

IN THE HIGH COURT OF LESOTHO

In the Application of :

SELLOANE PUTSOANE Applicant

and

MOTLATSU LEKATSU Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai

on the 17th day of August, 1990.

The applicant herein seeks, against the Respondent, an order of this court framed in the following terms:

- " 1. Ejecting Respondent from a certain unnumbered site, or portion thereof at Thoteng Ha Scout, Roma, in the district of Maseru shown as plot Number 012 in the Lesotho Cadastral plan No. 18333.
2. Granting costs of this application to applicant.
3. Granting applicant such further and or alternative relief."

The application is opposed and affidavits have been duly filed by the parties. It is, perhaps, convenient to mention at this juncture that the original applicant in this matter was James Morapeli Putsoane. When the application came for arguments the court was informed that the applicant, James Morapeli Putsoane, had since passed away. An application was, therefore, made that his widow

Selloane Putsoane, be substituted as the present applicant. The application for substitution was not opposed and accordingly granted by agreement of the parties.

It is common cause from the affidavits that prior to 1974 a certain Leronti Matobo was entitled to the use and occupation of a piece of land at Thoteng Ha Scout in the area of Roma. In 1974 a portion of the land was lawfully allocated to the applicant for use as a residential site. Annexure "A", certificate of land allocation was on 9th March, 1974 issued to him as proof thereof. That portion is shown as No. 012 on annexure "B", the Cadestral Plan No. 18333.

It is further common cause that in July 1985 the Respondent started amassing building materials on a plot adjacent to the residential site admittedly lawfully allocated to the applicant in 1974. According to the applicant the plot on which the Respondent was amassing building materials was another portion of the land belonging to Leronti. He had negotiated for that plot with Leronti and it was subsequently lawfully allocated to him as another residential site in 1979. He attached annexures "C" and "D" as proof thereof. When he noticed the Respondent amassing building materials on the plot the applicant contacted and told him to remove the building materials. The Respondent, however, refused to do so.

Apparently the applicant instituted, before the Maja Local Court, proceedings in which he claimed the eviction of the Respondent. It is not clear, from the papers before me, what the outcome of those proceedings was. In any event the applicant has now approached the High Court for an order as aforesaid.

In his affidavit the Respondent conceded that the plot on which he had been amassing building materials originally belonged to Leronti. He denied, however, that the plot was ever lawfully allocated to the applicant. According to the Respondent he had acquired the plot from the previous owner, Leronti. He had in fact paid money which Leronti received for the plot. The Respondent denied, therefore, that the plot was lawfully allocated to the applicant who accordingly had no right to evict him therefrom. In the contention of the Respondent Annexures "C" and "D" were nothing but fabrications calculated to defraud him of his right to use and occupy the plot on which he had in fact already built a house and was living with his family.

As I see it, the decision in this case revolves on whether the plot, the subject matter of this dispute, belongs to the applicant or the Respondent. Although each of the litigants claims this plot, it is significant that the Respondent has produced no documentary proof to substantiate his claim. All that he says is that he acquired the plot from Leronti, the previous owner, who is apparently not a chief and cannot, therefore, lawfully allocate land in this country.

On the other hand, the applicant has produced two documents purporting to substantiate his claim that the plot belongs to him. The documents are annexures "C"

4/ and "D"

and "D", respectively, a certificate of land allocation and a written agreement between himself and Leronti. Both documents are dated 15th August, 1985. Annexure "D" reads, in part:

- " An agreement between
1. Mr. Leronti Matobo, the site allotter
- and
2. Mr. James M. Putsoane, the site allottee.

Basing myself on the decision of the commissioner of Lands in Maseru, I, Leronti Matobo and Mr. J.M. Putsoane, on the basis of paragraph (2) of that letter refer our matter to the chief of Roma for his intervention.

The chief advised that as he knew that I have another site at that area I should give the disputed site to Mr. James M. Putsoane and Mr. Matlatsi Lekatsu another site as a replacement to the site in dispute. The chief blessed the idea because it was fair and peaceful.

Leronti Matobo.

I agree and approve the decision above because it is in order.

Sgd: Maama M. Maama
Chief of Roma."

The alleged Commissioner of Lands' letter on the basis of which the applicant seems to rely for the contention that he had been allocated the plot by Leronti is not attached to the affidavits. This court is, therefore, not aware of the contents of para (2) thereof. In any event, I have already intimated my view that Leronti is not a land allocating authority in this

country. He cannot, therefore, have lawfully allocated the plot, the subject matter of this dispute, to the applicant.

Although the applicant averred that he was allocated the plot in 1979 and produced annexure "C" as proof thereof, it is significant that annexure "C" does not bear him out. It was clearly issued to him by the Chief of Roma on 15th August, 1985 and not 1979. It must also be observed that in 1980 the area of Roma was declared an urban area by Legal Notice No. 14 of 1980 dated 22nd August, 1980. That being so, it must be accepted that if it were true that on 15th August, 1985 the plot the subject matter of this dispute, was lawfully allocated to the applicant, the law applicable was Part III of the Land Act 1979 of which S.19(1) specifically provides:

" 19(1) this Part applies to the grant of title to land in an urban area."

In terms of the provisions of S. 24 of the Land Act 1979 the power to grant title to land within an urban area is exercised by an Urban Land Committee consisting of:-

- " (a) the Principal Chief having jurisdiction, as chairman;
- (b) the commissioner or his authorised representative;
- (c) the District Administrator, or where a Town Clerk has been appointed, the Town Clerk for the relevant urban area who shall be the secretary of the committee;
- (d) three other persons appointed by the Minister."

S.27(1) of the Land Act 1979 provides:

"whenever a decision to grant title to land under this Part has been taken, the secretary of the Urban Land Committee shall forward to the Commissioner a certificate to that effect in Form "C3" in the Third Schedule and shall at the same time issue a copy of the certificate to the applicant" (My underlining)

In the instant case, annexure "C", the copy of the certificate, issued to the applicant is in Form "C2" and not Form "C 3" in the Third Schedule. Form "C2" is, however, not a proper form to use where land has been allocated within an urban area. I have underscored the word "shall" in the above cited S.27(1) of the Land Act 1979 to indicate my view that if it were true that in 1985 the applicant was allocated the plot, the subject matter of this dispute, within the urban area of Roma, it was mandatory to use Form "C3". Moreover, annexure "C" is signed by the local chief Maama, M. Maama purporting to be the Chairman of the land Committee. As it has already been stated earlier, the Principal Chief and not the local chief is, in terms of the provisions of S.27 of the Land Act 1979, the chairman of the urban land committee.

By and large, I am convinced that the plot, the subject matter of this dispute, was irregularly allocated to the applicant and for that reason he cannot be

heard to say the plot lawfully belongs to him. The applicant cannot, therefore, be entitled to evict the Respondent from the plot over which he has no legal title

In the circumstances, I have no alternative but to dismiss the application with costs:



B.K. MOLAI

JUDGE

17th August, 1990.

For Applicant : Mr. Monaphathi
For Respondent : Mr. Matete.