

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LAND COURT DIVISION

LC/APN/77/2013

In the matter between:-

NTSU DANIEL NTS'ONYANE

APPLICANT

AND

MOTLATSI THEJANE
COMMISSIONER OF LANDS
LAND ADMINISTRATION AUTHORITY
ATTORNEY GENEAL

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

JUDGMENT

Coram : Hon. Mahase J.
Date of hearing : 22 October, 4, 11, 18 November, 2 December, 2013
Date of Judgment : 17th March 2017

Summary

Land Court Procedure – Sale agreement of site between parties – Validity of same – Cancellation of Lease – Alternative relief of refund of purchase price – Jurisdiction of the Land Court.

ANNOTATIONS

CITED CASES:

- **C & S Properties (PTY) LTD v. Dr. 'Mamphono Khaketla and 2 Others, C. of A. (CIV) No. 63 of 2011**
- **Mothobi v. Seboka LAC (2007-2008) p. 439**
- **Commander of LDF v. Sekoati, LAC (2007-2008) p. 303**
- **Khaketla v. Malahleha and Others LAC (1990 – 1994) p. 275**
- **Sea Lake (PTY) v. Chung Hwa Trading Enterprises Co PTY (LTD) and Another, LAC (2000 – 2004) p. 190**

- **Vincent v. Lesotho Bank, LAC (2000 – 2004) p. 83**

STATUTES:

- **Land Act No. 17 of 1979**
- **Deeds Registry Act No. 12 of 1967**
- **Land Act No. 8 of 2010**

BOOKS:

- **None**

[1] Introduction

Subject matter herein is a site situate at Hlotse in the Leribe district. Parties entered into a sale agreement of the site in question in April 2008.

[2] Facts

Parties herein concluded between themselves an agreement of sale of a site, which site was unnumbered as a lease had not been issued. The purchase price was the sum of M22,000.00 of which M12,000.00 was paid as a deposit.

[3] It was a term of their agreement that the balance would be paid in full by the applicant after the 1st respondent had obtained a lease for the site.

[4] The first respondent later obtained a lease in respect of that site, however, he withheld this information from the applicant. Nonetheless, the applicant discovered in June 2013 that a lease in

respect of this site had been issued. It is lease No. 26121-043 which was issued on the 21st September 2012.

[5] The 1st respondent has since been insisting that the lease has not yet been issued although the applicant has knowledge that it has been issued. The applicant is apprehensive that the first respondent is in the process of disposing that site by selling it to somebody else, if he has not already done so. His apprehension is based on the fact that the site in question has since been fenced and was being developed.

[6] The applicant avers that since the 1st respondent disposed of his rights over that site in 2008 when he concluded the sale agreement, he has no right to deal with or to dispose of it.

[7] He has accordingly approached this Court for an interim relief asking the court to order that:-

- a) The first respondent be interdicted from disposing and or dealing with plot No. 26121-043 pending the outcome of this application;
- b) That upon payment of the balance of the sale price, this lease No. 26121-043 be cancelled by the third respondent and be issued in favour of the applicant;
- c) That upon payment of the necessary administration fees by the applicant, the second and third respondents be directed to issue a new lease in respect of this plot in the names of the applicant;

- d) That first respondent be ejected from this plot;
- e) Payment of costs by the first respondent on Attorney and client scale;
Alternatively he claims
- f) That the sale agreement between him and the first respondent be cancelled;
- g) That the first respondent be directed to refund the deposit of the sum of M12,000 to him with interest per annum calculated from April, 2008 to date of judgment;
- h) Costs;
- i) Further and/or alternative relief.

[8] Ultimately and by consent, prayer 6.2 (a) was amended by having the words “dealing with” deleted.

[9] Before dealing with the law and the reliefs sought, it is apposite to note that according to the applicant the sale agreement between him and the first respondent has never been cancelled nor has first respondent refunded the sum of M12,000.00 deposit he has referred to in his originating application.

