

## Just as European Courtroom Lawyers Use Previous Cases, Participants in Northern Sotho Argue with Proverbs Intended to Serve as Past Precedents for Present Actions

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**ABSTRACT** The paper discusses the value and relevance of proverbs in terms of reaching a convincing decision on judicial matters among the Northern Sotho people of South Africa. The paper argues that the proverbs are indispensable in settling differences among the Northern Sotho people. The advent of modern judicial systems has not negatively affected the effectiveness of proverbs in this regard. Proverbs explain some important aspects of social systems as far as Northern Sotho is concerned. They build and legitimize a particular kind of social order. The paper argues that what is true of a society's values is also true of its political symbols, images, ceremonies and collective self-understanding. The paper also shows that proverbs give the members of a society a sense of rootedness, existential stability and a feeling of belonging.

### INTRODUCTION

The aim of this paper is to demonstrate the usefulness and importance of proverbs in concluding judicial and social cases in Northern Sotho. In the Northern Sotho culture, like other cultures in many parts of Africa, there is a great admiration for the well-trying case, for the speaker who summarizes a dispute or gives the judgment with clarity, for the elder who is able to cite past cases of significance or quote proverbs to make a legal point. Although sometimes during the case, arguments may break out, the sessions are usually handled with dignity. Proverbs respond to a violation of norms within a society. They form a part of the culture, which is also a system of regulation. This type of culture approves or disapproves of certain forms of behavior and ways of life, prescribes rules and norms governing human relations and activities, and enforces these by means of reward and punishment. According to du Plooy and Kilian (2012: 22), everybody should realize that the human world is always governed by standards (norms), and that whatever decision is taken, it is really a value judgment.

### METHODOLOGY

Conceptual analysis will be used in an effort to make the study manageable and to illicit the

expected results. Relevant books from the library, dissertations, journals, papers and magazines were used to support this study. This method has been chosen because it would assist the researcher to determine the effectiveness of proverbs in settling cases in Northern Sotho.

### RESULTS

The use of proverbs in traditional courts illustrates the cultural identity of the Northern Sotho people. Proverbs indicate their philosophy of thinking and an understanding of values, ethos and belief systems unearthed by their forefathers. Proverbs form a social fabric that binds the people together. They are in a way teaching people not to abandon their culture and tradition. Matjila (2012:41) asserts, "People who throw away their customs are committing suicide like the head louse." Proverbs express the fundamental truth that has a bearing or impact on life. They enrich the language and point to the person's ability to bring an idea without using words that refer to it directly.

### DISCUSSION

#### The Law and the People's Attitudes towards It

The law of the Northern Sotho speaking people is mainly a manifestation of their belief in

action. It partially helps adjust the behavior of different individuals or groups within the social organization in terms of their system of values. It is used to maintain the proper order as prescribed by their beliefs and legal norms, and is based largely on religious concepts. Through their law, people can differentiate between the two opposing concepts of right and wrong, or good and evil, and these concepts clearly define their rules of conduct. In maintaining a proper conduct, a kind of punishment should be imposed on the transgressors. Theft, for example, is not allowed and can be dealt with supernaturally and legally. The wrongdoer will also be scorned by his/her fellow human beings. As any breach of the norms can adversely affect not only the transgressor but also the entire community, the legal system is utilized to make sure that these norms are maintained. The rules of conduct are maintained by force of both, supernatural and legal sanctions. Any breach of accepted conduct, which is perpetrated unnoticed by the community, can still be dealt with supernaturally. The Northern Sotho law, as a body of rules with legal force, is mainly customary law. This law has, therefore, been handed down by tradition. It is obvious that the law is enforced by the courts. The decisions of the courts are repeatedly quoted as precedents, and an unwritten store of these interpretations has become established (Krige 2014: 49).

