

IN THE LAND COURT OF LESOTHO

Held at Maseru

LC/APN/136/2014

In the matter between:

NTOA ABEL BUSHMAN

APPLICANT

And

**LESOTHO DEVELOPMENT
AND CONSTRUCTION COMPANY (PTY) LTD**

1ST RESPONDENT

JOANG MOLAPO

2ND RESPONDENT

LAND ADMINISTRATION AUTHORITY

3RD RESPONDENT

CORAM:

S.P. SAKOANE AJ

DATE OF HEARING:

1 and 2 DECEMBER 2014

DATE OF JUDGMENT:

10 DECEMBER 2014

SUMMARY

Preliminary objection in terms of Rule 66 (2)(b) and (c) – objection being lack of title to sue and prescription – applicant seeking cancellation of lease of respondent but not asserting rival claim to whole plot but only portion thereof encroaching into his plot – held that as holder of registered title deed to unregistered plot, applicant has locus standi but since he waited for ten years to bring suit, the court takes that he has abandoned his rights.

ANNOTATIONS

CITED CASES:

Molapo v. Molefe LAC (2000-2004) 771

Mphofe v. Ranthimo And Another LAC (1970-1979) 464

STATUTES:

The Land Act No.17 of 1979

The Land Court Rule, 2012

BOOKS:

LAWSA, 2nd Edition Vol. 14, Part 2

RULING ON OBJECTION

- [1] The applicant seeks, among others, orders to cancel a lease No.22124-184 in favour of the 2nd respondent's father (since deceased) and cancellation of a deed of transfer in respect of the same plot registered in favour of the 1st respondent.
- [2] The applicant has a registered on title deed to land granted to him on 15th April 1975. The title deed 26th May, 1975 is in his favour in respect of an “unnumbered business site in Maputsoe in Leribe district”. There is annexed to the registered title deed a sketch plan describing the unnumbered site.
- [3] The applicant's pleadings relevant for purpose of this ruling are that:
- (a) In 2004 2nd respondent's father sued the applicant in the Leribe Magistrate's Court for specific performance in respect of plot No.22124-001 which he claimed was his and it was adjacent to applicant's site. The application was dismissed but the judgment subsequently rescinded.

- (b) During those proceedings in the Magistrate's Court, the applicant discovered that:
- (i) the 2nd respondent's father had caused division of plot No.22124-001 into plots numbers 22124-183 and 22124-184 in respect which he subsequently acquired their leases on 8th February, 2005;
 - (ii) the 2nd respondent's father thereafter sold the divided plots and plot number 22124-184 was sold to the 1st respondent in 2005;
 - (iii) plot number 22124-184 overlaps with applicant's unnumbered site by about 268 square metres and the 1st respondent is aware of this overlap. A surveyor's report to this effect is annexed;
 - (iv) the annexed surveyor's report states that "plot 22124-001 was subdivided into two plots, namely 22124-183 and 22124-184. There is an encroachment on plot 22124-184 of approximately 268 sqm as shown by the red line

on the attached diagram. There are some shacks erected on the disputed area.”

[4] The 1st and 2nd respondents raise a preliminary objection of *locus standi* and prescription. On *locus standi*, the objection is that the applicant has no legally enforceable right on plot No.22124-184 because:

- (a) he has failed to apply for a lease in terms of the provisions of the **Land Act, 1979** and thus rendering his title deed null and void;
- (b) he has no standing to apply for cancellation of lease and deed of transfer issued in favour of the 1st respondent;
- (c) the claim has prescribed in that since 2004 when the applicant became aware of the sub-division of plot No.22124-001 in 2004 and the acquisition of the sub-divided plot No.22124-184 by 1st respondent in 2005, he did not do anything for a period of ten years.

[5] During oral argument, Mr. Setlojoane, for the 1st and 2nd respondents, put in the fore-front of his contentions two propositions:

1. The applicant has lost any benefit of rights to the registered title deed as he has failed to apply for a lease or to convert the said title into a lease after the coming into operation of the **Land Act, 1979**.
2. Failure to bring this application within a reasonable period is an unacceptable delay which constitutes an abandonment of a right.

