CIV/APN/246/90

IN THE HIGH COURT OF LESOTHO

In the application of :

NTSANE KHABISI ..... Applicant

and

MINISTER OF INTERIOR..... 1st Respondent
ATTORNEY GENERAL..... 2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 25th day of September, 1991.

On 1st October, 1990 the applicant herein filed, with the Registrar of the High Court, a notice of motion in which he moved the court for an order framed in the following terms:

"1. That a Rule Nisi be issued and returnable at the time to be fixed by this Honourable Court, calling upon the Respondents to show cause why:

(a) The 1st Respondent and/or his servants shall not be directed to refrain from using and/or interfering in any manner whatsoever with applicant's business site situated at Ha Matala in the district of Maseru;

(b) The strict compliance with the rules of this Honourable court shall not be dispensed with;

(c) Costs of this application in the event of opposing same;

(d) Further and/or alternative relief.

2. That prayer 1(a) operate with immediate effect as an interim order pending the outcome of this application."

Although a certificate of urgency accompanied it, the application was apparently not moved as such. Instead the motion papers were, on 2nd October, 1990, served upon the Respondents who, on 9th October, 1990, intimated their intention to oppose this application. Affidavits were duly filed by the parties.

Briefly stated, the facts that emerge from affidavits are that on 10th March, 1976 the applicant was lawfully allocated a piece of land for commercial purposes at a place called Ha Matala here in Maseru. As proof of his title the applicant has attached, to the founding affidavit, annexure "A" - a certificate of land allocation commonly known as Form C. Following the allocation to him, the applicant fenced the site but no buildings of any sort have as yet been erected thereon.

It appears from the affidavits that in March, 1990 the 1st Respondent caused a pitso to be convened for the people of Ha Matala. At the pitso all those people who had land rights in the area within which the applicant's site falls were required to submit their names at the office of Lands and Survey so that they might be awarded substitute rights, presumable because the 1st Respondent intended, in the public

interest, to declare the area a selected development area. The applicant never submitted his name at the office of Lands and Survey as required. On 11th May, 1990 the area within which the applicant's site falls was duly declared a selected development area as per Legal Notice No. 60 of 1990 which is attached, as annexure "A", to the answering affidavit.

It is common cause that on 20th September, 1990 and therefore, following the publication of the Legal Notice No. 60 of 1990 in the gazette, the 1st Respondent commenced development operations on the area within which the applicant's site is situated. In the contention of the applicant the operations were carried out without his consultation and/or consent. He was, therefore, unjustifiably deprived of his possessory and ownership rights over the site, the subject matter of this dispute. Hence this application for relief as aforesaid.

The Respondents denied the applicant's contention and averred that upon publication of Legal Notice No. 60 of 1990 in the gazette, on 11th May, 1990 whatever possessory and/or ownership rights the applicant might have had over the site, the subject matter of this dispute, were extinguished in accordance with the provisions of section 44 of the Land Act 1979. The applicant could not, therefore, be heard to say when, on 20th September, 1990, the development operations

commenced on the area within which the site, the subject matter of this dispute, falls, he was deprived of possessory and/or ownership rights which were non-existent.

It is to be noted that section 44 of Part V of the Land Act 1979 provides:

> "44. where it appears to the minister in the public interest so to do for purposes of selected development, the Minister may by Notice in the Gazette declare any area of land to be a selected development area and thereupon, all titles to land within the area shall be extinguished but substitute rights may be granted as provided under this part."
>
> (My underlinings)

I have underscored the words "thereupon all titles to land within the area shall be extinguished" to indicate my view that the moment Legal Notice No.60 of 1990 was on 11th May, 1990, enacted, or published in the gazette, by the 1st Respondent, the applicant forfeited all his rights over the site, the subject matter of this dispute, which is admittedly within the area declared selected development area at Ha Matala. Consequently I am inclined to agree with the Respondents that as his site falls within the area declared selected development area the applicant could not, on 20th September, 1990, be heard to say he still had any rights over the site, the subject matter of this dispute.

It has been argued that in declaring the area, within which the applicant's site falls, a selected development area, in terms of the Legal Notice No.60 of 1990, the 1st Respondent did not comply with the provisions of section 44 of the Land Act, 1979 in that :

(a) he had failed to consult with the people to be affected thereby, in particular the applicant;

(b) he did not give sufficient description of the area to be declared selected development area and

(c) he did not indicate that the declaration of the area as a selected development area was the only way in which development could be achieved.

I am unable to agree with this argument. The question of declaring, in the public interest, a certain area as a selected development area is, in terms of the provisions of Section 44 of the Land Act 1979, a matter entirely within the discretion of the minister responsible for the administration of the Land Act. There was, therefore, no obligation on the 1st Respondent to show that the declaration of the area, within which the applicant had been allocated a site, as a selected development area was the only manner in which development could be achieved. That being so, the applicant's argument in (c) above cannot, in my opinion, hold water.

It is to be observed that under the Legal Notice No. 60 of 1990 the 1st Respondent has described the area declared selected development area to be 147.6 hectares, more or less, at Ha Matala Maseru Urban area as delineated on miscellaneous Plan No. 1/90 available for anybody's inspection in the office of the Chief Surveyor, Maseru. This, in my view, is a clear description of the area which was declared a selected development area and the applicant's argument in (b) above has no substance.

As it has been stated earlier, the averment that in March, 1990 the 1st Respondent caused a pitso to be convened at Ha Matala is not really disputed. Nor is it disputed that at the pitso the 1st Respondent's intention to declare the area within which the site allocated to the applicant falls, a selected development area was announced and all those people who had land rights in the area invited to submit their names at the office of the Lands and Survey so that they might be awarded substitute rights.

Assuming the correctness of these averments, it seems to me that prior to the enactment of Legal Notice No.60 of 1990 on 11th May, 1990 and a fortiori the commencement of the development operations on 20th September, 1990 the applicant and all other people whose land rights were affected by the declaration of the area in question as a selected development

area were contacted. The applicant's argument in (a) above has, therefore, no justification.

From the foregoing, it is obvious that the view that I take is that this application ought not to succeed. I accordingly dismiss it with costs.

B.K. MOLAI
JUDGE
25th September, 1991.

For Applicant : Mr. Hlaoli
For Respondent: Mr. Letsie.