



LESOTHO

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

**C of A (CIV) 04/2023
LC/A/0008/19**

In the matter between:

CHOKOCHA HATLA

APPELLANT

And

**ANWARY CARRIM
RESPONDENT**

1ST

**LAND ADMINISTRATION AUTHORITY
RESPONDENT**

2ND

CORAM:

MOSITO, P

CHINHENGO, AJA

VAN DER WESTHUIZEN, AJA

HEARD:

15 APRIL 2024

DELIVERED:

3 MAY 2024

Summary

An appeal cannot proceed if the cited respondent was deceased, or has not received service of papers, from the outset.

JUDGMENT

VAN DER WESTHUIZEN, AJA:

[1] During oral argument in this matter, counsel for the appellant indicated that the appeal was being withdrawn. Counsel for the first respondent, as well as the Court, accepted the withdrawal. Very brief reasons for this development are hereby recorded.

[2] The dispute at the heart of the matter revolved around title to a piece of land. Mr Chokocha Hatla, the appellant, alleged that he had inherited the site in issue and that he had been nominated by the family as heir.

[3] As the first respondent, the appellant cited Mr Anwary Carrim, who was also alleged to be entitled to the land. The relief sought by the appellant included the cancellation of a lease Carrim appeared to hold.

[4] The Land Court granted Mr Hatla's application. The High Court (sitting as a Land Court) overturned this decision. Hence, Mr Hatla appealed to this Court.

[5] However, the papers were never serviced on Anwary Carrim. In his "Affidavit of Non-Service" the messenger of the Magistrate's Court stated that when he attempted to serve the papers at Anwary Cassim's last workplace, he was informed by a Mr Naga that Anwary was "*not there*" and that one Imtiaz Carrim was responsible for accepting service but was out of the country. According to the messenger, one Omar Cassim informed him that Anwary Cassim was "*late, having died in the year 2000*". Thus, the messenger "*returned with the process unserved*".

[6] Imtiaz Carrim participated in the later proceedings, to some extent, but was neither formally joined, nor properly authorised to represent Anwary Carrim.

[7] In the Land Court and the High Court considerable attention was given to the question whether Anwary Carrim's death had been proven, in the absence of a death certificate, as well as the significance of the messenger's affidavit in that regard.

[8] The crucial point, however, is that the first respondent, cited by the appellant, was never a party to these proceedings. Whether he was dead or alive, he never received service and there was no indication that he was aware of the litigation about the dispute. Imtiaz Carrim was not cited as a respondent and thus not a party to the proceedings. An order, including to pay costs, against an individual who may or may not be dead, but who is in any event not before the court as a party to the proceedings, would make no sense. An order against for

example Imtiaz, who is not a respondent, would be irregular and meaningless.

[9] This became clear when oral argument in this appeal commenced. Both counsel agreed.

[10] Thus the appeal was withdrawn.



J VAN DER WESTHUIZEN
ACTING JUSTICE OF APPEAL

I agree



KE MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree



M CHINHENGO
ACTING JUSTICE OF APPEAL

FOR THE APPELLANT: ADV AM MAKASE

FOR THE RESPONDENT: ADV T R MPAKA