

IN THE HIGH COURT OF LESOTHO

CIV/T/329/2005

CIV/APN/ /2010

In the matter between:

BENJAMIN RADIOPELO MAPHATHE

APPLICANT

AND

EXECUTORS OF THE ESTATE OF THE LATE DR.K.T. MAPHATHE **1ST DEFENDANT**

MASTER OF THE HIGH COURT **2ND RESPONDENT**

REGISTRAR OF DEEDS **3RD RESPONDENT**

ATTORNEY GENERAL **4TH RESPONDENT**

JUDGMENT

Coram : Hon Nomngongo J

Date of hearing : 2nd September,2010

Date of Judgment : 8th February 2013

[1] The plaintiff is the second son of the late Kenneth Thulo Maphathe. In his life-time he executed a will which was followed by no less than ten codicils, the last of which is dated 11th October 1999. He died in 2001. The plaintiff

has been excluded sometimes expressly, from these testamentary dispositions. The reason given by the testator being that during his life time he had generously assisted him and another brother Tlali Lebohang Maphathe to establish their own business ventures.

[2] The plaintiff then made an application to this court to have the will declared null and void in CIV/APN/479/02. That application was dismissed with costs on the attorney and client scale. It appears under cross-examination that the plaintiff again tries to approach court regarding similar matters and according to him under some unspecified, different circumstances. Judgment went against him by default. He applied for rescission of that judgment. We don't know what the fate of that application.

[3] Against this back ground the plaintiff once again approached court by way of action claiming relief as follows:

1. Cancellation of leases NO. 0647-041, 06472-222 and 06472-223.
2. An order that Plot NO. 06472-041, NO. 0647-222 and 0647-223 do not form part of the estate of the late Dr K.T. Maphathe.

3. An order that the 3rd Defendant should issue leases in respect of those sites in the name of the plaintiff.
4. Costs of suit to be paid out of the estate.
5. Further and alternative relief.

[4] All the leases have been issued in the name of the late Dr Maphathe. The first is dated 19th August 1983 and the others both on the 11th September 1990. In his will and codicils thereto the testator has bequeathed all these properties to various legatees to the exclusion of the plaintiff.

[5] It is the plaintiff's case that in 1983 he acquired these sites from one Mr Scot and due to the fact that his father was a government minister, he requested him to obtain leases for the properties. He ran businesses with his father and for that purpose they registered a company called Mafeteng Block Hand Brick (Pty) Ltd. which would operate from those sites. In 1988 he was involved in a car accident which incapacitated him, so that his father took the lead in organizing the affairs of those sites by obtaining leases.

[6] During 1990 plaintiff's father according to him obtained such leases in his own name and then entered into an agreement of sublease with a

company called **Kupes (Lesotho) Pty Ltd** in respect of plots n0.'s 0647-041 and 0647-222 for a period of twenty five years and for the development and construction of a shopping complex. The plaintiff would be the caretaker of the complex. That all the leases were registered in 1990 is of course not accurate because lease n0.06472-041 was registered long before that, in 1983. The question then arises here, why his father, to whom he entrusted registering the properties, presumably because of his influence as government minister, had to wait almost seven years to register the other two properties in 1990.

[7] Plaintiff further states in his declaration that it was “then” agreed between plaintiff and his late father that the plaintiff would continue occupying Plot NO. 06472 – 223 and to use some of the shop (sic) at the shopping complex for his own benefit. It was further agreed that plaintiff would be a caretaker of the complex. To that end he was introduced to officials of Kuper Lesotho (Pty) Ltd.

[8] Finally it was agreed between himself and his father that after the latter’s death all three sites would be transferred back to him. The agreement or agreements were seduced to writing and taken the bank for safe keeping.

- [9] The case for the plaintiff therefore rests on this agreement.
- [10] The plaintiff has failed to produce the written agreement saying that his step-mother has by stealth removed that document from the book. He produces no evidence that her step-mother has in fact done so. The lease he could have done was to call the bank to testify that there was even such a document. He did not. Instead he called his brother Sam Maphathe who says he was present when the agreement was reached. This he stated in the pre-trial conference statement. In his evidence in chief and cross-examination he turned around and categorically said he was not present but only got to know later about such agreements. He is not even sure which documents his father took to the bank. His evidence sounds hollow. This leaves the plaintiff alone with his unsupported word.
- [11] As if that is not enough, that word is totally inconsistent with his father's conduct and therefore any agreement. He executed a will disposing of these sites and in doing so expressly excluding the plaintiff. His father seems to have had a penchant for codicils. He executed numerous of them. In all of them he never remembered his son, the plaintiff or their so called agreement.

[12] I conclude that in the circumstances that there was never such an agreement. The case collapses under its own weight. Absolution must be granted and the action dismissed with costs.

T.NOMNGCONGO
JUDGE

For Plaintiff : Mr Mphalane
For Respondent: Mr Moleneaux