Laws made by chiefs have been added to the body of accepted customary law, even though legislation is an exceptional procedure in the legislation system of the Northern Sotho people. Such laws have lately become increasingly necessary to adjust the Northern Sotho people to changing conditions. There is no denial of the fact that there has been an increase of divorce rates in recent years (Mönnig 1983: 302). To discourage divorce, many tribes have made a law that any person who sues for divorce must pay the court a fine of one beast. It is important to note that the body of law in Northern Sotho culture is generally referred to as *mekgwa le melao* (customs and laws). Every initiated man is expected, as part of his duties, to attend different courts in his tribe as often as he can. It is where all initiated men learn legal procedures and hear cases tried with reference to the former cases. Any person who witnesses an offence is bound to report the case directly to the court of the chief and give sufficient evidence when the

case is heard. Court decisions include the paying of compensation (*tshenyegelo*) to the plaintiff, and also the payment to the court (*mangan-gahlaa*), which is remuneration to the court and its officials for their labor. Apart from fines and compensations, the wrongdoers may be deported or lashed.

### The Use of Proverbs in Arguments

In Ramaila's *Taukobong* (1973), the short story *Di sa tsebanego di a welana* warns people about the danger of stealing other people's properties. Obi Ntholase was a person who, like his father, liked to steal other people's properties. He stole Dire's bicycle pump. The two men came from different villages and met at a neutral point. They did not know each other. Dire put his bicycle outside a certain house and entered that house where he found some men who were just relaxing. The first person to go out was Obi. He spent some time outside and came back later. After a while, two other men went outside following each other. Like Obi, the two men came back. At that time, there were some children who were playing in the yard, walking in and outside the house. Dire also went outside and found out that there was no pump on his bicycle. He tried to find out from the three men inside the house about the lost pump but no one admitted the responsibility. He also asked the children about it, but that did not help. He suspected the three men who had gone outside. Even though many people suspected Obi, as they knew him as the professional thief, the author says:

*Setopo re šupa nakedi* (Ramaila 1973: 47)  
'A thief is a thief when caught red-handed.'

By this proverb, the author shows that men do not have evidence, which shows that Obi is a thief. Although he was a habitual thief, it does not guarantee that he is the one who stole the pump. Alternatively, he might be the one who stole it, but no one saw him stealing it, and furthermore, it was not found in his possession. As there was no proof, Dire said that a person who stole his pump should know that all his domestic animals would die. His (Obi's) animals and child died. This is supplemented by Ottenburg (2014: 60) when he says that:

*Some cases remain unsettled either because, in the analysis, the evidence is inconclusive. Resort may then be made to a supernatural technique, that is, the consultation of a diviner or*

*an oracle. There is usually no appeal from a decision arrived at by such supernatural techniques, but they are generally used only in more serious or difficult cases.*

Theft is thus not condoned in the Northern Sotho culture and is a punishable offence. Obi committed a crime because he took something not rightfully belonging to him without its owner's consent. He did that secretly and thought that he would succeed. Chance (2015:180) notes that crime is one particular undesirable form of aggressive behavior or a violation of the law.

In the novel, *Tshelang Gape* (Matsepe 1971), a variety of proverbs have been used to reflect different themes. It is a habit for most Northern Sotho speaking people to hurt other people. They usually devise some means of hurting them. In many cases, those who do so end up hurting themselves. They feel the pain, which they want other people to feel. The novel revolves around a man called Kgware. Kgware always ill-treated his wife, Mmaboi, because she gave birth to many children. This type of treatment surprised her because the children did not belong to her alone, but to both of them. He tortured her until she went back home. One of the thorny issues was that her husband, Kgware, had a love affair with a married woman who later fell pregnant and gave birth to a healthy child. This matter was taken to the tribal court. During his trial, he admitted that they had sexual intercourse several times, but denied that the child was his. The men sang a different tune and found him guilty. They considered the child as his and finalized the case by using the following proverb:

*Kgomo ya loka ngatha e nwele* (Matsepe 1971: 73)

'Find a pretext to be demised from one's work.'

Kgware was fined a cow. His wife refused with it because he committed adultery. The child should have been theirs. Her refusal irritated him. He tortured her continuously and that forced her to go home. When she arrived home, she died of multiple wounds that were caused by her husband. He, however, received a message from the family of his in-laws that his wife had passed away. Without wasting much time, he asked his neighbors to dig a grave that would be used to bury her. As the proverb goes, *Lebitla la mosadi ke bogadi* (the grave of the woman is the home of her parents-in-law), which means

that once a woman is married, she no longer belongs to her own home. He was forced to go and take her corpse so that he could bury her where she was married. When he arrived at his in-laws, he found that she had been buried. He asked his brothers-in-law to dig her out, but they refused. When he tried to dig her out himself, they taught him a lesson that he would never forget by thrashing him. He then went to Chief Tholaboreledi to tell him about his problems. He told the chief that they thrashed him because he sent his wife home to think again about their marriage.

