IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LCC/APN/05/2012

LAND COURT DIVISION

In the matter between:-

ROMA VALLEY CO-OPERATIVE SOCIETY	**APPLICANT**

AND

LESETELI MALEFANE	**1ST RESPONDENT**
OM INVESTMENTS (PTY) LTD	**2ND RESPONDENT**
THE DIRECTOR OFLAND ADMINISTRATION AUTHORITY	**3RD RESPONDENT**
LANDS ADMINISTRATION AUTHORITY	**4TH RESPONDENT**
REGISTRAR OF LANDS	**5TH RESPONDENT**
ATTORNEY GENERAL	**6TH RESPONDENT**

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : Various dates
Date of Judgment : 23rd February, 2016

Summary

Land Court Procedure – Cancellation of a lease allegedly obtained in the names of the first respondent- Cancellation of a sub-lease agreement between first and second respondents – Declaration order sought by applicant that it is the sole owner of the plot in question.

ANNOTATIONS

CITED CASES:

- **Bater v. Bater (1950)2 All E.R. 458**
- **Molapo v. Molefe LAC (2000-2004)771**

- **Nqojane v. National University of Lesotho LAC (185 -89, 369**
- **Sea Lake (PTY) LTD. v. Chung Hwa Enterprieses Co. (PTY) LTD and Another, LAC (2000-2004), at 190**
- **'Matau Makhetha v. Rex LLR 1974 – 75, 431**

STATUTES

- **Land Acts 1973 and 1979**
- **Deeds Registry Act No. 12 of 1976**

BOOKS

- **Schwikkard and Van Der Merwe – Principles of Evidence, 2nd Edition 2002**

[1] The applicant is a cooperative society duly registered in terms of the laws of Lesotho. It is an owner of plot no. 18333-136, situate at Ha Scout Roma in the district of Maseru. The site in question was obtained from its original owner one Mrs. Blandina Tjamabu on or around April 1976 and was subsequently formally allocated to the applicant by the relevant land allocating authority in terms of the law then applicable; namely the Land Act of 1973. It was duly issued a form C; herein annexed as exhibit "B" – page 8 of the paginated record.

[2] The first respondent's wife, Mrs Malenka Malefane was employed by the applicant as a clerk from 1976 to 1990. On the other hand, the first respondent did serve as a board member of the applicant.

[3] In fact, the applicant has another office situated at or near the Roma Police Charge Office. This is where it official offices operate from and the board operates from this office. The first respondent's wife

resigned from the employ of the applicant in 1990. However, around that time, she reported to her employer that the key to the cabin in which the form C of the applicant was kept had gone missing.

[4] The above fact was reported to the chief of the area who with the assistance of the applicant's members was able to re-issue another Form C to the applicant. It is not quite clear if he reissued another Form C or whether some of the applicant's members had with them copies of the original Form C. What is clear is that the applicant has a Form C issued in its names.

[5] However and to the dismay of the applicant and its members, they realized in the year 2011 that someone was carrying on with some developments at their said site. An investigation revealed that actually the developer was the second respondent and that it was in possession of a sublease agreement with the first respondent for second respondent to develop the site in question.

[6] The applicant also discovered that the first respondent had since been issued with a lease document in his own names in respect of the applicant's site, subject matter in this application. The applicant called as its witnesses nine witnesses all of whom are people born and raised at Roma and are all original residents of Roma. I will deal with their evidence in due course.

[7] The first respondent opposes the application and has filed his answer in terms of the Rules of this Court. He testified in his defence and he

introduced some documentary evidence as exhibits in support of his case.

[8] Most of the facts above are of common cause including in particular the fact that the first respondent's wife was employed as a clerk of the applicant and that the first respondent served in the Board of Directors of the applicant; as well as the fact that the original Form C of the applicant mysteriously went missing from the cabinet files of the applicant at the time when the wife of the first respondent was employed as a clerk by the applicant and that she resigned from the applicant's employ shortly after that document had gone missing; from where she as a clerk had kept it.

[9] Also of common cause is the fact that after the applicant was formed, incorporated and operated in this country, around 1976 after it acquired the site in question from PW3's late mother, a house was built on it by the applicant. The builder was one Mr. Rasemethe Thaanyane.

