

IN THE LAND COURT OF LESOTHO

Held at Maseru

LC/APN/18/2014

In the matter between:

ALICE MPHUTLANE

APPLICANT

And

MOSA SEOLI

1ST RESPONDENT

TSIETSI MOKITIMI

2ND RESPONDENT

HER WORSHIP MS L. NTELANE

3RD RESPONDENT

**CLERK OF COURT (MASERU
MAGISTRATE'S COURT)**

4TH RESPONDENT

JUDICIARY

5TH RESPONDENT

ATTORNEY GENERAL

6TH RESPONDENT

CORAM:

S.P. SAKOANE AJ

DATE OF HEARING:

13 NOVEMBER 2014

DATE OF JUDGMENT:

25 NOVEMBER 2014

SUMMARY

Jurisdiction of District Land Courts and the Land Court - application for stay of proceedings and declarator in relation to sale of matrimonial home forming part of a joint estate – whether such application concerns title to land – held that the application is not about dispute of title to land and therefore land courts do not have jurisdiction.

ANNOTATIONS

CITED CASES:

Chalatse And Another v. Acting Chief Justice And Others CIV/APN/315/2004

Kobeli v. Moseneke And Others C of A (CIV) No.28/2014

Lephema v. Total Lesotho (Pty) Ltd And Others C of A (CIV) No.36/2014

Letsie v. Director of Public Prosecutions LAC (1990-94) 246

Moletsane v. Sethathi C of A (CIV) No.54/2013

STATUTES:

District Land Court Rules, 2012

Land Court Act No.8 of 2010

Land Court Rules, 2012

Legal Capacity of Married Persons Act No.9 of 2006

JUDGMENT

[1] This matter was instituted in this Court on 19th February 2014 on an urgent basis for the following relief:

- “(a) Dispensation with the modes and forms of service due to the urgency of this application.
- (b) The proceedings in CIV/DLC/MSU/91/2013 be stayed pending the final determination of this application.
- (c) Declaring the transactions entered into in the Applicant’s husband and the 1st Respondent involving the joint estate null and void.
- (d) Declaring the auction emanating from CC 1166/06 involving the Applicant’s estate null and void.
- (e) Directing the 1st and 3rd Respondents to restore the moneys and/or any consideration paid by the 2nd Respondent in lieu of Applicant’s property bought from the purported auction.
- (f) Restraining the 2nd Respondent from interfering with Applicant’s peaceful stay at their home.
- (g) That prayer (a) and (b) operate with immediate effect as interim court order.”

[2] On 20th February 2014 Mahase J. granted an interim order in the following terms:

“IT IS HEREBY ORDERED:

- (a) The ordinary modes of and forms of service be dispensed with due to the urgency of this application.
- (b) The proceedings in CIV/DLC/MSU/91/2013 are hereby stayed pending the final determination of this application.
- (c) Respondents are ordered to appear before this court in person or through representative duly instructed and able to answer all material questions pertaining to the application on 10th day of March 2014.”

[3] Eventually substituted service was due and the matter postponed. 3rd of June 2014 was appointed as the date of Pre-trial Conference.

[4] When the matter first came before me on 17th September 2014, it appeared that the 1st Respondent had not still been served. I then postponed the matter to 14th October 2014 to enable service. Indeed, on 14th October service had been effected on 1st Respondent. An opportunity was given to this respondent to file an answer for the matter to be heard on 13th November 2014. Hence this judgment.

ANALYSIS

[5] When Mr. Mariti rose to move the application, I asked whether this Court has jurisdiction to grant the relief prayed for. He submitted that the Court can do so in terms of the **High Court Rules, 1980** as a division of the High

Court. But he was driven to concede that there is nothing in the **Land Court Rules, 2012** which provides for resort to the High Court Rules in respect of Land Court proceedings. This concession is properly made.

[6] The other dimension of the debate was whether absent any competing claims to title and claims to rights overriding title to land, this Court was competent to entertain this matter at all. Indeed this is the central enquiry. To answer this question, we must find out the statutory word on the matter of jurisdiction. In this regard sections 73, 74 and 76 of the **Land Act No.8, 2010** provide as follows:

“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.

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

75.

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

- [7] Apart from the general provision on jurisdiction under section 73, the land courts have other special jurisdiction. The District Land Courts have review and appellate jurisdiction over decisions made by the Commissioner of Lands and the allocating authorities (Sections 18(3), 20(2), 22, 36(3) and (4) and 72 of the Act). They also have original jurisdiction in matters relating to: (a) adverse and conflicting claims under sections 28 and 59; (b) disputes concerning refusal of consent or signature by a spouse married in community of property where such are required under the Act (Section 10(5)); and (c) disputes on value of improvements to land in respect of which a lease has been terminated (Section 37(9)).
- [8] The Land Court has review and appellate jurisdiction over all the decisions of a District Land Court and decisions of Government on expropriation and acquisition of land for the public interest. (Sections 28(3) and 52(d)).
- [9] This special jurisdiction of the District Land Courts and the Land Court is mentioned in the Rules as well. Rule 9 of the **Land Court Rules, 2012** provides:

“9 (1) The Court shall exercise specific jurisdiction over the following matters:

(a) Appeals against any decision of the Government in regard to expropriation affecting the land rights of the appellant; and

(b) Appellate matters against any decision of the District Land Courts.

(2) Pursuant to section 5 of the **High Court Act of 1978** and the **Constitution of Lesotho**, the Land Court shall have inherent jurisdiction over all matters that do not fall under the exclusive jurisdiction of the District Land Courts.”

[10] Rule 8 of the **District Land Court Rules, 2012** provides that:

“8. The court shall exercise subject-matter jurisdiction over the following matters:

(a) matters related to withholding of consent or signature by a spouse married into community of property;

(b) matters related to issue of lease by pertinent authority;

(c) matters related to compliance with prescribed use of or development plan;

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

(e) adverse claims on land;

(f) review against a decision of the pertinent authority to withhold consent;

(g) conflicting claims referred by the Minister of Local Government and Chieftainship in accordance with section 59 of the Act; and

(h) appeals against determination of a regularization or adjudication process.

[11] Whatever may be the parameters of the categories of disputes actions and proceedings over land as stipulated by the Rules, they must be confined to land and titles to land, conversion of titles to land, the securing of titles to land under section 73 and also concern appellate and review powers adverted to

in paragraphs [7] and [8] of this judgment. The interpretation of the Rules must, therefore, be one consistent with the provisions of the Act. Otherwise they would be inconsistent and invalid to the extent of any inconsistency. (See **Letsie v. Director of Public Prosecutions** LAC (1990-94) 246 @ 250D – 251B; **Chalatse And Another v. Acting Chief Justice And Others** CIV/APN/315/2014 para [14] (HC) dated 15 September 2014). I, however, do not discern any inconsistency in the Rules as they only mimic the subject-matter jurisdiction provided for in the various sections of the Act.

[12] Section 73 of the Act has been interpreted by the Court of Appeal thus:

“[22] In regard to the jurisdiction issue the enquiry as to what the expressions ‘relating to land’ or ‘concerning land’ mean, must therefore focus on the provisions of the Act. It is clear, in my view, that the Act is concerned . . . with title to land, derogations from title and rights which override title. The dispute raised by Lephema’s application, (i.e. assertion of rights by sublease and cancellation and reversal of invalid registration of lease agreement in the **Deed Registry Act**) for example, unquestionably relates to or concerns the property but it is common cause that it is not a dispute ‘relating to’

or ‘concerning’ land within the meaning of the Act. Those expressions are of wide and general import but they must be interpreted in their context so that the dispute, to which they refer are disputes involving **claims to the title, claims relying on derogations from title or claims to rights overriding title.**” [Emphasis supplied] (See **Lephema v. Total Lesotho (Pty) Ltd And Others** C of A (CIV) No.36/2014 dated 24 October 2014 (as yet unreported))

[13] *In casu*, the application is about nullification of the sale of the matrimonial house in a joint estate at a public auction. This auction was unknown by the applicant until execution procedures were triggered by the Messenger of Court and ejectment papers served on her. The question, therefore, is whether the disputes in the matter concern a claim to title, derogations or rights overriding title to land. In my view they do not because the rights that vest in a buyer at a public auction do not fall within the purview of the type of disputes envisaged under the Act.

[14] The answer to the issue raised is given by the Court of Appeal in **Moletsane v. Sethathi** C of A (CIV) No.54/2013 dated 24 October 2014 where the Court said:

“[11] But even accepting that the legal requirements in question were not observed, it does not follow that the whole process were a nullity. It would seem that the attention of the learned judge was not drawn to section 43 of the **Subordinate Courts Order** which reads-

‘A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.’

...the onus was on the party who sought to set aside a sale by the messenger of the court to allege and prove bad faith or knowledge of a defect on the part of the purchaser at such a sale in execution.”

[15] The dispute in this application is not even of the kind which involves the sale of property of a joint estate in a marriage in community of property whereby such property is sold or alienated by one spouse without the consent of the other contrary to section 7 of the **Legal Capacity of Married Persons Act No.9 of 2006**. If this was the kind of dispute, the applicant would have a valid claim as such a sale would be invalid (See **Kobeli v. Moseneke And Others** C of A (CIV) No.28/2014 dated 24 October, 2014) Nevertheless, such a claim would not be justiciable in this Court or the District Land Court as it is not about title, derogation from title or rights overriding title to landed property but impeachment of a private sale of matrimonial property without the requisite spousal consent.

[16] Therefore, to the extent that Rule 9 of the **Land Court Rules, 2012** and Rule 8 of the **District Land Court Rules, 2012** purport to confer jurisdiction or supplement the jurisdiction of the Land Courts, they are

ultra-vires sections 73 and 76 of the Land Act, 2010. Jurisdiction is conferred by an Act of Parliament and not the Chief Justice through delegated legislation.

[17] It is for these reasons that the rule staying proceedings in CIV/DLC/MSU/91/2013 was discharged and this application dismissed with costs.

S.P. SAKOANE
ACTING JUDGE

For the Applicants: K.A. Mariti

For the Respondents: H. Nathane KC