

IN THE HIGH COURT OF LESOTHO**(LAND COURT)****HELD AT MASERU****CIV/A/10/14****CIV/DLC/MSU/07/14**

In the matter between:-

'MAKATLEHO MASOABI (born Mofelehetsi)**1st APPELLANT****PHEELLO MASOABI****2ND APPELLANT****AND****FUMANE MOFELEHETSI****RESPONDENT****JUDGEMENT**

Date of hearing : 8 August 2014

Date of judgment : 21 August 2014

SUMMARY

Appeal from the District Land Court to the Land Court – Applicants/Appellant having applied for interdictory relief before the District Land Court – the respondent objecting that the court has no jurisdiction to grant an interdict because such an interdict must be preceded by a declaratory order as to the parties right. The court holding that it had no jurisdiction as it had no power to determine rights over land.

Held: The District Land Court erred that it did not have jurisdiction to entertain the matter regard being had to the terms of section 73 of the Land Act 2010 as amended by section 7 of the Land (Amendment) Act 2012.

The appeal upheld with costs and the preliminary objection raised in the District Land Court dismissed with costs.

ANNOTATIONS

CASES:

Manong & Associates (PTY) LTD v Department of Roads and Transport, Eastern Cape, and Another (No 1) 2009 (6) SA 574 (SCA).

STATUTES

District Land Court Rules 2012

Interpretation Act No. 19 of 1977

Land Act No. 8 of 2010

Land (Amendment) Act No. 16 of 2012

Legal Notice No. 32 of 2012,

MOSITO AJ

1. INTRODUCTION

1.1 On 23 January 2004, the Applicants ('Makatleho Masoabi and Pheello Masoabi) instituted proceedings in the District Land Court for the district of Maseru through an originating application. This was an application for an order in the following terms:

- “1. An order interdicting and restraining the respondent from interfering in any manner whatsoever with the Applicants’ peaceful occupation of their site registered under Lease No. 13281-627 formerly known as Site No. 14 Sea Point, Maseru City in the district of Maseru.
2. Directing the respondent to pay costs hereof;
3. Granting Applicants further and/or alternative relief.”

1.2 The application was opposed by the respondent (Fumane Mofelehetsi) by means of an answer. In the answer, the respondent raised an objection as to lack of jurisdiction of the court and also proceeded to plead over. In particularising the point about lack of jurisdiction, the respondent pointed

out that “this claim is inadmissible on the grounds of want of jurisdiction in terms of Rule 8 of the District Land Court Rules. The Applicants base their arguments on the Will and the Lease of which the law clearly states that interpretation thereof shall be in the Land Court not in the District Land Court. This Honourable Court does not have the jurisdiction to interpret a Will and a Lease, this is in terms of the Land Court Act 2012 s9 (2). Therefore we pray that this application be dismissed with costs on attorney and own client scale”.

1.3 The District Land Court upheld the issue as to lack of jurisdiction and consequently dismissed the application. The Applicants (Appellant) noted an appeal to this court against the decision of the Magistrate on the following grounds:

- “1. The Learned Magistrate a quo erred and misdirected herself in holding as she did that, she had no jurisdiction to the validity of a will. The Learned Magistrate had no competence in law to determine and decide issues not brought before her for determination.
2. The Learned Magistrate a quo erred and misdirected herself in dismissing the Appellant’ application as she did and in total disregard of the District Land Court Rule.
3. The Learned Magistrate a quo misconstrued the nature of the orders sought in the Originating Application hence she erred and misdirected herself in dismissing the application with costs.
4. Since the Appellant have not yet received Ruling in this matter, they reserve the right to file further and better Grounds of Appeal upon receipt of same”.

1.4 It is important to point out that the court a quo, having found that it had no jurisdiction to entertain the matter; it could not proceed to consider

the merits of the application. It is therefore necessary to only determine whether the court a quo was correct in holding as it did that it had no jurisdiction to entertain the matter. Once it is found that it had jurisdiction to entertain the matter then the matter could have been considered by the court a quo.

- 1.5 Both learned counsel before this court requested this court to determine the merits of this appeal notwithstanding those merits had not been determined by the court a quo. I do not think it will be proper for this court to accede to the request to consider the merits of the application before the court a quo. The only issue that was determined related to jurisdiction. The actual merits of the case were not considered. In the result it will only be necessary to consider whether or not the court was correct in dismissing the application on the basis that it had no jurisdiction.

2. **CONSIDERATION OF THE APPEAL**

- 2.1 Perhaps the most convenient way to deal with this matter is to consider the law applicable to the exercise of jurisdiction by the District Land Court. The District Land Court is a creature of statute. It was established by **section 73 of the Land Act No. 8 of 2010**.

- 2.2 That sections that govern the establishment of the court read as follows:

“Establishment of Land Courts

73. The following courts are established with jurisdiction, subject to the provisions of this Part, to hear and determine disputes, actions and proceedings concerning land:

- (a) the Land Court; and
- (b) District Land Courts.

The Land Court

74. The Land Court shall be a Division of the High Court.

District Land Courts

75. The Subordinate Courts are the District Land Courts for the purposes of this Act.

Rules

76. The Chief Justice may, in consultation with the Minister responsible for land, make rules for the practice and procedure in the land courts.”

2.3 A closer examination of section 73 of the Land Act does not indicate which causes of action both this court and the court a quo have jurisdiction over. It was perhaps upon realisation of this anomaly which was likely to present problems to the exercise of jurisdiction by the courts that the Parliament intervened by means of the **Land (Amendment) Act No. 16 of 2012**. Section 7 of the latter Act provides as follows:

“The principal law is amended in section 73 by adding the word “all” between the words “determine” and “disputes”.

