

IN THE HIGH COURT OF LESOTHO

In the Application of :

NTSUKUNYANE RAMETSE	1st Applicant
JUBILE TSOSANE	2nd Applicant

and

THE ATTORNEY GENERAL	1st Respondent
MINISTRY OF INTERIOR	2nd Respondent
THE TOWN CLERK	3rd Respondent
LIKETSO MASUPHA	4th Respondent
MOSOLA TSOSANE	5th Respondent
MAKEOANE MAJORO	6th Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 20th day of August, 1990.

The applicants herein have instituted, before the High Court, an ex-parte application in which they seek, against the Respondents, the following order:-

"1. That a Rule Nisi be and is hereby issued calling upon the Respondents on a date to be determined by this Honourable Court to show cause (if any) why:-

(a) The 6th Respondent shall not be restrained forthwith from developing a site, which is a

2/ portion .....

portion of second Applicant's field  
situate at NALEDI at Ha-Tšosane in Maseru  
urban Area and the site is an extent: 61m x  
31m x 59.7m x 31.8m;

- (b) The 6th Respondent shall not be ordered  
to remove his poles from the said  
site;
  - (c) Why the 1st Applicant shall not be  
issued with a ~~lease~~ for the aforesaid  
site;
  - (d) The respondents shall not be ordered to  
pay costs of this application.
2. Granting the Applicants such further and  
or alternative relief.
  3. That prayers 1(a) operate with immediate  
effect as an interim order."

It is, perhaps, worth mentioning that when the  
application was first placed before me, I read through  
the motion papers and noticed that although in their  
founding affidavits the applicants averred that the  
site in question had been lawfully allocated to the  
first applicant, no certificate of allocation as  
proof thereof had been annexed to substantiate the  
avermment. It was clear to me, therefore, that the  
application would be strenuously opposed and it could not  
be fair to grant the order ex-parte. In the circumstances  
I ordered that the motion papers be served on the  
Respondents in the normal manner.

3/ After the .....

After the papers had been duly served on all the Respondents only the 6th Respondent filed notice of intention to oppose and the answering affidavit. The other Respondents did not intimate intention to oppose the application. It may, therefore, be safely assumed that they are prepared to abide by whatever decision will be arrived at by the court.

It is not really disputed, in the affidavits, that prior to 1979 the second applicant was the lawful owner of an agricultural land situated at a place known as NALEDI here in Maseru. He relinquished a portion thereof for re-allocation as residential site.

According to the applicants, in October 1979, the residential site was lawfully allocated to the first applicant. He was duly issued with a Form C, certificate of land allocation. Following its allocation to him the first applicant erected poles around the site. However, the 6th Respondent also subsequently erected poles around the same site.

The applicants further averred that the Form C which had been issued to the first applicant went missing in 1983. When he noticed that other poles had been erected around the site, the subject matter of this dispute, the first applicant reported to the second applicant and the chief who made him a letter directing him to the third Respondent's office where he met the fourth Respondent, an employee of the second Respondent. Investigations were then mounted in the

4/presence .....

presence of the parties, the fifth Respondent and two police officers by the fourth Respondent who ultimately decided that the site belonged to the 6th Respondent. The applicants were unhappy with the decision, hence the institution of these proceedings, against the Respondents, for an order as aforementioned.

In his affidavit the 6th Respondent avers that the site, the subject matter of this dispute, was lawfully allocated to him on 15th September, 1979. He has annexed a Form C, certificate of land allocation, as proof thereof.

The 6th Respondent concedes that, following its allocation to him, he erected poles around the site. He denies, however, that the first applicant had, at the time erected any poles on the site. According to him it was only in 1986 that the first applicant removed his (6th Respondent's) poles and replaced them by his (first applicant's). He then decided to fence the site. Whilst he was in the process applicants' attorney of record came and claimed that the site belonged to the first applicant to whom it had been lawfully allocated in 1983. He disputed the claim and went to the first applicant himself about the matter. The latter was, however, not prepared to discuss the matter with him. He and the fifth Respondent then went to the third Respondent's office where they met the fourth Respondent. The sixth Respondent concedes that the fourth Respondent carried out

investigations as alleged by the applicants and it was found that the site, the subject matter of this dispute, belonged to him and not the first applicant. He contended, therefore, that the application should be dismissed with costs.

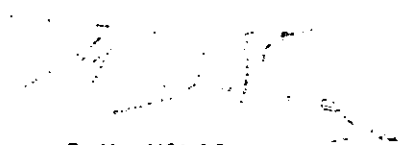
The salient question for the decision in this case is, in my opinion, whether the site, the subject matter of this dispute, was lawfully allocated to the first applicant or the 6th Respondent. Notwithstanding their averments that the site was lawfully allocated to the first applicant in October, 1979 and, therefore, belonged to him, it is significant that the applicants have failed to produce any Form C, certificate of land allocation, as proof thereof. If it were true that the first applicant's Form C went missing in 1983 and could not, therefore, be annexed to the motion papers, as the applicants wish the court to believe, they could have easily caused the official register of land allocation to be produced as proof that in 1979 the first applicant was, indeed, lawfully allocated the site. They have failed to do so. The allegation that the first applicant's Form C got lost in 1983 is, in my view, unconvincing and certainly no proof of land allocation.

The 6th Respondent has, however, produced a Form C, certificate of land allocation, which is, in my view, conclusive proof that the site had, on 15th September 1979, been lawfully allocated to him. For the sake of argument, I shall however, take it that in their affidavits

6/ the applicants .....

the applicants were deposing to the truth when they averred that the site, the subject matter of this dispute, was allocated to the first applicant in October 1979. Assuming the correctness of my view that the site was allocated to the 6th Respondent on 15th September, 1979, it must be accepted that when in October 1979 it was allocated to the first applicant the site already belonged to the 6th Respondent and was, therefore, not available for re-allocation. That being so, it is clear that the answer to the question I have earlier posed viz. whether the site, the subject matter of this dispute, was lawfully allocated to the first applicant or the 6th Respondent must be in favour of the latter.

In the premises, it is obvious that the view that I take is that this application ought not to succeed and it is accordingly dismissed with costs.



B.K. MOLAI

JUDGE.

20th August, 1990.

For Applicant : Mr. MPhutlane

For Respondent : Mr. Matete.