

IN THE HIGH COURT OF LESOTHO

In the Matter of

TAHLO MATOOANE

Plaintiff

v

1 MOTLATSI QHOMANE
2 REGISTRAR OF DEEDS

Defendants

J U D G M E N T

Delivered by the Hon. the Chief Justice Mr. Justice
T.S. Cotran on the 11th day of April 1984

The plaintiff Tahlo Matooane seeks a declaration that he is the owner of an unnumbered site at Upper Thamae. Motlatsi Qhomane and the Registrar of Deeds are cited as defendants. It is common cause that the plaintiff holds a certificate of title issued by the Deeds Registry. The Registrar of Deeds made no appearance. Motlatsi Qhomane, the first defendant, raised a plea of res judicata.

It is common cause that the defendant Motlatsi Qhomane sued the plaintiff Matooane in the Subordinate Court at Maseru in October 1980 seeking his eviction from the same unnumbered site and was there successful. I have perused the pleadings, proceedings, and the judgment of the lower Court. It is clear that the plaintiff wants to argue the same issues by pursuing the same cause but in a different form, in a different Court.

The possession of a certificate of title to land in Lesotho is no more than prima facie evidence of ownership. The onus of proving otherwise was on the defendant and in the Subordinate Court he has satisfied the magistrate that in spite of plaintiff's possession of the title deed he was the true owner of the site and is entitled to

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have the plaintiff evicted. Unless there is an appeal from that judgment the matter must end there. The Subordinate Court has no jurisdiction to cancel the plaintiff's title deed, only the High Court can (see s.7 of the Deeds Registry Act 1967) but it does have jurisdiction to entertain actions over land and eviction. The only point of substance is whether the lower Court's jurisdiction over registered land is ousted by implication if the result of litigation before it entails rectification of the register something which only the High Court can do. Jacobs CJ in Maseela v Maseela - 1971-1973 LLR p 132 - answered the question in the negative. In Mbagamthi v Phalatsi (CIV/APP/25 of 1979 dated 16th March 1982 - unreported) a similar issue arose albeit in the converse form in that the Court held in favour of the holder of the certificate of title and rejected the contention that the Local Courts jurisdiction over land is ousted. I did, however, express the hope that once it is recognised that the action involves rectification or alteration of the register that the High Court ought to be the forum where such issues are better resolved

The special plea therefore succeeds and the plaintiff's "action" for a declaration must be dismissed with costs.

CHIEF JUSTICE
11th April 1984

For Excipient	Mr. Matsau
For Plaintiff	Mr. Mda, Jr.