

No. _____

SUBJECT.

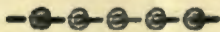
Case No. 1 of 1911

Simron Mowys

vs.

Mudibedi

CIVIL RECORD



NO. 1 of 1911.

In the Special Court of the Resident Magistrate, MAFKING,
constituted by Section 33 of Proclamation No. 2 B.B. of 1885.

S I M E O N M O N Y E.....Plaintiff.

versus

M O D I B E D I.....Defendant.

Heard on Tuesday the 10th day of October, 1911, before
E.C.A. Welsh, Esquire, Resident Magistrate for the said
District and Lekoko Montsioa, Acting Chief of the Barolong.

Plaint:- Appeal from the decision of Chief Lekoko Montsioa
of MAFKING.

Mr. Minchin for Appellant.

Mr. Joyce for Respondent.

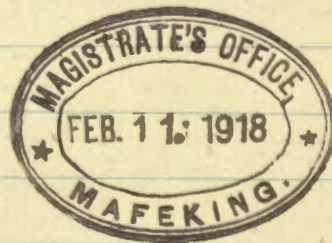
Mr. Joyce files his plea marked "A"

Mr. Joyce calls.

Certified a true copy of
the original proceedings
filed of Record in this office

Chamman

CLERK OF THE COURT,



Mafeking .

10 - 10 - 1911.

The Clerk of the Special Court constituted by section 33 of
Proclamation No. 2 B.B. of 1885.

Sir,

Simeon Monye vs. Modibedi.

I have the honour to note an appeal to
the Chief Magistrate or such Court as represents the Chief
Magistrate in terms of the Proclamation constituting the
Court, the members of the Court not having been able to agree
as to a decision.

I have the honour to be,

Sir,

Your obedient servant,

S. Minchin.

IN THE SPECIAL COURT CONSTITUTED BY

5/- Stamp.

SECTION 33 OF PROCLAMATION NO. 2 B.B. OF 1885.

To the Messenger of the Court or his lawful Deputy.

SUMMON

MODIBEDI,

a Morolong Native residing on the Setlagoli Native Reserve at Maritzani (hereinafter stuled the Defendant) that he appear before the Special Court constituted by Section 33 of Proclamation No. 2 B.B. of 1885 to be holden at Mafeking on Tuesday the 10th day of October , 1911, at 10 o'clock in the forenoon with his witnesses(if he have any) to answer

SIMEON MONYE

a Morolong Native of the farm Holland in the District of Mafeking (hereinafter styled the Plaintiff) in an action brought by the Plaintiff by way of appeal from the decision of Lekoko Montsioa in his capacity as Acting Paramount Chief of the Barolong in an action wherein the said Modibedi was Plaintiff and the said Simeon Monye the Defendant and wherein the said Modibedi recovered against the said Simeon Monye judgment for the sum of £103.

And the said Simeon Monye complains and says that on different occasions during the years 1909 and 1910 he received from the said Modibedi in all the sum of £103 (for which payments he gave receipts of which copies are annexed, the originals being in the possession of the said Modibedi) in terms of a verbal agreement entered into between them whereby the said Simeon Monye was to purchase 103 morgen of the farm Chobham situate in the district of Mafeking from one Spencer Minchin together with other ground which the said Simeon Monye was purchasing from the said Spencer Minchin of the said farm at £1 per morgen the purchasers paying surveying expenses and costs of transfer to themselves; that the said sum of £103 was duly paid by the said Simeon Monye to the said Spencer Minchin and that the said Modibedi then lived on and occupied the ground so bought and interviewed the said Spencer Minchin and others with regard to the purchase and only now claims that the money was not paid for the purpose above mentioned but was

was lent.

Wherefore the Plaintiff prays that the decision of the said Lekoko Montsioa that the money was lent by and should be returned to the said Modibedi may be reversed with costs of suit.

And serve on the said Defendant a copy of this summons and annexures and return you on that day to the said Court what you have done on this summons.

Dated at Mafeking this 14th day of September, 1911.

Geo. Daly.

Clerk of the Court.

Return.

Acting upon instructions received from the Plaintiff's Attorney I have this day served a copy of the within summons and receipts upon Defendant's attorney E.W. Joyce.

T. Aldred.

Messenger R.M. Court.