[10] Secondly, it is the applicant’s case that some development is being carried out on this plot despite that the interim order of court interdicting the

applicant from having this site developed in anyway pending finalization of this applicant has not been rescinded.

[11] The applicant has since had an application for contempt of court which he had filed against the first applicant and the person who was alleged to have been effecting the said development on that site abandoned.

[12] The issues for determination as agreed to by both counsel are:

- Whether the said agreement of sale of this site between the applicant and the first is enforceable in law;
- Whether therefore the main relief sought by the applicant, namely cancellation of the lease, issued in favour of the first respondent may be granted, so that then the lease in respect of the subject-matter herein be issued to the applicant.

[13] Counsel have not raised the issue of the jurisdiction of this Court to deal with this matter. This is despite the fact that the application is not an appeal as envisaged in Rule 9 (1) (a) and (b) of the Land Court Rules No. 1 of 2012. Further on, none of the parties has invoked section 7 of the Deed Registry Act No. 12 of 1967.

[14] According to the interpretation section of the above-shown Act, the word “Court” is interpreted as meaning or denoting the High Court of Lesotho. Be that as it may, with the advent of the creation of the Land Court, which is a division of the High Court, the jurisdiction of this Court is limited as provided under Rule 9(1) (a) and (b) of the Rules of this Court.

- [15] It is therein provided, under the heading: subject-matter jurisdiction:-
 9(1) *“The court shall exercise specific jurisdiction over the following matters:*
- a) *Appeals against any decision of the government in regard to expropriation affecting the land rights of the appellant; and*
 - b) *Appellate matters against any decision of the District Land Courts”.*

[16] It becomes immediately clear from the above that unless if the current matter involves an appeal as indicated above, then the Land Court has no jurisdiction to entertain this application for the simple reason that it is not an appeal against the decision of any of the named entities.

[17] This is particularly so because none of the parties has invoked Rule 9(2) of the Rules of this Court which reads as follows:
“Pursuant to section 6 of the High Court Act of 1978 and the Constitution of Lesotho the Land Court shall have inherent jurisdiction over all matters that do not fall under the exclusive jurisdiction of the District Land Courts”.
(N.B. Section 5 should read Section 6 of the High Court Act.)

[18] In terms of Rule 8, District Land Courts have jurisdiction, and are empowered to exercise subject-matter jurisdiction over the listed matters, one of which is:-

.....

- (b) Matters related to issue of lease by pertinent authority

[19] Whilst the Deeds Registry Act (supra) has not been repealed, it is the considered view of this Court that after the coming into operation of the Land Act No. 8 of 2010 and the promulgation of the Land Courts Rules, it is imperative for counsel or parties to not ignore the provisions of this Act and its Rules when they launch applications in the Land or District Land Courts because of the peculiar way in which their subject-matter jurisdictions have been drafted.

[20] These Rules have been deliberately and so carefully drafted as to leave no doubt that in fact, the Land Court is an appellate court as indicated in Rule 9 (supra).

[21] This is despite the fact that section 73 of this Act under which the Land Courts are established provides (after the amendment) to wit Land Act (amendment) N0. 16 of 2012; that:-

73 *“The following courts are established with jurisdiction, subject to the provisions of this part, to hear and determine all disputes actions and proceedings concerning land:...*

[22] However, in terms of Rule 9(2) (supra) the Land Court shall have inherent jurisdiction over all matters that do not fall under the exclusive jurisdiction of the District Land Courts.

[23] In the instant application, the interim relief sought in the Land Court could as well be sought in the District Land Court. Refer to Rules 22 and 23 of the District Land Court Rules No. 2 of 2012.

- [24] The final relief (a) falls to be dealt with by or in the Commercial Court because aside from the fact that there has not been any formal transfer of this site or plot to the applicant, the transaction is purely of a commercial nature viz. sale of a plot by one party to the other.
- [25] Final relief (b) is an order for specific performance without any alternative prayer of payment of damages. