

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LAND COURT DIVISION

LC/APN/28/2013

In the matter between:-

MAHLOMOLA NKHABU

APPLICANT

AND

MOJELA LEROTHOLI
‘MAMAAMA LEROTHOLI
COMMISSIONER OF LANDS

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : various dates
Date of Judgment : 6TH May 2016

Summary

Land Court Procedure – Duplication of proceedings – Parties having concluded and entered into a sale agreement of a house in 2005. – Parties agreeing that buyers could occupy house before purchase price was paid and whenever they so wished after contract of sale was concluded between them. Respondents occupying an uncompleted house – Pending some development to make house habitable – Further agreed that buyers should follow up on the processing of seller’s lease application – Lease being issued in 2007 through efforts made by buyers – Lease still in the names of seller but withheld by buyers – Seller refusing payment of purchase price and instead approaching court for cancellation of sale agreement, eviction and payment of rental arrears from 2009 to January 2013.

Held:

- *Improper procedure adopted by applicant as he has duplicated reliefs which are substantially those that the applicant had prayed for in the Magistrates’ Court.*

- *Applicant has resorted to a wrong procedure by filing the originating application in the Land Court instead of having appealed against the judgment of the Court a quo.*
- *This is an abuse of processes of court and is contrary to Rule 83 because that judgment delivered by the court a quo is final and binding.*
- *This Court has no jurisdiction to entertain and or to deal with this application.*
- *Applicant is guilty of material non disclosure.*
- *Application dismissed with costs on attorney and client scale.*

ANNOTATIONS

CITED CASES:

None

STATUTES:

- **Land Act Rules No. 1 of 2012**

BOOKS:

- **None**

[1] **Introduction**

Parties herein had entered into a sale of a house situate at Ha Masana in Maseru. The house which was not fully completed is situated at an unregistered site thereat.

- [2] The sale agreement was completed on or about the 1st February 2005, for a consideration of the sum of M45,000.00 (forty-five thousand maloti). Another term of the sale agreement was that the buyers/respondents could

assume occupation of the house whenever they wished to do so, which step the buyers accepted as they moved into that house.

[3] At the time the applicant was working and or was moving to stay in South Africa. Through the authority of the applicant, the 1st and 2nd respondents made a follow up on the processing of the applicant's lease to that house, which lease was issued in 2007. It is lease number 14333-031.

[4] The buyer, in whose possession the lease document remains, has been prepared to pay the full purchase price to the seller as originally agreed but the seller is now refusing to accept that money. Instead, and without alleging any breach of the sale contract on the part of the buyers, is refusing to accept that sum of M45,000.00; and has instead approached courts of law as shall hereunder be shown.

[5] **FACTS**

The following are common cause facts:

In October 2009; the applicant (seller) demanded from the respondents (buyers) payment of rental of M500.00 per month, although it is not clear what the basis of that demand was since there was never any rental agreement of the premises in question between the parties.

[6] Later on, the applicant purported to give notice of the sale agreement between him and the respondents by an SMS text message. (This is novel practice); failing payment of rent and or the purchase price.

- [7] He alleges that having failed to get a response from the buyers, he then approached this Court for the eviction of the buyers from the house in question, as well as for cancellation of the sale agreement. Refer to paragraph 12 of his originating application.
- [8] Aside from the fact that prayer (b) in this paragraph has no foundational basis and aside also of the fact that the applicant has not taken into consideration that the fact that the buyers have incurred costs for the processing of the lease and for having improved that house; the applicant has withheld some very crucial information from this court.
- [9] The information so withheld being that prior to his approaching the Land Court, he had initially sued the respondents in the Maseru Magistrates' Court for substantially identical or the same prayers as in this Court. This is clearly an abuse of court processes. This behaviour also casts a negative picture on the applicant's bona fides.
- [10] The respondents have and correctly so, raised a special answer against this originating application. That special answer being that in the circumstances, this Court (Land Court) has no jurisdiction to entertain this matter as same has already been dealt with to finality in the Maseru Magistrates' Court in AP/306/2010; in which the applicant's counter claim asking for substantially the same prayers as in the instant application has been dismissed with costs.
- [11] In terms of Rule 83(1) the Court may not try any application or claim in which the matter that is substantially in controversy has been directly and substantially in controversy in a former application between the same parties,

or between parties under whom they or any of them, litigating under the same title, and has been heard and finally decided by a competent court.

(2) Any matter which could and should have been made a ground a defence or claim in the former application shall be deemed to have been directly and substantially in issue in such application.

[12] The applicant has nowhere in his originating application hinted to the fact that in fact, this matter was subject-matter in another court in which the court finalized the matter. That this matter between the same parties was dealt with to finality by a competent court is not challenged. It is therefore highly improper that the applicant has not been candid with this court.

[13] In this premises and for the foregoing reasons, the first and second respondents' special answer is upheld.

[14] The applicant's originating application is dismissed with costs on attorney and client scale to be paid to the first and second respondents.

M. Mahase

Judge

For Applicant:- Advs. T. Toeba and Jonas

For First and Second Respondents:- Adv. Nts'ene

For Third Respondent:- No appearance