IN THE LAND COURT OF LESOTHO

Held at Maseru

LC/A/03/2016

In the matter between:

DANIEL RANTLE **APPELLANT**

And

THE METHODIST CHURCH OF SOUTHERN AFRICA **1ST RESPONDENT**

ZIPHOZIHLE DANIEL SIWA – PRESIDING BISHOP OF MCSA OBO METHODIST CHURCH OF SOUTHERN AFRICA **2ND RESPONDENT**

CHAIRMAN MORGAN – EXECUTIVE SECRETARY OF MCSA OBO METHODIST CHURCH OF SOUTHERN AFRICA **3RD RESPONDENT**

CORAM: **S.P. SAKOANE J.**

DATE OF HEARING: **02 NOVEMBER, 2016**

DATE OF DELIVERY: **21 NOVEMBER, 2016**

SUMMARY

Condonation for the late filing of appeal – appellant failing to file record within period stipulated by Rules – whether sufficient explanation made for delay in applying for condonation as well as delay in filing record of appeal. Other problem being that the appellant had not applied for stay of execution of the order and still refused to comply with the order – whether the court should hear appellant – appeal struck off.

JUDGMENT

I. INTRODUCTION

[**1**] This matter comes to the Land Court by way of an appeal from the District Land Court. The judgment of the District Land Court was handed down on 16 March, 2016. The following day, on 17 March 2016, the court *a quo* made the following order:

> "1. The First Respondent, Daniel Rantle, is ordered and directed to relinquish and hand over to the First Applicant full possession and control and use and enjoyment of the property more fully described in the records of the Registrar of Deeds as "**Certain Ecclesiastical and Educational Site, described as Site number 81, Stadium, Maseru Reserve**" physical address is Old Airport Road, Stadium Area, Maseru.
>
> 2. The First Applicant is in law declared to be the true beneficial owner and holder of all rights that attach to the property referred to in paragraph (1) above to the exclusion of all others, in particular the First Respondent.
>
> 3. The First Respondent must pay to the Applicants the costs of this application on a party and party scale."

[2] The first Notice of Appeal dated 16 March 2016 was addressed to the Clerk of the District Land Court and Attorney, for the respondents. It reads thus:

> "**SIRS;**
> **KINDLY TAKE NOTICE THAT** the **1st Respondent**, being dissatisfied with the final decision and judgment of the Honourable Court dated 16th March 2016, hereby note (sic) an appeal against such decision and judgment.
>
> The grounds of appeal are hereto annexed and marked "**A**", and the 1st Respondent reserves the right to provide further and additional grounds once the written decision and judgment of the Court has been furnished to him."

[**3**] A second Notice of Appeal dated 16 March, 2016 was filed on the 17 March, 2016 addressed to the Registrar of the Land Court and Attorneys for the respondents. Significantly, this Notice of Appeal states:

> "KINDLY FIND ATTACHED, THE NOTICE OF APPEAL BY THE APPELLANT AGAINST **THE FINAL DECISION AND JUDGMENT** OF THE COURT BELOW (DISTRICT LAND COURT FOR MASERU). [Emphasis added]

[**4**] A third Notice styled "AMENDED NOTICE OF APPEAL" dated 1 August, 2016 was addressed to the Registrar of the Land Court and Attorneys for the respondents. It "amends, adds to and/or vary the Notice of Appeal previously filed with the District Land Court, Maseru and this Honourable Court on March 2016 and should be read together therewith". In the attached "further grounds of appeal", there is repeated

reference to "The court *a quo* erred and misdirected itself in granting the orders and making the final judgment/decision/order".

[**5**] The record of appeal was filed in the Registry of the High Court, which is also the Registry of the Land Court, on 1 August, 2016. This was approximately 107 days after the issuance of the Order of the District Land Court referred to in para [1] above. It is certified in terms of Rule 89 (4) of the **Land Court Rules**, 2012 as "the true and correct record of pleadings and judgment in the Court below".

Condonation

[**6**] Rule 90 (3) of the **District Land Court Rules**, 2012 obliged the appellant to file the record of appeal within 45 days of the delivery of the judgment. Because of the inordinate delay, a condonation application for the late filing of the record and leave to deliver the third amended Notice of Appeal with further grounds of appeal was filed and moved on the date of the hearing of this appeal. The respondents have not filed any opposing papers. Their stance projected from the Bar is that the Court should not hear this appeal for the reason that the respondent is in contempt of the Order of the court *a quo*. I shall return to this argument after I have considered the condonation application.

