

CIV/A/10/2012

IN THE HIGH COURT OF LESOTHO

In the matter between:

ELIZABETH ‘MANKABI KOTSOKOANE **Appellant**

And

LEHLOHONOLO MOLAPO **1st Respondent**

HER WORSHIP – THE MAGISTRATE **2nd Respondent**

JUDGMENT

CORAM: **HON. HLAJOANE J**

DATE OF HEARING: **25TH OCTOBER, 2012.**

DATE OF JUDGMENT: **22ND NOVEMBER, 2012.**

Summary

Appeal against the decision by the Magistrate dismissing the action for want of jurisdiction – whether Magistrate can transfer a matter to the High Court – whether section 17 (2) of the Subordinate Courts Order excludes the High Court – Appeal dismissed with costs.

Annotations:

Statutes

- 1. Subordinate Courts Order No.9 of 1988**
- 2. Subordinate Courts Rules No.132 of 1996**

Cases

- 1. Tzouras v S.A Wimpy 1978 (3) S.A 204**
- 2. Alex Murray (Pty) Ltd v Perry 1961 (2) S.A 154**

- [1] The appellant launched an Application before the Magistrate's Court in Butha-Buthe for vacation from a certain land alternatively to pay for sale or compensation for the land or plot in question.
- [2] The first respondent raised a point of law to the effect that the Court had no jurisdiction to entertain that matter. The point *in limine* was upheld and the application was thus dismissed with costs.
- [3] Being dissatisfied with the decision of the magistrate, appellant has appealed to the High Court. His first ground of appeal being that the Court *a quo* ought to have not dismissed the application but ought to have transferred it to a Court of proper jurisdiction.
- [4] Appellant in his ground of Appeal has not mentioned what he meant by Court of competent jurisdiction. It was only in argument

that he mentioned the High Court as the Court of competent jurisdiction.

- [5] In response to the first ground counsel for the first respondent referred us to **Section 17 (2) of the Subordinate Courts Act**¹ which reads;-

“If, at any time after the issue of summons, it appears to the Court that the action is within the jurisdiction of any other Court established within Lesotho, other than the High Court, the Court may transfer the action to such other Court.”

- [6] Counsel further showed that for the appellant to be saying the matter ought to have been transferred to the High Court, clearly demonstrated that he admitted that the Subordinate Court had no jurisdiction.

The reading of the Rule above clearly shows that by any other Court should not be considered as referring to the High Court as the High Court has been excluded.

- [7] **Sections 17 (2) of the Subordinate Courts Order** clearly sent out the message that it is the High Court which transfers matters to the Subordinate Courts and not vice versa. So that the Court was correct to have dismissed the action for want of jurisdiction, the Subordinate Court being a creature of statute.

¹ Section 17 (2) Subordinate Court Order No.9 of 1988

[8] Appellant has also argued that the Court a quo had jurisdiction to adjudicate over ejectment proceedings. That the compensation of M500,000.00 was still subject to negotiations. He said this was short of specific performance as there was no contractual relationship between the parties.

[9] In response to the above respondent's counsel referred the Court to **Rule 48 (5)**² which states thus;

“A notice of appeal or cross appeal shall state;

(a) *Whether the whole or part only of the judgment is appealed against, and if part only, then what part; and*

(b) *The grounds of appeal, specifying the findings of fact or rulings of law appealed against.”*

[10] In *casu*, the appellant has not made it clear as to whether he was appealing against the whole or part of the judgment. He said he wanted the Court to adjudicate on ejectment but that the issue for compensation was subject to negotiations.

[11] Our **Rule 48 (5)** above is similar to the **South African Uniform Rules, Rule 49 (4)**. In support of his argument counsel for the respondents referred to the case of **Tzouras v SA Wimpy (Pty) Ltd**³. The notice of appeal was framed thus:

² Rule 48 (5) Subordinate Courts Rules Legal Notice 132 of 1996

³ 1978 (3) S.A 204

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The aforesaid appeal is noted against the whole of the judgment handed down by the Honourable Mr Justice Nestadt on 18 August 1977.”

- [12] The Court in **Tzouras** above decided that there was failure by the applicant to specify in the notice of appeal the findings of fact or rulings of law appealed against and the grounds upon which the appeal is founded.
- [13] If we were to go by way of regarding the non-compliance with **Rule 48 (5)** which is regarded as peremptory that non-compliance would invalidate the notice of appeal. But also even if we were to follow what the Court permitted in **Alex Murray (Pty) Ltd v Perry**⁴ to allow appellant to file a fresh notice of appeal which would comply with the relevant Rule, the appeal would still fail on the ground of want of jurisdiction by the Court *a quo*.
- [14] The Court *a quo* was thus correct to have dismissed the action for want of jurisdiction as in terms of **Rule 17 (2) of the Subordinate Courts Order** it could not transfer the matter to the High Court.
- [15] The appeal is thus dismissed with costs.

⁴ 1961 (2) S.A 154 N

A. M. HLAJOANE
JUDGE

For Appellant: Mr Sekatle

For Respondents: Mr Teele K.C.