

IN THE COURT OF APEAL OF LESOTHO

C OF A CIV) NO.53/14

LC/APN/126/14

HELD AT MASERU

In the matter between:

SHALANE SHALE

APPELLANT

AND

‘MAMOSHE LIMEMA

1ST RESPONDENT

LAND ADMINISTRATION AUTHORITY

2ND RESPONDENT

THE LANDS REGISTRAR

3RD RESPONDENT

O/C LITHOTENG POLICE STATON

4TH RESPONDENT

COMMISSIONER OF POLICE

5TH RESPONDENT

ATTORNEY GENERAL

6TH RESPONDENT

JUDGMENT

CORAM : Y. MOKGORO, AJA

T. MONAPATHI, JA

S. PEETE, JA

HEARD ON : 29TH JULY 2015
DELIVERED : 7TH AUGUST 2015

SUMMARY

Lease – two leases granted to two persons over one site. Primacy of one lease over the other to be determined in accordance with provisions of sections **68** and **69** of the **Land Act 2010**, regulating their systematic or sporadic sequence.

Any Form C which was not registered in terms of section 15 (2) and (4) of the Deeds Act No.12 of 1967 had lapsed and eased to have any effect.

Annotations

Statutes

Constitution of Lesotho 1993

Deeds Registry Act 1967

Land Act 1973

Land Act 1979

Land Act 2010

Systematic Land Regularisation Regulations 2010

Reported Cases

Mphofe vs Ranthimo – LAC (1970-1979) 464

Sehlabi vs Khoele –LAC (2005-2006) 400

Investment Triangle (Pty) Ltd vs Thabo Ntsane

(1999-2000) LLR 529

Cur Adv vult

Postea (August 7)

Peete J.:

- [1] This is an appeal against the judgment of the Land Court in a land claim in which the present 1st respondent (**Mamoshe Limema**) had prayed for relief couched thus:-

- “(a) *Interdicting and retraining the 1st Respondent or any one acting on this behalf from entering and/or vandalising the said site.*
- (b) *Directing the 1st Respondent to remove his steel posts on the Applicant’s site failing which Applicant with the assistance of Messenger of Court and the Police shall be charged to remove such posts.*
- (c) *Demolition of all immovable structure erected by 1st Respondent and removal of movable property of 1st Respondent Applicant’s site.*
- (d) *Ordering 2nd Respondent to produce files for both applications of leases number **13302-716** and **13303-1433** to enable the court to make an informed determination.*
- (e) *Declaring the Applicant as rightful owner of the site at Lithabaneng Maseru.*
- (f) *Cancellation of **Lease No.13302-716.***

(g) *That prayer (a), (b), (c) and (d) operate with immediate effect as interim orders.*

(h) *Cost of suit.”*

There was no counter application from the appellant before the **Land Court**.

[2] The acrimonious land dispute between the appellant and the respondent has been precipitated by a “*double allocation of two leases*” –**No.13302-1433** to 1st respondent and **No.13302-716** to the appellant. Both these two leases relate to one site situated at Lithabaneng Maseru Urban Area. Back in 1976, one **Ernest Moroke** seemingly sold one site to the appellants and the respondent. More about this later

[3] The two Leases cited above that have been granted by the **Land Administration Authority** (LAA) have strange peculiarities:-

(a) Appellant’s Lease No. **13302-716** was signed by the Commissioner of Lands under the Lands Administration Authority on the 26th November 2012 (one *Malefetsane F Phelane* witnessed the granting of this lease). The lease document was registered 20th December 2012. Its approximate area is “**174***quare metres more or less,*” whereas the respondent’s Lease No.**13302 – 1433** was signed by a different

Commissioner of Lands on the 17th June 2013 (one *Lesole Sematlane* witnessed the granting of Lease). The Lease document was registered on 26th June 2013. The approximate area: “**1774 square meters more or less**” It is 27 sq meters larger than of appellant. How can one site be larger than itself?

[4] Other peculiarities:

(a) *Ground Rent* for Lease **No.13302-1433** is M301.58

Ground Rent for Lease **No.13302-716** is M401.81

(b) *Duration* for Lease **No-Lease No. 13302-1433** is 90

years *Duration* for Lease **No 13302 – 14716 – 60 years**

- Special Conditions – Lease No.13302-1433 – “**RESIDENTIAL**” Lease No.13302-716 “**COMMERCIAL**”

[5] The appellant admitted before the Land Court *a quo* that –

(a) when he applied for the grant of his Lease, he knew that someone else had already applied for the lease on the same site; and

(b) that although he had applied for the lease after the respondent, he, the appellant got his lease registered on the 20th December 2012 while the respondent

(despite her earlier application) got her lease registered on the 26th June 2013 (some six months later).

