CIV/T/112/97

IN THE HIGH COURT OF LESOTHO

In the matter between

MATSELISO MOSHABESHA	1st Plaintiff
TSOEUNYANE MARITE	2nd Plaintiff
MAPITE KHOMONGOE	3rd Plaintiff
MANTAMANE PHETA	4th Plaintiff
TIMIEA MARITE	5th Plaintiff
MPHO SEBOKO	6th Plaintiff
MPHO MOREMI	7th Plaintiff
MANTHOFELA MOAHLOLI	8th Plaintiff

and

MINISTER OF HOME AFFAIRS	1st Defendant
MALUTI MOUNTAIN BREWERY	2nd Defendant
THE ATTORNEY GENERAL	3rd Defendant

JUDGEMENT

Delivered by the Honourable Justice Mrs.Guni
on the 6th day of November, 2001

The historical facts of this case, which led up to the present litigation, may be summarised as follows: In 1988 the 2nd defendant fenced a piece of land. This piece of land had been previously lawfully occupied and used by some of the plantiffs herein. This particular piece of land, plot 004 was declared "a selected Development area" by the Minister of Interior in the

Government Gazette N0.81 of the 5th October 1990. Pursuant to this declaration, the Minister of Interior (hereafter referred to as the Minister) entered into a lease Agreement with the 2nd Defendant – Maluti Mountain Brewery (hereafter referred to as the Brewery).

The Ministry of Interior is the Authority which administers THE LAND ACT N0.17 OF 1979, (hereafter referred to as the Act.).

In terms of Section 44 of the act, the Minister is empowered to declare selected Development areas if it appears to him or her to be so demanded, in the public interest. Section 44 reads a follows: "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".

The plot was developed by the Brewery in accordance with the lease Agreement between the Minister and the Brewery. The Brewery wished to

expand and therefore obtained the use of the adjacent plot 005. The Department of Lands and Survey resolved to combine the two plots – 004 and 005. They were given a new N0. 006.

The Brewery is a titleholder of that piece of land now plot N0.006. Following that decision to combine the two plots and issue a single number for both of them, two further steps had to be taken by the Minister and the Brewery, in order to carry on the intended development of that area. The first step was taken by the Minister to declare in terms of section 44 plot 006 as a selected development area. This declaration was done on the 14th June 1991. It was published in Government Gazette N0.48 of 1991. Immediately after the publication of the declaration that plot N0.006 was selected development area, the parties (i.e. the Minister and the Brewery) entered into the new lease Agreement which came into effect on the 28th September 1992, in respect of the new plot N0.006.

The Brewery has since 1992 occupied that piece of land on which it operates a depot. The plaintiffs issued out of this court on 26th March 1991, summons against the Minister and the Brewery. In the said summons plaintiffs are seeking an order of this court, (1) declaring the Government

Gazette N0.48 of 1991 as null and void. Secondly they seek an order evicting and/or ejecting the Brewery from that piece of land or alternatively ordering the defendants to compensate the plaintiffs for the loss of the use and occupation of that piece of land.

The parties through their counsel agreed on a number of issues. First of all it was agreed that 'Manyakallo Moshabesha be substituted for the 1st plaintiff who is late. 'Manyakallo is the daughter of the late Matseliso Moshabesha. The counsel again agreed that the case must proceed only in terms of the alternative prayer that of payment of compensation to the plaintiffs by the Brewery. The court was asked by both parties to deal with and determine only the question of title or right to claim compensation from the Brewery by the plaintiffs. The issue of quantum of the compensation is deferred also by agreement of the parties.

The plaintiff's case is to the effect that they are entitled to compensation according to Section 45 of the Act. It was agreed by the parties that the plaintiffs were previously the lawful users and occupiers of the land in question. In the statement of agreed facts which was drafted by the counsel for the parties just before the commencement of this trial, there is an acceptance by the plaintiffs that the Brewery is also presently a lawful

occupier and user of that piece of land. It is pleaded on behalf of the Brewery that it is not obliged to pay compensation to the plaintiffs. Both parties rely on section 45 of the Act for their submissions. Section 45 provides as follows; (1) "where the selected development area consists wholly or partly of agricultural land other than land within a selected agricultural area, licensees or allottees of such agricultural land shall be deemed to have received three months' notice of termination of their licences or of revocation of their allocations, as the case may be, beginning from the date of publication in the **Gazette** of the notice referred to in section 44". (2) "(Where the selected development area consists wholly or partly of agricultural land within a selected agricultural area, lessees of such land shall be deemed to have received three months' notice of termination of their leases as in subsection (1) and shall be entitled to compensation for any loss incurred through being deprived of their land". (My underlining).

In the beginning, before the Minister of Interior and the Brewery entered into the lease agreements in terms of which the Brewery developed the site in question, the land comprising those plots previously used and occupied by the plaintiffs were declared "a selected development area. The plaintiffs have claimed that the land in question was previously used and

occupied by them as fields. It is agreed that they used that land wholly for agriculture. The technical terms used in this Act have been defined in Section 2 of the Act. The expressions and/or Phrases underlined by me in section 45 are particularly relevant in the determination of this matter.

"Selected agricultural area" means an area set aside under section 50 for the development of agriculture by modern farming techniques. "Selected development area" means an area set aside under section 44 for purpose enunciated therein. The two areas, (i.e. selected agricultural area and selected development area) are created or brought about by the Act under different sections. In respect of "a selected agricultural area" the minister responsible for Agriculture makes recommendation to the Minister of Interior. Nothing of the sort is alleged to have happened in respect of the land in question.

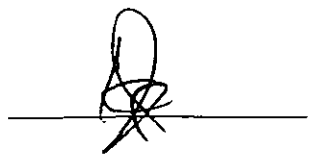
Sub-Section (2) of Section 45 is the one which specifically deals with compensation. Before the loser of the right to use and occupy particular piece of land, can be entitled to compensation, two pre-requisites must be satisfied. The selected development area that has been declared must consist wholly or partly of agricultural land within a selected agricultural area. The

land must not only be wholly or partly used for agriculture but must be within " a selected agricultural area".

In the declaration, the plaintiffs have not alleged that their fields were in a selected agricultural area. They have not also proved to the satisfaction of this court, that there was ever a Government Gazette in which that area within which their fields were situated, was declared in terms of section 50 of the act, a selected agricultural area. Section 50 establishes selected agricultural areas as follows: "where it appears necessary for the development of agriculture to do so, the Minister, acting upon the recommendation of the Minister responsible for Agriculture, may, by notice in the Gazette declare any area of agricultural land to be a selected agricultural area and, thereupon, any allocation or licence in respect of such agricultural land shall be deemed to have been revoked or terminated on three months' notice beginning from the date of publication in the Gazette of the declaration notice".

The land which the plaintiffs may have used for agricultural purposes purely as fields, do not entitle them to claim compensation for loss of the use and occupation of the same. Sub-section (1) of section 45 clearly spells out

the exact term which disentitle the claimants such as these plaintiffs. The relevant portion thereof reads as follows: "where the selected development area consists wholly or partially of agricultural land other than land within a selected agricultural area. In their declaration, the plaintiff merely alleged that the Brewery fenced their fields and built a depot. This allegation falls far short of the requirements set out in section 45 of the Act. Compensation is only payable in terms of that section. It is claimed by the plaintiffs relying particularly on that section. Without satisfying those requirements therein set out, their claim for compensation must fail. It is dismissed with costs.



K.J. GUNI

JUDGE

1ST OCTOBER, 01

For applicant : Mr. Nathane

For Respondent : Webber and Newddigate