

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LAND COURT DIVISION

LC/A/1/2014
CIV/DLC/MSU/30/2014

In the matter between:-

‘MALINEO MOLETSANE

APPELLANT

AND

RAMPATI MOLETSANE

1ST RESPONDENT

‘MAMOSI MOLETSANE

2ND RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 9 August 2016
Date of Judgment : 5th December 2016

Summary

*Land Court Procedure – An appeal against judgment of the District Land Court –
Reasons for judgment having not been written – None compliance with Rules of
the District Land Court.*

ANNOTATIONS

CITED CASES:

- **Jobo Lenono and Others C. of A (CIV) No. 28 of 2010**
- **Mophato oa Morija v. Lesotho Evangelical Church, LAC (2000 – 2004)
p.354.**

STATUTES:

- **Land Act No. 8 of 2010**
- **Land Court Rules No. 1 of 2012**
- **District Land Court Rules No. 2 of 2012**

BOOKS: None

[1] **Introduction**

This is an appeal against the decision of the District Land Court. The order of court, dated the 28th April, 2014 and filed of record reads:

“The matter is hereby referred back to Land Administration Authority (LAA). There are no written reasons indicating the basis upon which the learned Magistrate made such an order. There is no written judgment delivered to date.

[2] Being dissatisfied by this order the appellant filed an appeal. The respondents have also filed a cross appeal. On the date that this matter was prosecuted counsel for both parties informed the court that they have filed applications for condonation of the late noting of the appeals. The reasons for delaying to file the appeal (cross appeal) is that the learned Magistrate who presided over the matter had to date (9th August, 2016) not had written reasons for her judgment delivered to the parties. This is very regrettable.

[3] **Facts**

Subject-matter herein is the estate of the late Thekiso Moletsane. The matter was argued in the court a quo, after having been postponed several times for various reasons. One of such reasons being that one of the parties sought an amendment to the originating application. This was ultimately granted by consent.

[4] The gist of the appeal is that on the 28th April 2014, the learned Magistrate ordered that the matter be referred to the L.A.A (The second respondent in CIV/DLC/MSU/30/2014).

- [5] As has been indicated above, no reasons have been delivered by the court a quo explaining why it made this decision.
- [6] As a matter of common cause, one of the parties had raised a preliminary objection in terms of Rule 65 (1) of the District Land Court Rules. However, and for unstated reasons, the learned Magistrate did not make a decision on the said objection. This is contrary to Rule 66(1) and (2) of the above Rules,
- [7] In a nutshell, the effect of the order of Court referring the matter to the L.A.A. is that parties are back to where they were initially before they approached the court a quo as no decision on this preliminary objection has been made nor have they had the matter argued on the merits.
- [8] Also, the order referring the matter back to the L.A.A. has no foundational basis because there was never any relief prayed for in this regard by any of the parties to this application.
- [9] Put differently, this was never an issue to be determined by the court a quo. That explains why none of counsel had addressed or advanced argument upon it.
- [10] In any case, in terms of the Land Administration Authority Act. No. 9 of 2010, the Land Administration Authority is a body corporate responsible for land administration, land registration, cadaster, mapping and surveying and matter incidental thereto. It is not a court of law. It will never be in a position to make any decision on this application.

[11] **The Law:-**

Both parties have filed an appeal and a cross appeal respectively against the order/judgment of the court a quo. The said grounds of appeal which respectively appear at pages 193-194 and 18 to 21 of the court's file are incorporated herein.

[12] In terms of the District Land Court Rules No. 2 of 2010, sections 65 and 66 the court is mandated to decide on any preliminary objections raised by any party to the application before proceeding with the trial. Further on, a court is in the same vein mandated to decide or to make a decision after having heard evidence as it may be appropriate for the decision to be made.

[13] In particular, in terms of Rule 66 (5) of the said Rules,

“Any decision passed under this rule shall be recorded together with the reasons for such decision”.

[14] In short a Land Court before which a preliminary objection is raised has to first deal with it and make a decision after production of evidence by parties to the application. The matter does not end here; such a decision together with the reasons for it have to be recorded.