A Historical Background

- [6] Sometime back in 1976, one **Ernest Marole** sub-divided his land in the area of Lithabaneng to several persons including the present respondent and possibly the appellant. The then Chief Lebipi had issued a “*FORM C*” as per provisions of the then **1973 Land Act**. The respondent states that her “Form C”, later got lost or went missing, and that on the 27th August 2012 Chief LM Keiso had written an official letter to the LSPP (LAA predecessor). Fairly translated the letter reads:-

**“To: Office in Charge,
LSPP
Maseru 100**

I request that Mrs Mamoshe Limema be granted a lease situated at Lithabaneng Ha Keiso. This is a residential site. Its “Form C” is lost. It is a 1976 site. Area of the site is as follows. 84 x 40 x 80 x 50 feet. I therefore ask that she be granted lease.

I thank you.

Yours

Signed L M Keiso.”

[The letter bears *Lithoteng Police Post* stamp of **27th August 2012**].

- [7] In its letter dated 30th January 2013, the LAA Dispute Resolution Specialist **Mpho Ntsonyane – Molupe** wrote to the 1st respondent informing her that the Plot in regard to which she had applied for lease, also seemed to belong to the present appellant who had already had a lease registered on the 20th December 2012 and that the 1st respondent was being invited for mediation. This mediation – which was unsuccessful and the land dispute was then referred to Courts of law for final resolution and determination.
- [8] This notwithstanding, the respondent got her lease **No.13302-143** officially registered on the 26th June 2013 under what is called “*systematic*” allocation. The appellants’ registration had seemingly been processed under “*sporadic*” allocation.

- [9] When the land dispute finally came fore the **Land Court** (*a Division of the High Court*), the present appellant had previously lodged an urgent application before the **District Land Court Maseru** seeking an injunction against the respondent and an interim court order had been issued by the Resident Magistrate “*interdicting and restraining the respondent from entering Plot No.13302-716 and from assaulting or threatening to assault (appellants’) workers*” at the site. [CASE NO CIV/DLC/MSU/16/14 (February 2014)]

- [10] The “**Originating Land Application**” was lodged by the respondent (Mamoshe Limema) in the Land Court on the 2nd July 2014 (LCAPN/126.2014). A serious tension had developed between the appellant and respondent and fencing poles were being dug out from the site.

- [11] In her founding affidavit and as she later testified before court, the 1st respondent narrated a story that way back way back in 1976 she and her husband had “*brought the said site (no.13302-1433) from one **Ernest Marole** and had later fenced it*”. She says how site when she later lodged an application for the registration “*in March 2011*” it was through “Systematic Land Registration Project and File Ref.No.25575 was duly opened for her at LAA”. This application, as we have been, had been supported by a

letter from the Chief L.M. Keiso as her original Form C had gotten lost.

- [12] She told the **Land Court** that having been invited by LAA, she had collected her Lease **No.13302-1433** on the 1st August 2013 and that she later also got to know that the appellant had also been previously granted lease over the same plot in December 2012.

- [13] Whether the Plot in dispute fell under Systematic Land Registration or under Sporadic Land Registration has been a thorny issue left unanswered except that LAA presented a copy an aerial Cadastral map to the 1st respondent. It can only meaningfully be interpreted by the LAA – and the evidence of before the Land Court *Mokhehi Letsela* was far from convincing.
- [14] The evidence of *Mr Mokhehi Letsela* from LAA could not sufficiently explain the workings of the “*Systematic*” and of the “*Sporadic*” Land registration. It baffles one how one plot can have two lease numbers. *Mr Letsela* conceded that “**13302-1433**” was made under “*Systematic Land Registration*” while No.**13302-716** was made under “*Sporadic Land Registration*”. It seems under the Systematic – the LAA Surveyors are freely provided to survey sites while under the “*Sporadic*” site owner employs his own surveyors.

He went further to say “systematic land registration applied in 2011 whereas “sporadic” applied in 2012; and that sporadic process was quicker than the “systematic”.

He says the 1st respondent’s application for lease delayed because she applied under systematic in 2011 and that appellant overtook her because he applied under sporadic in 2012.

[15] The Ministerial Gazette, if any, has however not been produced declaring and listing the area in which the plot falls as being under Systematic Land Registration.

[16] It appears that a surveyor under “*Sporadic*” Land registration could easily and speedily pass over a surveyor under the *Systematic* registration and the sporadic survey plans could be considered much sooner before those under Systematic system.