At the tribal hearing, Chief Tholaboreledi also gave Kgware a chance to go and think about his marriage with Mmaboi. Instead of thinking about it, he fled and hid in the cave at a place belonging to Chief Diholamoko. Chief Tholaboreledi sent a message to Chief Diholamoko to arrest Kgware. Chief Tholaboreledi sent more people to go and fetch Kgware and told them to ask Chief Diholamoko to come with them. When they arrived, Chief Tholaboreledi realized that the grave that was supposed to bury Kgware's wife was still open. It is taboo in the Northern Sotho culture to close a grave without anything inside it. Chief Tholaboreledi stabbed Kgware in the armpit with a spear and pierced right through the lung of the right side to the heart. He jumped and fell in the grave before Chief Tholaboreledi pulled the spear. The chief then instructed the people who were with him to close the grave with Kgware inside it. Chief Tholaboreledi told his friend, Chief Diholamoko, that:

*Ke phethile la mogologolo,*

*Mokgakgati o a ikgela,*

*Moepalebitla le yena o a ikepela* (Matsepe 1971: 78).

'I have done that of the forefather,

Be hoist with one's own petard,

One does not mourn a person who has committed suicide.'

The rod, which Kgware wanted to beat his wife with, instead beat him. His brothers-in-law beat him. The grave, which he dug to bury his wife buried him.

In the Northern Sotho culture, the preferential unions normally dictate the choice of a marriage partner. The negotiations and the final decision are mostly in the hands of the two groups concerned, that is, the group that represents the bride and the one that represents the bridegroom. The wishes of the bride and the

groom are, therefore, not taken into consideration. The proverbs in the novel *Kgorong ya Mošate* (Matsepe 1962) rotate around a girl who did not want to get married into her aunt's family. Her parents entered into negotiations with the parents of her cousin and agreed that they get married without their consent. They all believed that marriage between them, as cousins, was an extension of the family circle. The young man did not have a problem with marrying his cousin. The girl wanted the partner of her choice, but not the relationship marriage. She had many enticing attractions.

The girl fell in love with a married man who promised her a decent life. As time went on, she became pregnant. The married man then lied as any other man does to win the heart of a lady he loves. The man wanted to marry her, but she refused after realizing that he was already married. She vowed to become his wife if he could get rid of his wife. The man told the girl how he was forced by his mother to marry his wife and the way he disliked her. She also told her that his wife was sluggard who is lazy to scratch and wash herself and could not sweep were they slept. He went on to tell her that he wanted to marry the person he loved and that she was that person. He concluded by saying that the woman she married did not belong to him but to his mother. She also told him how stupid her cousin was. The girl became extremely excited after listening to the man. She turned her heart and got married to him. She then went to stay with her parents-in-law. To her surprise, the man who promised her heaven and earth never kept his promise. She spent three months in his family without seeing him. They did not have sex. One day, when the man came back home, she cried uncontrollably when she told him that he was deceiving her. She told the man to his face that he loved his wife very much, and not her. The man promised the girl to chase his wife, but that never happened. The man told the girl that there was no way that he could stop loving his wife because he has four children with her.

She went back home and presented this case to her parents who were less concerned about it. Her parents told her that in life the child does not guide himself/herself, but is guided by his/her parents. The author confirms this opinion by using the following proverbs:

*Popotela e sa kwego e wetše leretheng la mohwelere,*

*Ngwana a llela nakana ya mokhura, sehlang le mo nee* (Matsepe 1962: 55).

'He who will not be ruled by the rudder must be ruled by the rock,

He who refuses to obey must face the consequences.'

The young lady then took the matter to the traditional court. She wanted the court to turn things around in her favor. The court heard that she was an obdurate person who did not want to take advice from her parents. It further heard that she refused to get married to her cousin. The court concurred with her parents when it said that *o lletše nakana ya mokhura* (literal translation: she cried for the fife of the Ricinus communis plant). This fife referred to the married man. The man whom she cried for made her cry. Mönnig (1983:131) says that:

The Pedi accepts the decision of the parents as final. In this connection, the following proverb is always quoted:

*"Nyatšamolala e hwile molaleng"*

He who despises the veld will die in the veld.

