

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/328/2010

LAND COURT DIVISION

In the matter between:-

HAROON ABDULLAN MAHOMED

APPLICANT

AND

**KPMG HARLEY AND MORRIS JOINT VENTURE CO.
(Liquidators of Lesotho Bank)**

1ST RESPONDENT

**LESOJANE FRANCIS LEUTA
REGISTRAR OF DEEDS
COMMISSIONER OF LANDS
THE ATTORNEY GENERAL
RELEBOHILE LIPHOTO**

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

6TH RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 25th March 2013
Date of Judgment : 19th June, 2013

Summary

Civil Procedure – Land Court – Land Act No. 8 of 2010 – Registration of immovable property in favour of Applicant – interdict against certain individuals interfering with that process – Transfer of portion of 6th Respondent’s site to applicant.

ANNOTATIONS

CITED CASES:

- S. v. Msibi 1974(4) S.A. 821 (T)
- S. v. Munn 1973(3) S.A. 734 (NC)

- **Joubert v. Englin 1910 (AD) 6**
- **Ocean Cargo Line LTD v. FR Waring (PTY) LTD 1963 (4) S.A. 64 (A)**
- **Gordon No v. Standard Merchant Bank LTD 1983(3) S.A. 68 at page 90 E-H**
- **Glen Anil Finance (PTY) LTD. v. Joint Liquidators, glen Anil Development Corporation LTD (In Liquidation) 1981 (1) S.A. 171 (A) at 182 D – H**
- **Likotsi Civic Association and 14 Others v. Minister of Local Government and 4 Others (CIV) No 42 of 2012**

STATUTES: **None**

BOOKS: **None**

- [1] This is an application in the main in which the applicant is asking this Court to order and direct for the registration of certain immovable property now known as Plot No. 12282 -469 in his names. This was formally known as plot No. 78B.
- [2] The plot in question had been allocated to the original owner, the first respondent's predecessor, - Lesotho Bank. The lease in respect of same was registered in the names of then Lesotho Bank in January 2000.
- [3] During July 1998, the then Lesotho Bank auctioned some of its residential properties. The now sixth respondent was a successful bidder in respect of this plot of land. It was then plot No. 78B (now plot No. 12282-469); while the second respondent was a successful bidder of the then plot 78D. These plots are now plots numbers 12282-469 and 12282-470 respectively.

- [4] Sometime in August 1999, the sixth respondent had rights over his plot No. 12282-469 transferred to the applicant after having secured the necessary ministerial consent and approval in May 2009.
- [5] Later and upon the request of the second respondent from the Lesotho Bank, the front portion of plot No. 78B was extended to the second respondent and would form an extension of plot No. 78D to be incorporated into the land of the second respondent, so that that extension would provide additional space to the otherwise cramped surroundings of plot 78D.
- [6] However, following that agreement between Lesotho Bank and the second respondent but before that sub division extension was formalized Lesotho Bank and the sixth respondent signed a deed of sale for the said plot No. 78B. Subsequent to this, the sixth respondent sold that plot No. 78B to applicant herein.
- [7] In other words, the intervention of the sixth respondent prevented a sub division and or occurred before the agreed sub division of plot No. 78B as per agreement between the first and second respondent was affected.
- [8] This uncompleted or unfinished sub division of plot No. 78B as had been agreed between the first and second respondents has ever been a bone of contention which has resulted in the launching of this application. The case is unresolved particularly due to the subsequent liquidation of the Lesotho Bank. The first respondent is arguing that the said plot cannot and should not be transferred into the names of the applicant until such time as the site has been sub-divided as has been agreed between the said Lesotho Bank and

the second respondent, and until such time that the applicant has stopped any attempt to stop the incorporation of that front portion of the site into the area of plot No. 78D, which portion of the site is to be transferred into the name of the second respondent.

[9] Of course, the applicant who was never a party to the agreement between the then Lesotho Bank and the second respondent is opposing the sub division and transfer of the sub divided portion of plot No. 78B to the second respondent and alleges that such an agreement is not binding upon him; being a third party, and so was never a party to the said agreement.

[10] The fact that there was this agreement between the first and second respondent relating to the incorporation of the front portion of plot No, 78B is not in dispute between the parties herein; except that the applicant says that he is not bound by it, for the reason stated above.

[11] The issued for determination by this Court is therefore whether the agreement in question stands in the way of transfer of that portion of plot No. 78B to that of the second respondent. It must be indicated that the applicant is not challenging the existence and or the authenticity of this agreement between the first and the second respondent.

[12] The only reason why the agreed upon sub division of this plot was not effected is because Lesotho Bank with which the second respondent had entered into such agreement was liquidated before this agreement was put into effect; and later the sale of the whole of this piece of that plot by sixth respondent to the applicant compounded the problem. This does however,

not annul the prior agreement between the then Lesotho Bank and the second respondent. The fact that the sixth respondent has resorted to unlawful action by having torn down the fence erected by the second respondent in pursuance of that agreement does not and cannot change nor can it extinguish the agreement of the second respondent over that southern portion of that plot 78B with Lesotho Bank. The applicant does not even deny the existence of that agreement between the first and second respondents. Neither does he deny that the said agreement was entered into some months before he and the sixth respondent entered into the agreement of sale of that plot 78B. Refer to supporting affidavit of Mr. Taelo Maleka.

- [13] The applicant has raised some points of law in which he basically alleges that the second respondent has no locus standi and in which he challenges his answering affidavit. Without much deliberation on these issues, it should be indicated that the said points of law have been incorrectly taken for the reasons stated by counsel of the second respondent. There are no justifiable reasons advanced as to why the applicant says the second respondent has no locus standi herein while he does not deny that by virtue of the said agreement between Lesotho Bank and the second respondent with regard to that southern portion of plot No. 78B which is adjacent to second respondent's plot and which forms the very basis of that agreement and subject-matter herein, the interests of the second respondent are thereby prejudiced. He does not even deny that, that portion of that plot has already been included in the purchase price paid by second respondent to Lesotho Bank.

[14] In a nutshell, this point of law is untenable, so also is the first point which in essence is a peripheral issue which does not prejudice the applicant in anyway. It really has no bearing on the issue to be determined by this Court. In any case, applicant has not in raising this points of law, complied with the provisions of the Rules of this Court.

[15] This Court has been asked to determine issues herein raised but the problem is that, this is a Land Court matter but the applicant has not invoked the provisions of the Land Act No. 8 of 2010 neither has he complied with the relevant provisions of the Land Court Rules, Legal Notice No. 1 of 2012. As a result, much as this Court has extensively dealt with the facts, it feels that it is fair that the matter be not be dealt with any further and that the application be and is hereby dismissed for none compliance with the provisions of the said Act and Rules.

No order as to costs is made

Refer to case of

Lesotho Civic Association and 14 Others v. Minister of Local Government and 4 Others. C of A (CIV) No. 42 of 2012 (unreported) delivered on the 19th April 2013.

M. Mahase

Judge

For Applicant: Adv. Mpaka

For 2nd Respondents: Adv. Loubser