C3.15

Disinherison & Repudiation of Heir

A kraalhead may, for good reason, disinherit the heir of any of his houses, but this step is not lightly taken by the kraalhead, nor is disinherison readily presumed to have taken place (Mfanga vs Tshali, 1 NAC. 31) Sinaka vs Sinaka, 1937 NAC (C&O).

There are two essential requirements for an act of disinherison & if either of them is not present any supposed act of disinherison would be regarded as ineffective (See Sinaka's case).

(1) It is essential that before a son is disinherited he shall have given good cause for it. A good cause would include conduct or behaviour by the son showing that he is lacking in a proper sense of responsibility or restraint or that he is incompetent or unable to manage kraal matters or that he is prodigal. Thus his repeated disobedience in serious matters, his constant & careless incurring of delictual liabilities or his forcibly ejecting the kraalhead from the latter's own kraal or his unauthorized dealings with the kraalhead's property — all these are examples of good causes for disinherison. Idiocy or insanity would also constitute a good cause.

(2) Secondly when the kraalhead has good cause for disinheriting his son he must follow a certain procedure in going about it.

Either he can call a meeting of the members of his family group in the presence of his son, lay his complaints before them and make a declaration that he is disinheriting his son. The son is of course given an opportunity to state his side of the case. The whole matter must then be reported to the Chief.

Or he must call a ~~meet~~ meeting of his relatives & after consultation with them report the matter to the Chief & ask him to call the son before him to show cause why he should not be disinherited. If the Chief is satisfied that the disinherison is warranted, he can issue an order accordingly. If the son having been duly called, does not appear before the chief, the order may be made in his absence. (Tiba vs Soviya, NAC(C&O) 1944).

If a son has been disinherited in this way, if he can show that there was no just cause for the disinherison, the act could be set aside by the Court (Nkhelo vs Nokhelo 6 N.A.C.). But the son must take action during his father's life-time. If he fails to ~~do~~ do so until after his father's death, it is doubtful whether the Court would disturb the act of disinherison.

In the Transkei it is competent for the Native Commissioner in terms of section 11 of Proclamation 142 of 1910 to hear an application for the disinherison of a son.

A kraalhead may at any time revoke an act of disinherison & re-instate his disinherited son. No specific formalities are required for this (Nkhelo's case).

A son who has been disinherited or publicly repudiated loses his right to succeed to his father, the next son in line becoming the heir (Tiba vs Soviya).

The descendants of a disinherited son or a formally repudiated son are not disinherited by the act whereby their father was disinherited. They have normal rights of succession within the family group. (Tiba's case)

Not only the heir, but any son may be repudiated by his kraalhead, for good cause, provided the same

procedure is followed. The effect of the repudiation would be the same (Mkego v. Matikiti, 1 N.A.C. 242)