

CIV/T/164/96

**IN THE HIGH COURT OF LESOTHO**

In the matter between

**MOLEFI MOTABA****Plaintiff**

and

**MOITSUPELI JEFFREY LETSIE  
COMMISSIONER OF LANDS  
REGISTRAR OF HOME AFFAIRS  
MINISTRY OF HOME AFFAIRS  
THE ATTORNEY GENERAL****1st Defendant  
2nd Defendant  
3rd Defendant  
4th Defendant  
5th Defendant****JUDGMENT**

Delivered by the Honourable Mr. Justice M.M. Ramodibedi

on 26th day of August 1997.

The plaintiff has issued summons against the defendants for prayers couched in the following terms:-

- “(a) Cancellation of and expunction from the records of the Second, Third and Fifth Defendants, the lease number 12292-792 registered in the names of First Defendant.
- (b) Eviction and/or ejectment of the First Defendant from Plaintiff's

aforesaid site.

- © Costs of suit against the First Defendant; and the Second, Third, Fourth and Fifth Defendant's (sic) only in the event of opposition.

- (d) Further and/or alternative relief."

The matter is opposed by the First Defendant only.

The essential facts in the case are hardly in dispute. The subject matter of the dispute in this case is a certain residential site situated at Europa (Site No. 240) Maseru City in the district of Maseru.

The Plaintiff relies on title deed No.12823 dated 16th December 1977 issued for the same site in the name of his late mother 'Mamolefi Motaba. It is common cause that the Plaintiff is the lawful heir to the late 'Mamolefi Motaba's estate. The Title Deed was handed in by consent at the trial before me as Exhibit "A".

On his part the First Defendant relies on lease No. 12292-792 dated 18th February 1994 issued in respect of the same site in First Defendant's own names. The lease was also handed in by consent at the trial as Exhibit "B". It is common cause that the First Defendant was allocated this site after it had been declared a Selected Development Area in terms of Legal Notice No.32 of 1993. It is further common cause however that the declaration thereof was not for "public purposes" as defined by Section 2 of the Land Act 1979 but that it was made for private interest.

It is common cause further that Plaintiff was never given notice or an opportunity to be heard before the site was declared a Selected Development Area nor were his rights to the site ever revoked. The parties are indeed on common ground that plaintiff's aforesaid title deed has never been cancelled.

It is clear from the pleadings that the Defendant does not dispute that at all material times the late 'Mamolefi Motaba has been the lawful holder of the above mentioned title deed in respect of the disputed site.

The First Defendant's defence to Plaintiff's claim is based on two (2) grounds namely:-

- (a) That Plaintiff's title deed "is now invalid in as much as it has not been converted into a Lease in terms of the law."
- (b) That the disputed site was declared a Selected Development Area prior to its allocation to the First Defendant. It is sought to persuade the Court that Plaintiff's rights to the disputed site were automatically extinguished in terms of Section 44 of the Land Act 1979.

I should mention that when the trial commenced before me on the 11th August, 1997 Mr. Ndlovu for the First Defendant made formal admissions of all the essential facts of the case as stated above thus rendering it strictly unnecessary for the Court to hear formal evidence. The admissions were however duly read into the record.

It proves convenient at this stage to consider First Defendant's defence in this matter.

(a) **That Plaintiff's title deed "is now invalid in as much as it has not been converted into a lease."**

I start from the premise that following the principle laid down in Matšeliso Mbagamthi v Buta Phalatsi C of A (Civ) No.7 of 1982 the Plaintiff being the lawful successor in title to the registered owner of the land an onus rests upon the First Defendant to rebut the presumption of Plaintiff's rights of ownership.

Mr. Ndlovu for the First Defendant relies on Sections 30, 31 and 32 of the Land Act 1979 for the proposition that plaintiff's title deed is now invalid by reason of the fact that it has not been converted into a lease. Those sections read as follows:

"30 (1) Whenever facilities exist in any area for the issue of leases or licences created under section 28, the Commissioner shall cause a notice to that effect to be published in the **Gazette** and thereupon every person in that area to whom section 28 applies shall, within six months from the date of publication of the notice, apply for the issue of a lease or licence.

(2) The Commissioner may, of his own motion, or for good cause shown by an applicant, extend the period of time during which an application is to be made under subsection (1).

