

IN THE HIGH COURT OF LESOTHO

In the Application of :

LOUIS JOAS t/a LESOTHO FUNERAL SERVICES

Applicant

V

QUTHING DISTRICT POULTRY CO-OP SOCIETY

Respondent

J U D G M E N T

Delivered by the Hon. Mr Justice M.L. Lehohla
on the 30th day of April, 1990.

The applicant Louis Joas trading as Lesotho Funeral Services brought his application to court on notice of motion seeking an order:

1. Directing the respondent to effect transfer of every right, title and interest in and to plot number 26, situate in the Quthing Urban Area, into the applicant's name.
2. Authorising and directing the Registrar to sign and execute on behalf of the respondent all necessary documents for the transfer of the property in question, should the respondent fail to comply with the order prayed for in prayer 1 above. And (see further para. 10 of the applicant's founding affidavit).
3. Awarding the applicant costs, or
4. Granting applicant an alternative relief.

In his founding papers the applicant sets out that

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he and the respondent entered into a verbal agreement (by which I am made to understand is meant oral agreement for indeed whether written or oral an agreement is verbal as long as it is composed of words. But if oral it is not written and vice versa) in terms of which the applicant was to build a new storeroom for the respondent at the latter's new site.

In pursuance of this agreement the applicant avers that he fulfilled the following conditions:-

- (a) He obtained a building permit a copy of which is attached marked "A".
- (b) Within the ninety six day stipulated period for completion of the building he had completed the undertaking and handed the keys thereof to the respondent.

It appears that condition (c) was not met by the respondent. This condition according to the applicant was that when he had completed the building in (b) then a certain site No. 26 which before being registered as a Corporative Society belong^{ing} to the Egg Circle would be transferred by the respondent to the applicant.

In the preliminary arguments the applicant's counsel submitted that there are no real disputes of fact in this application and invited the court to be wary of ~~deliberately created disputes of fact.~~

He submitted that it was desirable to dispose of these spurious disputes of fact. He pointed out that it is not proper for the respondent in reaction to the applicant's averment to keep on saying "I deny these and put the applicant to proof thereof" without stating why it questions the authority of the applicant to bring these proceedings or stating what qualification its deponent has to say its chairman is authorised to oppose this application.

It is of fundamental importance to bear in mind that applications are not only pleadings but evidence. It is

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not proper therefore to withhold information which, if supplied, would have the effect of curtailing lengthy proceedings and the accompanying costs with the hope that oral evidence would later help ventilate possible areas of dispute.

It was with this in view that the applicant's counsel sought to implore the court to direct the respondent to file supplementary affidavits in which full evidence as to its authority is set out.

When the respondent's counsel opposed the move proposed on behalf of the applicant Mr Sello stated that he was then withdrawing that application and asking the court to grant application as set out in the papers.

It was contended for the applicant that it was not proper for 'Neko to say he is entitled to make the affidavit he made instead of saying he was authorised to do so as well as making an indication of that authority.

It was further pointed out that *ex facie* the papers there is not even any remote indication that he is authorised to make his affidavit. It seems that he thinks that because he is a chairman he is entitled to interfere in proceedings in which he has no locus standi. The applicant was however not keen on having this application dealt with on this technical ground alone.

With regard to the merits the applicant relies on Annexure "C" which shows that he entered into an agreement with the respondent represented by people listed in that annexure. It was submitted that annexure "C" is a prima facie document executed by the respondent for it bears the respondent's date stamp and is signed by people representing the respondent.

Annexure "C" shows that in her capacity as the chair-lady Mrs Mary Damano was authorised by the undersigned persons, to wit, 'Maphabo Nakotoko, 'Mathabo Khoathane and 'Mahlomohang Tsekoe acting on behalf of the respondent

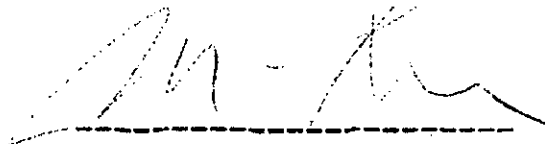
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to effect all the necessary arrangements for the transfer of site No. 26 to Mr Louis Sello on fulfilment by the latter of conditions referred to earlier in this judgment.

'Neko on behalf of the respondent avers that he knows nothing about annexure "C" and goes further to say that even if it could be said he is aware of its existence it was not effected with the authority of the respondent.

But whatever 'Neko's attitude is to the application it seems to me untenable to support his self-defeating stance in the face of the applicant's uncontradicted evidence that he has performed his side of the contract.

The application is granted with costs.



J U D G E.

30th April, 1990.

For Applicant : Mr Sello

For Respondent: Mr Hlaali.