

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LCC/APN/05/2012

LAND COURT DIVISION

In the matter between:-

ROMA VALLEY CO-OPERATIVE SOCIETY

APPLICANT

AND

LESETELI MALEFANE
OM INVESTMENTS (PTY) LTD
THE DIRECTOR OF LAND ADMINISTRATION
AUTHORITY
LANDS ADMINISTRATION AUTHORITY
REGISTRAR OF LANDS
ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT

3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 14th March 2013
Date of Judgment : 5th July, 2013

Summary

Civil Procedure – Land Court – Lease – Cancellation of same – Jurisdiction of the Land Court – Land Act of 1973 – conflicting interests and or rights by two parties over same plot.

ANNOTATIONS

CITED CASES:

- CGM Industrial (PTY) Ltd. v. LECAWU and Others 1995 – 1999 LAC 791
- Attorney-General and Others v. Kao 2000 – 2004 LAC 656
- Lints'a v. Mahloko and Others 2005 – 2006 LAC, 193

- **Nko v. Nko 1990 – 1994 LAC 312**

STATUTES:

- **Land Act No. 8 of 2010**
- **Land Court Rules No. 1 of 2012**
- **Deeds Registry Act No. 12 of 1967**
- **District Land Court Rules No. 2 of 2012**
- **High Court Act No. 5 of 1978**

BOOKS: **None**

- [1] Parties herein are at loggerheads over a certain plot number 18333 – 136 situated at Roma in the district of Maseru near Ha Scout.
- [2] The applicant is an entity registered in terms of the laws of Lesotho as a cooperative society. It carries its business at its premises at Roma near the police station. Refer to originating application as to the identity and other particulars of the respondents.
- [3] According to documents herein filed, the applicants acquired rights over the land in question on the 1st day of April 1976 from the original owner of that plot one Mrs. Blandina Tjamabu.
- [4] Subsequent to that, applicant successfully applied for a formal allocation to it of that site/plot in terms of the provisions of the then current relevant law, the Land Act of 1973. Refer to exhibit “B” which is the relevant allocation application. Having so succeed in this regard a “Form C” herein annexed was issued to applicant. Vide page 9 of the originating application.

- [5] It is a matter of common case that at that time in 1973, the first respondent was the Secretary General of the applicant while his wife, one 'Malenka Raba was an employee of the applicant.
- [6] The fact that the first respondent was once the secretary general of the applicant is buttressed and or is confirmed or indicated in exhibit B wherein he has appended his signature to that application. Further on, and in that capacity in the applicant, the first respondent wrote the letter marked "COMPOL" at page 14 of the originating application, by which letter he was accepting and or confirming his acceptance of a nomination to serve in the Board of Directors of the applicant.
- [7] The fact that the applicant had at all material times been an owner of the plot in question is highlighted in various other documentary attachments and annexures in this application; to wit refer to a list of such documents herein annexed to this applicants, with the exception of annexure for C2 date stamped October 2002.
- [8] It is the plaintiffs' contention that sometime while the first applicant's wife was an employee of the applicant, where she worked as a Clerk she reported to her employer/applicant that the form C in respect of that site had been stolen. Of course, applicant says that it later transpired that in fact the first respondent had connived with his wife to defraud the applicant of its site as it later so became evident when it learned around December 2011 that the first respondent had had a lease issued in his names and was claiming that that plot belongs to him. The applicant denied that the first respondent was ever the original owner of that plot but says, first respondent has

fraudulently obtained the lease and all related documents to this plot fraudulently with the assistance of his wife, to the prejudice and loss of the applicant. First respondent has had that site sub-leased to someone else.

[9] The applicant has therefore approached this Court (the Land Court) seeking judgment for:

1. Cancellation of lease on plot no 18333 – 136
2. Cancellation of sub-lease agreement of plot no. 18333-136
3. Directing first respondent to surrender lease document No. 18333-136 to the Director of Lease services, Land Administration Authority and in turn that applicant be issued with such document in its names as the sole owner of the said plot.
4. Costs of suit at the higher scale as to show the courts displeasure by the behaviour of the first respondent
5. Further and or alternative relief.

