

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LAND COURT DIVISION

LC/APN/04/2012

In the matter between:-

RANGAKA LETEBA

APPLICANT

AND

ZOE PRAISE PRIMARY SCHOOL COMMITTEE

1ST RESPONDENT

MOHAU KOTSI

2ND RESPONDENT

LAND ADMINISTRATION AUTHORITY

3RD RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 14th February, 2014
Date of Judgment : 25th February, 2015

Summary

Land Court – Land Court procedure, Rules – Default judgment having been granted against the applicant – Applicant applying for rescission of same

ANNOTATIONS

CITED CASES:

- Chetty v. Law Society Transvaal 1985 (2) S.A. 756 AD at 765
- Thamae and Another v. Kotelo and Another, LAC (2005 – 2006)
- Loti Brick v. Mpofu 1995 – 1996 LLB & LB 446 at 450
- Bossman Transport Works Committee & Others v. ret 1980 (4) 794 (A)

STATUTES:

- Land Court Rules, 2012

BOOKS: None

- [1] This is an application for rescission of default judgment that was granted by this Court against the applicant/1st respondent on the 6th December 2013. Subject matter herein are two sites of lease number 13301 – 734 and 13301 – 735 both situated at Ha Seoli next to Cheapside supermarket. Initially, the said site had been registered in or by the 3rd respondent in the names of the 1st applicant/1st respondent and were by order of this Court referred to above, effectively transferred into the names of the 2nd respondent/2nd applicant.
- [2] The applicant/1st respondent has now approached this Court in terms of the provisions of Rule 57 of the Land Court Rules of 2012, asking this Court to grant rescission of the default judgment granted on the 6th December 2013. For reasons spelt out in the certificate of urgency attached to the originating application, the applicant alleges that should the normal periods of service not be dispensed with, he stands to suffer undue hardships, irreparable harm and prejudice because the third respondent may have effected the order of court in question.
- [3] The applicant/1st respondent further informed this Court that the order of court in question was brought to the attention of his legal representative on the 15th January 2014. If this be so, then this application for rescission has been filed within the time period provided for in Rule 57(1).
- [4] Reasons underlying the launching of the instant applicant are spelt out in the originating application dated the 16th January 2014, filed in this Court on the 17th instant. Refer to contents of same at paragraphs six up to 12. I need not repeat same. Contents therein are incorporated herein.

- [5] Be that as it may, the crux of the applicant's complaint is that the 6th December was actually not the day in which, according to the provisions of Rule 63, the parties should have attended court for a pre-trial conference since no such pre-trial conference had been held as provided for in the said Rule; and that this Court had never allocated the 6th December 2013 as a day in which they were to appear in court for any business of the Court.
- [6] Indeed, a proper reading and perusal of the court minutes as well as of the contents of the annexures RL1 up to RL4, referred to by the applicant reflect no indication that the 6th December 2013 was ever allocated by this Court to the parties herein as a date for the pre-trial conference in this matter. In fact no pre-trial conference was held in this matter. This is clearly contrary to the provisions of Rule 63. Not only that, even the provisions of Rule 64 of the said Rule of this Court have never been invoked prior to the moving of an application in terms of the provisions of Rule 57 (supra).
- [7] In the premises, and without deliberating on this matter any further because it is also very clear ex facie the Court minutes that the date in question was never allocated by court to any of the parties, and further because no pre-trial conference was ever held, contrary to the clear provisions of Rule 63 (supra) nor were parties ever examine as per provisions of Rule 64 (supra).
- [8] Both counsel have ably and clearly articulated all the legal principles applicable in applications of this kind. The Court is most indebted to them.

[9] It is indeed not in dispute that the matter was never allocated a date of the 6th December 2013, prior to the said default judgment having been granted. It is therefore the considered view of this Court that for reasons stated above, and regard being had to the surrounding circumstances of this case, the applicant's application should and is accordingly granted as prayed. The applicant has clearly ably satisfied the court that there was good cause for his non-appearance on the day that the default judgment was granted against him.

[10] Parties are ordered to approach the office of the Deputy Registrar to obtain another date for the pre-trial conference so that the provisions of Rules 63 and 64 of the Rules of this Court should be complied with.

M. Mahase

Judge

For Applicant	-	Adv. P.V. Ts'enoli
For 1 st Respondent	-	Adv. A.M. Chobokoane
For 2 nd and 3 rd Respondents		No appearance