

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LC/APN/03/2012

LAND COURT DIVISION

In the matter between:-

MAFA MOSHOESHOE

APPLICANT

AND

**DISTRICT FOOTBALL ASSOCIATION - LERIBE
LESOTHO FOOTBALL CLUB
LAND REGISTRAR
COMMISSIONER OF LANDS
LAND ADMINISTRATION AUTHORITY
ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT**

RULING

**Coram : Hon. Mahase J.
Date of hearing : 14TH March 2013
Date of Judgment : 16th July 2013**

Summary

*Civil Procedure – Land Court – Main case pending before this Court – Interdict
and restraint – Essential Elements of same*

ANNOTATIONS

CITED CASES:

- Attorney-General v. Swissbourn Diamond 1995-99 LAC 87 at 99 D-E
- LATARU v. N.U.L 1995-99 LAC 661 at 672 F-G
- Ferreira v. Levin 1995(2) S.A. 813, 830 D – 834C.
- LC Diamond Cutting Works (PTY) LTD v. Diamond Cutting Boards 1983(2) S.A. 760, 766D – 767D.

- **Botha v. Maree 1964 (1) S.A. 168**
- **Airroadexpress (PTY) LTD. v. Chairman, Local Road Transport Board, Durban 1986(2) S.A. 663 at 681**
- **Plascon-Evans Paints v. Van Riebock Paints (PTY) LTD 1984 (3) S.A 623 at 634E-H**
- **Commander of LDF and Another v. Matela LAC (1995-99) 799 at 810 H-I.**

STATUTES: **None**

BOOKS: **None**

- [1] The applicant and the respondents are parties in the originating application in LC/APN/03/2012. This application which one may refer to as the main application is still pending before the Land Court (the Division of the High Court). Subject-matter therein is a certain plot number (23131-475) (23123 – 275).
- [2] It would appear that parties herein are claiming ownership or right or title over that same plot and that in fact the first respondent has already been issued a lease in respect of that plot and its number is 23131-475, while the applicant had also earlier been issued a lease over that same plot under lease number 23123-275.
- [3] According to the applicant, he was granted a lease over that plot long before same was later also granted to the first respondent.
- [4] In a nutshell it is clear that the third up to the fifth respondents have allegedly granted two different parties lease over the same plot but under different lease numbers.

- [5] The applicant subsequently approached this Court for relief when he realized that the first respondent was already developing that site in which it is going to build a football stadium. A request made on behalf of the applicant through his attorney to ask that the first respondent stop such works on that plot were not heeded, hence why the applicant had to institute this interlocutory relief.
- [6] All of the respondents have been served with the originating application and an application for an interdict which has been accompanied by a certificate of urgency; in which certificate the applicant has clearly spelt out the reasons for his having moved this Court on urgent basis. The matter is being opposed by the respondents.
- [7] I must however indicate at this juncture that all parties have made attempts to comply with the provisions of the Land Court Rules No. 1 of 2012 except that they have, contrary to the provisions of the said Rules filed founding and opposing affidavits etc which have not been provided for by the said Rules.
- [8] To be precise, respondents have proceeded with their subsequent pleadings in terms of the High Court Rules as against the relevant Land Court Rules. They have not followed nor adopted the format provided for in the said Rules and have therefore violated the provisions of Rules 28 (1) (d) in filing their answer.
- [9] None of the parties have invoked the provisions of Rule 64 of the said Rules of the Land Court (*supra*), thereby ignoring the directives of the Court of

Appeal in the case of Likotsi Civic Association and Fourteen Others v. The Minister of Local Government and Four Others in C. of A. (CIV) NO. 42/2012.

[10] Having made the above observations, it is then also imperative to examine whether or not, this Court is prevented from dealing with the interlocutory relief sought by the applicant and from making a determination upon it.

[11] This Court is aware that in terms of the provisions of Rule 23(1) of the Land Court Rules, it is empowered to grant interim relief to one party until such time as the other party or parties may be heard.

Sub-rule 2 provides a time period within which the other party shall be given notice where the court thinks that the circumstance does not warrant interim relief *ex parte*.

[12] In the instant applicant, the respondents have been duly served with the notice of application for an interdict as well as with the certificate of urgency. They are therefore aware of the existence of this application. They have however proceeded to develop the plot in question, probably they did so because the court has not yet made any ruling on the instant interlocutory application.

[13] It is noted however that, even though the respondents have filed a notice of intention to oppose, this step has not been provided for in the Land Court Rules. They should instead, have invoked the provisions of Rule 28 where appropriate. In fact and to be precise, both parties have at various stages of

their pleadings invoked the High Court Rules instead of invoking the relevant provisions of the Land Court. As a result, the respondents have also not used the proper format in opposing this interlocutory application. Refer to Rule 28 (1), (d) and (2) as well as to the provisions of Rule 30 (2)

- [14] As has been indicated above, the respondents have been duly served with the notice of application for an interdict and the certificate of urgency in which the reasons justifying the filing of same have been spelt out. The respondents have not complied with the provisions of Rule 28 (2) in responding to this application. For instance, they have not complied with the requirements of the provisions of Rule 13 dealing with annexures etc.
- [15] Be that as it may, the burning issue here is the fact that the respondents are continuing with the works on the plot in question and subject matter herein much to the alleged prejudice of the applicant. It is therefore only fair and just that the respondents be stopped temporarily from proceeding with the construction works thereat; in particular because the respondents have been served with the notice of application in the instant matter. Further on, the applicant has also established all the requirements of an interdict of a temporary nature.
- [16] The fact that the respondents are allegedly continuing with the construction works over this said plot justifies the reason why the applicant's application should be granted. The reasons stated by the applicant and the surrounding circumstances of this case demand that the interim relief be and is hereby granted as prayed.

[17] The respondents are accordingly ordered, interdicted, and restrained forthwith from continuing with the construction works and or any other works on that plot number 23123-275 otherwise also known as plot No. 23123-475 situate at Ha 'Mathata – Maputsoe in the district of Leribe.

[18] Costs of this application are granted to the applicant; such shall be calculated as is provided for under the provisions of Rule 100 of the Land Court Rules (supra).

M. Mahase

Judge

For Applicant : Adv. P. V. Ts'enoli

For Respondent : Mr. Q. Letsika