[17] In particular *Mr Letsela* told the Land Court:-

“...I am not really sure because the map doesn’t show dates which one was surveyed before another one...”

and he goes on to bluntly state:-

“...I think, my Lord, I can call it a double allocation I think is what the chief did here because I have examined files and they both have the chief’s letter from the very same chief Lithoteng – the stamp says “...morena oa Lithoteng...” (my underline)

- [18] The letter written by Chief of L M Keiso dated 28th September 2011 reads:-

“Fair Translation of “C”

<i>stamp</i>	<i>Chief’s</i>	<i>date</i>
	<i>Dated</i>	<i>28-09-</i>
<i>11</i>		

***The Director
LSPP
Maseru 100***

I pass my sincere greetings to you sir.

I hereby beg that ‘Mamatheohela Shale be granted a lease of her site situation at Lithabaneng Ha Keiso and she has a Form C dated 06-02-1997.

Therefore sir it seems that one Mamoshe Limema has made an application regarding the same site by error on the 24-03-11 under application number 25 575 and I therefore request that her application be cancelled for the site is not hers.

Thank you
L.M. Keiso
Chief of Lithabaneng Ha Keiso” (My underline)

The effect of this letter was to disentitle the 1st respondent of any right over the site now in dispute.

[19] It is clear that while Chief L M Keiso had also written letter to the LSPP supporting the applicant’s entitlement to the site, he had in another letter also supported the respondent to the same site! The respondent had earlier lost her own “Form C” document evidencing her entitlement to the site [23rd March 2011]. In this utter confusion, Chief LM Keiso should have been called to give evidence explaining the somersault regarding the entitlement of the appellant and of the respondent, more so because he was not there in 1976 or 1977 when the site was sold by Ernest Moroke!

[20] It is also clear that this utter confusion was exacerbated by the fact that the respondent’s application for lease was processed through the “*Systematic Land Registration*” while the appellant’s application for lease – for the same plot – was processed through “*Sporadic Land Registration.*” It is not in dispute that whereas she in fact applied for her lease well before the appellant’s the appellant’s application for lease was approved and granted by the LAA on 20/12/2013.

The same LAA granted lease on the same site to respondent on the 26/6/2013.

[21] It baffles one's imagination how one Commissioner of Lands (LAA) could under his hand grant a "*Residential*" Lease No 13302-1433 under systematic land registration on the 26th June 2013 when another Commissioner of Lands had granted a "*Commercial*" Lease No.13302-716 to appellant on the 20th December 2012 under sporadic land registration on the same site!

[22] Whereas Chief *L M Keiso* seemingly wrote a letter disentitling the respondent to the site, the chief does not seem to have informed the respondent that her lost "Form C" was invalid. The letter date-stamped 28th September 2011 was neither copied to the respondent. It was only in March 2013 that the respondent first knew of the double allocation!

[23] Amidst all this quagmire, the Judge *a quo* even stated:-

"HL: It seems we shall have to go for an inspection in loco to see the actual site on the ground and the LAA will have to come and clarify it".

[24] To complicate matters even further, no attempt whatsoever was made by counsel to establish whether the Minister responsible under the Act had published any Gazette declaring the area in question to be Adjudicating Area for purposes of systematic adjudicating in terms of *section 69* of the *Land Act 2010*. No such Ministerial Declaration as gazetted had been attached to the papers nor was any presented when evidence was led before the Land Court. This could have had a resolute effect upon the appellant's and 1st respondent's applications for lease made under sporadic system and systematic systems respectively.

[25] The fact that the letter of the chief LM Keiso of 28th September 2011 objecting to the respondent's application for a lease was unprocedural in that it did not raise an objection within 30 days of publication of the lease, does not remove the fact that "*a double allocation*" has been committed by the LAA. No double allocation on one site can ever confer good and lawful lease on the site.

[26] More telling is the concession by the appellant himself when being cross-examined:-

“Question: *When you applied your lease you knew that someone had already applied for a lease in favour of the same site?*

(Appellant): Yes”

Indeed the LAA in this double allocation tragedy and Chief LM Keiso have more explanations to give than they hitherto given before the Land Court, and in particular Chief LM Keiso who wrote letters disentitling the 1st respondent to the site was not called to give evidence before the Land Court.

[27] In upholding the respondent’s claim the Land Court disbelieved the appellant and his witnesses as being contradictory, not credible and biased. The Land Court has ably and succinctly catalogued the land history in Lesotho since independence of the country in 1996 and that the land administration has been chequered with irregularities and illegalities and no doubt our law reports are replete with land dispute cases.

