

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LAND COURT DIVISION

LC/APN/73/2015

In the matter between:-

THE MASERU LIBRARY SOCIETY
ALLIANCE FRANCAISE IN MASERU

1ST APPLICANT
2ND APPLICANT

AND

ANGLICAN CHURCH OF LESOTHO
PROPERTY COMPANY (PTY) LTD.
ANGLICAN CHURCH MISSION OF LESOTHO
THE LAND REGISTRAR
THE COMMISSIONER OF LANDS
LAND ADMINISTRATION AUTHORITY
ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 25th September, 2016
Date of Judgment : 26th October, 2016

Summary

Land Court Procedure – Donation of site, No 12284-449 Library building to Lesotho government – Such donation having been accepted by the donee – Lease document being later issued by Land Authorities in the names of the first and second respondents – portion of site having lawfully been transferred to 1st and 2nd respondents. – Applicants also claiming to have title or rights over same plot – Plot in question having been donated to Lesotho (Basutoland) Government in 1946 – Registration in favour of applicant having been made some twenty two years after donation was made and accepted by the Lesotho government – Lesotho government having not authorized any of the parties' use and possession

of the site in question to be changed – Applicants having unilaterally changed usage and purpose for which the donation was made.

Locus standi in judicio of the applicants – Certain case between these parties still pending in the High Court – Jurisdiction of the Land Court.

ANNOTATIONS

CITED CASES:

- **Taka v. Pheko C. of A (CIV) N0 59/2015**
- **Attorney General v. His Majesty the King and Others; C. of A. (CIV) No 13/2015**
- **Mbangamthi v. Phalatsi, L.A.C. 1980 – 84**
- **Viljoen v. Federated Trust LTD 1971 (1) S.A. 750 (0) 760**
- **Masuku v. Mdlalose 1998 (1) S.A. 1 S.C.A**

STATUTES:-

- **Societies Act No. 20 of 1966**
- **Deeds Registry Act. No. of 1967**
- **Land Acts No 8 of 1973,**
- **Land Act No of 1979**

BOOKS:-

- **Herbstain and Van Winsen: The Civil Practice of Superior Courts in South Africa**

FACTS

[1] Briefly the facts are that subject-matter herein is plot number 12284-449 which is situated in the Maseru Central area. Both the first applicant, first and second respondents are claiming to have title to this plot.

- [2] Previously, the plot in question housed the public Library; then known as Maseru Library. Refer to annexure “ACL2”
- [3] The said plot and buildings thereat were donated to the Lesotho government (Basutoland government) by a certain Mr. Ernest Hubert Stephens on the 11th day of June 1946. Refer to annexure “A”.
- [4] The said donation was made “subject to the condition that the said buildings shall be utilized in perpetuity for the purposes of a public library for the benefit of the inhabitants of the territory of Basutoland, and further subject to the condition that the said Basutoland government shall maintain and keep the said buildings in a proper state of repair”.
- [5] Notably, is the fact that there is annexed herein a sketch map of the library building in which the boundaries between it and the St. John’s church are clearly indicated.
- [6] What is not in dispute is the fact that the said Ernest Hubert Stephens, who is described as a company director, of Maseru, Basutoland has declared in this annexure “A”, to give unto Basutoland government every right or interest to and in the buildings and other fixtures erected by him on portion of plot No. 48 on the Maseru Reserve, Basutoland as will more fully appear from the sketch plan “A” hereunto annexed.
- [7] Now it will be clearly seen that the Library building, subject-matter herein falls squarely within the portion of plot No. 48 and that there

are no other buildings shown to be in existence within that plot at that time.

- [8] As has been alluded to above, this deed of donation; annexure “A” was written or executed on the 15th June 1946. It was subsequently registered as No. 1949 by the then Government Secretary of Basutoland.
- [9] There is nowhere in this Deed of Donation, annexure “A” where it is indicated that the plot in question was ever donated to any of the applicants or the first and second respondents.
- [10] To be precise, the first applicant – the Maseru Library Society was then not yet in existence because the purported registration executed in its favour was so executed on the eighteenth March 1970 (18/03/1970). This is a period of some twenty four (24) years since the library building was donated to the Basutoland government.
- [11] Of most significance is the fact that the first applicant, the Maseru Library Society was registered in this country in the year 2006, and was allocated registration number 68/06. This is a period of about sixty (60) years since the donation to the Basutoland government was executed and accepted.
- [12] There is notably absent from the documentary evidence filed on behalf of the first applicant the sketch map plan of this site which unlike in annexure “A” above is described as being site No. 11A area

Maseru Central. Are they perhaps referring to a different plot from plot No. 48?

