

# IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LC/APN/12/2012

In the matter between:-

**KENEUOE LEPHOLISA**

**APPLICANT**

**AND**

**MOLELEKI LEPHOLISA  
THABISO LEPHOLISA  
KHOJANE LEPHOLISA  
KOLISANG MOCHESANE**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT**

## **JUDGMENT**

**Coram : Hon. Mahase J.  
Date of hearing : Various dates  
Date of Judgment : 17<sup>th</sup> February, 2015**

### **Summary**

*Land Court Procedure – Jurisdiction of Land Court Devolution of property – Applicant being the only surviving child of deceased – Applicant being a married lady – Whether or not applicant is entitled to inherit property of her late father after the death of her father – Her mother having predeceased applicant's father – whether this Court has jurisdiction to appoint applicant as sole heiress to her late father's estate – Applicant's father having died interstate.*

### **ANNOTATIONS**

#### **CITED CASES:**

- **Lephema v. Total Lesotho (PTY) LTD. And 9 others C. of A. (Civ) No. 2012**
- **Likotsi Civic Association and 14 Others v. The Minister of Local Government and 4 Others C. of A. (Civ) No. 42 of 2012**

#### **STATUTES:**

- **Land Act No. 8 of 2010**
- **Land Court Rules No. 1 of 2012**

- **Administration of Estates (Proclamation No. 19 of 1935) – section 2 read with section 60 thereof.**

## BOOKS

[1] Briefly the applicant who is the only surviving child of the deceaseds Kali and Mamaema Lepholisa approached this Court seeking inter alia, the following orders:

- That she be declared the sole heiress to her deceased parents' estate. These include
  - a) Pieces of land situated at Qoaling in the district of Maseru. These comprise developed residential and commercial sites.
  - b) A Developed residential site situated at Tsikoane in the Leribe district.
- Release to her of her late father's firearm and its certificate and all other documents relating to same.

[2] The issue relating to her father's monies which were held in the Standard Lesotho Bank referred to at sub-paragraph 7.4 of her originating application do not form part of this application since same have already been released to her.

[3] The fact that applicant's father died intestate is of common cause. So also is the fact that the applicant is the only surviving child born of the marriage between her deceased parents; as well as the fact that she is a married lady but that she has since returned to her parental home and

resides at the residential property at Qoaling. So also is the fact that she is/was married at the Moeketsi family.

- [4] There is a very material dispute of fact with regard to the ownership by her father of the properties i.e. land in both Tsikoane and Qoaling. Refer to the respondents' answer at paragraphs 3 and 4.
- [5] In a nutshell, it is the respondents' argument that the said land, residential, commercial and agricultural situated in the above-named districts are the Lepholisa family property even though resolution and decision by a family allowed the applicant to remain in occupation of the property at Qoaling.

It is not clear whether or not the above arrangement includes the commercial site at Qoaling.

- [6] Of course, the respondents have raised a point of law in relation to the jurisdiction of this Court to deal with this application. From the onset, it should be highlighted that in terms of the provisions of the Land Act No.8 of 2010, courts which have been established to deal with and to hear or determine disputes, action and proceedings concerning land are;
- a) The Land Court and
  - b) District Land Courts
- [7] The Land Court is a Division of the High Court and its procedure is in turn governed by the Land Court Rules No. 1 of 2012. In terms of the provisions of Rule 66 the court is empowered, in mandatory terms to decide such objections as may be made by the parties by way of a special answer. The

objections which any party to the proceedings is allowed to make are spelt out in Rule 66(2). For our purposes, the respondents have raised and or have made an objection in respect of jurisdiction of this court to deal with this application.

[8] It is their argument that in terms of the provisions of Rule 66 which dictates that a preliminary objection be raised by way of the special answer; then the applicant's suggested approach that the jurisdiction issue be dealt with in limine simply because it forms part of the respondents' answer is a wrong approach.