[15] Parties herein have joined issue on the fact that, the court a quo had been asked, to make a determination on the issue whether or not the District Land Court had jurisdiction to deal with a relief or prayer whereby one of the parties has applied to be granted a declaratory order in relation to the ownership or title over the subject-matter in this application.

- [16] They have also joined issue on the fact that the learned Magistrate in the court a quo has erred by referring the matter to the Land Administration Authority as she was not only asked to do so but she had no power to do so as the court lacked jurisdiction to determine this matter in the first place.
- [17] How referring the matter to the Land Administration Authority on the issue pertaining to the issue of the jurisdiction of the court a quo to deal with this application will assist the court a quo or the litigants to resolve the dispute in this matter has not been explained because no reasons of judgment have been given.
- [18] In the cross appeal, the respondents say that the court a quo erred in finding that it does not have jurisdiction over this matter; and over the incidental prayer of ejectment which is based on the determination of prayer 1.
- [19] It is further contended on behalf of the respondents that the learned Magistrate erred by not having ordered the Land Administration Authority to issue lease documents in favour of the second respondent when it referred the matter to Land Administration Authority. It is argued in this regard that the court a quo should have granted prayer 1 in the originating application in favour of the second respondent, in which case the court should also have granted prayer 2 – a prayer for ejectment/eviction of the appellant from the sites in question.
- [20] Obviously and regard being had to the surrounding circumstances of this case, the issue whether or not the District Land Court has jurisdiction to deal

with this originating application or the main application should be answered in the negative.

[21] Reasons for the above being that firstly, it is now a settled principle of our law that it is only the High Court which has jurisdiction to entertain prayer 1 in the originating application. In this prayer, the second respondent is seeking a declaratory order declaring her to be the lawful title holder of site No. 2-1-493B.

[22] The applicant's prayer 3 is also problematic, but I decline to deal with it fully as it has to be dealt with when counsel argue on the merits of this matter. As can well be expected, parties herein have indicated that they reserve the right to file such further and better grounds of appeal upon the delivery of reasons for judgment since there is no written judgment.

[23] In the instant application, the learned Magistrate proceeded to hear and "determine" an application in which among others and in the main, a declaratory order is sought.

[24] This was done contrary to the numerous decisions of the Court of Appeal to which counsel have referred to. The fact that there was no pronouncement or a decision on the issue of jurisdiction by the court a quo does not alter the situation.

[25] Indeed, both counsel have joined issue on this fact. The fact that the respondents' cross appeal is premised on the ground that the application should have been referred to the Land Administration Authority with an order that this authority should issue a lease in respect to this property

presupposes that the court a quo has jurisdiction to deal with declaratory prayers. This is not so.

[26] In terms of Rule 9 of the Land Court Rules, the Land Court shall have inherent jurisdiction over all matters that do not fall under the exclusive jurisdiction of the District Land Courts.

[27] In terms of Rule 8 of the District Land Court Rules (supra) a declaratory prayer or order has been left out as one of the matters upon which the District Land Courts have jurisdiction; hence the wording of Rule 9 (2) of the Land Court Rules (supra)

[28] In the premises and for the foregoing reasons, it is the considered view of this Court that indeed, the court a quo had no jurisdiction or power to deal with this matter where, clearly, a declaratory prayer or relief has been sought by the applicant (now respondents)

[29] It is highly regrettable that to date, reasons for the order of the Court a quo dated the 28th April 2014 have not been issued, much as it is a well settled principle of our law that such reasons should always be timeously delivered so as to avoid unnecessary delay. Also litigants are not only entitled to such reasons so that one can make a decision about the next step to take, but such delays prejudice litigants.

[30] In the instant matter both parties had to file applications of condonation of the filing of their respective appeals, at a cost due to the unavailability of reasons and or a written judgment.

[31] It has already been indicated above that a presiding officer is mandated by the law; to wit Rules of these courts referred to above to make a written decision on the preliminary objections raised by way of a special answer before proceeding with the trial of the application.

[32] For the above reasons and due regard being had to the circumstances of this application, the appeal is upheld and the cross appeal is dismissed with costs to the appellant.

M. Mahase

Judge

For Appellant:- Adv. L.A. Molati

For Respondents: Adv. L.M. A. Lephats'a