[13] In fact according to annexure “ACL2”, the site in question was formally and or lawfully transferred to an entity called English Church Mission, now formally the Anglican Church of Lesotho in terms of the Land Act of 1967 – section 8 thereof and most notably, the details of the transferor is Maseru Library and not the Maseru Library Society.

[14] As has already been alluded to above, the first applicant was incorporated in the year 2006; but the registration or transfer of subject matter herein in favour and on behalf of the English Church Mission, was effected in terms of the Land Act of 1967. This is a period of thirty nine (39) years before an entity referred to as Maseru Library Society was incorporated.

[15] In the said annexure “ACL2”, the Maseru Library and not the Maseru Library Society, consented to the transfer to the then English Church Mission now the Anglican Church of Lesotho by letter dated the 12th January, 1973. This is a period of twenty seven (27) years before an entity referred to as the Maseru Library Society had been incorporated and or before it was in existence. This is a matter of common cause particularly because nowhere is it alleged that the first applicant was formally named Maseru Library. This is aside from the fact that this entity Maseru Library Society was not yet in existence when the site in question in which had been housed the public library referred to in

annexure “A” was donated to then Basutoland government on the 15th June 1946.

[16] Even assuming without conceding that that is so, even if the first applicant was in existence in 1946, it is barred by prescription from contesting the donation to the Lesotho government and later to the transfer of the donated property by Lesotho government to the first and second respondents.

[17] The reason being that when in the year 2006 this entity was registered in Lesotho, it was a period of some sixty (60) years since the donation to the Lesotho government of this property was made and accepted by the Lesotho government. Secondly, it has been a period of forty three (43) and twenty three (23) years respectively since the transfer of this site as well as the issuance of a lease in favour of the first and second respondents were formally issued without the applicants having taken any lawful steps against such eventualities. They are therefore barred by prescription from taking any legal action against the first and second respondents.

[18] The above is further buttressed by the fact that there is no similar transfer of title or rights over this site to the first and second applicants as has been done in respect of the first and second respondents in terms of annexures “ACL2” as well as “D”/”ACL3”.

[19] Further on it has not been denied that coupled with the above; the first applicant lacks locus standi in judicio to claim to be the library

committee in terms of the deed of donation; their annexure “A” when they have, contrary to the conditions spelt out in the said deed of donation, leased out that property to the second applicant who is operating a liquor restaurant. The usage by the applicants of this site and fixtures erected on it are clearly in violation of the conditions spelt out in annexures “A” which are that such be “utilized in perpetuity for the public library for the benefit of the inhabitants of the territory of Basutoland”.

[20] The Attorney General as well as the current Land Allocating and Lease Registration Officers; namely, the third up to the fifth respondents have not filed any answers to this application despite service upon them of the originating application way back on the 8th September 2015. They have shown no interest in the outcome of this application.

[21] In a nutshell, and due to the fact that the alleged allocation of title in favour of the first applicant is highly questionable for the reason that nowhere has it been alleged that at the time the donation was made, the first applicant was already in existence, the special answer/preliminary objection raised has to be upheld.

[22] Also, there is more than ample evidence in accordance with annexure “ACL2” that the property in question was lawfully transferred to the first and second respondents and not to the first applicant and that to date, the first applicant has never in anyway challenged that transfer and registration in a court of law.

- [23] Nowhere is there any evidence or proof of the fact that the donee did authorize or agree with Maseru Library Society to run the library on its behalf on its registration, some twenty two (22) years after the donation was made to some other entity and not to the first applicant.
- [24] In short, for the reasons advanced above, the applicants have dismally failed to proof what interest they have in this property that they seek to lawfully protect.
- [25] A legal right has been defined as “an interest conferred by and protected by the law, entitling one person to claim that another person or persons either give him something, or do an act for him or refrain from doing an act”. Neither the donor nor the donee have ever transferred the property in question to the first applicant.
- [26] Further on, for the simple reason that the first applicant has not been mandated by the government of Lesotho/donor to run this library and for the reason that this property has been formally transferred to the first and second respondents and without any objection from anyone, the first applicant lacks any interest to protect it, and therefore has no locus standi in judicio in this proceedings.
- [27] In the premises and for the foregoing reasons, and bearing in mind the provisions of Rule 66 (2) (e) and 66 (3) of the Land Court Rules, the special answer and preliminary objections raised on behalf of the first

and second respondents are upheld. The applicants' application is dismissed with costs.

M. Mahase

Judge

For Applicants: A.M. De Wet

For First and Second Respondents: Adv. T. Taaso

For Third up to sixth Respondents: No appearance