

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LCC/06/2012

(THE LAND COURT)

In the matter between:-

**LIKOTSI CIVIC ASSOCIATION
TŠUPA TŠUPA
THABISO MOSITO
KHUTLANG LEFOKA
‘MAMPELE SHEKESHE
GIBSON MOSITO
‘MAMORENA MOSITO
MAKALANG MOSITO
‘MATSEPANG LEFOKA
KANANELO E. MOSITO
TUMISANG MOSITO
KHOTSO MOSITO
TSELISO LEFOKA
SEBOFI KOETLE
POLOKO LEFOKA**

**1ST APPLICANT
2ND APPLICANT
3RD APPLICANT
4TH APPLICANT
5TH APPLICANT
6TH APPLICANT
7TH APPLICANT
8TH APPLICANT
9TH APPLICANT
10TH APPLICANT
11TH APPLICANT
12TH APPLICANT
13TH APPLICANT
14TH APPLICANT
15TH APPLICANT**

AND

**THE MINISTER OF LOCAL GOVERNMENT
THE ATTORNEY GENERAL
LAND ADMINISTRATION AUTHORITY
LIKOTSI TECHNICAL INSTITUTION
CHIEF OF LIKOTSI, HA TSIAME (MORENA
KOENANE MATSOSO**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT**

RULING

**Coram : Hon. Mahase J.
Date of hearing : 10th October, 2012
Date of Ruling : 30th November, 2012**

Summary

Land Act 2010 – Land Court Rules 2012 - Prescription.

ANNOTATIONS

CITED CASES:

- **Faith v. Mabeta C. of A. (CIV) No. 40 /2009**
- **Kutloano Building Construction v. Matsoso and Others C. of A. (LAC 1985-1989) – page 99**
- **A-G and Minister of Local Government C. of A. (CIV) No. 25/2004**
- **Christ the King High School, Parents’ Committee v. Mphetheng, Head Master and Another CIV/APN/375/1987**

STATUTES

- **Government Proceedings and Contracts Act No. 4 of 1965 (Part 1)**
- **Land Act No. 9 of 1979**
- **Legal Notice No. 17/1999**
- **Societies Act of 1966**
- **Prescription Act No. 6 of 1861**

BOOKS

None

- [1] The applicants filed an originating application before the land court; a division of the High Court, on the 17th August, 2012. Same was duly served upon the respective respondents on that same day.
- [2] 2nd to 15th applicants are described as being members of the fist applicant. The first applicant being described as an association or society duly registered in terms of the laws of Kingdom of Lesotho. Its place of operation being Likotsi Ha Tšïame in the district of Maseru.

- [3] According to the contents of the originating application, the first applicant was registered in terms of the law of this country sometime in March 2012 and was allocated the registration number 2012/106 – Refer to annexure A page 15 of the originating application filed of record.
- [4] Second to the fifteen applicants are said to be owners of and having interests and rights in the fields covered by the Selected Development Arch (SDA) situate at Likotsi Ha Tšhame within the Maseru urban area.
- [5] With the exception of the 5th, 7th, 9th, 11th and 14th applicants, the rest of the applicants allegedly inherited the pieces of land; subject-matter herein from their respective parents.
- [6] Put differently, the 5th, 7th, 9th, 11th and 14th applicants were allocated the fields forming part of the subject-matter herein by the appropriate land authorities. For a further description and narration of how the applicants herein acquired rights over the pieces of land in question, refer to contents of paragraph 1 (a) up to (g) of the originating application.
- [7] I pause to observe, however, that no exact dates as to when the said applicants and members of the first applicant allegedly acquired and had their interests and rights upon same, have been disclosed on the originating application.
- [8] Further on this point, the dates when some applicants inherited and or had their inherited pieces of land registered in their names for purposes therein described have not been disclosed in this originating application.

- [9] The 11th applicant does not even disclose the date when he actually discovered that his alleged piece of land had been declared a selected development area. Refer to paragraph 1 (g) of same.
- [10] It is interesting to observe that although 5th respondent is the Chief of that area of Likotsi Ha Têiame, he is nowhere described as being a member of the first applicant and nowhere does his name appear in annexure A.
- [11] The facts of this case have been spelt out at or from paragraph 4 of the originating application. I need not repeat same.
- [12] Suffice it to mention that according to the brief facts, the area in question as well as an area referred to as Phomolong in this application were declared a selected development area way back in 1979, and in accordance with the now repealed relevant provisions of the Land Act No. 17 of 1979.
- [13] It is a matter of common cause that the Land Act No. 17 of 1979 upon which the applicants are basing their case has since been repealed and replaced by the current Land Act No. 8 of 2010. Indeed none of the applicants deny this fact.
- [14] In fact and to be precise, the second up to the fifteenth applicants claim to be members of the first applicant without denying that the first applicant was formed some thirteen years after their fields or the area upon which their individual fields, including the plantation allegedly belonging to the twelve applicant have been declared a selected development area by a competent body; namely the first respondent.

[15] The applicants, even those whose interests and or rights over the land, subject-matter herein are denied by the respondents have not at all made any attempt to provide any form of documentary evidence indicating the basis upon which they claim to have interests and rights over the said pieces of land.

[16] Neither has anyone of them disclosed in their originating application the following:-

- What steps they took in 1999 against the first respondent and all of the then relevant authorities when that land was declared a selected development area.
- Why they took no steps if such be the case; against such authorities in 1999 to date.
- They have all not laid down the basis upon which they claim to be members of the first applicant.

[17] It is the considered view of this Court that the applicants, having realized that their individual claims against the respondents have long ago prescribed in terms of the law, they then formed the first applicant and are now hiding behind it in order to pursue a prescribed claim on an erroneous assumption that a newly formed organization might assist them to circumvent the period of prescription. Whether or not they are members of the first applicant

(which fact the 4th respondent denies) they cannot be allowed to do that; what they are doing is a gross abuse of the court process.

[18] The first respondent has clearly addressed the issues pertaining to some of the applicants; in particular those who do not hold any rights whatsoever over some of the plots, part of the subject-matter herein. This is in addition to the unchallenged argument that some of the applicants are not members of the first applicant. Refer to the answering affidavit of Mphonyane Litlhakanyane.

[19] From the above, it becomes clear that some applicants who have no interest or rights over this land have been misjoined in the instant proceedings and have no *locus standi* to have brought these proceedings before court.

[20] Also, for the simple reason that according to the contents of annexure “A”/”LCA” applicants’ are not mentioned as being members of the first applicant, then they too are misjoined in the proceedings launched by the first applicant. Therefore, the first applicant has no mandate or authority to litigate on behalf of and or for people who are not its members even assuming (without conceding that their claims against the respondents have not prescribed). Refer to case of Lesotho Human Rights watch v

[21] The above preliminary issues/points in limine raised on behalf of the respondents are enough for this court to dispose of this application. Accordingly all the points raised in limine herein on behalf of the respondents are upheld. The applicants’ application is accordingly dismissed with costs to the respondents.

M. Mahase
Judge

For Applicants:
4th up to 15th Applicants

Dr. K.E. Mosito K.C
(with Adv. Rafoneke)

For Respondents -
4th up to 5th Respondents
No appearance for:

Adv. V.V. M. Kotelo

1st up to 3rd applicants
1st up to 3rd respondents