon Evan Paints vs Van Riebeecks Paints Ltd 1984 (3) SA 623 (A.D)

[1] On 22nd January 2018 Applicant originally lodged this application seeking relief in the following terms:

1. Ordering and declaring that applicant is the main lawful chief of Seleso Semonkong in the district of Maseru.
2. Ordering and declaring that the appointment of the 3rd Respondent as the chief is null and void and of no force and effect.
3. Declarator that it is wrong for the 2nd Respondent as a chief of Seleso and removing Applicant as a chief.
4. The order directing the fourth Respondent to gazette the applicant as a chief of Ha Seleso.
5. An order directing Local government to compute and pay salary of the applicant since July 2015.

The essence of the case of Applicant is that he seeks a declarator of this court that he is the substantive holder of office of chief of Ha Seleso and challenges his removal from that office by 2nd Respondent and replacing him with 3rd Respondent.

THE PLEADINGS

[2] As has been stated many times before, a cardinal principle of pleadings is that pleadings are meant to define the central dispute between the parties. Therefore, a party will stand or fall on his pleadings. The history of pleadings before court today is as follows:

- 2.1 On 18 January 2018 Applicant launched the present application as outlined in his Notice of Motion set out in paragraph 1 of this judgment above.
- 2.2 On 19 February 2018 and on 1st March 2018, 2nd and 4th Respondents respectively intimated their intention to oppose Applicant's case.

- 2.3 On 1st March 2018 Affidavit opposing Applicant's Motion and facts supporting it. On 23rd March 2018, 2nd Respondent also filed his Answering Affidavit in opposition to the Notice of Motion and its supporting Founding Affidavit.
- 2.4 On 19th April 2018 Applicant filed his Reply to the Answering Affidavits of 2nd and 4th Respondents. In it he confirmed that 2nd Respondent was the substantive chief of Ha Seleso. By this admission alone prayers 1, 2, 3 and 4 fall by the wayside. One prayer 5 remained standing. At paragraph 14 of his Founding Affidavit he avers that he was not given a hearing.
- 2.5 In the Replying affidavit Applicant purported to plead that he was contesting the manner of his removal by 2nd Respondent from office of chief/headman of Ha Seleso wherein he acted for 2nd Respondent. As Applicant now put it in his Reply, he confined his dispute to the procedure of removing in which he now contends was without giving him a fair hearing to answer allegations that he absented himself from duty from duty at the office for several months.
- 2.6 On 15 May 2018 the matter was set down for hearing on 11 February 2019. However. On 11th February 2019 the matter did not proceed on account of hospitalisation of presiding judge on 19th November 2018. The matter was postponed to 4th November 2019.
- 2.7 On 1st November 2019 Applicant filed a new Notice of Motion which in essence was a replacement of the original Notice of Motion rather than an amendment of his original Notice of Motion. It now contained 4 prayers only.

Commented [RL1]:

[3] Prayers in the amended notice of motion were no more formulated in declarator form as they had been in the original notice of motion. They now read:

- 3.1 That the removal of Applicant as acting chief of Ha Seleso, be declared null and void *ab initio* and set aside.
- 3.2 That Applicant be reinstated as acting chief of Ha Seleso by the Respondents.
- 3.3 That Applicant's salary and emoluments be reinstated and paid from the 15 July 2015 until he is removed by due process of the law.
- 3.4 Further and/or alternative relief.

The rest of the pleadings remain as filed before the filing of the amended notice of motion.

BACKGROUND

[4] Facts leading to these proceedings are that Applicant's father, Chief Seng Letsie had been appointed by 2nd Respondent to act as acting chief of Ha Seng, Ha Seleso. Ha Seng is in Semonkong. The substantive holder of office of chief of Ha Seng is 2nd Respondent. Applicant is therefore acting chief of Ha Seng at the behest of 2nd Respondent. Second Respondent area of jurisdiction including Ha Seng falls under the Principal Chieftainship of Tebang in the district of Mafeteng. Applicant's acting position of chief was terminated by chief Alexander Maama Mojela; (2nd Respondent), in 2010 following complaints of villagers and discovery that Applicant lived in Maseru when his family ran in catering business. 2nd Respondent

himself being the substantive holder of the position of chief of that area is a Medical Doctor by profession and his practice keeps him away from his chieftainship role hence the need to appoint someone to act on his behalf. This time in 2010 he appointed Applicant. The appointment of Applicant was at his pleasure as Applicant stood in for him personally as 2nd Respondent's personal right as substantive holder of office of chief of Ha Seng. 2nd Respondent explains that the appointments, both of Applicant and that of his father were merely intended to ensure that there is a traditional headman for the affected village and for the convenience of the subjects of that village while he 2nd Respondent was unavailable to attend those duties personally as substantive holder of office of chief in the area. That at no stage was Applicant appointed by the King in terms of the **Chieftainship Act of 1968**. For purposes of his appointment Applicant refers the court to "ML1" to show that he was appointed in 2010. Unfortunately, annexures to Applicant's Founding Affidavit are unmarked, making it impossible to identify "ML1" suffice is to say that his acting appointment is not in issue. Applicant also says that before this acting appointment he was a gazetted chief of Ha Seleso Thabang. This is not true. Applicant is factually wrong in this. He has not been gazetted as substantive holder of office of chief of headman of Ha Seng. He was appointed by 2nd Respondent to act for him as headman of Ha Seng. This is denied by Respondents. However, this is not material to the issue beforehand, being that of the removal of Applicant from the position of acting chief of Ha Seleso.

