IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) NO.32 OF 2017

In the matter between

RANTLAMO MICHAEL MOTUMI APPELLANT

And

PETER SEOEHHLANA SHALE 1ST RESPONDENT

THE REGISTRAR

LAND ADMINISTRATION AUTHORITY 2ND RESPONDENT

CORAM: DR K. E. MOSITO P

DR P. MUSONDA AJA

M. MOKHESI AJA

HEARD: 22 NOVEMBER 2018

DELIVERED: 7 DECEMBER 2018

SUMMARY

Civil practice in the Land Court -Land Court Rules 2012 – Rules 11, 28, 64 (1), 67 (2), 71 and 72 - Preliminary objection –Power of the Land Court – Jurisdiction –need for matter to go to trial – Summary dismissal of application at pre-trial stage – The Scope of Rule 67 (2).

JUDGMENT

MOSITO P

BACKGROUND

[1] This is an appeal in which the Appellant appeals against the judgment of the High Court (Mahase J). The background to the appeal is that the first Respondent herein issued an originating application against the Appellant and other litigants who have decided not to appeal against the said judgment. The appellant and his co-respondents a quo, opposed the originating application.

[2] In the originating application, first Respondent sought an order directing the Registrar of the Land Administration Authority (LAA) to cancel Lease No 13291-1079 and issue a new Lease to the Respondent in respect of a business plot situate at Lekhalaneng, opposite Spar Supermarket in Maseru. The Respondent also sought an interdict that, Ilyas Omar, Shabana Omar and Rantlamo Michael Motumi be restrained from setting foot and/or effecting any developments on the property in question, except by due process of law.

FACTS

[3] The facts material to the consideration of this appeal are that, the first Respondent (as Applicant) alleged that he is the owner of an undeveloped business plot situate at Lekhalaneng, opposite Spar Supermarket in Maseru. He alleged that he inherited the said plot from one Tefo Seoehlana in 2003. The said Tefo Seoehlana has since passed on. The Respondent applied for the registration of the plot from the LAA and only to discover that the Plot No. 13291-1079 had been transferred to IIyas Omar and Shabana Omar by the Appellant. He then approached the Court a quo for the relief as outlined in paragraph [2] above.

[4] In opposition to the said originating application, the present Appellant raised a number of defences. First, the Appellant, IIyas Omar and Shabana challenged the jurisdiction of the court a quo to entertain the application. Second, they argued that there were buildings on the Plot in the 1960s and 70s which belonged to the Appellant's grandfather, one Pholoana Samuel Motumi. Third, the Appellant further alleged that he inherited the said plot from his father, who had in turn inherited it from his own father, Thabiso Motumi. However, the learned judge a quo rejected the appellant's defence and granted the application as prayed, hence the present appeal by the Appellant.

THE LAW

[5] In advance of considering the grounds of this appeal, it is at this juncture apposite to consider the law applicable to its determination. The Land Court is a creature of

statute.[1] However, the statute establishing it does not specify causes over which the Court has jurisdiction. It was perhaps upon realisation of this omission which was likely to present problems in the exercise of its jurisdiction that, the Parliament introduced an amendment providing in s7 of the amending Act that, '[t]he principal law is amended in section 73 by adding the word "all" between the words "determine" and "disputes."'[2]

[6] *Legal Notice No. 32 of 2012*, provides that, "it is not clear from s 73 of the Land Act, 2010 as to whether the intention of the section was to provide the Land Courts unlimited jurisdiction to hear and determine all land disputes whether criminal or civil. This [Act] clarifies the position by giving them unlimited jurisdiction in land matters."

