

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

In the matter between:

MILTON MOTHIBELI

Appellant

And

THE JUDICIAL COMMISSIONER

1st Respondent

MOHLALEFI BERENG

2nd Respondent

JUDGEMENT

Coram : Hon. Mr Justice T. E. Monapathi
Date of Hearing : 14th December 2012
Date of Judgement : 12th September 2013

SUMMARY

As a general rule mere production of a Form C is not conclusive proof of lawful of land allocation. It is prima facie proof of allocation which can be rebutted. If not rebutted it may turn into conclusive proof.

CITED CASES

Majoro v Sebapo 1981 (1) LLR 150 at 156-156

Bokako v Khabanyane CIV/A/19/1991.

STATUTES

Land Act No. 19 of 1979

[1] This matter started at Ratšoleli Local Court. Thereafter to Makhaola Central Court and ultimately to the Judicial Commissioner's Court. The Plaintiff before the Local Court had sued for ejectment. The Judicial Commissioner's Court gave judgment in favour of Respondent. On the 26th April 2006 Appellant launched an application aimed at directing the learned Judicial Commissioner to accept Appellant's notice of leave to appeal. The application was granted unopposed. On the 24th June 2008 the Learned Judicial Commissioner arrived at the decision that Appellant's case was not fit for appeal.

[2] Following the decision of the learned Commissioner mentioned above Appellant launched an application in terms of which it sought leave to appeal to the High Court. On the 27th April 2009 Appellant was granted leave to appeal to the High Court. The Appellant paid all the necessary fees for appeal.

[3] In order to prove his case Appellant (Plaintiff) indicated that Respondent was interfering with a site which had been lawfully allocated to him by the lawful authority in 1975. Following the allocation of the site to Appellant, Appellant left the country owing to political reasons.

[4] The site issue is adjacent to one Serobanyane's site. The size of Appellant's site is 30m x 19m. In 1986 Appellant installed some poles on his site. The Appellant was denied an opportunity to tender his Form "C" in order to proof his case. Land in Lesotho is a controlled asset by the state according to section 3 (1) of the **Land Act 1979**. A grant of title to land in the urban areas entitles the grantee to hold a lease.

[5] Titles to land in urban areas lawfully held by any person on the date of commencement of the **Land Act 1979** are deemed to convert into leases. See section 28 of the **Land Act 1979**. As a general rule mere production of a Form "C" is not a conclusive proof that the land has been lawfully allocated to the person who produced it. It is only *prima facie* proof of allocation which can be rebutted but if not rebutted at the conclusion of the case it may turn itself as conclusive proof. This is trite law in that a *prima facie* case can if not rebutted at the end become a conclusive case. See **Majoro v Sebapo 1981 (1) LLR 150** at 156-156 and **Bokako v Khabanyane CIV/A/19/1991**.

[6] In the present case Respondent tendered a form "C" which does not belong to him. In essence he lacked *locus standi*. Where there is a re-allocated of land already allocated, there must be revocation of the previous allocation. See Section 13 of the **Land Act No. 17 of 1979**.

[7] In the present matter Appellant's allocation has never been revoked by any lawful authority. In the result the site still belonged to him. It is trite law that fair

trial demands that a litigant must be given an opportunity to tender all relevant evidence he has, be it documentary or oral.

[8] In the result this appeal succeeds with costs

T. E. MONAPATHI
ACTING CHIEF JUSTICE

For Applicant : Mr. M. Ntlhoki
For Respondent : Mr. Tšenoli