

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LAND COURT DIVISION

LC/APN/97/2013

In the matter between:-

MOLEFI MALAPANE

APPLICANT

AND

TEFO MOHALE

1ST RESPONDENT

‘MAMOHATO MOHALE

2ND RESPONDENT

STANDARD LESOTHO BANK

3RD RESPONDENT

FNB BANK LESOTHO

4TH RESPONDENT

LAND ADMINISTRATION AUTHORITY

5TH RESPONDENT

RULING

Coram : Hon. Mahase J.
Date of hearing : various dates
Date of Judgment : 2nd March 2015

Summary

Land Court – Its Rules and Procedure – Failure by a party to attend Court in violation of the Rules of this Court.

ANNOTATIONS

CITED CASES:

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STATUTES:

- **Land Court Rules, 2012**

BOOKS: None

- [1] This case has been pending before this Court since around the 8th April, 2014. The issues for determination by this Court are a declaratory order and an ejection of the first and the second respondent from the house situated at Sekamaneng in the district of Berea.
- [2] In brief the applicant, the first and the second respondents entered into an agreement of sale of the said house of the respondents to the applicant. All procedural steps were followed to effect same and after the applicant had fully paid the purchase price to the said respondents, the second respondent is now refusing to allow the applicant occupation of the said house. Her reason for such refusal being that her then husband has not sought her consent when he sold the interests to that house to the applicant.
- [3] The applicant had obtained a loan from his bank so that he could pay the purchase price for that house. He is currently liquidating that loan by paying the monthly instalment of M4,200.00 and has had that house bonded.
- [4] All efforts to have the second respondent allow him occupation of that house have failed. The first respondent has already, way back in June 2013 vacated that house so as to allow the applicant to take occupation of same as per their deed of sale.
- [5] The applicant has paid in full the purchase price of M200,000.00 (Two hundred thousand maloti) to both respondents one and two. This is why the first respondent does not oppose this application.

- [6] The first and second respondents who were married by customary rites therefore in community of property have since divorced. However, the second respondent against whom a divorce order was granted has appealed that order, but she has to date not had it prosecuted.
- [7] The second respondent has defiantly remained in that house; which incidentally was originally build or acquired by the first respondent and his first wife who has pre deceased him.
- [8] The reason for having refused to vacate that house; subject-matter herein, is that she now denies having been consulted by her ex-husband when he sold this house to the applicant; as such she says she has never given her consent to the said agreement of sale. This Court only goes this far with the facts because counsel are still to argue the matter further.
- [9] The second respondent was, today, the 2nd March 2015 to go into the witness box to give her side of the story and or to testify so as to convince this Court about her story of never having been consulted before this house was sold to the applicant.
- [10] Counsel for applicant has briefly summarized what happened in court from the very initial stages of this trial. Same are incorporated herein. Suffice it to mention that at all times, it has always been the attitude of the second respondent not to attend court on certain specified dates and or to come to court late even though she had always been in court when the case was postponed to certain specified dates. Never has the applicant nor his counsel absconded for no justifiable reason and without first having informed court

that certain allocated dates would not be suitable to him or his client. The first respondent is a very sickly person who has and is undergoing medical treatment in Johannesburg, but he is always in attendance in court whenever he has been so ordered to attend. Not only that he always informs court if dates allocated will not be suitable for him to attend court and the court always accommodates him so as to avoid any inconvenience. The second respondent never does so.

[11] The dates of the trial on the 2nd March and 9th March were allocated by court for prosecution of this matter, hopefully to finality. The second respondent was to testify in opposition of the application. The 9th March was the date when counsel were to make final submissions. Refer to adv. Lephuthing's affidavit.

[12] However, and to the dismay of this Court and by some strange coincidence, neither counsel for second respondent nor herself were, for unknown reasons, in attendance in Court on that day; the 2nd March 2015.

[13] What later transpired between counsel herein is spelt out in the affidavit filed by counsel for the applicant. In short counsel for the second respondent had forgotten to diarize the case for the 2nd March 2015; and was then on his way to Leribe to attend a workshop. This information does not help much to relieve the said counsel of his duty to attend court. What is most disturbing is the fact that even his client was not in attendance and there is no explanation as to why she too had not attended court.

- [14] This court has already alluded above, to the fact that this is not the first time that she fails to attend court. Be that as it may, counsel, should and knows that a postponement is not there just for the taking. A party who wishes to have the matter postponed should as a principle of the law seek an indulgence of the court to do so. Some justifiable and sound reasons for that application must be advanced so that the court can exercise its mind judiciously on such an application.
- [15] This is particularly so in a case such as the present one where the matter is almost at its final stages, and where any postponement prejudices the other side. No order as to costs in this case can compensate the applicant who is desirous that the matter be finalized as he is repaying the mortgage over the house which he is denied an opportunity to occupy by the second respondent.
- [16] In the absence of both counsel and second respondent before this court, and after this court has been amenable, for a good cause to squeeze this case in its very tight schedule, counsel and his client should have attended court without fail; but regrettably both of them are not before court. To date, there is no effort made by counsel to come to court to explain why he and his client could not attend court. This matter has been prolonged way beyond the time limits and set requirements of the Land Court Rules and the Land Act, which call for speedy resolution of disputes on hand.
- [17] The second respondent's attitude is that of laxity. She and is not concerned about the plight of the applicant. She has therefore displayed reluctance in the prosecution of her defence; much to the prejudice of the applicant.

[18] In the premises, and for the foregoing reasons, it is the considered view of this Court that the second respondent has failed to prosecute her defence.

[19] Counsel for applicant is accordingly at large to proceed with the case in terms of the provisions of Rule 55 (2). No costs order made. Matter postponed to the 9th March 2015.

M. Mahase

Judge

For Applicant - Adv. Lephuthing

For 1st Respondent - In person

For 2nd Respondent - Adv. Maleke