[7] The Land Court Rules lay down the practice and procedure to be followed in bringing a claim relating to land before the Land Court. Thus, Rule 11 reads:

> *Any proceeding for the determination of any land related matter by the court shall be started by filing an originating application as set out in form 1 of the schedule with the Deputy Registrar.*

[8] Such an application does not require to be supported by an affidavit. Rule 28 provides for an "answer" to an application. This, too, does not require a supporting affidavit. Both the originating application and the answer are required under the Rules applicable to each, respectively, to contain *inter alia*, a concise statement of the material facts on which the application or answer is based.[3] The

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[1] See: section 73(a) of the *Land Act No. 8 of 2010*.
[2] See: section 7 of the *Land (Amendment) Act No. 16 of 2012.*
[3] Rules 12 (c) and 28 (1) (d)

purpose of Rules 11 and 12 is the same as that served by a plea in the High Court or Subordinate Court. This purpose was aptly summarized as follows in ***Frasers Lesotho Ltd v Hata-Butle (Pty):***

> the requirement of a rule in terms such as these is to enable each side to come to trial prepared to meet the case of the other (see Benson and Simpson v Robinson 1917 WLD 126), and to enable the court to isolate the issue it is to adjudicate upon (Robinson v Randfontein Estates Gold Mining Co. Ltd 1925 AD 173 at 198). The cause of action or defence must appear clearly from the factual allegations made (Dun and Bradstreet (Pty) Ltd v South African Merchants Combined Credit Bureau (Cape) (Pty) Ltd 1968 (1) SA 209 (C) at 224)."[4]

[9] The procedures in the Land Court are similar to those of the Labour Court. The Labour Court proceedings have been held not to be a *civil cause* or civil *action*.[5] The o*riginating Application* in both Courts is the equivalent of a notice of motion and a declaration. The originating application and Answer are pleadings, by definition of their purpose. The whole purpose of pleadings is to bring clearly to the notice of the Court and the parties to an action the issues upon which reliance is to be placed in litigation.[6] The object of pleading is to ascertain definitely what is the question at issue between the parties;[7] and this object can only be attained when each party states his case before Court.[8] Thus, the Rules of the Land Court must be observed.

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[4]See: *Frasers Lesotho Ltd v Hata-Butle (*Pty) Ltd LAC (1995-1999)698 at 702 A-D.

[5] See: A*ttorney General v Lesotho Teacher's Trade Union and Others LAC (1995-1999) 119 at 133.*

[6] See *Durbach v Fairway Hotel Ltd 1949 (3) SA 1081 (SR) at 1082.*

[7] *Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice* 22nd ed at 113.

[8] See: also *Imprefed (PTY) LTD v National Transport Commission 1993 (3) SA 94 (A) at 107.*

CONSIDERATION OF THE APPEAL

[10] The first and third grounds of appeal are about failure to follow the procedure prescribed by the Land Court Rules. The Appellant complains that, the Court *a quo* erred in granting the originating application as prayed without hearing evidence or examining the parties as envisaged by the Rules. It is to these grounds that I must now turn. As pointed out by this Court in the ***Likotsi Civic Association case***,[9] it would seem that the framers of the Rules discussed in the previous section had in mind *inter alia,* the identification or definition of disputes of fact which might arise on the papers. The learned Judge *a quo,* Mahase J, without hearing evidence, granted the application. Against her order the appellants appeal to this Court. Rule 64 provides for an "examination of parties" at the "first hearing." Rule 64 (2) reads: "[t]he court may orally examine either party in relation to any material fact of the legal action." Rule 64 (4) goes on to provide that: "[a]fter examining the parties the court shall give directions as to the further conduct of the proceedings." It would seem that the framers of the Rules had in mind in this connection, *inter alia,* the identification or definition of disputes of fact which might arise on the papers.

[11] In paragraph [8] of the ***Mofoka v Ntsane and Others***' judgment, this Court went on to point out that:' Rule 71(1) provides that the party entitled to begin shall state his case by relating it to the documentary evidence or list

[9] See: *Likotsi Civic Association and 14 Others v The Minister of Local Government and 4 Others C of A (CIV) NO.42/2012.*

of witnesses that he may have attached to his application. As regards the manner of producing evidence, Rule 72(1) enjoins the party entitled to begin to call his witnesses who, after taking an oath or affirmation, shall be examined by that party, cross-examined by the other party and re-examined by the party beginning where necessary. Witnesses are to give evidence orally in open Court. In my view, the effect of Rules 71 and 72 is to require the leading of sworn evidence in respect of facts contained in the originating application, the answer as well as the annexure or list of witnesses that may have been attached to originating application as well as the answer.'

[12] Thus in the Mofoka's case, this Court held that, '[9] [i]n the present case, the procedure laid down in Rules 64, 71 and 72 was unfortunately not followed in the Court *a quo*. Instead, the Court *a quo,* without hearing evidence or examining the parties or any of them, and without first giving any directions as contemplated in the rules, dealt summarily on the papers with the default judgment in favour of the 1st respondent and disposed of the application by granting it, with costs. In my view, the learned Acting Judge erred in doing so (See: ***Likotsi Civic Association and 14 Others v The Minister of Local Government and 4 Others*** *(supra*).' As was the case in ***Likotsi Civic Association and 14 Others*** *(supra*):

> [3] … the procedure laid down in Rule 64 was unfortunately not followed in the Court *a quo*. Instead, the Court *a quo,* without hearing evidence or examining the parties or any of them, and without first giving any directions as contemplated in the rule, dealt summarily on the papers with the two points *in limine* raised by the fourth respondent, upheld them both and disposed of the application by dismissing it, with costs. In my view, she erred in doing so.

[13] It is in line with the remarks above that I am of the view and agree with the Appellant that, the Court *a quo* erred in granting the originating application as prayed without hearing evidence or examining the parties as envisaged by the Rules. The second ground of appeal is that, the learned judge erred in cancelling the Appellant's lease on the plot the subject matter of the dispute without affording him an opportunity to be heard was the result of a misdirection on her part as there was no evidence to enable her to decide as she did. As this Court pointed out in **Masupha v Nkoe and Another**:

> [27] Although the learned judge was correct in asserting his jurisdiction and dismissing the preliminary objection directed at the Land Court's jurisdiction, his summary dismissal of the application without a trial deprived the applicant the opportunity to present his claim regardless of its prospects. Indeed even a frivolous claim deserved a hearing. It should be noted that the respondents made no appearance at the hearing of this appeal.[10]

[14] In the headnote in ***Masupha v Nkoe and Another (supra),*** this Court pointed out that, where a preliminary objection (***special answer)*** is raised before trial in terms of ***Rule 66 (1)*** of the ***Land Court Rules 2012***, the Land Court should not summarily dismiss the main application where a dispute of fact is real. Matter must proceed to trial if the court affirms its jurisdiction. ***Rule 67 (2)*** gives a wide discretion to the court to afford both parties an opportunity to present their cases at the trial. The court can even ***suo motu*** order

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[10] *Masupha v Nkoe and Another (C OF A (CIV) 42/2016) LC/APN/165/2014) [2017] LSCA 11 (12 May 2017).*

a deficient application to be amended with an appropriate order as to postponement and costs thereby occasioned.

[15] I therefore agree with the Appellant that, the learned judge erred in cancelling the Appellant's lease on the plot the subject matter of the dispute without affording him an opportunity to be heard was the result of a misdirection on her part as there was no evidence to enable her to decide as she did.

DISPOSITION

[16] In the result, the following order is made:

1. The appeal is allowed
2. The judgment of the court *a quo* in favour of the first respondent is set aside.
3. The matter is remitted to that Court so that it may proceed in accordance with the Rules of that Court.
4. The parties, or one or other of them may commence this matter afresh, in which event it must be heard by another Judge.
5. Each party is to bear his or her own costs.

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DR K. E. MOSITO

PRESIDENT OF THE COURT OF APPEAL

I agree:

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DR P. MUSONDA AJA

ACTING JUSTICE OF APPEAL

I agree:

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M. MOKHESI AJA

ACTING JUSTICE OF APPEAL

For Appellant	Adv L. Masoeu
For Respondents	Adv M. Mphakoanyane