

IN THE COURT OF APPEAL OF LESOTHO

In the matter between

AFRICAN METHODIST EPISCOPAL CHURCH

Appellant

AND

ENTERPRISE INVESTMENT (PROPRIETARY) LIMITED

Respondent

HELD AT MASERU

CORAM

KUMLEBEN, J.A.

Grosskopf, J.A.

Melunsky, AJA

REASONS FOR JUDGMENT - ORDER OF COURT

11 October 2002

Land Act, 17 of 1979 as amended - non-compliance with
SECTION 6(1) (C) - AGREEMENT UNENFORCEABLE

Melunsky, A.J.A.

In this matter the appeal was dismissed with costs on 3 October 2002 and reasons for so doing were furnished at the hearing. It is considered necessary to reduce the reasons to writing and to formulate the order of this Court.

THERE WAS NO APPEARANCE FOR THE RESPONDENT AT THE HEARING. THE APPELLANT'S COUNSEL RAISED TWO POINTS ON APPEAL AND IN OUR VIEW AT

LEAST ONE OF THEM IS UNANSWERABLE. IN THE CIRCUMSTANCES BRIEF REASONS WILL SUFFICE.

The respondent, a registered company, attempted to enforce an agreement which it had entered into with the appellant in terms whereof it purported to acquire the appellant's interest in certain land. In order to succeed the respondent was obliged to establish that it was capable of holding a title to land in terms of section 6 (1) (c) of the Land Act, 17 of 1979 as amended by section 4 (c) of the Land (Amendment) Order, 1986. In terms of the sub-section, therefore, it was necessary for the respondent to prove that at least 51% of its shareholding was and remained at all times in the hands of citizens of Lesotho who were Basotho.

ALTHOUGH THE RESPONDENT ALLEGED THAT A MAJORITY OF ITS SHARES WERE HELD BY A LESOTHO CITIZEN IT DID NOT ESTABLISH, OR EVEN ALLEGE, THAT THE PERSON IN QUESTION WAS A MOSOTHO. THE RESULT IS THAT THE RESPONDENT FAILED TO ESTABLISH THAT IT WAS CAPABLE OF HOLDING A TITLE TO THE LAND WHICH IT PURCHASED AND IN CONSEQUENCE IT CANNOT ENFORCE THE AGREEMENT. IT FOLLOWS, THEREFORE, THAT THE APPLICATION SHOULD HAVE BEEN DISMISSED WITH COSTS.

THE ORDER WHICH IS MADE IS THE FOLLOWING:

1. The appeal is allowed with costs.
2. The order of the court a quo is set aside and is replaced with the following:

“The applicant's application is dismissed with costs.”

L. S. Melunsky

Acting JUDGE OF APPEAL

I agree

M. Kumleben

JUDGE OF APPEAL

I agree

F. H. Grosskopf

JUDGE OF APPEAL

Delivered on the 11th day of October 2002

For the Appellant :

For the Respondent :