

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LC/APN/12/14

In the matter between:-

NTHOLENG MOLEFI

APPLICANT

AND

EXPOMIX PROPERTIES

1ST RESPONDENT

THABELANG THANTS'I

2ND RESPONDENT

MOSHEOA MOKETE

3RD RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 31ST March 2014
Date of Judgment : 31st March 2014

Summary

Land Court Procedure and Rules – Sale of site – None delivery of site to applicant – Applicant seeking specific performance of contract of sale or refund of money paid to respondents by applicant – None observance of the Land Court Rules.

ANNOTATIONS

CITED CASES: **None**

STATUTES: **Land Court Rules, No. 1 of 2012**

BOOKS: **None**

- [1] The applicant in the originating application approached this Court in terms of the provisions of Rules 11, 12, 13 and 14 of the Land Court Rules No. 1 of 2012. The respondents were all duly served with this application on the 6th February 2014 as per contents of the return of service.
- [2] Subsequent to that, parties herein engaged in some correspondence in which firstly, the respondents, instead of refunding to the applicant the purchase price which was paid for that plot or site, in the sum of twenty-three thousand maloti; they offered to refund same to applicant in monthly instalments of three thousand maloti per month. They have not offered to refund same with interests. This offer was rejected by the applicant.
- [3] Correspondence herein was by letters dated the 27th February and the 20th January instant. The applicant then decided to have the application prosecuted on the 31st March 2014. This is made clear on the duly filed notice for appearance of respondents dated the 7th February instant and filed before this Court together with the originating application on the 4th February instant.
- [4] When on the 31st March 2014, this application was to be prosecuted, there was no appearance by the attorney of the respondents, nor was any of the respondents before Court. Counsel for the applicant then invoked the provisions of Rule 22 (1) and this Court being satisfied as to the contents of the return of service alluded to above, and that correspondence, then granted the application against the respondents with costs on an ordinary scale. The interest rate originally requested by the applicant of twenty six percent, was

however, reduced to eighteen percent because there was no justification for that high interest.

[5] In brief the relief sort on behalf of the applicant was:

- Delivery of plot No. 18 extension whose dimensions are 534.61 square metres within 30 days of judgment by the first respondent.

Alternatively

- Delivery of a land parcel within the Maseru urban whose dimensions are 534.61 square metres by 1st respondent or repayment of the amount of M23,000.00 paid by applicant and received by first respondent within 30 days of judgment hereof;
- Payment of interest on the M23,000.00 by first respondent received and kept unjustly by the said first respondent, and interest at the rate of 26% per annum accruing from the date of judgment hereof.

Alternatively

- Repayment of the said M23,000.00 by second and third respondents who were at the time of the transaction, directors of the first respondent; and
- Payment of interest on the M23,000.00 received by the first respondent under the directorship of second and third respondents kept unjustly by the said first respondent,, at the rate of 26% per annum accruing from the date of judgment hereof, the other one paying the others absolved.
- Cost of suit

- Further and/or alternative relief.

[6] In strict adherence to correct procedure, the applicant had attached all of the list of documents and witnesses to his papers. Among others, and most importantly the applicant had attached to his originating application all cash receipts and a bank deposit slip showing all the monies he had paid to the respondents in accordance with the sale agreement terms and conditions for purchase of that plot situated at Masowe in Maseru district. In short, the applicant had paid in total the agreed sum of M23,000.00 as the selling price of the plot in question. The said, agreement of sale between these parties had been concluded in or around April, 2012. To date, the applicant has not been handed that site/plot much to his detriment and prejudice and to the unjust enrichment of the respondents.

[7] The applicant has clearly and correctly so in the view of this court, refused and or declined the offer of the respondents to repay that said sum of M23,000.00 at instalments of M3,000.00 per month as he has clearly indicated that he has to acquire another site and that he had paid that sum as agreed for no other purpose but for acquisition of a site.

[8] There is no doubt that the applicant has kept to the letter of the conditions of the sale agreement – refer to all cash receipts and bank deposit slip; annexure 6(a) as well as annexure 7(a) which are the prove of bank deposit and letter confirming that applicant has paid all the said money respectively. Annexure 7(a) has been written by the applicant and/or on behalf of the first respondent, as confirmation and or proof by its office to the effect that indeed the applicant has fully paid all payments, which by the conditions of

the said sale agreement were due and payable to it by the applicant for a site which he has bought from the first respondent, situated at Masowe (Ha Shelile Plot No. 18).

- [9] The respondents have to date not effected transfer of the site in question to the applicant, nor have they replaced that plot with another plot; neither have they refunded the applicant the said sum of M23,000.00 (the purchase price) for which he paid for that plot.
- [10] They instead ignored and or refused upon demand, to honour the conditions of sale agreement nor did they refund him his money as alluded to above. No reasons have been offered to date as to why they were unable to perform in accordance with the conditions of the said sale-agreement. This refusal by them to do any of the above left the plaintiff no other option but to approach the Court as he did.
- [11] Indeed, the applicant is by law entitled as of right to demand from the respondents, so far as is possible, a performance of their undertaking of the terms and conditions of sale referred to above.
- [12] The respondents were all duly served with the originating application on or about the 6th February 2014 in terms of the provisions of Rule 19 of the Rules of this Court. Refer to the return of service herein file. They had also duly been informed to appear before this Court on the 31st March 2014. This is in compliance with the provisions of Rule 20(2) of the Rules of this Court. In fact the respondents have been given more than one month period provided in the said Rules.

- [13] There is therefore no reason why the respondents failed to appear before Court on the date for the Court appearance because they were made aware of the non acceptance of their offer referred to above as far back as the 12th February 2014 when they received applicant's letter in which their offer was refused on behalf of the applicant. The respondents have themselves to blame for their failure to attend court on that date set down for the first court appearance.
- [14] Counsel for the applicant was therefore perfectly in compliance with the provisions of the Rules of this Court when, on the 31st March she invoked the provisions of Rule 22 (1), particularly because the respondents had also not filed any answer, in total disregard of the provisions of Rule 28 of the Rules of this Court.
- [15] While this Court also felt obliged to invoke the provisions of Rule 22(1) and (2), it could not grant the applicant the prayer in relation to the 26% interest as there was no justification for that high rate of interest. The application was therefore granted by default against the respondents but the interest rate was reduced to 18% per annum from the date of judgment. Costs are awarded on an ordinary scale because the respondents have compelled the applicant not only to incur costs for litigation, but the applicant has been prejudiced by the respondents' non performance of their obligations in terms and conditions of the said sale agreement and for no justifiable cause whatever, since the applicant fully paid them the full purchase price as per the conditions of the contract; way back on the 25th October 2012. Now some nineteen months since October 2012, the

respondents have still not honoured their obligations under the said contract, and they eventually fail to attend court without good cause having been shown.

[16] The respondents are to pay such costs one paying the other to be absolved. Such costs to be paid in terms of the provisions of Rule 111, 112 (1) and (2) of the Rules of this Court.

M. Mahase

Judge

For Applicant - Adv. K. Thabane

For Respondents - No Appearance