[**7**] The grounds advanced for condonation, as articulated in the appellant's affidavit, can be succinctly stated to be:

7.1 The final judgment handed down by the District Land Court on 16 March 2016 was *ex tempore* - with a promise that a written one would follow later.

7.2 The written judgment was not forthcoming from the learned Magistrate despite repeated requests.

7.3 On 26 July, 2016, a copy of the written judgment was acquired from the respondent's attorneys. It is also on this date that a certified record of proceedings was also released to the appellant's Counsel by the Clerk of Court.

7.4 It was in the course of preparing the appeal record on 29 July, 2016 that Counsel "discovered that he had left out from the previous Notice of Appeal certain contents prescribed for notices of appeal by the Rules…… The Notice of Appeal therefore did not comply with the Rules regulating content of notice of appeal, in particular, Rule 91 of District Land Court

Rules 2012 and Rule 92 of the Land Court Rules 2012".

7.5 The appeal has reasonable prospects of succeeding because the 1st respondent is a *peregrinus* who is statutorily debarred from holding title to land in the Kingdom and, thus, does not have *locus standi*.

7.6 The matter is important to the 1st respondent and its members as they need "to know whether or not they continue to have title therein or the land has in law reverted to Basotho nation".

Test for condonation

[**8**] The principle governing consideration of condonation has recently been restated by the Court of Appeal in **Nthane Brothers (Pty) Ltd v. Tšiu** C of A (CIV) No.44/2015 (28 October 2016) to be this:

> *"[14] The test to be applied when it comes to an application for condonation has been stated on many occasions, including in this court [e.g.* ***National University of Lesotho v. Thabane*** *LAC (2007-2008) 476 para 11]. In* ***Van Wyk v. Unitas Hospital & another*** *2008 (2) SA 472 (CC), the South African Constitutional Court summarized the requirements for an explanation in an application such as this one as follows:*

'An applicant for condonation must give full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable.'"

[**9**] It is also necessary that an appellant who realizes that he/she has not complied with the Rules, to apply for condonation without delay. Thus, the full explanation must cover (a) the delay in seeking condonation and (b) the delay in complying with the Rules: See Herbstein and Van Winsen **The Civil Practice Of The High Courts And The Supreme Court Of Appeal Of South Africa** Volume 2, 5th Edition p.1234

Is there a full and reasonable explanation for the delay?

[**10**] The form and time of appeal from the District Land Court to the Land Court is governed by Rules 90 and 91 of the **District Land Court Rules, 2012** and Rules 91 and 92 of the **Land Court Rules, 2012**.

[**11**] Rule 90 (3) of the **District Land Court Rules** provides that:

"The notice of appeal together with the court records shall be filed with the Land Court within forty five days of the judgment appealed against being delivered."

The contents of the notice of appeal, as laid down by Rule 91, must include, *inter alia*, a certified copy of the full record of the proceedings. Rules 91 (3) and 92 (2) of the **Land Court Rules** are to the same effect.

[**12**] Therefore, the appellant should have filed a notice of appeal together with a certified copy of the full record of proceedings within 45 days of the delivery of judgment. Admittedly he did not do so. He concedes that "the notice and the record ought to have been filed by 30th April 2016 alternatively, if Sundays and public holidays are excluded (and he mentions none of such), the 7th May 2016". It be remembered that according to section 49 (2) of the **Interpretation Act No.19 of 1977**, the doing of anything in the last day of a prescribed period is only excused if such last day falls on a Sunday or public holiday. *In casu*, both 30th April and 7th May do not.

[**13**] Although notices of appeal were filed in the court *a quo* and this Court on 16 and 17 March 2016 respectively, those notices, minus certified copies of records of proceedings, did not constitute compliance with the Rules.

[**14**] On a calculation of the period of delay from 1 May to 31 July 2016, the appellant has delayed for 92 days – which is at least twice the 45 days

period within which the record ought to have filed. The explanation that the appellant's Counsel was battling to get a written judgment from the learned Magistrate won't wash for the following reasons:

14.1 A signed court order by the learned Magistrate and the Clerk of Court was available from 17 March, 2016. No reference is made to the Court Order in the appellant's second notice of appeal referred to in para [3] of this judgment. This, I consider, is a material omission in that it is trite law that an appeal lies against an order and not reasons for judgment. A record of proceedings accompanied by that court order should have been filed within the 45 days period and, if that was done, it would have constituted substantial compliance with the form, time of appeal and contents of the notices of appeal under the Rules. The notices of appeal should have indicated the desire of the appellant to amend the grounds of appeal upon receipt of a written judgment. However, there is no explanation for failure to acquire and file the court order with the record of proceedings between 17 March and 28 July.

14.2 The written judgment is dated 16 March 2016. There is no suggestion that this is not the correct date. Much store was laid, during oral argument, on the difference between 16 March 2016 and the 18 May 2016 on the rubber-stamp. But I am not told who put that rubber stamp and what purpose it serves. What is relevant and important is that a written judgment was there all along. It, therefore, does not make sense for the judgment to have been available to the respondents' attorneys and not the appellant's legal representatives. The appellant is not forthcoming about where, how and from whom the respondents' attorneys got a written judgment and, more importantly, whether any steps were taken to ascertain from the Clerk of Court where this judgment was between 18 May and 28 July 2016.

14.3 As soon as the appellant realized that the 45 days period would prescribe on 30 April or 7 May 2016 (it does not matter which), he should have made an application to court for an extension of the period and

production of the record of proceedings. This he never did.

14.4 The argument of prospects of the appeal succeeding rests on the assertion that the 1st respondent is a *peregrinus* whose status is not legally countenance for holding title to land. A quietus is put to this assertion is by the Court of Appeal in **Rantle v. Methodist Church of Southern African And Others** C of A (CIV) 34 2016 (28 October 2016) in regard to the 1st respondent's status:

> "[4] As the name indicates, the MCSA carries on its work in Southern Africa, which includes the Republic of South Africa, Botswana, Lesotho, Mozambique, Namibia and Swaziland. The head office of the church is situated in Johannesburg. In Lesotho, the MCSA operates under four circuits. It has various property interests in Lesotho, including churches, mission stations, a hospital, schools and an orphanage. Some of these are held in its own name while others are held in the name of the company, and entity constituted in January 1984 by the MCSA and for its benefit, *inter alia* ho hold property on its behalf.
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> [5] The company was constituted under the Lesotho Companies Act, 1967 with three subscribers, Rev Daniel Jacob Senkhane (the former Superintendent of the MCSA in Lesotho), Jakob Teboho Semane and Joseph Hlehlethe, who were also its first directors. The last-mentioned two directors passed away sometime before the present proceedings commenced and they were never replaced. Sadly, Rev Senkhane also

> passed away shortly after these proceedings were instituted, but not before deposing to a confirmatory affidavit on behalf of the company, about which more later.
>
> ……
>
> [9] It is clear from the voluminous record herein that there has been a long-standing feud between the MCSA and Rantle. He was ordained a minister in the MCSA in Bloemfontein in 1990. After serving in QwaQwa and Bothaville, he came to Lesotho, his home country, during January 1999, where he served as the Circuit Superintendent of the Maseru Circuit. However, a dispute arose between him and the MCSA and disciplinary proceedings were instituted against him during 2006, which he failed to attend. In the result, he was found guilty (in his absence) of misconduct and was 'discontinued from ministry in the MCSA' i.e. he was expelled as a minister and a member.
>
> ……
>
> [25] I am satisfied that, on the facts of this case, the MCSA has a real and substantial interest in the company so as to entitle it to approach the court for relief on its behalf. While they are undoubtedly separate legal entities, the Memorandum and Articles of Association of the company make it clear that, in reality, the company is the *alter ego* of the MCSA. The MCSA also has a reversionary interest in those assets, which are held 'in trust' on its behalf and which are to revert to it upon dissolution or winding up of the company. As a fact, therefore, the MCSA remains the true beneficial owner of such assets."

[**15**] Among the assets of which the 1st respondent is the beneficial owner is the property described in paragraph 1 of the court order which is on appeal before this Court. I then do not see how this Court can come to a

different conclusion on the issue as to who owns the property under reference.

[**16**] From the aforegoing, I incline to the view that the appellant has not given a full, acceptable and reasonable explanation for non-compliance with Rules.

Contempt by the appellant

[**17**] The matter takes a much more serious dimension in the light of the objection, raised from the Bar by Mr. *Woker*, which is that the appellant has refused to comply with the court order issued on 17 March, 2016.

[**18**] The bedrock of the objection is Rule 109 (3) of the **District Land Court Rules**. This Rule reads as follows:

> *"Where an appeal has been preferred against the judgment of the court, the magistrate shall not order for stay of execution, unless execution will likely result in irreversible damage in the event that the judgment is reversed by the appellate court."*

[**19**] The appellant, I was told, has not applied for stay of execution of the court order and is still in occupation and possession of the property

despite attempts by the respondents to get hold of the property with the assistance of the Messenger of the court below.

