REPORT OF ALL THE IMPORTANT CASES HEARD IN THE NATIVE TERRITORIES APPEAL COURT SITTING IN UMTATA AND BUTTERWORTH FROM THE DATE OF ITS ESTABLISHMENT TO THE BEGINNING OF THE YEAR 1907

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by W. E. Warner

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W. E. WARNER

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Trieste

Transkeian territories. Native appeal court.

REPORT

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HEARD IN THE NATIVE TERRITORIES APPEAL COURT SITTING IN UMTATA AND BUTTERWORTH FROM THE DATE OF ITS ESTABLISHMENT TO THE BEGINNING OF THE YEAR 1907

By W. E. WARNER
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SOUTH AFRICA
GAZETTE OFFICE, BUTTERWORTH, TRANSKEI
1907

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PRESIDENTS OF THE APPEAL COURT

Major Sir H. Elliot, C.M., Tembuland, Transkei and Pondoland.

Col. W. E. Stanford, C.M.G., C.M., of the Transkeian Territories.

A. H. Stanford, Esq., A.C.M. of Tembuland, Transkei and Pondoland.

M. W. Liebfeldt, Esq., R.M. Willowvale, A.A.C.M., Tembuland, Transkei and Pondoland.

NOTES BY THE REPORTER.

As in the majority of the cases reported herein it was impossible for me to tell by the records I had access to whether the appeal was from a judgment of the Magistrate or other officer, I have in every case put that it was from the Magistrate, this only to show from what Court the appeal was to enable the readers to refer to the original records should they so desire.

The italics in the case of Mtuyedwa vs. Baatye, page 37, are my own, the object being to draw the attention of the reader to the fact that the man publicly renounced his illegitimate son whereas if the ruling of the Appeal Court in Umtata in the case of Sidubulekana vs. Fuba were correct there would have been no need for him to do so and the fact that he did supports my contention that had he not done so the child would have been considered legitimate,

APPEAL COURT REPORT

UMTATA AND BUTTERWORTH.

Mankayi Renge vs. Kleinbool.

This was an appeal from the judgment of the Magistrate of Cala. The Plaintiff had sued and his summons been dismissed with costs. Before paying these costs he issued a fresh summons when Defendant took exception that the costs of the previous action had not been paid, Plaintiff replied that no B.C had been submitted to him and that he was prepared then to pay costs. Defendant refused to accept them then and the Magistrate over-ruled the exception. Defendant thereupon appealed to the Appeal Court, Umtata, and the judgment of that Court was as follows: "Section 32 Schedule B Act 20 of 1856 expressly provides that when a judgment of absolution from the instance is given the Plaintiff can only commence a new action upon payment of the costs awarded against him and it has been ruled in the Supreme Court that dismissal of a summons is the same in effect as absolution from the instance. Van Zyl, page 770, says Plaintiff may commence his action *de novo* provided he first pays Defendant's costs incurred. The case of Thacker vs. Fourie does not apply in this case as the discretion of the Supreme Court is not limited by Statutory law as is the case in the Resident Magistrates' Courts."

Appeal accordingly allowed allowing the exception in the Court below.

Mvalo vs. John Malgass.

This was an appeal from a judgment of the Magistrate of Cofimvaba. The claim was partly one for the return of the "ubulunga" beast, and the judgment of the Appeal Court, Umtata, on that point was as follows: "The return of cattle given as ubulunga can only be set off or made against a claim for return of dowry and in this case no return of dowry was made . . ." The rest of the judgment is not important.