31. The Commissioner may, by notice in writing, invite any person to whom section 28 applies to apply for the issue of a lease or licence within a time specified in the notice.
32. (1) Where a person to whom sections 30 or 31 applies, fails without reasonable cause to comply with the section within the time allowed therein, he shall forfeit his title to the land.  
  
(2) For the purposes of subsection (1) absence from Lesotho during the period of time allowed for an application shall be deemed to be reasonable cause.  
  
(3) A person to whom section 28(1) applies whose title is forfeited pursuant to subsection (1) shall be entitled to receive the value, as assessed by a Government valuer, of improvements lawfully made by him on the land subject to forfeiture.”

As I read these sections it must be obvious that Mr. Ndlovu's submission contains two (2) fundamental flaws which can be summarised as follows:

- (1) Sections 30, 31 and 32 of the Land Act 1979 do not operate in isolation but flow from Section 28 thereof. It is necessary therefore to consider the latter section which reads:

“28. Titles to land in urban areas, other than land predominantly used for agricultural purposes, lawfully

held by any person on the date of commencement of this Act shall be deemed to be converted into leases.”

Now since there can be no doubt about the fact that the Plaintiff's late mother was the registered owner of the disputed site at the commencement of the Land Act 1979 I am satisfied that her title to the site is duly deemed to have been converted into a lease by operation of the said Section 28 of the Land Act. It was thus strictly unnecessary for Plaintiff's late mother to apply for a lease. Accordingly First Defendant's defence in this regard must fail.

- (2) There are no admissible facts placed before me to show that the requirements laid down in Section 30 and 31 of the Land Act 1979 were ever satisfied (and the onus is clearly on the First Defendant) namely that the Commissioner ever caused a notice and published same in the Gazette to the effect that facilities exist in the area in question for the issue of leases created under Section 28. Once more there is no evidence that the Commissioner ever invited the Plaintiff or his late mother in writing to apply for the issue of a lease.

In the circumstances First Defendant's defence (a) cannot succeed.

- (b) **That Plaintiff's rights were extinguished by a declaration of Selected Development Area in terms of Section 44 of the Land Act 1979.**

The section in question in its amended form reads as follows:

“Where it appears to the Minister in the public interest so to do for purposes of selected development, the Minister may, after consultation with the relevant allocating authority by notice in the Gazette declare any area of land to be a selected development area and, thereupon, all titles to land within the area shall be extinguished but substitute rights may be granted as provided under this part.”

This section has engaged the attention of this Court as well as the Court of Appeal in a number of cases. The leading case is Pages Stores (Pty) Ltd v Lesotho Agricultural Bank and others C of A (Civ) No. 44 of 1988.

Following Pages Stores case I had occasion to state the following in a similar situation in Khalaki Sello v Pitso Pitso and Another Civ/A/1/95:

“In my view this section can only be resorted to in the public interest and not for protection of individual or private interests. I find therefore that it was wrong in law to declare the disputed site a selected development area merely to revive the Second Respondent’s rights which had been extinguished by her failure to register the site. The declaration was therefore not made in the public interest and is therefore invalid as being contrary to section 44 of the Land Act 1979.

Besides, there is absolutely no evidence that the Appellant who clearly had a legitimate expectation to be heard was ever given notice and hearing before such declaration of a Selected Development Area could be effected. I have come to the conclusion therefore that the said declaration of a selected development area was invalid and of no

force and effect.”

Brevitas Causa I discern the need therefore to adopt these remarks to the present case.

As earlier stated it is common cause that the declaration of a selected development area in respect of the disputed site was not made for public purposes but was specifically made for a private interest. I am satisfied therefore that the declaration was not made in the public interest contrary to Section 44 of the Land Act 1979. I consider therefore that the declaration is invalid and of no force and effect.

Again as earlier stated it is common ground that Plaintiff who clearly had a legitimate expectation was never given notice or an opportunity to be heard before the disputed site was declared a selected development area nor were his rights to the site ever revoked. Once more I consider that these omissions render the said declaration invalid.

See Pages Stores (Pty) Ltd. v Lesotho Agricultural Bank and Others (supra).

This brings me to the end.

In the result therefore the Plaintiff's claim is granted as prayed in terms of prayers (a) and (b) of the summons with costs against the First Defendant only.



**M.M. Ramodibedi**

**JUDGE**

26th day of August 1997.

**For Plaintiff : Mr. Nathane**  
**For Defendant : Mr. Ndlovu**