

IN THE HIGH COURT OF LESOTHO

In the matter between:

MATEBOHO HOOHLO

APPLICANT

AND

THABO HOOHLO

1ST RESPONDENT

LAND SURVEY AND PHYSICAL PLANNING

2ND RESPONDENT

ATTORNEY GENERAL

3RD RESPONDENT

HOOHLO PROPERTIES (PTY) LTD

4TH RESPONDENT

JUDGMENT

Coram : Hon. Nomngcongo

Date of hearing : 24th September, 2012

Date of Judgment : 8th February, 2013

[1] This is an old application that was brought on a certificate of urgency on the grounds that the respondent might sell applicant's site situated at Ha

Hoohlo and that applicant will suffer patrimonial loss if the application is not granted. The application was first moved on the 1st August 2007 before the Mofolo J who has since retired. It has since gone through the hands of no less than five Judges who granted various interlocutory orders.

[2] The applicant had sought orders in the following terms: that the respondent (sic) should show cause if any why:-

(a) Plot n0. 107 situated at Ha Hoohlo in respondent's name shall not be cancelled.

(b) Pending the outcome of this application Respondent shall not be restrained from disposing of the above mentioned site, in any manner whatsoever.

© In the event that a sale or any forum of alienation has taken place between Respondent and a third party into the names of the third party has taken place, such shall not be declared null and void.

(d) In the event that a sale has taken place between respondent and a third party but transfer into the names of the third party has not yet taken place, such shall not be stayed pending the outcome of these proceedings.

(e) That second respondent be authorized to issue a lease in applicant's name.

3. Costs of suit.

4. Further and/or alternative relief.

5. That prayers 1, 2(b) and (d) operate with immediate effect.

[3] The applicant cited, Thabo Hoohlo, Land Survey and Physical Planning and the Attorney General as 1st, 2nd and 3rd respondents respectively- Mofolo J granted an Interim Order in terms of the notice of motion returnable on the 8th August 2007.

[4] The applicant says in her founding affidavit (par.10) that she had been reliably and conclusively informed by one Ali **Mncube** that respondent has sold her site to a businessman **Ashraf Abubaker** and that respondent even holds a lease to her property namely plot 107. I mention this at stage because the applicant would later on the 23rd March 2008 apply to the court of the joinder Ashraf Abubaker as the 4th respondent when she knew right from the start that he was an interested party by virtue of the site being sold to him. Yet she chose not to cite her in the application. This was

an inexplicable non-joinder in proceedings brought ex parte and on an urgent basis.

[5] Be that as it may the first respondent on the 8th August 2007 filed a notice to raise points of law apparently in terms of Rule 8 10 (c) of the Rules of Court. From the notes of their Lordships and Ladyships on whose desks the file kept landing I do not know what finally happened about these points. There followed several postponements until the 28th of April 2008 when Peete J. ordered that respondents file their opposing papers on or before the 5th May 2008. On that day counsel for applicant and one respondent appeared before me and by consent the application for the joinder of Ashraf Abubaker was granted and the matter was not postponed to any date. But on the 22nd May the applicant launched an application in this court in which she prayed that certain ejection proceedings in the Magistrate's court against her be stayed pending the outcome of this application and that she be directed to prosecute these proceedings within a reasonable time. The latter prayer calls for comment. I think the applicant herself had now come to realize that although she had approached the court on an urgent basis her conduct of the case was not

commensurate with any urgency. She now wanted the court to prod her on.

[6] In the above application the applicant cites the 4th Respondent as Hoohlo Properties (Pty) Ltd. The magistrate court Maseru is the 5th respondent. Ashraf Abubaker who had previously been joined as 4th respondent does not feature anymore. Somehow Guni J. granted the application for stay of proceedings and a rule nisi issued. This was to be made a final order by Mofolo J. on the 15th September, 2008.

[7] On the same day that the above application was moved the applicant was moving yet another application on separate papers for the “joinder” and “**substitution**” of Hoohlo Proprieties as 4th respondent.

[8] Together with that she seeks now also to amend the original notice of motion by deleting all but prayer (e) of prayer (2) of the main relief sought. In the amendment the plaintiff has virtually abandoned her prayers in the original papers. Hoohlo Properties opposed and filed an answering affidavit. Applicant also filed her reply. No decision was made of this application. There were further post-ponements for undisclosed reasons until counsel again appeared before me indicating that the matter was not

ripe for hearing and it was post-poned sine die to allow counsel to sort out the mess that this case had come to be. That was on the 8th December 2008 Meanwhile the application was never adjudicated upon.

[9] Nothing was heard of the case until the 21st of September 2011 when Mr Manyeli and Mpaka appeared before. Both were at a loss as to the status of the case so was I at the time. It was assumed then that I was finally saddled with the case. I once again asked the parties to make some semblance of order to the proceedings.

[10] Next Mrs Kotelo and Mr Mpaka appeared before me on the 14th September 2012. Mr Mpaka then indicated that he had compiled a record. It turned out to be no more than the events I have chronicled above. Both Mrs Kotelo for the applicant and Mr Mpaka for Hoohlo Properties (Pty) Ltd. appeared satisfied that all was in order and said they were ready to file their heads of argument. These were later filed on behalf of the applicant and Hoohlo Properties (Pty) Ltd styling himself as the 4th respondent in spite of the fact that the application which was opposed for his joinder and substitution had never been decided upon by the court.

[11] The applicant came to court upon a certificate of urgency claiming that applicant “might sell her site”. That applicant apparently being Thabo Hoohlo from her finding affidavit according to her own papers (par.10) had already sold the site to Ashraf Abubaker she thus trashes her very own grounds of urgency. What she fears has already been accomplished. Now astonishingly she does not join Abubaker in those proceedings. This only goes to show that this case should never have been brought ex parte on an urgent basis. After all land is not a perishable commodity. The land was there and it would always be there. If had, well to the knowledge of the applicant, already changed hands. It could not suddenly take flight. Under these circumstances alone I do not know how the applicant could have sought relief by way of notice of motion, if only because the disputes of fact were plainly there for all to see. These proceedings should never have been brought on notice of motion.

[12] The applicant seems not even to know her property saying at first that it was plot 107 and then seeking to change that to lease number 12281 – 362 or a plot of that description. It seems that her attorney could not be bothered to take the small trip to the Deed’s Registry when they well knew there was a lease on the property plot 107.

[13] It seems to me that this application crumbles under its own weight and it has to be dismissed in it's entirely with costs.

T. NOMNGCONGO
JUDGE

For Applicant: Mrs Kotelo
For Respondent: Mr Mpaka