CIV/APN/316/2012

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the Matter Between:

MATSASENG LETLALA	Plaintiff
And	
MAGISTRATE – M. MOTEBELE	1st Respondent
SENEKAL QOBOLO	2nd Respondent
MASERU LAND ALLOCATION COMMITTEE	3rd Respondent
MASERU CITY COUNCIL	4th Respondent
LAND ADMINISTRATION AUTHORITY	5th Respondent
MINISTRY OF LOCAL GOVERNMENT	6th Respondent
ATTORNEY – GENERAL	7th Respondent

JUDGEMENT

Coram	:	Hon. Mr Justice T. E. Monapathi J
Date of Hearing	:	19th December, 2012
Date of Judgement	:	21st March, 2013

SUMMARY

There is a distinction between an appeal and review. There should normally be good grounds for both. For review good grounds therefore should be demonstrated, including that there may be gross irregularity, illegality etc. Where the magistrate refused to recuse himself in a rescission of judgment application the Applicant had had no right to apply for review instead of pursuing the rescission application which was pending before that court. No grounds for review existed. The Application ought to fail.

[1] The main prayer and focus of this application was about the prayer:

> "that the decision made by First Respondent in AP 41/2012 be revised and corrected or set aside"

The application was opposed.

[2] The grounds for review have to be succintly set out. It is often futile to dress up an appeal as a review matter. It is because it is normally on the grounds of gross negligence or other that a review application will be entertained. When less than a clear demonstration of the facts was made that will not suffice.

[3] The background seems to be that there had been that application AP 41/2012 (in the magistrate court) in which the Second Respondent herein, who is a magistrate himself, was seeking in the main to:

> "(a) restrain the Third Respondent herein forthwith from reviewing its decision dated the 4th day of April 2011 and/or invalidating its decision resulting from a meeting held on the 6th day of meeting held on the 6th day of February 2012 in the matter concerning the Applicant (Second Respondent herein) and First Respondent Applicant herein).

Secondly, "ordering the 4th Respondent (Fifth Respondent herein) to continue processing to finality the lease of the Appellant as per this application." So that from above the complexity of the matter seems to suggest itself. It was not made better or easier when Counsel addressed me. Equally unhelpful there were Heads of Argument from both Counsel.

[4] It remained for the court to break down those metaphysical postulations to easy legal statements, facts and conclusions. We had to rely on the affidavits filed by the parties to get a clear picture.

[5] The decision of the application by Second Respondent herein was that on the 14th February 2012 the court (of the First Respondent) above is prayer 2 issue interim interdict especially that rules were dispensed with and as in 2 (a) that:

> "Second Respondent be and is being restrained from forthwith reviewing the decision date 4th April 2011 and/or invalidating its decision resulting from a meeting held on the 6th day of February 2012 in matter concerning the Applicant and Respondents."

It appears to be common cause that the above prayers were later confirmed, as the Applicant said; on the 24th February 2012. It is important to note that after

confirmation of the rule and prior to an application for rescission, as Applicant says, he was advised and consequently applied for recusal of the Second Respondent as a Magistrate as such and "a colleague" of the First Respondent. This application failed. The learned Magistrate gave very strong reasons for his judgement which was annexed as GRT 4.

[6] The Applicant's story in the present matter was that the disputed property belongs to his late father's estate Khotso and Monohopi Letlala and he had been duly appointed as beneficiary and that this was known by the Second Respondent and that is why the latter was cited as First Respondent in Case No. AP 41/2012.

[7] While one would have thought that the Applicant would pursued his application for rescission notwithstanding the refusal by First Respondent to recuse himself. He has not done so to-date. Instead he came to court for review. The reason was that he was dissatisfied with the First Respondent's decision or order refusing recusal. That is why he cited or took up the ground based on: "acts of actual and reasonably apprehension of bias.". He submitted that: "the following are sufficient ground for the First Respondent to have recusal himself". See from paragraph 15.1 to 15.5 page 9-11 of the record (Founding Affidavit). In my opinion that was a wrong approach. He still had to pursue his application for rescission before the court *a quo*.

[8] Again it begs the question as to whether strictly this ought to be an appeal or review. Applicant did not appeal. Neither did he speak of any irregularity leading

to his application for review. Strangely enough the paragraphs 15.1 to 15.5 contain so may issue including and about those that were placed for hearing before the Third Respondent in the Magistrates court. This court is not competent to deal with those issues as in reality they are still before the magistrate.

[9] The good answer to the whole application is that we do not have an appeal and neither do we have a good review. This matter is still before the magistrate as an application for rescission matter. That is where it should be.

[10] The application was dismissed with costs.

T. E. MONAPATHI
ACTING CHIEF JUSTICE

For Applicant	:	Mr. Moeti
For Respondents	:	Mr. Ramakhula