

IN THE HIGH COURT OF LESOTHO

CIV/T/136/2006

CIV/T/446/1995

In the matter between:-

MAPUTSOE PROPERTIES

1ST Applicant

TOTAL LESOTHO (PTY) LIMITED

2ND Applicant

AND

‘MAMATLAKALA MAPHISA

1ST Respondent

**THE DEPUTY SHERIFF OF THE
HIGH COURT, MASERU**

2ND Respondent

**LAND ADMINISTRATION AUTHORITY
MASERU**

3RD Respondent

**LAND ADMINISTRATION AUTHORITY
LERIBE**

4TH Respondent

LAND REGISTRAR – LERIBE

5TH Respondent

ATTORNEY – GENERAL

6TH Respondent

CORAM : Hon. Mahase J.

Date hearing : 2ND August 2012

Date of ruling : 2nd August 2012

SUMMARY

Civil Procedure – Motion proceeding – Urgent application – Security for costs – Provisions of the Rules of this Court – to wit Rules 8 (220 (c) 15, 48 etc, - Interlocutory order of court – whether appealable or not without leave of court having been sort and granted/obtained

ANNOTATIONS

CITED CASES:-

**- Mohaleroe Sello & Co. v.N. Mphanya – C of A (CIV)
No. 35 of 1995**

STATUTES:-

- High of Appeal Act No. 10 of 1978

- High Court Rules No. 9 of 1980

BOOKS: - None

NONE

RULING

[1] An urgent application was filed on behalf of the applicants herein on the 31st July 2012. It was subsequently served upon all the respondents or their counsel on that date.

[2] The application has been filed in terms of the provisions of Rule 8 (22) (c) of the Rules of this Court.

[3] Reasons in support of the filing of this urgent application are stated in the certificate of urgency filed of record. They are the following: (I quote)

a) The property in question was sold on the 13th July 2012 in execution and in the event that effect is given to the sale, transfer is made and payment received, actual and potential prejudice will arise for all parties including the seventh respondent (my underlining).

b) The applicants have appealed the judgment in respect of which the property was sold, which appeal is pending before the Court of Appeal of Lesotho.

c) The applicants are likely to suffer irreparable harm if the application is not dealt with urgently as the aforesaid judgment may be set aside or reviewed.

d) Further grounds of urgency are set out in the applicant's notice of motion.

[4] The application is opposed on behalf of the first respondent/plaintiff in the main trial. It is apposite to mention that this case was been in and out of the courts in this country since 1995 to date. In 2006, the Court of Appeal

ordered that it be to the High Court for determination of the monetary value of the said property. Refer to judgment of the Court of Appeal as well as to the judgment of this Court, subject-matter herein.

- [5] Consequent upon the order of the Court of Appeal of Lesotho, the first respondent/plaintiff in the main trial issued summons in 2006 for payment of compensation or damages for the loss of her site to the defendant(s).
- [6] The history of this case was well and extensively been covered and or articulated by the many counsel who have and who are involved in this case and the resultant appeals and interlocutory applications. Same are incorporated herein.
- [7] The protracted litigation of this case is a disturbing feature to this Court more particularly for the reasons that in filing one after the other applications referred to above, as well as the noting of appeals to the Court of Appeal of Lesotho; different counsel on behalf of the applicants; viz
- Maputsoe Properties (PTY) Ltd.
 - Total Lesotho (PTY) Ltd. and
 - Total Properties (PTY) Ltd.,
- have all, and with impunity ignored and disregard the Rules of this Court, in particular, but not limited to Rules 15 and 48 respectively, to mention but a few.

