

**CIV/T/325/2011**

**IN THE HIGH COURT OF LESOTHO**

In the matter between:

**MOSIUOA LEBESA**

**Plaintiff**

**vs**

**STEVEN MOTJOKA**

**1<sup>st</sup> Defendant**

**LAND SURVEY AND PHYSICAL PLANNING**

**2<sup>nd</sup> Defendant**

**COMMISSIONER OF LANDS**

**3<sup>rd</sup> Defendant**

**REGISTRAR OF DEEDS**

**4<sup>th</sup> Defendant**

**ATTORNEY GENERAL**

**5<sup>th</sup> Defendant**

**JUDGMENT**

**Coram:**

**Hon. Hlajoane J**

**Date of Hearing:**

**10<sup>th</sup> September, 2012.**

**Date of Judgment:**

**1<sup>st</sup> October, 2012.**

**Summary**

*Special pleas on locus standi and res judicata – whether plaintiff had registered the certificate of allocation in terms of section 15 (4) of the*

*Deeds Registry Act – Whether in the absence of such failure to register plaintiff has locus standi – Point of res judicata unsuccessful and the decision did not determine the rights of the parties.*

## Annotations

### Statutes

1. **Deeds Registry Act 1967**

### Books

1. Becks Theory and Principles of Pleadings in Civil Actions.

### Cases

1. **LAC 2000-2004 Molapo vs Molefe 771 at 783-83.**
2. **1932 TPD Boshoff v Union government at 345.**
3. **1939 TPD Cohu v Rand Rietfontein Estates Ltd at 319.**

[1] Plaintiff has sued for cancellation of lease number 13312-487 and 13312 – 488 registered in the names of the 1<sup>st</sup> defendant; and also that the registration of lease number 13312 – 487 and 13312 – 488 be declared null and void.

[2] In his declaration plaintiff has shown that he is the lawful owner and holder of rights and interests in a certain residential site at Ha

Abia, Ha Joele in the Maseru district. That the site is held under a Form C to the extent of 100 x 100m.

- [3] Plaintiff thus alleges that 1<sup>st</sup> defendant has unlawfully occupied that site and that he claims to be holding leases numbers 13312 – 487 and 13312 – 488 for the said site and has even fenced it. Yet plaintiff claims to have never disposed off his site to anyone nor the 1<sup>st</sup> defendant. That therefore the leases must have been unlawfully obtained.
- [4] After filing his notice of appearance to defend, 1<sup>st</sup> defendant requested for further particulars. The following were the three questions that were asked by the 1<sup>st</sup> defendant:
- (a) When was plaintiff issued with that form c?
  - (b) Was the plaintiff's alleged form c issued by the proper authority?
  - © When was the form c registered with the Deeds Office?
- [6] Again in his request for further particulars 1<sup>st</sup> defendant wanted to know as to how different is the cause of action from the one in a certain CIV/APN/244/10 which was dismissed by this same Court on the 21<sup>st</sup> February, 2011.
- [7] In answer to that request plaintiff showed that the present case before Court is the Action proceedings, whereas in

CIV/APN/244/10 was the application proceedings which were dismissed because there were disputes of fact which according to him could only be disposed of by action proceedings.

[8] The 1<sup>st</sup> defendant in his plea took a special plea on two points; one on *locus standi* and the other of *res judicata*. He even attached the order in CIV/APN/244/10 which was dismissed by this Court.

[9] On *Locus Standi*

The 1<sup>st</sup> defendant said that when plaintiff said he has a form c, which is a certificate of Allocation, it must be assumed that such form C must have been issued in terms of *section 17 of the Land Act 1979*.

[10] However plaintiff in supplying the further particulars as was requested he has not denied that that certificate of allocation was indeed never registered with the Deeds Office.

[11] In his argument the 1<sup>st</sup> defendant referred to **section 15 (4) of the Deeds Registry Act<sup>1</sup>** which clearly states that failure to register a form C within three months of the date of issue renders the said form C after the expiry of three months of issue null and void and of no force or effect. The end result being that rights of occupation and use under such circumstances shall revert back to the state.

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<sup>1</sup>Deeds Registry Act No.12 of 1967

That in short means that failure to register ones form C extinguishes his title to land.

[12] **Section 15 (4) of the Act** besides the three months allowance for registration, also allows for extension of time by the Registrar of Deeds or as the Court may allow. The extensions of time must of course be on application by the affected party.

[13] It was the 1<sup>st</sup> defendant's case therefore that since plaintiff's certificate was never registered in terms of the relevant law as shown above his title to land has been extinguished so that because plaintiff's title to land was extinguished he therefore has no right to sue. That when the said land was later allocated to 1<sup>st</sup> defendant it was because such land was without owner as rights of occupation had reverted back to Basotho Nation.

