

## **IN THE LAND COURT OF LESOTHO**

**Held at Maseru**

**LC/APN/156/2014**

In the matter between:

**RICHARD MOELETSI**

**APPLICANT**

And

**LETSITSI NDONDOZELA**

**1<sup>ST</sup> RESPONDENT**

**MASERU CITY COUNCIL**

**2<sup>ND</sup> RESPONDENT**

**LAND ADMINISTRATION AUTHORITY**

**3<sup>RD</sup> RESPONDENT**

**'MALETSANG NDONDOZELA**

**4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL**

**5<sup>TH</sup> RESPONDENT**

**CORAM:**

**S.P. SAKOANE AJ**

**DATE OF HEARING:**

**14 NOVEMBER, 2015**

**DATE OF DELIVERY:**

**15 DECEMBER, 2015**

### **SUMMARY**

Application struck off and an attempt made to reinstate it – effect of withdrawal of application – where a matter is withdrawn that is the end, there is nothing to reinstate, Land Court Rules 50 and 61.

### **ANNOTATIONS**

**STATUTES:**

Land Court Rules, 2012

BOOKS:

Celliers et al (2009) Herbstein & Van Winsen, The Civil Practice of The Supreme Court Of South Africa, Vol. 1 5<sup>th</sup> Edition p.750

Herbstein and Van Winsen (1997), The Civil Practice of The Supreme Court Of South Africa, 4<sup>th</sup> Edition (Juta)

## **RULING**

### **I. INTRODUCTION**

[1] This is an application for reinstatement of an originating application LC/APN/156/2014 in which the applicant had sued the first three respondents. The application seeks to now join the last two respondents in LC/APN/156/2014.

[2] LC/APN/156/2014 was struck-off the roll on 14 November, 2014. This was after it transpired during the preliminary hearing that the matter had first been launched in the District Court and then “withdrawn” at the close of the applicant’s case. The “withdrawal” was done at the instance of the applicant. Upon this information being revealed, a ruling was made that application be struck-off the roll as it had been improperly instituted.

[3] The applicant is back in this Court seeking the following main reliefs:

- “a) Reinstating to the active roll of this Honourable Court, the proceedings in the main application in LC/APN/156/2014 which were withdrawn on the 25<sup>th</sup> November 2014;*
- b) Joining ‘MALESANG NDONDOZELA and THE ATTORNEY-GENERAL as the 4<sup>th</sup> and 5<sup>th</sup> Respondent respectively, in the main application in LC/APN/156/2014”.*

## II. MERITS

[4] This application for reinstatement brought by the applicant after getting legal opinion “to seek the relief he has applied for in the present proceedings.” It is also alleged that the applicant’s former Counsel of record “was over-cautious and/or probably felt duty bound to follow this Honourable Court’s advice” in withdrawing the main proceedings in LC/APN/156/2014.

[5] The 1<sup>st</sup> respondent has filed an answer to the reinstatement application in which he refers to the applicant’s “Notice of Withdrawal” of LC/APN/156/2014 filed in the Court on 26 November, 2014. The answer raises two legal points:

- (a) That the matter is not suitable for reinstatement;
- (b) Lack of jurisdiction.

### III. ANALYSES

- [6] The relief sought by the applicant is to reinstate proceedings “which were withdrawn on the 25<sup>th</sup> November, 2014”. The withdrawal notice was filed the following day on the 26<sup>th</sup> November, 2014. As I reason hereinafter, once the notice of withdrawal was filed, the matter was no more in court, let alone on the so-called inactive roll. This means that there cannot be any reinstatement of a matter which is not pending in court.
- [7] Withdrawal of proceedings is governed by rule 61 of the **Land Court Rules, 2012**. Withdrawal is a right which is exercisable and allowable subject to leave of the Court. But since the withdrawal herein was done after the matter had been struck off the roll, it is not necessary to determine its propriety or impropriety. What matters is that it was made and the Attorney for the 1<sup>st</sup> respondent accepts it. The withdrawal is, therefore, a common cause fact which is dispositive of the matter.
- [8] Counsel for the applicant contends that the withdrawn matter should be “reinstated” because its withdrawal was done on the advice of the Court. Apart from the fact that a court is not an advisor of the legal representatives of litigants, the application has no basis in fact and law.

[9] A day before the matter was withdrawn, I struck the matter off the roll on the ground that it was improperly brought into this Court. This was after the legal representatives of both sides had disclosed that the matter had been partly litigated in the District Land Court up to the point at which it was withdrawn at the close of applicant's case. The propriety of that act is the one that raised issues around forum-shopping. Absent any satisfactory explanation for any reasons for the "withdrawal" of a part-heard matter and non-disclosure of that fact in the originating application, I felt that the applicant was abusing court processes. Hence the matter was struck out.

[10] Now, the applicant acting on legal advice, seeks to "reinstate" the application. The rules of this Court do not contemplate such a procedure. The relevant rules are rules 50 and 52. These rules provide for reinstatement but only of applications that are struck out for failure of parties to appear at court hearings. So where there are abuses of court processes, the inherent jurisdiction of the court to control and prevent abuse of its procedures is the controlling of legal principle in the matter. And in this regard, an abuser of court processes and procedures cannot "reinstate" that which a court frowns upon and rejects: see Herbstein and

Van Winsen (1997) **The Civil Practice Of The Supreme Court Of South Africa**, 4<sup>th</sup> Edition pages 38-39.

[11] Normally there is nothing that a court can do if a litigant desires to withdraw a matter. An exception is in instances where the withdrawal constitutes an abuse of process or the justice of the matter requires that finality be reached. In such instances, the court can dismiss the matter or enter judgment in favour of the respondent/defendant: see Celliers et al (2009) Herbstein & Van Winsen, **The Civil Practice Of The High Court And The Supreme Court of Appeal of South Africa**, Vol.1 5<sup>th</sup> Edition p. 750. *In casu*, the applicant has withdrawn the application twice: first in the District Land Court and now in this Court. He wants to reinstate the withdrawn application. This he cannot do that as there is no application that is lying dormant that can be reinstated.

## **I. DISPOSITION**

[12] I hold that for these reasons, the application is misconceived and falls to be dismissed with costs.

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**S.P. SAKOANE**  
**ACTING JUDGE**

**For the Applicant:** M. Nathane KC instructed by V.M. Mokaloba & Co.

**For the 1<sup>st</sup> Respondent:** Q. Letsika of Mei & Mei Attorneys Inc.