[**20**] Mr. *Maqakachane* does not dispute the assertion that the appellant has neither applied for stay of execution of the order nor that he is still in occupation and possession of the property. His argument is that the court order says the appellant must "handover" the property but he is unable to do this because the respondents have not come forward for the "handover" to be done.

[**21**] Indeed Mr. *Maqakachane* could have no better argument to make – regard being to the Court of Appeal's observations about the appellant's conduct in his other appeal in **Rantle v. Methodist Church of Southern Africa And Others** C of A (CIV) No.24/2016 (28 October, 2016). The Court of Appeal said this:

> "[20] Counsel for the respondents submitted that quite apart from the jurisdictional issue, the appeal should not be entertained because of the manner in which the proceedings were conducted in the court below. In my view there is merit in this submission. A recital of the steps taken by the appellant will reveal why I am of this view-
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> - On the 22nd of March the appellant's attorney advised the attorneys for the respondents that they intended applying for a stay of the order granted by the District Land Court and would give them reasonable notice thereof. **Notice of an application for stay, to be heard in the District Court at 15h30 on the same day, was served on the respondents' attorneys at 14h30**.
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> - **On the same day**, (the time when this occurred is not apparent from the papers) **the appellant secured, without notice to the**

respondents, a stay of the order of the District Court in the terms set out in para (6) above.

- **As soon as the interim relief had been obtained in the High Court, the appellant withdrew his stay application in the district court**.

Counsel for the respondents submitted further that the manner and timing of the applications brought by the appellant as set out in this paragraph point to bad faith on the part of the applicant which justified the award of a punitive costs order against him.

[21] A court may order a party to pay his opponent's attorney-and-client costs where he has misconducted himself gravely in the conduct of the case or on the grounds of an abuse of the court process.

[22] **The interim stay order in the High Court was not necessary for the declaratory relief which the appellant sought and one is left with the inescapable conclusion that the procedure was designed so as to enable the appellant 'snatch' the order which he secured in the High Court**. This was clearly, in my view, an abuse of the court process which requires this court to express its disapproval of by making a punitive order of costs against the appellant." [Emphasis added]

[**22**] Moreover, it cannot escape the memory of this Court that the very interim rule was discharged by the High Court on 2nd June 2016 in CIV/APN/91/2016 – such that the court order remains in place and cries for compliance.

[**23**] Thus, the argument in justification of appellant's conduct is a specious one and is self-serving in that it ignores the crucial words of "relinquish" and reference to the 1st respondent herein as "the true beneficial owner and holder of all rights" of the property. This being immovable property,

it does not make sense for the appellant to still be in occupation and possession thereof as if he is obligated to guard it against it being unlawfully taken over by strangers. If he is doing this for the benefit of the 1st respondent as the true owner, why does he not give the keys to the Messenger of Court? Or does he not trust them as well? If so, why not hand-over the keys to the respondents' attorneys if he does not want to see the face of the 1st respondent?

[**24**] These questions are raised not to be answered, but to illustrate the disdain, if not impunity, with which the appellant treats the court order. This admittedly contemptuous behavior by the appellant cannot be countenanced. This Court sets its face sternly against this type of conduct and does not, therefore, see its way clear to hearing the appellant's appeal until he starts behaving like a law-abiding citizen.

[**25**] The rule of law and preservation of the integrity of the judicial system dictate that the appeal should not be entertained. As noted by the learned authors of **Herbstein & Van Winsen** (supra) p.1111:

> "The court could refuse to hear a person who has disobeyed an order of court until he has purged this contempt. The fact that a party to a cause has disobeyed an order of the court is not of itself a bar to being heard, but if the disobedience is such that, for a long as it continues, it impedes the course of justice in the cause by making it more difficult for the court to ascertain the truth or to enforce its orders, the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not first be removed."

[**26**] The appellant is disallowed from benefitting from judicial protection while he is still not prepared to respect the Court Order of the District Land Court.

II. DISPOSITION

[**27**] No case has been made for condonation for failure to comply with the Rules. Furthermore, the appellant wants to continue litigating in the face of unjustified non-compliance with the very order which he is challenging on appeal.

[**28**] It is for these reasons that the appeal was struck-off the roll with costs on 2nd November.

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S.P. SAKOANE
JUDGE

For the appellant: S.T. Maqakachane

For the respondents: H.H.T. Woker