[6] Mr. Nteso, for the applicant, counters by submitting that:

1. Rule 66 (2)(d) does not disentitle an adult person who is sane to bring proceedings. It is directed towards lack of capacity to sue in respect of minors and other persons whom the law requires that they be assisted. It is that type of lack of capacity which the Rules envisage.
2. Compliance with the provisions of the **Land Act, 1979** to apply for a lease are optional and do not have the effect of rendering a registered title null and void.

[7] It is common cause that the dispute is not about rival claim of title to plot No.22124-184 but rather to its encroachment into the applicant's unnumbered site by 268 sqm. 2nd respondent's father was granted a lease in respect of plot No.22124-184 registered in February 2005.

[8] The real issue then relates to the enquiry as to whether the applicant has a right to call for the cancellation of the lease on plot No.22124-184. The contention of Mr. Setlojoane is that this the applicant cannot do because he himself is not armed with a lease to the same plot. For this proposition reliance is reposed on **Molapo v. Molefe** LAC (2000-2004) 771. In this case, the Court of Appeal enunciated the following principles (at paras [29]-[33]):

1. An allottee of land is legally bound to apply for and register a certificate of title to occupy or use. Such registration must be done within three months of the date of issue of the certificate. Failure to do so within three months or any period of extension allowed by the Registrar of Deeds or the court, renders the certificate null and void.

2. Absent any registered certificate of title to occupy or use (title deed) a litigant has no *locus standi*. (See also **Mphofe v. Ranthimo And Another** LAC (1970-1979) 464).

[9] According to these principles, the registration of allocation of land secures the title of an allottee either to the occupation or use of the land. This runs in tandem with the common law principle that the right of the lessee in a long lease to occupation and use prevails against the whole world if registration has taken place. (See **LAWSA**, 2nd Edition, Vol. 14 Part 2 para 43)

[10] The question then to be answered is whether applicant's registered title deed to the site allegedly encroached upon by plot No.22124-184 suffices to enable him to sue. On the basis of the principles enunciated in the case of **Molapo v. Molefe** (supra), the answer must be in the affirmative. The applicant does have *locus standi* on the strength of his registered title deed. But the suit must be confined to the reversal of the encroachment only and cannot extend to the cancellation of the lease to that plot as there is no rival title to it.

[11] The next objection to consider is whether the suit is time-barred. Mr. Setlojoane contends it is so because the applicant did nothing since 2004 when he became aware of the encroachment. The effect of this delay of ten years is abandonment of his rights and unavailability of judicial intervention to restore the *status quo ante*. On the other hand Mr. Nteso demurs and says that the applicant is still within time to seek judicial intervention to restore the *status quo ante*.

[12] The applicant's position is that he became aware of the existence of plot No.22124-184 and acquisition of its lease by 2nd respondent's father during proceedings in the Leribe Magistrate's Court in 2004. These proceedings are still pending as a rescission application was granted in favour of 2nd respondent. It was during those proceedings that a surveyor's report was commissioned showing "there is an encroachment on plot 22124-184 of approximately 268 sqm". As I understand the report, the encroachment is on the plot which 2nd respondent's father is a lease-holder and not on the unnumbered site of the applicant. If that be the case, the applicant would have no basis to complain about any encroachment.

[13] But since the applicant feels aggrieved irrespective of the interpretation of the contents thereof, he is nevertheless within his rights to pursue the matter in court. Be that as it may, there is no explanation proffered why the applicant waited for almost ten years to institute these proceedings. This amounts to an unreasonable delay in the circumstances of this case. For this reason, I hold that this is tantamount to abandonment of his rights. (See **Molapo** case (supra) para [37])

[14] Finally, the issue of encroachment is yet to be determined by the court *a quo* in CC/57/04 following the rescission of the judgment of 8th November 2011 on 27th July 2012. To this extent, that issue can be said to be *lis alibi pendens*.

[15] In the result, the preliminary objection on prescription is upheld and the application struck out with costs in terms of Rule 67 (2) of the **Land Court Rules, 2012**. The applicant is free to pursue the matter in the Leribe Magistrate's Court proceedings which are pending finalization.

S.P. SAKOANE
ACTING JUDGE

For the Applicant:

P.T. Nteso

For the 1st and 2nd Respondents:

R. Setlojoane