S. Minchin,
Attorney & Notary,
Mafeking.

To the above named Defendant,

Take notice that you are hereby required to produce at the hearing of the above case on the 10th October next the receipts whereof copies are hereto annexed of which the Plaintiff intends to avail himself in evidence.

Dated at Mafeking this 14th day of September, 1911.

Yours &c,

S. Minchin.

Plaintiff's Attorney.

(1)

"B"

22/11/1909

Ke chotse mali a ga Modibedi Cholo £88
mebore gono ele 88 ea Chobomo.

Simion Monye.

(2)

"B"

1 - 7 - 1910.

Ke chotse mali mogo Molibele Cholo £15
ke morekela meborogono ele 15
Ko Chobomo.

Simion Monye.

COPY.

22/11/1909.

Ke chotse mali aga Molibeli Cholo £88 Kemorekela
meborogono ele 88 ea Chobomo.

(sgs) Simeon Monye.

(sgd) Shuping.

Translation.

22/11/1909.

I have taken Molibele's Cholo's money £88 to buy for him
88 morgen of Chobham.

(sgd) Simeon Monye.

(sgd) Shuping

1/7/1910.

Kechotse mali mogo Molibele Cholo £15; Kemorekela
meborogono ele 15 ko Chobomo.

(sgd) Simeon Monye.

(sgd)

Shuping.

Translation.

1/7/1910.

I have taken money from Molibele Cholo £15; to buy
for him 15 morgen of Chobham.

(sgd) Simeon Monye.

(sgd) Shuping.

SPECIAL POWER OF ATTORNEY.

I, the undersigned, Simeon Monye of Holland in the district of Mafeking, do hereby nominate constitute and appoint SPENCER MINCHIN with Power of Substitution, to be my true and lawful Attorney and Agent, in my name, place and stead, to appear wherever necessary and then and here as my act and deed, to institute proceedings by way of appeal in the Special Court constituted by Section 33 of Proclamation No. 2 B.B. of 1885 against the decision of Lekoko Montsioa as Acting Paramount Chief of Barolong in a case decided at Mafeking on the 24th day of August, 1911, wherein Modibedi was the Plaintiff and I was the Defendant in which case the said Modibedi obtained judgment against me for the sum of £103,

and generally for ~~the purpose~~ effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite as fully and effectually, for all intents and purposes, as I might ~~do~~ or could do if personally present and acting herein - hereby ratifying, allowing, and confirming, and promising and agreeing to ratify, allow, and confirm, all and whatsoever my Attorney and Agent shall lawfully do or cause to be done in the premises by virtue of these Presents.

Given under my hand this 6th day of September, 1911, in the presence of the undersigned witnesses:-

Simeon Monye.

As Witnesses.

J.N.R. Labuschagne.

A.M. Hamman.

IN THE SPECIAL COURT CONSTITUTED BY SECTION 33
OF PROCLAMATION NO. 2 B.B. OF 1885.

BETWEEN

SIMON MONYE

Appellant.

and MODIBEDI CHOLO

Respondent.

Respondent's Plea.

For a Plea the Respondent states that the summons served upon him does not fully set forth his claim as brought by him before Chief Lekoko Montsioa as will more fully appear from a copy of a letter hereto attached which fully sets forth his, Respondent's, claim in the lower Court.

Save as above Respondent joins issue with Appellant and prays that the Appeal may be dismissed with costs.

Edward W. Joyce.

Appellant's Attorney.

Mafeking.

August 16th , 1911.

To

Chief Lekoko Montsioa,
Regent of the Barolong Nation,
Mafeking.

Sir,

Molibeli Cholo vs. Simon Monye.

I am instructed by Molibeli Cholo Barolong presently of the Stadt, Mafeking, to inform you that he has a claim against Simon Monye also a Barolong residing near Maritzani and that he desires you to try the case.

My client claims that on the 22nd November, 1909 he gave to Simon Monye £88 for 88 morgen of the farm Chobham and again on the first July he gave Simon a further £15 for 15 morgen of the said farm, My client holds receipts for both these payments.

Subsequently it was arranged between my client's eldest son, Frans and Simon Monye that Simon should refund the said money (£103) and my client should purchase ground therewith elsewhere.- My client has now purchased ground elsewhere but notwithstanding many applications Simon Monye neglects to repay the said £103.

