IN THE HIGH COURT OF LESOTHO

CIV/T/374/2007

In the matter between:

MS RAHABA RAASO **PLAINTIFF**

V

SESHOPHE MAKOTOKO **1ST DEFENDANT**

HLAKOANE NARE **2ND DEFENDANT**

JUDGMENT

Coram: Nomngcongo J

Date of hearing: 06th December, 2009

Date of Judgment: 15th October, 2013

[1] The plaintiff seeks an order declaring herself the legal title holder or residential plot K17 – 358, Khubetsoana Maseru, alternative a declaratory that she is legally entitled to complete and enforce her rights thereto. She further seeks the court to declare any and all structures erected on the site

forfeited to her free of any claim or obligation for payment of the value as cost of such structures. She wants defendants to be ejected from the plot.

[2] She claims in her declaration that on or about 2nd June 1998 she "obtained rights to a ministerial grant of little" I respect of the said plot in terms of section 49 of the Land Act 1979. During 2002 she discovered that an immovable structure was being erected on the plot. The defendants were found to be responsible for the erection of the structures. Upon being confronted for proof of title by a representative of the Land Commission in the company of a soldiers the defendants were unable to provide proof of such title. The defendants have since been charged with the illegal occupation of the plot.

[3] The first defendant has not entered appearance to defend. The second has been done so. His plea is simple and it is that he denies that there was any Ministerial grant to the plaintiff as the Minister can grant title only on unallocated land where nobody has title and further that the Minister cannot revoke title of other parties without lawful steps. He denies that plaintiff has a valid title in law.

[4] In her request far further particulars the plaintiff asked a specific question whether the defendants allege that they have a better right to the property or

whether they deny that the land was allocated to plaintiff. The reply was that the 2nd defendant denies the existence of the Ministerial grant alternatively that such grant was unlawful as the Minister had no right to make a grant on land already allocated. It will be noted that he the 2nd defendant in this answer makes no claim on his own behalf and simply implies that the land has already been allocated without saying to whom it was allocated carefully skating around the question whether he claims a better right than the plaintiff.

[5] The plaintiff gave evidence that simply confirmed what was alleged in the declaration. In addition she called the Chief Lands Officer of LSPP who was also Acting Commissioner of Lands. The latter testified that when the Minister declares a place a selected development area affected people were informed of this. If such people had Form C's for the affected area, these were taken away and Mr Minister responsible would then make a ministerial grant which he signed. Such a grant would be preparatory to the production of a lease. The plaintiff in this case had such a document issued in her favour and that proved that she had title to such land and was in the process of preparing a lease.

[6] The one witness called on behalf of the second defendant is a lease-coordinator who works with the Chief Lands Officer. He basically confirms what the latter deposed to.

[7] In the circumstances, I do not understand what the 2nd defendant, who makes no claim to the plot in question, has resisted the plaintiff's claim for when there is even evidence that he said in a letter that he had occupied the site by mistake. The defence that the Minister may have acted unlawfully is not available to him because he has no claim of right over the subject matter of the dispute.

The action succeeds with costs

T. Nomngcongo
Judge

For Plaintiff: Mr Mpaka
For Respondent: Mr Matooane