THE CLAIM

- [5] In the new approach ushered in by the new Notice of Motion Applicant is emphatic that he is not contesting the position of substantive chief. He appreciates that 2nd Respondent is the substantive chief of the area.

Applicant's complaint is that the manner in which he was removed from the office is not procedurally fair. How he noticed that he was no longer in office Applicant says, was in July 2015 when he went to withdraw money and noticed that his salary for the month had been withheld. Applicant says this was after five years being acting chief of Ha Seleso. Applicant says he brought this turn of events to this immediate superior, 2nd Respondent. Applicant says 2nd Respondent denied knowledge why Applicant was not given his salary. 2nd Respondent confirms this but also says initially, he was not privy to all the information that is why he responded as such to Applicant's query. Later having learned all there was to learn, 2nd Respondent's stance has changed to that of it being just and fair for Applicant to have been denied his salary. We shall see how later in the judgment.

- [6] There was still no salary in August 2015. Applicant says he went for mediation before the judicial court and his superior chief Dr. Mojela Maama still maintained that he had no knowledge why Applicant's salary did not reflect. Applicant does not say when this mediation took place and what the outcome was. The next thing that Applicant says he did was to approach the Ministry of Local Government and Chieftainship; (4th Respondent), about the stoppage of his salary. Applicant says he learned from the Ministry that his salary was stopped because 2nd Respondent had written a letter to the effect that Applicant's chieftainship had been terminated. Applicant says he was informed that the letter was written in July 2015. Applicant also says that there was a talk between 2nd Respondent and the Principal Chief of Tebang, the result of which was a letter written to Local Government as well as to the Principal Chief of Tebang confirming that Applicant was still a chief of Ha Seleso. In this regard Applicant refers to "ML2" and "ML3" which I cannot discern.

Applicant says he himself had not received any letter terminating his work as chief. However, this is contrary to what he says at paragraph 14.3 of his Founding Affidavit that “*I must mention that according to the letter of chief Maama removing me from the office (my own underlining) he acted upon information or allegation of which I am unaware and could not be in the position to answer.*” In his own pleadings therefore, Applicant DID receive a letter from 2nd Respondent removing him from office and Applicant himself says he was not in the position to answer the allegation(s) in the letter. This is in squares with what 2nd Respondent says in his plea; that following an outcry from the villagers about Applicant not being of service to them. Applicant was given an opportunity to make representations which were not satisfactory. Second Respondent’s position therefore is that Applicant was indeed given opportunity to respond to allegations that he was not staying at Ha Seng and therefore not providing services to the villagers of Seng. It is not in issue that in December 2015 2nd Respondent instructed Applicant to hand over the office stamp and vacate the office.

- [7] Applicant says he went back to the Ministry of Local Government and this time the officers there told him that he was not entitled to any salary because there had been another chief designated after Applicant was removed who was earning that salary. That was chief Mathe Letsie, 3rd Respondent. Moreover, Applicant sought the intervention of the Ombudsman who found *inter alia* that indeed Applicant was removed from his acting position as chief because he was no longer performing his duties and the new acting chief was lawfully appointed.

WAS APPLICANT GIVEN A HEARING?

- [8] Applicant complains that he was removed from office as acting chief of Seleso without a hearing. That he was not given an opportunity to explain

why he should not be removed from office. Nor was he appraised of reasons informing the decision to terminate his appointment. Applicant correctly cites the work of **Baxter: Administrative Law 1984** at page 544; that an affected party has to be given adequate time of the intended notice so that he should prepare himself.....see also **Wade and Forsyth: Administrative Law (1994) 7th ed.** at page 494.