I will be glad if you will fix a day when the parties can appear before your Court with a view of having their case heard.

An early reply will oblige.

Yours faithfully,
(sgd) Edward W. Joyce.

The Stadt,
Mafeking,

18th August , 1911.

Sir,

MOLIBELI- OHOLO VERSUS SIMON MONYE

In acknowledging the receipt of your letter of the 16th instant, upon the above subject, I have the honour to inform you that I have sent for Simon Monye to come over to Mafeking. The date of the hearing of the case will be fixed on his arrival here.

I am, furthermore, to state that I have warned the siad Simon Monye to be here on Monday, the 21st idem, on which day, should he come, the case will be heard here on our Court.

I have the honour to be,

Sir,

Your obedient servant,

Lekoko Montsica.

Chief of the Barolonga.

E.W. Joyce, Esq.

P.O. Box 72

MAFEKING.

Received from Simon Monye the sum of £141 - 8 - 0 being the purchase price of portion of the farm "Chobham" adjoining the outspan on the western side of the farm to a Karee tree near the Maritzani spruit pointed out to him in the presence of D. Brill at the price of £1 per morgen.

The said Simon Monye has the further right to purchase further portions of the farm Chobham adjoining the western line or the whole farm at £1 per morgen transfer will be passed to him at his expense. Should he not purchase the whole farm any number of morgen which he shall finally purchase and pay for as above indicated shall be surveyed at his expense and transfer given to him at his expense.

Mafeking, March 30th , 1908.

(sgd) S. Minchin

30/3/08.

(1)

22/11/1909.

Received from Simeon Monye the sum of £88 for
ground on Chobham purchased in terms of agreement d.d.30.3.08

£88

1d. Stamp.

p.p. S. Minchin.

R.H. Murray.

(2)

1/7/1910.

Received from S. Monye the sum of £20 six shillings
for ground on Chobham purchased.

£20 - 6/-

1d. Stamp.

p.p. S. Minchin.

R.H. Murray.

25/6/1910.

Sub-Inspector Monro.

C.M.P.

MAFEKING.

Sir,

At the request of Simeon Monye of the farm Chobham
I have the honour to state that Molibeli Cholo who also resides
at Chobham is a partner of Simeon Monye in ground on the said farm
purchased from me and paid for by them together.

I have the honour to be,

Sir,

Your obedient servant,

(sgd) S. Minchin.

Mafeking.

South Africa.

August 5th . 1911.

To Mr. Simon Monye,
Farm Holland.
P.O. Maritzani.

Sir,

I am instructed by Mr. Frans Modibedi of Maritzani to demand from you the immediate payment of the sum of £103 being £88 lent and advanced by his father for and on his behalf to you on the 22nd day of November, 1909, and £15 lent and advanced by his father to you for and on his behalf on the 1st day of July, 1910.

Unless this amount together with costs (5/1d.) be paid at my office, on or before noon, on Saturday next, the 12th instant, Summons will be issued without further notice.

Yours, &c.

Edward W. Joyce.

Attorney-at-law.

Principal	£	103
Interest	£	6 - 13 - 9
Comm.	£	5 - 3
Costs	£	5 - 1
<hr/>		
	£	115 - 1 - 10.
<hr/>		

MODIBEDI sworn states:- I live at Morekoa on Setlagoli Reserve.- In 1909 and 1910 I gave Simon Monye £103 in all in two instalments of £88 and £15.- He gave me receipts which I put in B. marked B.- After I paid this money I shifted to the farm Chobham.- In March last year we made an agreement that ist that I should go and look for other ground and that Monye would refund the £103 I had paid him for 103 morgen.- My sons were present and agreed to this.- My son Frans and I and my son Mongalenyane went to look for ground.- I however returned and let them go on.- My son Frans eventually bought land from Mr. Lamb.- I left Chibham in June last and am now living at Morekoa.- I do not know who are occupying the house at Chobham.- I don't know my age but I am old.- My son Frans has been managing my affairs for some time past.- I was present when Frans returned and asked Monye for the £103.- Monye refused to give him the money because he(Monye) had bought ground.-