[10] The house in question was later rented out to various people who used it for commercial purposes but for the benefit of the applicant who benefitted from the rental paid by tenants.

[11] PW3 was authorized by his late mother as her agent in negotiating and completing the sale agreement transaction between herself and the applicant. This evidence which is to the effect that all of the members

of the applicant with the exception of the first respondent were born, raised and grew up at Roma Valley has not been controverted.

[12] According to him, the first respondent is a foreigner (Mojaki) at Roma Valley because he was not born thereat. The other witnesses for applicant corroborated this evidence.

[13] The evidence of all the applicant's witness as to how they knew the first respondent and how the applicant acquired his site from PW3's mother way back in the 1970's and the fact that the applicant's offices at the time when first respondent's wife was clerk with the applicant was situated at or near Ha Sekautu has not been denied nor challenged by the first respondent.

[14] The other important and crucial evidence which has not been denied by the first respondent is to the effect that, in fact among the entities which had rented out the premises of the applicant, subject matter herein is an entity known as Liphoto Brothers Company since in 1985.

[15] What this effectively means is that way back in the period between 1976 and 1985, the applicant had already been allocated this site and had built the house which it had rented out to various people. That the rental agreement was made with the applicant, and with nobody else, has not been challenged, so also is the fact that rental for the said premises was paid to the applicant and never to the first respondent nor his agent.

[16] The correspondence between the Department of Income Tax and one of the members of the company of Liphoto Brothers (Pty) LTD. buttresses the applicant's case that among others, as far back as 1989, the applicant was already in existence operating from the premises subject matter herein.

[17] In fact all documentary evidence annexed herein in support of applicant's case from pages 6 up to 19 and 21 up to 34 are a strong corroborating evidence in support of the applicant's case. The first respondent's alleged documentary proof of the Form CC2 at page 20 of the paginated record was, according to the chief's date stamp issued to him in the year 2002 on 31st October. The purpose for which it was allocated is for residential usage, although it now has since transpired that first respondent is now having that site developed for business purposes. This is obviously an unlawful usage of that site.

[18] The net effect of documentary evidence; in exhibit A, is that when on the 31st October, 2002 the first respondent was allegedly allocated the site in question, that same site had already been allocated to and used by the applicant some twenty six years before the 31st October 2002. That would mean that the allocation of that site to the first respondent was unlawful for the reason that such a site and had already been allocated to the applicant whose title, or rights over it had never been revoked in terms of the applicable law at the time; which would be section 13 of the Land Act 1979.

[19] To further illustrate the point that this site had been allocated to the applicant long before it was allegedly allocated to the first respondent, there is unchallenged evidence that as far back as the year 1985 the first respondent was appointed and served in the Board of Directors of the applicant as per letter written by first respondent; at page 19 of the paginated record. See also the sublease agreement at page 29 of that record. Last but not least refer to documents annexed herein at pages 32 and 33 of the paginated record written on the 7th August 1990 by the first respondent's wife, Malenka Malefane who had at all material times worked as a clerk of the applicant in the period spanning from March 1976 to August 1990. It will be recalled that it was around this time that she was so employed as a clerk that the Form C document of or in relation to the lawful title of the applicant mysteriously went missing from the cabinet in which she had kept it.

[20] There is a plethora of other evidence which buttresses the fact that this particular site had all along been lawful allocated to the applicant which developed and used it for commercial purposes. The origins of the allocation of this site to the applicant can be traced from the evidence of PW1 and PW2 up to that of PW9 which has not been challenged as well as he documentary evidence filed on behalf of the applicant. All of the said evidence of these witnesses whose evidence as been summarized in the list of witnesses remains unchallenged.

[21] In fact, the first respondent has also failed to plead issuably to the above evidence so also to evidence that the person who has allegedly signed as a witness, the Form CC2 at page 20 had died many years

ago prior to his alleged signature as a witness of this particular document.

[22] PW1 an official from Land Administration Authority testified that the issuance of a lease in the names of the first respondent could not have been lawful for the reason that there were no supporting documentation which is required as a prerequisite before a lease document is issued. Such a document is the title deed which is required and has to be surrendered to such an authority before a lease is issued.

