

**IN THE COURT OF APPEAL OF LESOTHO**

C OF A (CIV) 33/2010

In the matter between:

**PITSO TLALI**

**APPELLANT**

and

**TANKI MPHONYE**

**1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF DEEDS**

**2<sup>ND</sup> RESPONDENT**

**COMMISSIONER OF LANDS**

**3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL**

**4<sup>TH</sup> RESPONDENT**

**CORAM:** MELUNSKY, JA  
HOWIE, JA  
HLAJOANE, JA

HEARD: 8 APRIL 2011  
DELIVERED: 20 APRIL 2011

**SUMMARY**

Application on motion – High Court dismissing application – substantial but unforeseen disputes of fact – parties agreed that matter should be referred back to High Court for oral evidence to be led on disputed issues – Court of Appeal making such an order.

## **JUDGMENT**

MELUNSKY, JA:

[1] A certain Emanoele Tlali was allegedly issued with a Form C document in terms of section 15(1)(a) of the Land Act, 20 of 1973 (since repealed by the Land Act, 17 of 1979). The form is dated 8 May 1980, appears to bear the signature of Chief Makoena Majara and purports to allocate a piece of land to the said Emanoele Tlali, the appellant's brother.

[2] The appellant alleges that on the death of his said brother in 1982 all rights over his property, including the land referred to in para [1] hereof passed to him. The appellant later ascertained that a caravan or container on the said site belonged to the first respondent who also claimed that he was entitled to the property in question.

[3] The first respondent claims that he, too, was allocated a piece of land by Chief Makoena Majara by virtue of a Form C issued in terms of the Land Act 1973. The first respondent's form C is dated 1 May 1980 and is also purportedly signed by the same Chief. The land it refers to is smaller in size than the site on the Form C in the name of the appellant's brother but it falls within the area of the latter site.

[4] In his replying affidavit the appellant avers that the first respondent fraudulently obtained the Form C on which he relies and that the Chief's signature on it is "suspect". The appellant subsequently obtained a rule nisi and interdictory relief against the first respondent. It was issued on 7 July 2010 and was returnable on 20 July. There is nothing before us to indicate whether the rule was confirmed, discharged or extended.

[5] The appellant, on 29 July, instituted motion proceedings in the High Court, also in the form of a rule, *inter alia* calling upon the second respondent (the Registrar of Deeds) to show cause why he should not be interdicted from effecting registration of site No. 13274-1982 to the first respondent and why registration of the site by the Registrar to the first respondent should not be declared null and void. The application was dismissed with costs by Nomngongo J without furnishing reasons and the appellant noted an appeal to this Court.

[6] On appeal the parties were agreed that the matter should be referred back to the High Court to hear oral evidence on certain defined issues. In our opinion it is appropriate that such an order be made, rather than that the application be dismissed, as it appears that the appellant became aware of the Form C allegedly issued to

the first respondent only after the latter's answering affidavit was filed.

[7] The following order is therefore made:

1. The appeal is upheld and the order of the Court *a quo* is set aside;
2. The matter is remitted to the High Court for the hearing of oral evidence before a different judge on the following issues:
  - a) The circumstances under which a Form C was issued to Emanoele Tlali;
  - b) The circumstances under which a Form C was issued to the first respondent;
  - c) Whether the Form C issued to Emanoele Tlali was signed by Chief Makoena Majara and is valid in all respects;
  - d) Whether the Form C issued to the first respondent was signed by Chief

Makoena Majara and is valid in all respects.

3. For the purpose of the hearing of oral evidence the following shall apply:

- a) Neither party shall be entitled to call any witness who did not make an affidavit in the motion proceedings unless there has been served on the other party at least 14 days before the date appointed for the hearing a signed statement by the witness wherein the evidence in chief to be given by such witness is set out;
- b) If a party intends to call as a witness a person to give evidence on matters not raised in the affidavit of such person in the motion proceedings, a signed statement wherein the additional evidence in chief of such person is set out, shall be served on the other party at least 14 days before the date appointed for the hearing, failing which such evidence shall not be admitted;
- c) Discovery on oath of all relevant documents shall be made within 21 days of a party being requested to make discovery;

4. There shall be no order as to the costs of

appeal.

5. The registrar of the High Court is requested to give the matter preference on the High Court roll.

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**L.S. MELUNSKY**  
JUSTICE OF APPEAL

I agree:

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**C.T. HOWIE**  
JUSTICE OF APPEAL

I agree:

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**A.M. HLAJOANE**  
JUSTICE OF APPEAL

For the appellant : Mr. K.T. Khauoe

For the respondent: Mr. T.M. Maieane