X X :- I practically brought Simeon Monye up.- We both came from Thaba Nchu and are both Barolong.- Chief Lekoko tried the case between him and me.- The judgment Monye had to refund me the £103.- What I have told the Court today is the same I told the Chief and his Kotla.- I told the Chief I did not buy any farm.- I did not say I had bought any ground.- I said I lent the money to Monye.- I did not produce the receipts to the Chief.- I was asked to produce them and said Mr. Joyce had them.- I could have got them but did not as I was not ordered to do so.- I told Chief Lekoko I had not bought any ground.- I still say I bought no ground.- Monye was borrowing money from me to buy ground for himself.- Monye wrote out the receipts.- I can't read.- He did not tell me what he had written on the receipts.- Monye borrowed the money to buy ground for himself.- I did not buy any part of the farm Chobham.- This agreement to refund the money was made in March last year.- The money (£103) belongs to myself and to my sons.- I wanted Mr. Joyce to get my money.- He got the information on which he wrote the letter of the 16th August from me.- I did not buy any ground from Monye.- I remember going to Mr. Minchin's office after I had

paid

paid the £88.- Monye took me there.- I did not tell Mr. Minchin I had bought 88 morgen and asked if Monye had paid me the money.- I don't know the person who interpreted.- About Xmas last year I went to live on Chobham.- It was agreed I was to go there and stay there until Monye had refunded me my money.- The £15 was handed by my son Frans to Monye with my consent.- It was agreed the £103 would be refunded as soon as I was able to buy land for myself.- I bought land from Mr. Lamb in May last.- I did not ask Monye then to re-purchase the 103 morgen.- I only asked him for my money.- I never told Mr. Joyce I bought ground from Monye.- I told him I lent the money to Monye.-

Re-exd :- My memory is good.- For some time past owing to old age I have left management of my affairs to my son Frans.- Most of the negotiation with Monye and the instructions to my attorney were done by him.-

FRANS sworn states:-

I am son of last witness and have for some time past been managing his affairs at his request.- In November, 1909, I was at Barkly West and in July 1910 at Morokoa.- I was aware of the arrangement between my father and Monye and saw the receipts.- In March last I made on my father's behalf an agreement with Monye at Chobham.- It was that my father had to go and look for other ground as the ground he had bought for us was small,-and that Monye was to refund the £103 he had got from us.- I then went to look for ground and bought 300 morgen of the farm Koodoosbosch.- I produce receipts for money paid for this farm.- I have not paid all the purchase price yet.- After buying this farm I came back and asked Monye for the £103.- He said he was not going to pay the money as he had none and that we had better sell the 103 morgen of Chobham.- We then brought an action against ~~against~~ him before the Chief Lekoko,-and got judgment against him.- He has not paid us yet.- We never got transfer of the 103 morgen at Chobham.- My father left that farm in July this year.- One Piet is residing in the house we had and occupying the kraals.- We built the house and

and kraals on this farm.--

X X :- In November 1909 I was away on a visit at Barkly West and returned in April 1910.-- The £103 belongs to my father and his sons.-- I admit the 103 morgen were purchased.-- My father denies this and says the money was lent but that is because he is old.-- I don't believe all he says.-- The agreement with Monye was made in March this year not last year.-- I and my brother William and my father and Simeon Monye were present when the arrangement was made by which Monye was to refund the £103 to us.-- It was to be repaid as soon as I purchased other land.-- I did so in June last.-- I got nothing in writing from Monye.-- The land I bought at Mosita was cheap.-- Monye suggested I should try and get other ground.-- When I came back Monye said he was not going to pay back the money and said we had better sell the 103 morgen.-- He did not say he had bought other ground from Mr. de Kock.-- I know the house and kraal my father built at Chobham are occupied.-- I have been there since the case was heard by the Chief.-- A herd belonging to one Piet was in occupation.-- ~~Mongalelyane~~

MONGALELYANE sworn states:- I am son of the Respondent in this action.-- I remember an agreement being made between Monye and Frans.-- It was that Frans should go and look for ground to buy, and if he got ground Monye would refund the £103.-- I was present when this agreement was made.-- This was in March last.-- My brother went away and bought a farm near Mosita.-- I went with him.-- When we came Frans asked Monye for the money.-- He said I have no money to give you.-- He meant he did not owe us any money.--

