

IN THE HIGH COURT OF LESOTHO

CIV/A/17/2010

CC 1552B/08

In the matter between:

'MANTSABA MARATHANE

APPELLANT

AND

TS'OKOLO MOKHACHANE

RESPONDENT

JUDGMENT

Coram :Hon. Nomngcongo

Date of Hearing :01 September 2010

Date of Judgment :25th February 2013

[1] This is an appeal against the judgment of the magistrate's court, Maseru wherein the respondent had successfully ejected the appellant from the premises subject of this dispute. The appellant's grounds of appeal are that:

"The court a quo erred in law by deciding the question of ownership of the site, as it appears conclusively on the basis of the respondent's newly

obtained lease while ignoring the fact of occupation by appellant of the site in dispute for many past years”

- [2] Quite frankly I am at a loss what this means. Be that as it may the appellant filed additional grounds of appeal. These were:

“Court a quo erred in upholding a cause of action that has not been averred in the summons”

What that cause of action was the appellant does not say.

- [3] Now on the date of hearing of the appeal Mr. Phoofolo made an application from the bar to *“stay the proceedings”* because as he put it the appellant did not have the opportunity to challenge the validity of the lease exhibited in the court a quo and that the record is very poor as the lease was not part of it. I had no hesitation in dismissing that application. First of all the appellant was aware of the existence of the lease from date of judgment she did nothing until the date of hearing. Secondly the appellant herself prepared the record. She cannot be heard to say it is poor. Argument was then heard without Mr Phoofolo’s heads of argument which he had not prepared.

[4] What transpired in this case is that in the court a quo. The plaintiff (respondent) gave evidence to prove his title to the property subject of the dispute. In short the plaintiff showed how after defendant (appellant) occupied this property after he and his wife – appellant’s sister, had difficulties in her own marriage. They took her in and having stayed there for a number of years the appellant then got ideas of appropriating the property to herself. The plaintiff then took steps to have her ejected from the property.

[5] The defendant was represented at the trial by Adv. Mohapi. He did not cross-examine the witness Mr. Nathane closed his case. The defendant did not give evidence. That was the end of the end of the matter and naturally the learned magistrate entered judgment for the plaintiff (respondent). Nothing could be simpler. Why defendant then decided to appeal and her attorneys did not advise her of the futility of the exercise, I have no idea.

This appeal is dismissed with costs.

T. Nomngongo
Judge

For Appellant : Mr Phoofolo
For Respondent : Mr Nathane