

CIV/A/19/2011

IN THE HIGH COURT OF LESOTHO

In the matter between:

THABO NTSANE	1st Appellant
KHETHENG KHETHENG	2nd Appellant
NTSOAKI RAMOLAHLOANE	3rd Appellant
PHALATSANE KHECHANE	4th Appellant
MOTŠOANE MOFOLO	5th Appellant
‘MATUMELO MOTOSOLA	6th Appellant
LEFU LEHLOKA	7th Appellant
ABEL KHOLOPO	8th Appellant
MOTA	9th Appellant

And

INVESTMENT TRIANGLE (PTY) LTD	Respondent
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Coram:	Hon. Hlajoane J
Date of Hearing:	9th November, 2011.
Date of Judgment:	9th February, 2012.

Summary

Appeal on decision by Magistrate – Ejectment of appellants from site – whether notice and compensation applicable – Land in urban area – Bona fide vs mala fide occupiers – No need to give notice and compensation to mala fide occupiers – Appeal dismissed with costs.

JUDGMENT

- [1] This is an appeal against the decision of the Magistrate which had granted judgment in favour of the respondent.
- [2] The case before the Magistrate was for ejectment of the appellants from site No. 14304 – 004 at Ha ‘Nelese Maseru, and costs of suit. The respondent had claimed that the appellants were illegally occupying the said site where he is the lawful lease holder per Deed of Transfer No. 24228 registered in the Deeds Registry.
- [3] Respondent further showed that the appellants, despite demand were refusing to vacate the said site.
- [4] In his evidence before the Magistrate the respondent’s case has been that it bought the interest to that site from one Lenono Lenono who has since passed on. The said Lenono who was once a shareholder of the respondent.

- [5] There has been evidence before the Magistrate to show that the lease was made in 1994 and the transfer to the respondent was effected same year.
- [6] At paragraph 4 of their plea, 2nd, 3rd, 4th and 6th defendants at the trial have alleged that they had built their houses on the said site in 2002, 1999, 2007 and 2004 respectively.
- [7] Also attached to the papers at the trial was a judgment which shows that the 1st appellant was to be ejected from the site in issue in 1999. A warrant of ejectment was even issued in 2001.
- [8] On the other hand the 1st, 8th and 9th appellants had contented that they were not on the site subject of litigation, but outside the site in question. They however argued that in processing its lease the respondent also included their sites under lease No.14304 – 004.
- [9] The rest of the appellants save 1st, 8th and 9th pleaded that they obtained permission to occupy the land from the lawful owner Lenono Lenono. Also that the respondent had never at any given time asked them to vacate the land.

[10] From their arguments what among others both counsel had in common was the position of the law when it comes to *bona fide* and *mala fide* occupiers. That *mala fide* occupiers need not be given notice to vacate nor any compensation. But for a *bona fide* occupier, even if there are no valid documents for such occupation, there has to be notice to vacate and consideration of compensation. Refer to cases of **A.G. and Another v Moletsane & Others**¹ and **Makhutla and Another v Makhutla and One**².

[11] Fair enough, even the provisions of the Land Act demands for notices of termination of occupation. But even there will always be a catch for *bona fide* occupants not *mala fide* occupants.

[12] The Magistrate in his judgment made his decision based on the fact that the respondent already had his lease in his names in 1994 which as the record reflects was well before the appellants got their titles to land if any.

[13] So that when the appellants erected their houses there it was well after the title to the land had already been transferred to the respondent. 1st Appellant was even ordered to vacate the land and a warrant of ejectment issued against him as a result.

¹ C of A (CIV) 25 of 2004 found in 2005 – 06 LAC 146 at 150

²² C of A (CIV) No.7 of 2002 found in 2000 – 2004 LAC 480

[14] The two cases referred to above, in **A.G. v Moletsane** *supra*, the land involved had been declared a selected Development Area, but in *casu* we are dealing with just an ordinary land in an urban area.

[15] The decision of the High Court attached to the respondent's papers at the trial influenced the decision by the Magistrate to conclude that the appellants were in fact *mala fide* occupiers.

[16] As correctly argued by respondent's counsel, the 1st, 8th and 9th appellants were included in the ejectment proceedings because the land they claimed as theirs was also included in the lease document.

[17] the Magistrate's decision was also influenced by the fact that though the appellants claim to have derived their titles to land from previous owner Lenono Lenono, in consultation with the chief or chief's that could not have been the position as during the times that they claimed to have acquired land was during the time when the chief's in urban areas were no longer responsible to allocate land but the urban area committees.

[18] For the reasons shown above I find no justifiable reasons for this Court to interfere with the decision by the trial Court.

[19] The appeal is thus dismissed with costs.

A. M. HLAJOANE
JUDGE

For Appellants: Mr Mosito KC

For Respondent: Mr Matooane