X X :- I was a witness before the Chief when this case was heard.-- I admit the £103 was for ground bought from Monye.-- I said so before the Chief Lekoko.-- When this agreement was made with Simon Monye in March there were present: my father, my two brothers, myself, one Sehaku, John Monye and Simon Monye.-- Sehaku accompanied Simon.-- He is not one of our witnesses.-- Simon said we must go and look for other ground as there was too much stock on the farm.-- This conversation took place at Holland not

Chobham.- I mean the one where Frans asked for the money.- Monye repudiated liability and said we could take him to any court.- He also said we had better sell the ground.- Frans said he could not do that as he was not satisfied with the receipts.- The farm Koodoosbosch is 300 morgen.- We paid £700 for it.-

WILLIAM MELEBELE sworn states:- I am son of Respondent and know Simon Monye.- I remember he made an agreement in March last with my brother Frans.- The latter had to go and look for a farm elsewhere and if he got one Monye would refund the £103 paid for portion of Chobham.- My brother went away and bought a farm at Mosita.- When he returned and asked Simon for the money the latter refused to pay.- He refused to carry out his agreement to refund the money.- He said he had no money meaning he would not pay.-

X X :- I was a witness before the Kotla and told the same story,-I am telling now.- My father did buy the 103 morgen.- He is old and his memory is failing.- When the agreement was made in March last there were present : my father, my two brothers, myself, Sehaku, John and Simon Monye.- My brother Frans got ground at Mosita.- When he returned from there he went to Monye at farm Holland and asked for the £103.- There were present: my father, my two brothers and myself,-Simon Monye and one Barend who resides at Holland.- Simon refused to pay and said he had no money.- He said he did not owe the money and would not pay.- He said he would not pay because he had no money.-

Re - exd :- We were not a long time discussing the matter that day at Holland.- It is possible I may not have heard everything.- Frans was the spokesman on our side.-

Mr. Joyce closes his case.

SIMON MONYE sworn states:-

I am the appellant in this case.-

I owe part of Holland and part of Chobham and I have also bought portion of Connaught, lately.- I entered into an agreement in March

instructed to survey the land I bought.- What Respondent and his sons state is untrue.-

Re - exd. :- Respondent was over a year on Chobham.- I don't know why he left.- He left at end of July last.- Piet was there before then staying with my son.-

By the Court :- I did tell respondent when he said there was no water at Koodoosbosch they should find water themselves.- I told the Kotla I did not know the boundary between respondent and myself but the surveyor would fix that up when he came.- I told the Kotla the receipts would show that I had got the money to buy land for Respondent.- I paid the £103 to Mr. Minchin from whom I bought portion of Chobham.- I looked upon myself as agent for the respondent.- I have not got transfer of the ground I bought.- I am waiting to have it surveyed.-

SPENCER MINCHIN sworn states:-

I am attorney for appellant and am owner of farm Chobham.- In March 1908 appellant entered into agreement arrangement to buy ground on west side of this farm at 20/- per morgen and pay costs of transfer and survey fees.- He bought in all 570 morgen.- The balance of the farm 2500 morgen has been sold to one Smidt and Surveyor Ashton has had the survey in hand for some weeks past.- With regard to the two receipts for £88 and £20 - 6/- given to Monye when he paid the ^{NE} money he said respondent was purchasing jointly with him.- I said it was a matter I had nothing to do with and he must give transfer himself to respondent.- He told me respondent was buying 103 morgen.- About June 1910 both parties came to my office.- Respondent wanted to know if I had received £88 as it was his.- At the request of both men I gave them a letter addressed to ^{Sub-Inspector} Monro of which I put in copy.- It is dated 25th June, 1910.- Respondent must have been living on the farm Chobham then.- In March last the appellant could have had no object in buying farm from Respondent because he could have bought as much ground on the farm from me at 20/- per morgen.-

X X :- Respondent said he was a purchaser.- I would recognise him as a co-purchaser if the G.C. Mafeking would agree.- I did not notify respondent the surveyor was going out to mark off the part sold.- Simeon told me respondent was purchasing part of the ground with him.- I have paid the quitrent on the farm since.- I sold part to Simeon.- I have not tried to recover it from either party.- Simeon asked me to write the letter to Mr. Monro.- I got copies of the receipts given by Monye to respondent from Mr. Joyce immediately after the appeal was noted.- I only notified Monye the Surveyor was going.-

