

IN THE COURT OF APPEAL OF LESOTHO

In the matter between:

THABO CHARLES MAITIN

Appellant

and

MARY E. BARIGYE
ACRES INTERNATIONAL LIMITED

1st Respondent
2nd Respondent

HELD AT :
MASERU

CORAM:

STEYN, A.P.
KOTZE, J.A.
TEBBUTT, A.J.A.

JUDGMENT.

TEBBUTT, A.J.A.

The appellant in this appeal applied in the High Court for an order ejecting the respondents from a house owned by him in Maseru West and let by him to the respondents. His application was dismissed with costs. He appealed to this Court against that decision.

At the conclusion of the argument in this Court the Court dismissed the appeal, with costs. It intimated that it would file its reasons for so doing later. These are the reasons .

The learned Judge in the Court a quo (Maqutu J) dismissed the application on two grounds -

(i) he **meru motu** raised, as he was, of course, entitled to do, the jurisdiction of the High Court to hear the application and found that the application should not have been brought in the High Court but in the Magistrate's Court in terms of **Section 17 (1) (c)** of the Subordinate Court Order of 1988 , read with **Section 6** of the High Court Act No.5 of 1978, and

(11) he upheld a point **in limine** against the appellant viz that there was a dispute of fact of which the appellant should have been aware before bringing his application and that, therefore, his claim for ejection should have been brought by way of action and not by way of application.

The appellant challenged both these findings in his appeal. It was, however, clear to this Court - and indeed, Mr Sello who appeared for the appellant conceded as much - that if the learned Judge was correct in dismissing the application on the first ground viz the question of jurisdiction, the appeal as a whole had to fail.

As to the first ground, **Section 17(1)(c)** of

the Subordinate Court Order provides that the subordinate i.e. magistrate's courts have jurisdiction -

"(c) in any action of ejectment against the occupier of any house, land or premises within the district."

Section 6 of the High Court Act No.5 of 1978 provides that

"No civil cause or action within the jurisdiction of a subordinate court ... shall be instituted in or removed into the High Court save -

(a) by a Judge of the High Court acting on his own motion; or

(b) with leave of a Judge upon application made to him in chambers and after notice to the other party."

It is common cause that neither of these events occurred. The case should therefore, it would appear, have been brought not in the High Court but in the magistrate's court.

The appellant, however, contended that the jurisdiction of the subordinate i.e. magistrate's court is limited to those

ejection cases where the value of the occupation of the premises to the tenant is within the jurisdiction of that court. The appellant is not correct. **Section 17** of the Subordinate Court Order provides in **sub-section (a)** monetary limitations in respect of claims on liquid documents and, similarly, monetary limitations are set in actions in which the delivery of movable and immovable property is claimed. **Sub-section (d)** also provides for monetary limitations in respect of other actions. There is, however, no monetary limitation in respect of ejection actions, **section 17(1)(c)** conferring jurisdiction on the Subordinate Courts, in any action of ejection. (My emphasis)

The learned Judge **a quo** was therefore quite correct in holding that the subordinate courts have jurisdiction to hear ejection cases regardless of the value of the property and that, having regard to the provisions of **Section 6** of the High Court Act, the application should not have been brought in the High Court but in the magistrate's Court.

The first ground of appeal accordingly failed and it followed that the appeal as a whole had to fail. It was accordingly not necessary for this Court to consider the point **in limine** raised in the Court **a quo**.

In the result, therefore, the Court dismissed the appeal, with costs.

P.H. Tebbutt
.....
P. H. TEBBUTT
ACTING JUDGE OF APPEAL

I agree

J.H. Steyn
.....
J. H. STEYN
ACTING PRESIDENT

I agree

G.P.C. Kotze
.....
G. P. C. KOTZE
JUDGE OF APPEAL

Delivered at Maseru This *28th* Day of *July* 1994.