

CIV/A/12/2011
(JC/162/2008)

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:-

SEKOATI MAKHELE

Appellant

Vs

TEKE-TEKE RAMALESHOANE

Respondent

JUDGEMENT

Coram : Hon. Mr. Justice T. E. Monapathi
Date of Hearing : 12TH December 2012
Date of judgement : 28th February 2013

SUMMARY

Where no fault was actually found by the Judicial Commissioner with decisions of two lower courts, when a matter is later on appeal in the High Court, it is not useful to pick out issues of fact about which no challenge or cross-examination was done. The advantage of the trial Court to draw inferences and observe demeanour of witnesses should not be overlooked. The effect is that the decisions of the lower courts remain correct and valid.

CITED CASES

R v Dhlumayo 1948(2)SA 577(AD)

Ramantsoe v Ramantsoe 1982 LLR 238

[1] This is an appeal from the court of Judicial Commissioner in its case No. JC/162/08 involving a dispute over the site. While the Appellant contended in all courts that the land was at Ha Tsiu all the courts found on the contrary that the land was at Motimposo.

[2] The case had commenced in the Maseru Local Court where the present Respondent was Plaintiff. The court found for Plaintiff. The Defendant noted an appeal to the Matsieng Central Court which dismissed the appeal. The Defendant (Appellant) then noted an appeal to the Judicial Commissioner's Court which also dismissed the appeal. The Judicial Commissioners Court granted the Defendant (Appellant) a certificate of leave to appeal to this court.

[3] The grounds of appeal before the Judicial Commissioners court were as follows:-

- (a) That the Honourable Judicial Commissioner's court erred in law to disregard Appellant's registered title to the disputed land.
- (b) That the case is of *Ramantsoe vs Ramantsoe 1982 LLR 238* has no bearing at all to this proceedings.

- (c) That once more Respondent had no *locus standi in judicio* to have instituted these proceedings.
- (d) That the court misdirected itself in not considering the fact that Ramaleshoane's Form C differs in material respects to the title Deed
- (e) That there was no basis at all to have reinstated the judgments of the lower courts.

[4] The judgement of the Judicial Commissioner noted the following issues:-

- a) That Exhibit "A" confirmed that the site was at Motiponso and that such a site was allocated to one Liranyane Ramaleshoane in June 1973 per the latter's Form C. That the second Form C belonging to one Joel Makhele (who is the appellant) it shows that the Appellant was allocated the site in dispute in November 1977. The Judicial Commissioner's Court found that the second allocation to Joel Makhele was *void ab initio*;
- b) That the site in question belonged to Tekete Tekete Ramaleshoane who inherited it as an heir.

[5] Mr. Fosa, Counsel for Appellant, quite out of turn, introduced the issue of the identity of the sites and that there could have been an issue about the fraudulent Form "C". Regrettably the latter had not been suggested or raised before in such a way that it could have been challenged or examined in the courts below.

[6] Mr. Thabane, counsel for Respondent maintained there was no way that the site, which was legally allocated to Respondent, would similarly legally be allocated to

Appellant. On the other hand counsel for Respondent submitted that the issue of the Appellant's Title Deed and Form "C" having been issued after that of Respondent's cannot make the Appellant's allocation illegal alone.

[7] Faced with a question as to what removed the issue of Respondent's allocation to the site in question, Counsel was at pains to issuably respond to why belatedly be relied on the issue of the identity of the site by claiming that it was in issue that is whether the disputed site was at Motiposo or Ha Tsiu. Counsel for Appellant conceded however that the issue of identity and measurements of the site in dispute was never challenged in the court *a quo*. That is where his problems and of that of the Applicant lied. See *Rex v Dhlumayo and Another 1948 (2) SA 677 (A.D)* as to advantages of the trial court vis-à-vis that of the appeal court as to factual inferences and witnesses demeanour.

[8] In view of the above facts and looking at the record, the appeal stands to be dismissed and it is so dismissed with costs.

T. E. MONAPATHI
JUDGE

For Applicant : Adv Fosa
For Respondent: Adv B.Thabane