THOMAS MASENG sworn states :-

I am clerk in employ of Mr. Minchin and know both parties.- I remember Monye paying £88 at the Office.- I interpreted for him.- He said it was on account of the farm Chobham.- He said it belonged to respondent and wanted the money in his name, but the clerk - Murray - would not do it.- I remember respondent calling at his office with his son and Monye.- Monye said he had brought respondent there as they were buying the ground together.- Respondent asked for whom had Monye stated he was paying the £88.- Mr. Minchin told him Monye had brought the and said it was respondent's money.- Respondent said he and Monye were buying together.- I was present at the hearing of the case before the Chief and gave evidence.- Respondent's sons all said there that the money had been lent to Monye to buy the ground for himself.- The evidence they gave this morning is different.- Nothing was said by them before the Chief of any agreement made in March last.-

X X :- No papers were produced before the Kotla.- I don't know of any letter to the Chief on 16th August or his reply.- The signature to the letter of 18th August is the Chief's.- The letter from Mr. Joyce to the Chief was not mentioned at the trial.- I don't remember if the respondent asked to have the receipt in his name.- Monye asked to have the receipt for £88 in respondent's

name

name but Mr. Murray refused to do it.- I don't know if Mr. Minchin recognised respondent as a purchaser.- I appeared before the Kotla as a witness.- I was there the whole of the first day.- Judgment was given next day but I was not present.-

MASINYANA

JEREMIAH MANNYANA sworn states:-

I am a Headman and member of the Chief's Kotla at Mafeking.- I was present at hearing of this case before the Chief and heard the evidence.- I have heard the evidence given here today.- Respondent gave the same evidence but his sons not.- At the Kotla they stated they never bought any ground and were away when the money was handed to Simon.- When they returned they objected to their father lending the money to Monye to buy ground for himself.- They objected to the loan and their father said Simon was going to refund it.- A further amount of £15 was paid to Simon by their father also as a loan.- They denied there was any purchase of land by them or their father.- They also said Monye suggested they should go and look for another farm.- What they said today is not the same as the evidence they gave before the Kotla.

X X :- Before the Kotla Simeon admitted he told these people to go and look for another farm.- He blamed them for not making a dam on the farm they bought at Mosita.- I was a party to the judgment given by the Chief.- We believed the respondent and his sons that the money was a loan.- Respondent and his sons said Simon told them to go and look for another farm.- I don't remember what Simon said in reply to this.-

Re-exd. :- Respondent said Simeon told them to go and look for another farm.- Simeon said the money was to purchase ground for respondent.- Simeon said as the ground was not surveyed he could not point it out to respondent.- We asked him if he had a witness and he said no.-

CASE CLOSED.

The

The two members of the Court not being
able to agree - NO Judgment.

E.C. Welsh.

R.M.

-e-e-e-e-e-e-e-e-e-

SPENCER MINCHIN, LL.B.

Attorney, Notary,

AND

Conveyancer.

TELEGRAPHIC ADDRESS: "MINCHIN."

P.O. Box 26.

B

Mafeking,

BRITISH BECHUANALAND,

24. 8. 1911.

The Acting Paramount Chief Lekoko Montsioa,
Mafeking Stad.

Dear Chief,

I am instructed by Mr. Simeon Monye to note an appeal from the decision of yourself and your Kgotla in favour of Modibedi for the sum of 5105 and to state that the case will be brought in due course before the Special Court constituted by sec. 33 of Procl. 2 B. B. of 1885.

I have the honour to be, Sir,

Your obedient servant,

S. Minchin

13
SPENCER MINCHIN.

MAFEKING.

24th/8/1911.

The Acting Paramount Chief Lekoko Montsioa,
Mafeking Stad.

Dear Chief,

I am instructed by Mr.
simeon Monye to note an appeal from the decision
of yourself and your Kgotla in favour of Modibedi
for the sum of £103 and to state that the case will
be brought in due course before the Special Court
constituted by Sec. 33 of Procl. 2 B.B. of 1885.

I have the honour to be

Sir,

Your obedient servant,

S. Minchin.

Collection Number: A979

Silas T MOLEMA and Solomon T PLAATJE Papers

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