[10] The first respondent denies that the applicant is the owner of this plot in question. He has in fact raised a point of law in challenging the applicant. In doing so, he has also annexed to his answer documents in the form of:-

- A lease issued in terms of the provisions of the Land Act of 1979 “LM2” (page 35 of the record)
- Form C – issued in 1980 (page 45)
- Sketch – map of this plot page 46
- Copy of certificate of tithe – registered on the 15th January 1980 (No. 15218) in the names of the first respondent. I note that none

of the said copies shown above have been certificate as true and correct as is a requirement of law.

- Lastly, a letter “LM1” written by one Z.M. Liphoto, to the chieftainness of Roma Ha Maama in which a complaint about the works carried out by the first respondent illegally on that site is being made to her to ask for her intervention. (This has neither been certified nor translated into English.

[11] The respondents have raised a point of law in which they challenge the jurisdiction of this Court to deal with this application. They have abandoned other such points.

[12] In a nutshell, they are objecting and or challenging the jurisdiction of this Court to deal with this application. They have however not done so in accordance with the Rules of the Land Court in that their answer is not in accordance with Form 2 of the schedule herein although applicant has not challenged this issue.

[13] Reliance for argument that this Court has no jurisdiction to entertain this kind of an application is placed upon the provisions of Rule 9 of the Land Court Rules No. 1 of 2012. One must also indicate at this juncture that this Court has not as yet invoked the provisions of Rule 64 because the respondents have raised a preliminary objection, which matter has to be dealt with in accordance with the provisions of Rule 66.

[14] In brief the respondents argue that this Court i.e. the Land Court, a division of the High Court has no jurisdiction to entertain the matter that falls squarely within the District Land Courts.

[15] Reliance in support of this argument is based upon the provisions of Rule 8 of the District Land Court Rules No. 2 of 2012 which, among others, provides that:-

The Court shall exercise subject-matter jurisdiction over the following matters:

(b) Matters related to issue of lease by pertinent authority -----

(d) Review against decision of an allocating authority for revocation of an allocation

[16] The provisions of the above sub-rule are not very specific because they are not clear as to which actual leave related issues the District Land Court has jurisdiction over. One cannot with certainty say cancellation, of a lease or sub-lease; registration, transfer etc matters which are envisaged in these provisions.

[17] on the other had, and in complete contrast to the provisions of above sub-rule of the District Land Rules, the provisions of sections 2 (1), 5, and 7 (1) of the Deeds clear and are unambiguous as to their purport and subject-matters and also as regards the duties of the Registrar of Deed, as well as to which court has jurisdiction over certain specified matters.

[18] The provisions of the Land Act of 2010 and the District Land Court Rules are silent as to whether or not the commissioner of Lands can also cancel leases or sub-leases. In contrast, the provisions of the Deeds Registry referred to above 2(d) specifically empower the Registrar of Deeds to among other duties, cancel leases and release of any part of the property leased. The provisions of section 7 (1) of this Act prohibit the cancellation of a certificate of title or other deed conferring or conveying title to immovable property etc except upon an order of court. This is couched in mandatory terms and the provisions of section 2(1) interpret and describe the word “Court” as meaning the High Court of Lesotho.

[19] In the premises, the argument that this Court has to jurisdiction to entertain this application is mislead. Clearly since the Land Court is a division of the High Court and also because the lease and sub-lease subject-matter in this application have been registered by the Deeds Registry Office in terms of the provisions of the Deeds Registry Act (supra) it follows therefore that it is the Registrar of that office who shall effect cancellation of same upon an order of this Court.

[20] It is for the foregoing reasons that the point of law raised herein is dismissed because only the Land Court as a division of the High Court has jurisdiction to order for such cancellation. The Registrar of Deeds, is prohibited from so cancelling any titles on immovable property as provided in the Deeds Registry Act except upon an order of Court, which means the High Court.

[21] Lastly, it has been clearly stated that the Land Act of 2010 repeals the 1979 Land Act. There is nowhere where it is stated herein that any of the Acts

mentioned at section 93 (page 436) have been repealed. In particular, for purposes of adjudicating upon this application, Act No. 12 of 1967, the Deeds Registry Act has not at all been repealed. The objection against the jurisdiction of this Court to deal with issues herein raised has not be well founded.

[22] The point of law herein raised is accordingly dismissed with costs to the applicant.

M. Mahase

Judge

For Applicant	-	Adv. Metsing
For first Respondent	-	Adv. P.V. Tšenoli