CIV/APN/318/86

IN THE HIGH COURT OF LESOTHO

In the Application of :

T.Y. SECONDARY SCHOOL FOUNDERS/PARENTS ASSOCIATION	1st Applicant
ESAIA THITE	2nd Applicant

VS

LESOTHO EVANGELICAL CHURCH	1st Respondent
JEREMIAH NONYANA LEBEKO	2nd Respondent
COMMISSIONER OF LANDS	3rd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 8th day of January, 1988.

On 3rd October, 1986 the applicants herein moved the Court for, and obtained against the Respondents, a lengthy rule nisi returnable on 20th October 1986. However the effect thereof was inter alia, to direct the 1st and the 2nd Respondents to give back to the Applicants the control and administration of T.Y. Secondary School to the applicants, to hand over forthwith all the books of account relating to the school, to the sheriff for onwards transmission to the applicants; to declare that a certain plot No. 19213-001 belongs to the 1st Applicant and the 1st Respondent has no rights whatsoever thereto and to declare that the 1st Applicant is entitled to the use of the church buildings belonging to the 1st Respondent at Teyateyaneng for the purpose of running the said T.Y. Secondary School.

The rule was, on 9th October 1986 duly served upon the Respondents. On 14th October 1986 the 1st and 2nd Respondents intimated their intention to oppose confirmation of the rule. The 3rd Respondent did not intimate the intention to oppose confirmation of the rule

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and it may safely be assumed that he is prepared to abide by whatever decision this Court will arrive at. Affidavits were filed by the parties.

It is worth mentioning from the word-go that CIV/APN/318/86 was brought here as an urgent application in which the rule prayed for was granted without prior service of the motion papers to the Respondents. The rule was therefore, granted ex-parte. When the rule thus granted was served upon the Respondents, the motion papers were, however, not simulteneously served with the rule. It is common cause that the 2nd Respondent in whose possession the books of account relating to T.Y. Secondary School were, did not comply with the order embodied in the rule. On the return day, 20th October 1986, the Applicants then brought CIV/APN/335/86 in which they moved the court for an order directing inter alia, that the 2nd Respondent be committed to prison for contempt of the Court order in CIV/APN/318/86.

It is, however, to be observed that in terms of the provisions of Rule 8(18) of the High Court Rules 1980 the 2nd Respondent was entitled to anticipate the return day, if he so wished. Granted that the motion papers were not served together with the rule I fail to apprehend how the 2nd Respondent could have properly filed papers anticipating the return day. In my opinion failure to serve the motion papers together with the rule rendered service thereof irregular and prejudicial to the 2nd Respondent. I take the view that on that reason alone CIV/APN/335/86 ought not to succeed and it is accordingly dismissed with costs.

Returning now to CIV/APN/318/86 it appears from the affidavits and other papers placed before me that the question of whether or not the 1st Respondent owns T.Y. Secondary School and is, therefore, entitled to its control and administration has been the subject of a long dispute before the Courts of Law. The history of that dispute is succinctly outlined by Odes, J.A. in C. of A. (CIV) No.2 of 1986 (unreported) at p.1 et seq. It is

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unnecessary for me to go over it again, suffice it to say having outlined the history of this dispute the learned Judge of Appeal proceeded to consider the evidence that had been adduced before the trial court and concluded that the onus of proof that it owned the school and was, therefore, entitled to its control and administration rested upon the 1st Respondent. The 1st Respondent had, however, failed to discharge that onus Indeed, the probabilities pointed to the opposite direction i.e. the 1st Respondent did not own, and could not, therefore, be entitled to the control and administration of T.Y. Secondary School.

I must say a proper reading of the Court of Appeal's judgment as a whole leaves me in no doubt whatsoever that the school in question is the property of the 1st Applicant. That being so, it stands to reason that the 1st and the 2nd Respondents who have admittedly continued to run the school despite this decision of the Court of Appeal ought to have handed over to the 1st Applicant its control and administration. Likewise the 2nd Respondent should have handed over to the sheriff for onward transmission to the 1st Applicant all the books of account relating to the school. Failure to do so is clearly a flagrant disregard of the decision of the Court of Appeal on the part of both the 1st and 2nd Respondents. This, in my view, must come to a halt forthwith.

As regards Plot No. 19213-001 the salient question is who, between the 1st Applicant and the 1st Respondent, was allocated the site. Each of the parties claim the allocation of the site. In support of its claim the 1st Applicant has attached annexures ET"6" and ET"7" documents dated 2nd April 1985 and 12th April 1984, respectively, emanating from the office of the 3rd Respondent indicating that the site was applied for and allocated in the name of the 1st Applicant, the fees for the preparation of a lease were paid for by the 1st Applicant, the building permit and the fees thereof were, respectively, issued and paid for in the name of the 1st Applicant.

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Although it has attached annexure LEC"3", a lease indicating that the site was on 11th April 1985 registered in the name of K.E.L. Property Company (Proprietary) Limited which is admittedly wholly owned by it the 1st Respondent has failed to produce any document as proof that it ever applied for and was allocated plot No. 19213-001, building permit for the development of the site was ever issued in its name or that of K.E.L. Property Companies (Proprietary) Limited and fees relating to the preparation of the lease and the building permit were paid by it. Indeed, there is a suggestion that annexure LEC"3" was issued in the name of K.E.L. Property Company (Proprietary) Limited merely because the 3rd Respondent was pressurised so to do and not because Plot 19213-001 was allocated to the 1st REspondent or its agent. That should not have happened. No undue pressures should ever be exerted for the issue of leases. In the circumstances I take the view that the site, the subject matter of this dispute, was allocated to the 1st Applicant and in registering it in the name of its agent the 1st Respondent has, so to speak, hijacked the site. I am fortified in the view that the site belongs to the 1st Applicant by the decision in C. of A. (CIV) No. 2 of 1986 (unreported) at p. 12 where Odes, J.A. clearly said :

> "That the F.P.A. was more than a vehicle for the application for a school site admits of little doubt."

I am prepared therefore, to declare that plot No. 19213-001 belongs to the 1st Applicant and the 1st Respondent has no rights whatsoever thereto.

It is clear from the evidence that when T.Y. Secondary School was established it had no buildings of its own. By agreement with the 1st Respondent, or its representative in the area, the 1st Applicant was authorised to use church buildings belonging to the 1st Respondent for the running of the school on condition that the 1st Applicant would be responsible for repairs of whatever damage was caused on the church property. There is no indication that the agreement has been

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terminated. As I see it, the basic principle is that agreements are made to be observed. It follows, therefore, that whilst the agreement lasts, the 1st Applicant is entitled to use the church buildings for the purpose of the running of the school as agreed.

From the forgoing it is obvious that the view that I take is that the rule granted in CIV/APN/318/86 ought to be confirmed with costs and it is accordingly ordered.

J U D G E.

8th January, 1988.

For Applicants : Mr. Edeling
For Respondents : Mr. Matsau.