[23] I pause to observe that this evidence has not been challenged and further to observe that annexures LM1, LM2 and exhibit A – which have been filed herein in support of the first respondent's case are mutually inconsistent in many ways:-

- Firstly, exhibits A indicates that the site in question is allocated for residential purposes, while
- Secondly, annexure LM1 and LM2 indicate that the site in question is allocated for business purposes.
- Thirdly, measurements of the said site as reflected in the above annexures differ very materially. In exhibit A, the measurements are 118^{m} x 110^{m} (length) and 60m x 50m (width) whilst in annexures LM1 and LM2, the measurements are 140m x 120m x 30m x 40m.
- Fourthly, the places where the site in those annexures is allegedly situated differ in that in exhibit A – the site is said to

be situated at Qhobosheaneng Ha Mokuoe, whilst in annexures LM1 and LM2, the site is allegedly situated at Thoteng Roma Lesotho and Maama Roma Lesotho respectively.

- Last but not least on the discrepancies, the annexures, at page 20 – exhibits A have been signed by Chief Maama M. Maama, and bears further the signature of a witness Rabatho Khoete and that of Gerard Pitso, a member of the allocating authority and is date stamped the 31st October 2002.

[24] Whilst LM1 at page 45 of the record bears the signature of Maama M. Maama but has not been witnessed by anybody. Most notably, this was issued on the 5th January 1980 in favour of the first respondent.

[25] What further compounds the first respondent's problems is the fact that in annexure LM2 at page 41 of the record, the site in question is described as being unnumbered whilst in his answer, at paragraph 6 (a) he alleges that the site with plot number 18333 – 136 has always been the first respondent's.

[26] The first respondent has also made a bare denial to the averment that the applicant acquired the site in question from its original owner in 1976. This he does without having adduced any evidence to rebut this allegation.

[27] On the contrary, the applicant has adduced evidence of PW3, Pascal Tjamabu, the son of the original owner of this field who was authorized by his own mother to handle and work with the applicant at

the time when the transaction between her and the applicant was entered into and finalized.

[28] The first respondent has never formally challenged before a court of law the above transaction between Mrs. Blandina Tjamabu and the applicant. He has failed to rebut the evidence that the original Form C of applicant's site was stolen during the tenure of his wife with the applicant and in her custody.

[29] Surprisingly, under cross-examination, the first respondent is on record as also having said that he too knew that this site was allocated to the applicant in 1976. He has also failed to rebut evidence that the title of this site was ever formally revoked lawfully by the appropriate authority with applicant having been given prior hearing before its site was allocated to him during any of the two different periods reflected in the annexures referred to above.

[30] The first respondent also dismally failed to challenge evidence that the house built on that site by the applicant had been built by one Rasemethe; neither could he deny nor challenge evidence that prior to the alleged allocation of this site to him; that the applicant had rented it out to some different individuals and that rental for same was paid and or collected by the officials of the applicant and never by him because he has never been owner nor in possession of that site.

[31] In short, the first respondent failed to challenge all the evidence adduced by the applicant which corroborated evidence that applicant built the house on that site in 1976.

[32] He could also not challenge evidence that, as a member of the applicant, he was once given permission to use part of the site as a garden for him to make a living but that it was never formally transferred to him as his own by the applicant. There is no such proof of transfer of applicant's rights and interest over that site to the first respondent.

[33] This Court attended an inspection of loco of the site in question. What is most surprising is that although the first respondent has annexed different documentary evidence as proof of his alleged title over this as alluded to above, at the inspection in loco he pointed at the very site which is situated at Thoteng Ha Sekautu Roma; which fits the description of the applicant's site as per contents of annexures A and B, and other related documentary correspondence relating to the site of the applicant.

[34] The first respondent has dismally failed to proof that he was lawfully allocated the site in question by the relevant authority at any period in time. The discrepancies and inconsistencies in annexures LM1, LM2 and LM3 as well as such other discrepancies in respect of the usage for which that site was allegedly allocated to him, among others have inflicted a great blow to the first respondent's case.

[35] The above unexplained discrepancies visible on the first respondent's documentary evidence are irreconcilable. The same is true for the different uncertain locations or places wherein his alleged site is situated. He has failed to describe in precise and exact terms where his said site is actually situated. The only inference which any reasonable court can draw from the above is that indeed, the first respondent has fraudulently acquired and has had the applicant's site fraudulently registered in his names as alleged by the applicant.