This means that if you disregard the advice of your parents it will lead to disaster.

Matsepe and the quotation mentioned above want to be very clear about the unlawful sexual relations that were not supposed to have occurred between the young girl and the married man. Disobedience to the instructions like this one is the cause of so many conflicts among tribes and families, not to mention the dramatic increase of the Acquired Immune Disease Syndrome (AIDS) virus in the African continent. How many children are living in the streets today, abandoned because their mothers never wanted them, or were rejected by their boyfriends? How many have never lived in a happy home with a loving mother and father and still were abused because of this evil "tradition" that allows all sorts of immoral sexual behavior to run wild and destroy innocent children's lives?

This is shown in the *Daily Sun* from 7<sup>th</sup> August 2009, where a mother wanted to give her child away. It is true that most mothers make sure that they stand by and look after their children, no matter how hard or bad the situation is. But a 27-year-old woman chose otherwise. The woman wanted to give up her three-year-old boy to her uncle's wife. She gave her uncle's wife her healthy child when he was a year old. It is reported that she voluntarily went to the Social Development offices to make sure that her pa-

rental rights were taken away from her. Even though she was employed, she could not look after her child. She regarded her uncle and aunt as the right people to raise him as they raised her as their daughter. When the social workers advised her to look for the father of the child for his consent, she said that she did not know where to look for him. She went on to tell them that when the child was born, her boyfriend disappeared and since then she had to struggle alone. To show that she was confused, an adoption supervisor at Johannesburg Child Welfare argued that the young mother should receive counseling about her intention to give her baby up for adoption.

Dumping unwanted kids is really disgusting. No one can argue that the streets in the country have been converted into dumping sites of surplus offspring by their irresponsible, negligent and malevolent "parents" who do not deserve to be called human beings. Every day innocent children are being denied the gift of life by their ruthless and merciless parents. Municipal workers discover fetuses and babies wrapped in plastic bags unexpectedly while on duty, and this leaves them traumatized. If one is not prepared to be a parent, one should play it safe.

In the novel *Morutiši Dinyepo* (Dolamo 1976), the battle continued between Teacher Dinyepo and his parents. Dinyepo started with roguery in Johannesburg, but was a lecturer when he came back home. He told his parents that he met a lady called Thola, and wanted to marry her. They wanted him to marry his cousin, but he refused by using the following proverb:

*Ye maswi ga e itswale* (Dolamo 1976: 18)

'Children of good parents do not necessarily take after them.'

The proverb above implies that he did not want to be like his father. His maternal grandmother agreed with her grandson, Dinyepo, by using sarcasm. The old lady supported her grandson by uttering the following statement that is derived from the proverb:

*Ngwana yo o llela nakana ya mokhura* (Dolamo 1976: 18)

'This child refuses to obey.'

The complete proverb is the one that is found on page 55 of Matsepe's novel, *Kgorong ya Mošate*, as indicated above. His grandfather admitted that he was defeated. He accepted defeat by using the following proverb:

*Mmapelo o ja serati, senyakelwa ga a se rate* (Dolamo 1976: 22)

'One is free to choose the one he/she likes.'

Dinyepo was given a chance to marry the life partner he chose for himself. He indeed married Thola, and instructed his parents and grandparents not to interfere in his marriage. Although they did not like what he was doing, they did as instructed. Thola started to give him a lot of problems. One of the problems is that they did not have a child. He was not comfortable in his family. He got himself into trouble. He disregarded sound advice from his parents and grandparents. He did not know what to do. When he told them about his marital problems, his grandmother said to him:

*Ngwana, o wetše, popotela e sa kwego e wetše leretheng la mohwelere* (Dolamo 1976: 48).

'Child, you are in trouble, he who will not be ruled by the rudder must be ruled by the rock.'

Note that the name Thola refers to a bitter fruit of a tree called *morollwa*. She was a type of a person who often scolded people and used obscene language. This name reminds one of the proverb that says:

*O se bone thola boreledi, teng ga yona go a baba*

'Appearances are deceptive'.

Dinyepo became bitter with his wife, Thola. Dinyepo was confused. He thought the best thing that he could do was to run away, which he eventually did.

