



## ANNOTATIONS

### CITED CASES

**Minister of Labour and Employment and Others V Tseuo LAC (2007-2008)  
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### STATUTES

**Land Act No. 8 of 2010**

### BOOKS

[1] This is an application in which Applicant seeks an order for a *rule nisi* to be issued calling upon respondents to show cause why an order in the following terms should not be made final;

“(a) That pending finalization of action already instituted in CCT/24/12 in which inter alia an order for cancellation of lease and sublease in favour of Applicant (probably to read 1<sup>st</sup> Respondent) is sought; 2<sup>nd</sup> and 3<sup>rd</sup> Respondents refrain from proceeding with works on the site in dispute namely plot No: 18333-136.”

Applicant sought dispensation and an immediate interdict in terms of the said prayer.

[2] The matter was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It first came before Hon. Madam Justice Majara, and the order was granted but amended to

read that pending finalization of this application. This meant that once this Application is finalized the interdict would cease to operate.

[3] It is appropriate to mention at this stage that the action referred to in the original notice of motion is one in which plaintiff, (Applicant herein) claims;

“1. Cancellation of lease plot No. 18333-136.  
2. Cancellation of sublease agreement of plot No. 18333-136.  
3. Directing 1<sup>st</sup> defendant to surrender lease document No. 18333-136 to the Director of Lease Services, Land Administration Authority and in turn plaintiff be issued with such document in its names as the sole owner to the said plot.....”

[4] It is therefore abundantly clear that the dispute is in fact one that concerns the rights to ownership of the plot in question. It is not clear why the case was allocated to the Commercial Division of the High Court.

[5] The plaintiff in the action seeks an order to direct the 1<sup>st</sup> defendant to surrender the lease to “the Director of Land Services, Land Administration Authority” for allocation to itself. This implies that the **Land Act No.8 of 2010** was already in force at the time and plaintiff was aware of that fact. The matter should therefore not have been allocated to the Commercial Court. The citation and classification of the case as CCT/24/12 indicates that it was allocated to the Commercial Court from the beginning.

[6] The Land Courts have been established under the **Land Act No.8 of 2010**. Their role is to hear and determine disputes relating to land. The Land Court is a division of High Court and District Courts are Subordinate Courts for the purposes of the Act.

[7] The **Land Act N0.8 of 2010** has been promulgated;

“to repeal and replace the law relating to land, provide for the grant of titles to land, the conversion of titles to land, the better securing of titles to land, the administration of land, the expropriation of land for public purposes, the grant of servitudes, the creation of land Courts and the settlement of disputes relating to land; systematic regularization and adjudication and for connected purposes”<sup>1</sup>.

[8] In their opposition to the order sought, Respondents raised a number of points *in limine* relating to;

- (a) Lack of urgency.
- (b) Lack of authority of deponent to the founding Affidavit.
- (c) Failure of Applicant to show title to the plot, and
- (d) Absence of jurisdiction for the Court because the matter falls within the jurisdiction of the Land Courts.

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<sup>1</sup> Preamble to Land Act No. 8 of 2010

- [9] This Court is of the view that no finding needs be made on the first three grounds and concludes that the matter may be disposed of on the basis of the fourth; that it has no jurisdiction to hear and determine this matter.
- [10] Applicant's deponent to the founding Affidavit in his reply attempts to justify bringing this matter to the Commercial Division of the High Court on the basis that the Lease or Form C was issued for commercial purposes.
- [11] The point departure however, is not the purpose of the lease, but rather the nature of the dispute. If the matter had not been allocated to the Commercial Court, Applicant could have relied on the provision in the new Land Act that where a case relating to land was pending before the High Court prior to the coming into effect of the Act, the case may continue to be heard by the High Court until completion and the ruling shall have the same effect as if made after the coming into effect of this Act<sup>2</sup>.
- [12] The High Court referred to in this section however is the Court in the exercise of its ordinary civil jurisdiction; not sitting as a Commercial Court. Furthermore, it would appear that the matter was not pending before the High Court at that stage in any event. It was only instituted and issued out of the High Court on 7<sup>th</sup> February 2012. It was therefore not necessary to make the further inquiry.

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<sup>2</sup> Section 89 of Land Act 2010

[13] The case of **Minister of Labour and Others V Tseuoa** was a constitutional challenge to the **Labour Code Order 24 of 1992**. It was argued that the right to equality before the Law and Courts was violated by the lack of access to the Court of Appeal by certain persons. The Court of Appeal was dealing with a Constitutional matter, but it had this to say quoting the Constitutional powers of the Lesotho Parliament;

“Parliament may establish Courts Subordinate to the High Court, Courts martial and tribunals and any such Court or tribunal shall, subject to the Provisions of this Constitution, have such jurisdiction and powers as may be conferred on it by or under any law.”

[14] It is therefore the conclusion I have reached that this Court has no jurisdiction to hear and determine this matter. It is a dispute about title to land and it falls within the jurisdiction of the Land Courts.

[15] I accordingly make the following order;

(a) that this being a matter relating to title or ownership of land it ought to have been instituted in the Land Courts as this Court has no jurisdiction.

(b) the interdict as amended by my Sister Majara J. is of necessity discharged because it was amended to operate only until the finalization of this Application.

(c) the costs of suit are awarded to the Respondents.

**L.A. MOLETE**  
**ACTING JUDGE**

**For Applicant : Mr Metsing**  
**For 1<sup>st</sup> Respondent : Mr Tsenoli**  
**For 2<sup>nd</sup> Respondent : Ms Ramphalile**