

IN THE HIGH COURT OF LESOTHO

In the Application of

LESOTHO AGRIC DEVELOPMENT BANK

Applicant

v

D.L. NTLHASINYE

Respondent

J U D G M E N T

Delivered by the Hon Mr Justice J L Kheola
on the 6th day of March, 1986

The Applicant is applying for an order in the following terms

- "(a) Directing the respondents to immediately vacate portion of Site No. 12284-024, Maseru which he presently occupies and which has now been transferred to applicant
- (b) Authorising and instructing the deputy sheriff to take over the premises and to give applicant vacant possession thereof
- (c) Directing respondent to pay the costs of this application.
- (d) Further and/or alternative relief "

Mr. Mashape is the Managing Director of the Applicant. He has deposed that the Respondent occupied a portion of Site No 12284-024 by virtue of an agreement of sub-lease with one Mr. Garach the previous owner and that the agreement expired on the 30th June, 1985. He further states that in June, 1985 the Applicant sought to take occupation of the whole plot and he accordingly wrote to the Respondent giving him notice

/to vacate... ..

to vacate the premises. As a result of representations made by the Respondent to the Applicant, it was agreed that the Respondent be given an extension and be allowed to remain on the premises until the 30th November, 1985. Mr. Mashape alleges that since then the Respondent has sought many excuses to remain on the premises and that despite a final notice given to him on the 7th January, 1986 the Respondent has refused and/or failed to vacate the premises.

It is common cause that Mr. Garach sold the plot in question to the Applicant on the 14th February, 1985. The Deed of Transfer is dated the 12th June, 1985. When the Applicant took possession of the plot the Respondent had been a tenant of Mr. Garach paying a monthly rent of R984-96. There is no written agreement of lease between the Respondents and Mr. Garach. The Applicant has annexed a copy of an agreement of lease between Mr. Garach and Basotho Enterprises Development Corporation (Pty) Limited (BEDCO) which was signed on the 20th August, 1979. Mr. Molete for the Applicant has asked the Court to assume that there was a cession of the agreement of lease to the Respondents by BEDCO. On the other hand the Respondents deny that there was any written agreement between them and Mr. Garach. They allege that their agreement has always been a verbal one.

The original application was brought against D.L. Ntlhasinye trading as Lesotho Photo Labs. On the 28th February, 1986 an application was made for the joinder of Lesotho Photo Laboratory and Lighting Distributors (Pty) Ltd. as second Respondent. The application was granted.

The Respondent's version of what took place is that after Mr. Mashape had agreed to extend their occupation until the 31st December, 1985 he subsequently agreed to allow the 2nd Respondent to occupy the plot until March, 1986. The agreement was verbal. The Respondents further

/aver.....

aver that when they noticed that the Managing Director of the Applicant was changing his mind about the verbal authorization he had made, they approached the Honourable Minister of Agriculture who is the Chairman of the Applicant. The Minister of Agriculture, Chief Peete Peete provisionally authorised the extension of the lease subject to confirmation by experts who were to remove the delicate laboratory equipment that they would remove it in March or April, 1986.

On the 20th January, 1986 the 1st Respondent wrote a letter to the Honourable Minister of Agriculture and attached a copy of a letter from Kodak Technical Section confirming that their technical staff from Johannesburg would be able to assist in the removal of the equipment during April, 1986. The Managing Director of the Applicant was given a copy of the letter to the Honourable Minister.

The ordinary rule is that in an application of this nature three sets of affidavits are allowed, namely, founding or supporting affidavits, answering affidavits and replying affidavits. In his replying affidavit the Applicant is expected to adduce any piece of evidence which is relevant to the issue and which serves to refute the case put up by the Respondent in his answering affidavit. (See Civil Practice of the Superior Courts in South Africa, 3rd edition)

In the instant case Mr. Maqutu for the Respondents was fair enough to indicate ^{to} Mr. Molete that it will probably be necessary for him to file a replying affidavit and indicated to the Court that he would not oppose the application for postponement to enable Mr. Molete to file the replying affidavit, if he so wished. Without any hesitation Mr. Molete told the Court that he had read the opposing affidavit of the 2nd Respondent and that he was not going to file any replying affidavits. I think this was an unfortunate decision because the allegations made by the 2nd Respondent have not been refuted and remain on the record as evidence which has not been challenged.

/Mr Molete.

Mr. Molete has submitted that the Minister of Agriculture, as the Chairman of the Board of Directors could not grant the extension of the lease. He submits that the 2nd Respondent has not produced any proof of this allegation. I do not understand what proof Mr. Molete wants because the 2nd Respondent has annexed a letter addressed to the Minister and a copy of a letter from Kodak confirming that experts would come in April. It is clear that on the 7th January, 1986 the Minister conditionally allowed 2nd Respondent to remain in occupation of the plot. If these allegations were not true it was the duty of the Applicant to file replying affidavits from either the Minister himself or from the Managing Director of the Applicant. I do not agree with Mr. Molete that it was the duty of the Respondent to file an affidavit from the Minister to prove that he verbally authorised extension of the lease. The Minister is part and parcel of the Applicant and if serious allegations are made against him, it is the duty of the Applicant to refute such allegation by filing a replying affidavit from either the Minister or any other person in a position to know that the Minister never made the extension.

For the reasons stated above I have come to the conclusion that the Applicant has failed to refute very serious allegations made by the Respondents and the Court has no alternative but to dismiss the application.

The Application is dismissed and the Applicant is ordered to pay costs.

J L KHEOLA
J U D G E .

6th March, 1986

For Applicant - Mr Molete
For Respondent - Mr Maqutu.