

CIV/APN/89/90

IN THE HIGH COURT OF LESOTHO

In the Application of :

JAMES RAJAH Applicant

and

HARETSEBE MOTSOANE 1st Respondent

LELINGOANA MOTSOANE 2nd Respondent

MALEFANE MOTSOANE 3rd Respondent

MOSIUOA MOTSOANE 4th Respondent

MOKOAI QHAI..... 5th Respondent

J U D G M E N T

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

on the 12th day of September, 1991.

The applicant herein has filed with the Registrar of the High Court a notice of motion in which he moves the court for an order couched in the following terms:-

- "(a) Dispensing with the periods of notice required by the rules on the grounds of urgency of this application;
- (b) Directing Respondents to restore forthwith to applicant a certain site under commercial and/or business site at Lekhaloaneng, Maseru city where applicant operates a cafe;
- (c) Directing Respondents to restore possession of items listed in Annexure attached to Applicant's founding papers to Applicant forthwith;
- (d) Directing Respondents to pay the costs of this application;
- (e) Granting Applicant such further and/or alternative relief as this honourable court may deem fit."

The Respondents intimated intention to oppose this application and affidavits were filed by either parties. It is worth mentioning that although the application was filed with the Registrar of the High Court on 2nd April 1990 as an urgent application it was not moved until 15th August, 1991 when the court was told that the applicant had since regained possession of the property, the subject matter of this dispute, and was

carrying out his business operations thereon. The only question remaining for the determination of the court was, therefore, that of costs.

It appears from the papers before me that at certain Motsokololi Motsokane and the applicant concluded a verbal agreement whereby the latter was to erect four (4) rooms on a site belonging to the former at a place called Lekhaloaneng here in Maseru. In return Motsokololi was to give a portion of the site to the applicant who intended developing it for commercial purposes. The agreement was concluded in the presence of Motsokololi's wife and eldest son.

Following the agreement the applicant proceeded to develop the site. He erected two (2) rooms and a shop building in which he started business operations. Before the agreement could be reduced to writing and the applicant build the remaining two rooms Motsokololi passed away. His widow and the eldest son then approached the local chief, Moshoeshe Seoli, with an application that the applicant be formally confirmed on the portion of the site given to him by the late Motsokololi, subject to the condition that he would complete the erection of the remaining two rooms.

The local chief subsequently wrote to the department of Lands and Survey requesting that the site be surveyed with a view to demarcating the portion that was to be formally allocated to the

applicant, subject of course to the condition agreed upon by the parties. Before the site could be surveyed the widow of Motsokololi passed away and his eldest son developed a mental illness.

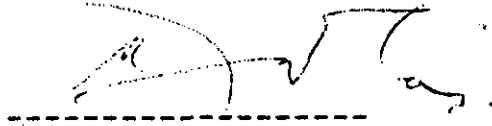
It was then that the Respondents, who are the other children of the late Motsokololi, questioned the legality of the applicant's presence on the site, the subject matter of this dispute, on the ground that there was no written agreement as proof that their father, Motsokololi, and the applicant had agreed that part of the site would be portioned to the applicant in return for his erecting four (4) rooms on the site. The matter was taken before the District Administrator who found that the applicant and the late Motsokololi did agree as previously stated. However, as it had not been lawfully allocated, in terms of the Land Act 1979, to the applicant, the portion of the site still belonged to the person who succeeded the late Motsokololi as his heir.

Following the decision of the District Administrator the Respondents fenced the whole site thus denying the applicant access to the portion on which he had built the shop and was carrying out business operations.

Assuming the correctness of the District Administrator's finding that a verbal agreement did exist between the applicant and the late Motsokololi over the portion of the site, the subject

matter of this dispute, the principle is that agreements are made to be observed. As his heirs, the children of the late Motsokololi cannot, therefore, be allowed to unilaterally repudiate the agreement. By fencing the applicant out of the portion of the site on which he was, in terms of the agreement, lawfully operating his business the Respondents were wrong and the applicant had no alternative but to approach this court as he did, for relief.

That being so, it is only fair that the Respondents must pay to the applicant the costs of this application. It is accordingly ordered.



B.K. MOLAI

JUDGE

12th September, 1991.

For Applicant : Mr. Nathane
For Respondents : Mr. Matooane.