

CIV\APN\106\89

IN THE HIGH COURT OF LESOTHO

In matter between:-

TSELISO MOKHETHI

Applicant

and

LETLAMA MATLOLE
COMMISSIONER OF LANDS
REGISTRY OF DEED
ATTORNEY-GENERAL1st Respondent
2nd Respondent
3rd Respondent
4th RespondentJ U D G M E N TDelivered by the Honourable Mr. Justice J.L. Kheola
on the 18th day of November, 1991.

This is an application for an order in the following terms:-

- (a) Cancellation of Registration of No.06474-021 issued to 1st Respondent in respect of plot No.06474-021, initially known as Site No. 622 Mafeteng Reserve, situated at Mafeteng Urban Area, in the District of Mafeteng; and/or
- (b) Directing the 2nd Respondent to cancel and delete from his records the name of the 1st Respondent and substitute therefor the name of the Applicant as the rightful holder of Lease No. 06474-021 in respect of plot No. 06474-021 situated at Mafeteng Urban Area, in the District of

Mafeteng;

- (c) Directing the 3rd Respondent to cancel from his records registration of Lease No. 06474-021 in favour of the 1st Respondent, and/or expunge from his records the name of the 1st Respondent and substitute therefor the name of the applicant as the lawful holder of Lease No. 06474-021 in respect of plot No. 06474 situated at Mafeteng Urban Area, in the District of Mafeteng.
- (d) Directing the Respondent to pay the costs of this application. Second and Third Respondents to pay costs only in the event that they oppose granting of the Orders sought in this application.
- (e) Granting Applicant further and/or alternative relief.

In his founding affidavit the applicant avers that he is the holder of a registered title to occupy and a certificate of registered title to immovable property in respect of plot No. 622 situated at mafeteng Urban Area. The certificate to occupy was registered in the Deeds Registry under No. 5897 on the 9th July, 1968 in respect of plot No. 622 as duly allocated to him by the proper authority. (See Annexure "M" to the founding affidavit).

In 1968 the applicant was desirous of selling and transferring his interest and right in a portion of the said plot to the first respondent. He avers that a partly written

and partly verbal agreement was concluded between himself and the first respondent in terms of which his right and interest in an identified portion of the said plot would be transferred to the first respondent for M400-00. The first respondent and the document containing the written terms is with the first respondent.

A deed of transfer in respect of the portion sold to the first respondent was to be executed by the first respondent attorney in due course. Such deed of transfer was duly drawn by the first respondent's attorney and when they were on the verge of signing it, the applicant discovered that the terms of the said deed of transfer did not accord with the agreement of sale between himself and the first respondent. Whereas they initially agreed on the transfer of portion only of the said plot, the terms embodied in the deed of transfer reflected an intention to transfer the whole of the said plot.

When he drew the first respondent's attention to the disparity or discrepancy between what they agreed upon and the terms of the draft deed of transfer, a dispute arose and the signing of the deed of transfer was suspended. (See Annexure "TM2").

The applicant avers that it seems that unknown to him the first respondent proceeded to apply to the second respondent

for the issue of a lease in terms of the Land Act of 1979. (See Annexure "TM3"). The second respondent accepted Annexure "TM3" and proceeded to prepare Lease No.06474-021 in favour of the first respondent in respect of the said plot. The said lease was registered by the third respondent on the 11th August, 1988 under No.06474-021 (See Annexure "TM4").

The first respondent admits that the plot originally belonged to the applicant but avers that his title subsequently ceased when he sold his entire interest to him (first respondent). He avers that a proper transfer of the whole plot was effected in his favour in July, 1969 and Ford D was properly executed (See Annexure "A" to the answering affidavit).

It is alleged further that the applicant denounced his title to the plot to the Reserve Chief who in turn informed and transmitted the same to the District Administrative Secretary (Annexure "B"). He avers that the applicant is estopped from bringing his claim regard being heard to the fact that his (first respondent's) application for a lease was duly advertised so as to enable anybody with an adverse claim to raise an objection (Annexure "C").

The first respondent avers that they did not sign the deed of transfer because the applicant himself informed him

that it would take too long and suggested that they should approach the headman of the reserve who duly assisted them.

The second respondent avers that the documents which were presented to him by the first respondent entitled him to issue a lease.

I shall not express any opinion on the merits at this stage because there are serious disputes of fact on issues such as:

1. Was only a portion of the plot sold to the second respondent or the whole plot was sold.
2. Did the applicant denounce his title to the plot?
3. Why was the draft deed of transfer not signed.

I order that the matter should go to trial. The Notice of Motion and the founding affidavit shall be regarded as the summons and the answering affidavits as the plea. The parties are free to ask for further particulars, to discover and must hold a pre-trial conference.

O. L. KHEOLA

JUDGE

18th November, 1991.

For Applicant - Mr. Mahlakeng

For First Respondent - Mr. Phafane

For 2nd, 3rd, 4th Respondents - Mr. Mohapi.