- [9] In his defence, 2nd Respondent says that Applicant was given a hearing before his acting appointment was terminated. The history given is that Applicant neglected his duties as acting chief for his personal catering business in Maseru. According to 2nd Respondent Applicant was given an opportunity to make representations as to why he had left his office for more than 5 months. 2nd Respondent does not give details of the nature and/or form of the opportunity to make representations save to say that as already indicated, Applicant himself did allude to having received a letter of termination which he was unable to answer. 2nd Respondent adds that following numerous complaints from the subjects of his village about Applicant's poor service delivery and absence from work he confronted Applicant who failed to give a satisfactory explanation for his absence from work. At Paragraph 11 pf the Answering Affidavit 2nd Respondents pleads pointedly that Applicant made representations and did not dispute the fact that he had been absent from office for a period exceeding 5 months. At Paragraph 3 of his Reply Applicant makes a bare denial without dealing issuably with that plea of 2nd Respondent. In consequence, his appointment was terminated, and his salary was withheld upon his termination from office. According to 2nd Respondent Applicant was fairly removed from office, having been given a hearing and his representations duly considered. In reply Applicant makes a bare denial to 2nd Respondent's outline of facts. On the authority of **Plascon Evans Paints vs Van**

Riebeek Paints Ltd 1984 (3) SA 623 (A.D) case I accept the plea of 2nd Respondent as the correct factual statement of the truth that Applicant was given a hearing but failed to refute that he had absented himself from office for 5 months.

- [11] 4th Respondent has also filed an Answering Affidavit deposed to by its Principal Secretary Mr. Tšeliso Mokoko. 4th Respondent in their plea ask that this application in respect of prayer 5 be dismissed with costs. Their defence is that Applicant is not the substance holder of the office but an acting chief. Of course, the court is clear that that is not Applicant's case 4th Respondent confirms that Applicant's salary was stopped in July 2015. Their explanation is that they as the Ministry received a letter that appeared to have been authored by 2nd Respondent which motivated the stoppage of Applicant's salary. Annexed to 4th Respondent's Answering Affidavit are 3 letters collectively marked "PSI". In terms of this set of letters 2nd Respondent introduced chief Mathe Letsie as acting chief in place of Applicant on grounds that Applicant has not been of service to the people of Ha Seng, Seleso. The Principal Chief of Tebang wrote in those terms to the District Administrator Mafeteng, who in turn wrote in similar terms to 4th Respondent effectively stopping the salary of Applicant. The same salary to be paid to the incoming acting chief Mathe Letsie from 01 July 2015. Indeed, Applicant did not get his salary at the end of July 2015.

WAS APPLICANT ENTITLED TO A HEARING FROM 2ND RESPONDENT ANYWAY?

- [12] The answer to this question will depend on the nature of the right conferred by 2nd Respondent on Applicant. As we have seen 2nd Respondent is the substantive holder of office of chief/headman of Ha Seleso. Ha Seleso is under the jurisdiction of the ward chief Tšakholo who is 2nd Respondent.

2nd Respondent conferred his personal right to Applicant to act in his office at Ha Seleso on or about 2010 while he himself attended to his medical practice in Government Service. As I see it 2nd Respondent's personal right to ask applicant to act for him is purely personal to 2nd Respondent and may therefore be withdrawn by 2nd Respondent at any time without assigning any reason for doing so. In my view therefore there was no obligation in law for 2nd Respondent to give Applicant a hearing before withdrawing his right to continue to act as headman of Ha Seleso. On this basis also the Applicant's case falls to be dismissed.

**DO PLEADINGS OF APPLICANT ESTABLISH A CASE FOR HIM
FOR THE ORDERS HE GRAVES IN THE AMENDED (NEW)
NOTICE OF MOTION**

- [13] It will be seen that after the Applicant's Reply the facts therein seek to provide a basis for support of the new Notice of Motion. But it was to be remembered that a Reply is not the place where an Applicant case is made in motion proceedings. An Applicant's case is made out in the Founding Affidavit. In the present case I am satisfied that Applicant has failed to make out a clear case establishing his right to be granted the prayers he graves in the new Notice of Motion.

CONCLUSION

- [14] 2nd Respondent as the substantive chief of Seleso conferred his personal right to Applicant for the latter to act on his behalf. 2nd Respondent's right is determinable at his pleasure. On that ground alone Applicant must fail. His subjects were unhappy with the services of Applicant or lack thereof. This prompted 2nd Respondent to remove Applicant and, in his place, put 3rd Respondent. Applicant's complaint that this was done in an irregular manner has not been supported with any evidence. I am satisfied on the

admitted pleaded facts that applicant was in fact given a hearing by 2nd Respondent but was unable to give Mamma Mojela a satisfactory answer. In fact, Applicant himself acknowledges having received a letter from 2nd Respondent and he was unable to answer allegations therein. Applicant having been satisfied that Applicant remaining in that position completely defeats the intended purpose. What 2nd Respondent had conferred to Applicant was his personal right and not a right conferred by a public authority conferring a public right to somebody. I find no irregularity on the part of Respondents.

This application is accordingly dismissed with costs.

J. T. M. MOILOA
JUDGE

FOR THE APPLICANT: ADV. T. N. HABASISA

FOR 1st RESPONDENT: ADV. L. RAMAEMA

FOR 2nd RESPONDENT: ADV. Q. LETSIKA