[36] Consequently, the issues whether:-

- The land in question was vacant in 1980
- Whether land already developed could be reallocated to another without giving its original title holder a hearing in terms of sections 13, 14 and 15 of the 1979 (the law then applicable) and
- Whether annexure LM1 is valid in terms of any law, should be answered in the negative.

[37] There is ample evidence to the effect that as far back as 1976, the applicant and the original owner Mrs. Blandina Tjamabu together with her son, PW3 had entered into a sale agreement and that subsequent to that the applicant had a house built there. This is the three roomed house which was then rented out to various people one of such people being PW8, Mr. Motjopo Mapetja whose evidence is that he was once rented the house in question by the applicant and that the premises in question were built in the applicant's site situate at Ha Sekautu in the Roma area.

[38] The evidence of PW9, Mr. Makuoa Leemisa who used to work for applicant confirms and corroborates other witness' evidence that as far back as 1987, the said house built on applicant's site situate at Thoteng Ha Sekautu had already been rented out by the applicant and that this witness used to collect rental on behalf of the applicant. He testified further that he stopped collecting rental in the year after that house was burned.

[39] He also corroborates other witnesses evidence on behalf of applicant to the effect that he knew that first respondent was also a Board member of the applicant and that applicant was called Roma Valley Cooperative Society. He never knew the first respondent as a title holder or owner of the site in question. He did not hesitate and was unshaken under cross examination that he was employed by the applicant and not the first respondent to among others collect rental on behalf of the applicant and never on behalf of the first respondent.

[40] He also corroborates evidence that these was a time when the applicant's house burned down but that it has since been rebuild by the applicant. All of this evidence has not been challenged by the first respondent.

[41] The first respondent, whose evidence is evasive and contradictory has failed to proof that the land in question was vacant when it was allegedly allocated to him. He has equally failed to rebut evidence to the effect that such land had been lawfully allocated to the applicant

as far back as 1976 and that due process was followed in effecting such allocation.

[42] Although he is blowing hot and cold over the period when he alleges allocation of this land was revoked from applicant, he has not adduced any evidence in support of this averment. There is nothing placed before this Court indicating that title on this site was ever lawfully revoked by a competent body from the applicant.

[43] In fact, the word revoke, presupposes that a title over land which had been allocated to someone is extinguished. However there is no proof that the chief of Ha Maama has ever revoked such an allocation of the site in question from the applicant.

[44] It is the considered view of this court that indeed there has never been any decision by a competent authority to revoke the allocation of the site in question made as far back as the 1970's on behalf of the applicant. Section 15 (2) (b) of the Deeds Registry Act is therefore not applicable to the applicant.

[45] The first respondent further on attempted to also argue that he was allocated the site in question in 1980. The relevant and or applicable Land Act would be the 1979 Land Act, but he annexed to his answer the Form C; which form is not provided for in the 1979 Land Act. Section 5 (4) of the 1979 Land Act refers to an issuance of Form C2 and C3 which would be appropriately issued if one's application for allocation of a site was granted.

[46] This evidence tendered by the first respondent is a further indication that he has been employing under-handed fraudulent tactics in having obtained a lease over the applicant's site and he did so not being certain about which law was applicable. Further on, first respondent has not successfully challenged evidence that as far back as 1980 or prior to it, the applicant had already developed the site in question and that it had already been renting it out to various people. The fact that the applicant has had that site allocated to it before the first respondent had developed it is not in doubt.

[47] In the circumstances and regard being had among others to the totality of the evidence of applicant which remains unchallenged, it is the considered view of this Court that the applicant has successfully proved its case against the respondents. The applicant's application is accordingly granted as prayed in terms of prayers 1, 2 and 4.

[48] Prayers 3 is granted in part in so far as the first respondent is ordered to surrender the lease document No. 18333-136 to the Director of Leases and or to the Land Administration Authority.

[49] Applicant is ordered to formally apply for issuance of the lease in respect of this site in its favour following proper procedures.

[50] The first respondent has burdened his answer with some irrelevant material not relevant to the application thereby attracting costs on a

higher scale. For this reason, the applicant's application is granted with costs on an attorney and client scale.

M. Mahase

Judge

For Applicant:	Adv. Metsing
For 1st Respondent:	Adv. P. Tsenoli
For 2nd to 6th Respondents:	No appearance