2.4 In fact in the **Legal Notice No. 32 of 2012**, it is indicated that “it is not clear from section 73 of the Land Act, 2010 as to whether the intention of the section was to provide the Land Courts unlimited jurisdiction to hear and determine all land disputes whether criminal or civil. This Bill clarifies the position by giving them unlimited jurisdiction in land matter.” In my opinion therefore, the District Land Court was given unlimited original jurisdiction in respect of land matters. This was done by means of section 7 of the **Land (Amendment) Act No. 16 of 2012**.

2.5 The case before the court a quo related to a dispute over land. The District Land Court Rules were published in the gazette on 3 February 2012. In line with the established general principles of interpretation as contained in section 24 of the **Interpretation Act No. 19 of 1977**, subsidiary legislation shall have the same force and effect and shall be as

binding and shall be construed for all purposes as if it had been contained in the Act under which it was made.

- 2.6** In my opinion therefore the District Land Court Rules 2012 must be construed for all purposes as if they had been contained in the Land Act 2010. It follows therefore that while Rule 8 of the said Rules lists the subject matters in respect of which the District Land Court shall have jurisdiction, that list is not exhaustive because the court has been given jurisdiction to entertain all disputes, actions and proceedings concerning land. It follows therefore that the District Land Court had jurisdiction to entertain the matter before it.
- 2.7** There appears to be a related procedural issue which arises from the decision of the Magistrate. This seems to be that the Magistrate was of the opinion that the District Land Court has no jurisdiction to entertain interdicts because in so doing, it would then have to make a declarator relating to the rights of the parties over the site. This approach appears to have been informed by the terms of section 29 of the **Subordinate Court Order No.9 of 1988** on which the respondent relied even before this Court. This approach appears to be based on the meaning to be subscribed to section 75 of the Land Act quoted above which provides that, the Subordinate Courts are the District Land Courts for the purposes of this Act. This meaning is erroneous.
- 2.8** By analogy with what Kroon AJA said in **Manong & Associates (PTY) LTD v Department of Roads and Transport, Eastern Cape, and Another (No 1) 2009 (6) SA 574 (SCA)** at para 35:

As regards constitutional matters, the question again is not whether the Equality Court has jurisdiction 'to adjudicate constitutional matters' (again, presumably meaning to rule upon constitutional rights), but what the extent is of the

jurisdiction given to the Equality Court by the Equality Act and whether that jurisdiction would embrace the grant of the relief sought by the appellant. That question I have already answered in the affirmative. To the extent that any order granted by the Equality Court has, from a practical point of view, the same effect as an order by the High Court on a constitutional matter, that again would be merely co-incidental.

2.9 In *casu*, the question is not whether the District Land has jurisdiction to adjudicate the validity of a will but what the extent is of the jurisdiction given to the District Land Court by the Land Act and, whether that jurisdiction would embrace the grant of the relief sought by the appellant. That question I have already answered in the affirmative. To the extent that any order granted by the District Land Court has, from a practical point of view, the same effect as an order by the High Court on a land matter, that again would be merely co-incidental.

2.10 In approaching this matter in the manner she did, it seems the learned Magistrate was of the view that the issue before her was whether or not the will was valid as opposed to whether or not it was either the Appellant' or the respondent who had rights and interests over the site.

2.11 In my view the learned Magistrate was inclined to determine the issue of the validity of the will which was not before her. The issue before the Magistrate was not one about the validity of the will but the issue as to who of the parties was entitled to the site in question. It is difficult to understand why the court did not have jurisdiction to determine all disputes even including a determination on which of the parties is entitled to the site in question and to pronounce that it was either the one or the other who had such rights. If the issue of the validity of the will were to be determined, it seems to me that that would be a matter would be a subject of incidental jurisdiction of the court.

2.12 Of course it may occur that the District Land Court is called upon to decide a claim which falls within its jurisdiction in respect of both cause of action and parties as well as amount, but that in order to adjudicate upon such claim the court is compelled to pronounce upon matters falling beyond its jurisdiction. The question may then be whether the court will cease to have jurisdiction in a case where it would otherwise have had jurisdiction, but virtue of the fact that this collateral matters fall outside its jurisdiction. This issue is one that has to be informed by whether the particular dispute before the court concerns an action, dispute and proceedings over land. In such cases the court would have incidental jurisdiction to pronounce upon the issue otherwise falling outside its jurisdiction if only for purposes of making a final determination on the matter in respect of which it has jurisdiction. However, for now a detailed discussion of how the court has to go about exercising such incidental jurisdiction, is a matter that should wait until the next day and it is not necessary to be determined in this case.

3. CONCLUSION

3.1 In conclusion therefore, this court holds that the court a quo erred in holding that it had no jurisdiction to entertain the matter before it as the proceedings before it related to a dispute over land. It was not a dispute about the validity or otherwise of the will. This court also agrees with the Appellant that the court a quo misconstrued the nature of the relief sought in the originating application and erred in dismissing the application with costs.

3.2 In the result the following order is made:

- (a) The appeal succeeds with costs.
- (b) The ruling of the District Land Court is altered to read that “the preliminary objection as to jurisdiction is dismissed with costs”.
- (c) The matter is referred to the District Land Court for determination on the merits by the court.

DR. K.E.MOSITO
ACTING JUDGE

For Appellant: Adv R. Setlojoane

For Respondent: Adv N.E. Hatasi