[14] To strengthen his point further, the 1<sup>st</sup> defendant gave the interpretation of the word "owner" in relation to immovable property in terms of **section 2 of the Deeds Registry Act** *supra*, as plaintiff has referred to himself as lawful owner of the land in question,

*"Owner" in terms of the Act being, "the person registered as the owner."*

- [15] 1<sup>st</sup> Defendant referred the Court to the case of **Molapo v Molefe**<sup>2</sup> where the Court of Appeal dismissed the appeal on the ground that it was the respondent who had proved that he was the registered owner of the land, whereas the appellant had failed to prove that he had a clear right to occupy the land in dispute.
- [16] In answer to what has been argued by the 1<sup>st</sup> defendant plaintiff pleaded ignorance of law, but as we know ignorance of law is no excuse. Plaintiff said he was not aware that he had to register in terms of section 15 above. However plaintiff submitted that allocation to him and to 1<sup>st</sup> defendant be declared to be on the same footing.
- [17] Plaintiff based his argument on the fact that according to him it is not clear as to how the 1<sup>st</sup> defendant himself acquired the site in issue. That may as well be that 1<sup>st</sup> defendant did not acquire the site lawfully. He said there has been no proof as to allocation of the site to the 1<sup>st</sup> defendant, as to how and when he acquired the site. So that all amounts to speculation as to how 1<sup>st</sup> defendant came to have the said lease.
- [18] It will be noticed that plaintiff has alleged in the papers that he is the registered owner of the title to the land in question. As proof of such allocation he had a lease. 1<sup>st</sup> Defendant on the other side

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<sup>2</sup> 2000 – 2004 LAC 771 at 782 - 783

has a form C which he concedes has not been registered in terms of the provisions in the **Deeds Registry Act**, thus rendering the form C null and void and of no legal force and effect.

[19] He who alleges must prove, that has always been the accepted principle of our law. 1<sup>st</sup> Defendant has suggested that the lease could have been unlawfully acquired, but that is sheer speculation as he has not shown anything to support what he said or his suspicion.

[20] Since the law clearly dictates in no uncertain terms that the form C has to be registered within some specified period of three months and non compliance thereof renders the form C null and void it follows therefore that when 1<sup>st</sup> defendant was so allocated the land in question the rights of occupation and use had reverted to the Basotho Nation by operation of law.

[21] By virtue of having lost title by operation of law plaintiff therefore had no title to sue. He thus has no *locus standi* to sue in the circumstances of this case.

[22] *Res Judicata*

The 1<sup>st</sup> defendant has ably shown the essential elements of *res judicata* as the following:

- (a) The prior action must have been between the same parties or their privies.
- (b) The prior action must have concerned the same subject matter.
- (c) The prior action must have been founded on the same cause of action.

He found support in the decisions of **Boshoff v Union Government**<sup>3</sup> and **Cohn v Rand Rietfontein Estates Ltd**<sup>4</sup>.

[23] 1<sup>st</sup> Defendant has attached to his plea a final Court Order that was given by the same Court in a CIV/APN/244/10 ON THE 21<sup>ST</sup> February, 2011. The parties in that Application were:

Mosiuoa Lebesa	Applicant
Vs	
Steve Motjoka	1 <sup>st</sup> Respondent
‘Malimpho Sejanamane	2 <sup>nd</sup> Respondent
Land Survey & Physical Planning	3 <sup>rd</sup> Respondent
Attorney General	4 <sup>th</sup> Respondent
Registrar of Deeds	5 <sup>th</sup> Respondent

[24] As can be seen from looking at the parties in both CIV/APN/244/10 and the present trial, the parties are the same

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<sup>3</sup> 1932 TPD 345

<sup>4</sup> 1939 TPD 319



except that the present Application has Commissioner of Lands not ‘Malimpho Sejanamane.

[25] The Applicant has not denied that the Application that was dismissed satisfied the three essential requirements as shown in 22 above. His argument was only that because it was in an application proceedings where the matter was dismissed, he was still at liberty to institute a trial action because the matter was dismissed on points *in limine* but had not gone into the merits of the case. According to him when the application was so dismissed the rights of the parties were not determined.

[26] According to the dictates from the book by **I. Isaacs**<sup>5</sup> when dealing with the special plea of *res judicata* pointed out that the three essentials as shown above presuppose that the proceedings took place in a Court of competent jurisdiction and were determined by a judgment which was final and a settlement of the rights of the parties.

[27] An example was even made of a situation where the Court in pronouncing the earlier judgment which is sought to interpose as *res judicata* is found to be having no jurisdiction in the matter, that the plea will fail, as such a judgment is null and void. That if the earlier suit did not finally determine the parties’ rights, the plea

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<sup>5</sup> Becks Theory and Principles of Pleadings in Civil Actions p.142 - 143

will also fail. Which therefore means it will only be in a judgment which has determined the rights of the parties that plea of *res judicata* would succeed.

[28] In the earlier decision on the same subject matter and the same parties in CIV/APN/244/10 some four points *in limine* were raised being the following:

- Urgency
- Non-joinder
- Defective Application
- Misjoinder

[29] As can be seen from the points *in limine* that were raised, they only dealt with the style of presenting a case before Court. So that when the case was dismissed following the points *in limine* that were raised, that decision had not determined the rights of the parties. So that the special plea of *res judicata* cannot work for the 1<sup>st</sup> respondent.

[30] Though the applicant has been successful on the special plea of *res judicata*, he has however not succeed on the point of *locus standi*. He has been found to be having no *locus standi in judicio* for failure to have registered his title with the Deeds Registry Office for that alone the application stands to be dismissed, and it is thus dismissed with costs.

**A. M. HLAJOANE**  
**JUDGE**

For Plaintiff:            Mr Lesaoana

For Defendants:        Mr Nteso