- [8] There are now about two or three applications filed for stay of execution, sale and transfer or registration of the property to those who have bought the property in question following a public auction of same.
- [9] The story does not end up here, some counsel (if not all) have filed appeals against the refusal of the interlocutory application(s) without first having sort and obtained leave of this Court.
- [10] As matters now stand, there are about three appeals filed by different counsel on behalf of the applicant Maputsoe Properties (supra), Total Lesotho and Total Properties.
- [11] The net effect of the above referred to conduct displayed by all counsel for applicants, particularly or notably those who purport to represent Maputsoe Properties, is that they have duplicated some relief/prayed sort on behalf of their clients.
- [12] To compound and make matters worst, some counsel have reopened the main case and have sort to argue afresh the issues already adjudicated upon by this Court even though they have noted appeals to the Court of Appeal. None of them seems to be prepared to await the outcome of the said appeals. None of them have paid security for costs.

- [13] They are allege prejudice which they say is being or which will be occasioned by their respective clients should they await the outcome(s) of the appeals they have noted.
- [14] None of them have regard to the party in whose favour the judgment has been granted and upon whose property the applicants have for over decades been operating a petrol filling station; while the plaintiff/first respondent has never been compensated for the loss of her said property/site.
- [15] Indeed from the above unfolding scenario; it is apparently clear that this highly protracted litigation is not about to reach finality, much to the prejudice of the plaintiff in whose favour judgment has since been granted.
- [16] This now brings me to deal with the application filed on behalf of the applicant in the many such applications. The application in question was filed on the 31st July 2012.
- [17] The crux of this application is the stay of transfer of the property in question to those who have since bought it from a public auction held on the 11th July 2012.
- [18] It must be mentioned at the outset that although the deponent to the founding affidavit the seventh and eighth respondent as

parties herein, ex facie the record, only six respondents have been specifically cited.

[19] It is on record that only the two applicants and the first respondents are represented by Messrs Louw and Maqakachane respectively in this application. There is nothing filed of record indicating that Messrs Lebona Lephema and Tseliso Sekhoacha are represented by any counsel before this Court in the instant application; neither is there any proof in whatever form of the fact that they have been notified and served with the notice of motion papers herein filed on behalf of the applicants.

[20] Also, and further on the above, there is no application for the joinder in this instant application of the said Messrs Lephema and Sekhoacha nor of the rest of respondents numbers three up to six who have not initially been parties to this protracted litigation with regard to this particular property or subject-matter in the main trial

[21] There is therefore none joinder of the buyer(s) of the property, subject-matter herein. There is no doubt that such people should have been formally joined and served with all the necessary court papers herein because they have an interest in the property forming the subject matter of this application.

- [22] The first respondent's attorney of the provisions of Rule 48(1) of the Rules of this Court. This was in turn duly served upon the applicant's attorneys on the 2nd August 2012 at 9.41 a.m. refer to hand-written note on the second page of that notice.
- [23] This means that attorney for the applicants is aware of notice. He however proceeded to address court on his application without indicating whether or not he accepts or contests the amount of security therein demanded. He only contended himself with saying that this court should proceed to hear his argument of this application because counsel for first respondent has not filed or record, and on behalf of the first respondent, an application for payment of security for costs.
- [24] With the greatest respect, the stage which calls for a formal application for payment of security for costs can only be embarked upon if, or duly when provisions of Rule 48 (1), (2) have been set in motion.
- [25] In short until such time that applicants herein indicate that they contest their liability to give security or if they fail or refuse to furnish security in the amount demanded or the demand or of the Registrar's decision as the case may be etc, then and only then can the first respondent or her attorney set in motion the provisions of Rule 48(3).

[26] Issues raised by Mr. Maqakachane and on behalf of the first respondent pertaining to payment of security for costs and to an appeal filed against an interlocutory order(s) granted by this Court have been canvassed in the case of **Mohaleroe Sello & Co v. N Phanya C of A (CIV) No. 35 of 1995 LLR 1991 – 1996**. Also refer to provision of **section 16 of the Court of Appeal Act of 1978**.

[27] This Court, having pointed out a way forward to counsel by referring to the said Rule 48 that matter be stood down until at 2:30 pm of the 2nd August 2012. The Rules of this Court are very clear as to the procedure to be adopted with regard to payment of security for costs. Should counsel for the applicants not be prepared to have such costs paid, then counsel for the first respondent is at large to further invoke the provisions of Rule 48(3), (4), (5) and (6).