[28] While recognising that all land vested in the Basotho Nation, the **Land Act of 2010**¹ repealed the 1979 Land Act and it is intended to “*provide for the grant of titles to land ...the better securing of titles to land and administration of and with a view to promote efficiency in land services.*” The

¹ Section 12 of the Land Act 2010.

Commissioner of Lands as the principal functionary under the 2010 Act has important functions one of which is “***...issuing leases to land...***” and “***...establishment and maintenance of an accurate and complete database containing information on land – holding in Lesotho ...***”
(My underline)

[29] As regards the *Form C* of the appellant granted in 1977 and *Form C* of the respondent granted in 1976 and was probably later lost, not much reliance can be given to these two seemingly surreptitious *Form C*’s because both these earlier allocations should be ignored because – they were not registered “*within three months*” as required by the **Deeds Registry Act No.12 of 1967** because as **Schults P** once stated - “*...both alleged allocations fell away in the distant past...*”² and did not continue to confer any title to appellant or respondent.

[30] All that remains is that even if there have been improvements or fencing effected by one party before another on the disputed plot, since there were no existing lawful allocations prior to the conflicting leases,, such improvements on the site were - in the eyes of the law - an exercise in futility.

² **Schultz P** in *Mphofe v Ranthimo* – 1970 – 1979 LAC 464 at 468 H-

[31] The question that ultimately remains – and was not determined by the Land Court – is whether when the respondent applied for lease in 2011 (before the appellant did) the plot in question fell under the Systematic Land Regularization Project in which case the provisions of section 68 and section 69 of the **Land Act No.8 of 2010** shall apply. They read **seriatim**:

“Presumption of sporadic adjudication

68. *All land for the time being not under systematic adjudication shall be deemed to be under sporadic adjudication.*

Systematic adjudication to prevail over sporadic adjudication

69. *Where the Minister publishes a notice in the Gazette declaring an area to be an Adjudication Area for purposes of systematic Adjudication, then section 8 shall automatically cease to have effect in respect of all land defined in the said notice.”*

[32] **Conclusion**

In view of the fact that both *Form C*’s obtained by either the appellant and the respondent having not been registered in

terms of the *Deed Registrar Act 1967* and that both titles to land had consequently expired, it was and is still necessary to establish when the applicant and the respondent applied for their leases and whether at the time there was a Ministerial Gazette designating or declaring the Lithabaneng Area as a “*Systematic Area*” in which can case the provisions of section 68 and section 69 of the Land Act N0.8 of 2010 apply to determine precedence of title.

- [33] As **Ramodibeli JA** (as he then was) stated in **Sehlabi v Khoele** LAC (2005-2006) 400 at 405

“[16] ...there cannot co-exist, in my view, a lawful SDA in public interest and an individual tenure on the same piece of land or plot. That would no doubt create chaos which is in turn a recipe for lawlessness. It is the fundamental duty of judicial officers to prevent all of these and thus preserve the rule of law.”

- [34] In the light of the foregoing and of the provisions of section 68 and of 69 of the Land Act 2010 and of the supremacy of systematic system over the sporadic system, the 1st respondent’s lease must have preference over that of the appellant’s.

[35] On the similar vein, there cannot co-exist a lawful lease granted under the systematic land registration and another lease granted to another person under sporadic land registration on the same piece of land or plot.

[36] *Ex passant*, it must be stated clearly that the adjudication procedures before the Land Court are essentially *sui generis* and are “*inquisitorial*” in nature and the “**originating applications**” are usually complemented by “**viva voce**” evidence from both parties and the Land Court can even call any necessary witnesses and can mount an inspection *in loco* on the land in dispute.

[37] The **Land Administration Authority** and its officials are under a statutory duty to keep proper and completely up-to-date records and database containing information on landholding in Lesotho especially all leases and other entitlements granted by the LAA. These database should be regularly vetted, inspected and regularised to avoid improper or irregular duplication and multiple allocation.

[38] **Order:** In the circumstances of this case, the Court orders

the case to be remitted to the Land Court before a different Judge to:-

- (a) establish whether there was at the relevant time a *Ministerial Gazette* declaring the area in which the plot is situated as designated for systematic land administration and regulation.
- (b) to hear the evidence of Chief **LM Keiso** concerning his contradictory letters.
- (c) to hear the evidence of the two *Commissioners of Land* who granted the two leases No.13302-716 and Lease No.13302-1433 including production of the files of the respective leases.
- (d) to conduct an inspection *in loco* of the site.

S. PEETE

JUSTICE OF APPEAL

I agree

Y. MOKGORO

ACTING JUSTICE OF APPEAL

I agree

T. MONAPATHI

JUSTICE OF APPEAL

For Appellant : Mr Nathane KC

For 1st Respondent : Ms Tau-Thabane