The proverb in Matabane's *Notsa Todi Lemapong le* (1974) is uttered in tragic events. In this novel, Tabudi put himself in difficulties. He also did not listen to his parents. He smoked dagga, mocked tribal courts and assaulted community members. The tribal policeman arrested him and he was brought before the tribal court. The men heard the case in court and found him guilty. The participants in the tribal court proved beyond doubt that he took the law in his own hands. One unnamed participant maintained that Tabudi must be punished. The old man who suggested that Tabudi must get seven cuts on his buttocks said:

*Moipolai ga a llelwe, sello sa gagwe ke moropa* (1974: 41)

'One does not mourn a person who has committed suicide.'

The tribal court agreed with the old man and Tabudi was given seven heavy cuts. The proverb mentioned above was used accurately be-

cause Tabudi tempered with the rights of the community. By committing the criminal offences mentioned above, he determined his own fate, and in this way deserved punishment. He was also arrested by the police and went to jail because men at the court were sick and tired with the way he misbehaved.

Many people fall in love for the wrong reasons. Most fall in love for the image and not the true nature of a person. Falling in love means committing oneself and giving one's everything to the relationship. Love is about getting to know each other, understanding each other's strengths and weaknesses, and learning to live with them. It is about being able to say, "I truly love you and not for what I think you might offer." One should always say, "I will remain yours and you will remain mine through the major storms." True love does not mean sex or money, but is an inspiration that conquers through the impossible. People should try to fall in love for all the right reasons. They should love with their hearts, not with thoughts of temptation.

#### **POPULAR PROVERBS OF WISDOM IN THE MODERN AGE**

Proverbs are people's resources that they can use to better their lives. They are used to inform, advise and disseminate information about all types of issues that are taking place in a community (Nhlekisana 2010: 103). These cultural tools are entities that affect the Northern Sotho people's identities and behavior. Khoza (2015:4) indicates that people of vision and purpose are needed in great numbers to recover what is best in the African past and project this heritage into the future. These people should make sure that all the values are identified and adopted. Toelken (2014: 35) goes on to maintain that:

*Conservatism refers to all those processes and forces that result in the retaining of certain information, beliefs, customs and the likes, and the attempted passing of those materials, intact through time and space in all channels of traditional expressions.*

This is also supported by Finnegan (1970: 521) when she asserts that oral literature is quite relevant for the contemporary analysis of all the societies, including the Northern Sotho speaking people, and not just for those who are interested in the past.

The Northern Sotho traditional courts still use proverbs to teach moral lessons and to shape the society. This implies that they use proverbs on different experiences as a means of social control (Possa and Makgopa 2010:2). These researchers continue to explain that proverbs are not vanishing, but are changing to suit the modern age. They say that new proverbs are being coined from time to time. This is supported by scholars such as Mokitimi (1991), Agbaje (2006), Ahmed (2005), Domowitz (1992), Seitel (2009) and Mieder (2013).

#### **CONCLUSION**

Proverbs are used to comment on social situations, that is, where human beings interact. These social situations may be at work, home or in tribal courts. It is also crucial to note that language is not the only key factor in the growth of the ethno-national identity and unity. Religious, cultural and economic factors are equally important in the development of ethnic consciousness and nationalism. A nation, which lacks its culture, does not have the spirit, which makes its people a nation. The use of proverbs is crucial in deciding who is right or wrong in judicial matters in Northern Sotho. The Northern Sotho people have the right to dignity. They are not supposed to be treated as if they are not human beings because there are laws that protect them. Some of these laws depend on proverbs because proverbs are deemed to be full of wisdom and can be adapted to suit any context. In fact, proverbs exist to rectify the mistakes made by the community. This is why proverbs in Northern Sotho should be taken seriously as they play a vital role in the development of every individual.

#### **RECOMMENDATIONS**

Traditional courts should be respected like courts that use English only to conduct different cases. Traditional courts, just like European courts, may apply legal sanctions against the wrongdoer. The Northern Sotho people, like speakers of other African languages, should be proud of their cultural heritage. Elders and academics should continue to transfer this oral art from one generation to the other and acknowledge this part of art as one form of indigenous intellectual resource that African people, includ-

ing the Northern Sotho speakers, use to get the best out of life.

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