[9] The provisions of Rule 66(1) are not in any way ambiguous such that parties can strife to argue to convince this Court how best to go about the disposal of a preliminary objection. It simply provides in a clear language that such an objection i.e. a preliminary objection should be decided by the court before proceeding with the trial.

[10] That such an objection has to be dealt with alongside the merits, regard being had to the manner it has been dealt with in the papers; is not in consonance with the procedure therein spelt out. Of course, the said court Rules envisage a trial. However for removal of doubt it may be prudent to reproduce the relevant portions of the said provisions of this Rule:-  
Preliminary objection

66(1) *“Before proceeding with the trial, the court shall decide such objections as may be made by the parties by way of a special answer”.*

*(2) Any party may make an objection on the following grounds;*

*a) that the court has no jurisdiction*

*b) .....etc.*

[11] The provisions of Rule 9 of the Rules in question i.e. the Land Court Rules, supra provide for specific jurisdiction of the Land Court. These are;

9 (1) (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. Obviously, and regard being had to the applicant's reliefs sort, there is no doubt in the mind of this court that none of such reliefs fall within the jurisdiction of this Court. They can therefore not be dealt with by this court which by law, has no jurisdiction to deal with such disputes.

[12] The applicant has not been appointed an heir to the estate in question. There is in fact in existence a material dispute of fact as to whether or not the land in question belonged to her own parents or is the property of the Lepholisa family.

[13] Even assuming without conceding that there was no such dispute, there is no documentary evidence filed in support of the applicant showing that she has inherited such land formally.

[14] The crux of the applicant's application is based on inheritance or on succession. However, she cannot succeed on this because, she has not been

appointed an heir to that estate. This is aside from the fact that she has since been married and also her father has died intestate.

[15] The basis upon which she claims to be the rightful person to be appointed an heir to her father's/parents' estate has not been explained except that she is the only surviving and biological child of the deceased persons, Kali Aledander and 'Mamaema Lephholisa. The fact that she is married and has since assumed the surname of Moeketsi has not been disclosed by her to this Court.

[16] This Court does not clearly have jurisdiction to deal with disputes relating to claims based on inheritance and or succession; nor can it deal with matters regarding a declarator based on heirship. Such issues can be adjudicated upon by the High Court exercising its normal civil jurisdiction.

[17] It is trite that, matters regarding heirship should initially be dealt with by the family council before it is challenged before any court of law. As has been alluded to above, it is not the applicant's case that she or somebody else has been appointed by the Lephholisa family as an heir to this estate.

[18] There is no doubt that even the applicant's claims or relief sort at subparagraph 8.4 relating to her father's firearm does not at all fall within the jurisdiction of this Court.

[19] In conclusion, this Court does not even have incidental jurisdiction in relation to the above claim; why counsel had it included in this application is not understandable.

- [20] It has been suggested that this court is obliged to conduct a trial in order to determine whether this is strictly a land dispute or a succession or inheritance dispute (sub-paragraph 12.4 of respondents' written submissions). With the greatest respect this is not the duty of this Court. Counsel are to acquaint themselves with the provisions of the Land Act as well as of the relevant Rules before they advise their clients as to the course they are to follow in launching the applications at the instance of their clients. They, and not this Court are paid to give sound legal advice to their clients. The duty of this Court is to adjudicate and not to advise counsel.
- [21] The submission, advanced in support of the applicant's case with reference been made to the provisions of section 35(2) (a) of the Land Act (supra) does not advance the applicant's case in anyway, for the simple reason that this court has no jurisdiction to deal with matters relating to succession; especially in the light of the fact that the applicant has not been formally appointed an heir to her parents' estate.
- [22] Also, and as has been indicated above, there is a material dispute of fact in regard to her late parents' ownership of the land in question.
- [23] In the premises, and for the foregoing reasons the applicant's application is dismissed. This being a family issue, no order as to costs is made.

**M. Mahase**

**Judge**

For Applicant:- Adv. M.V. Khesuoe

For Respondent:- Adv. T. Mpaka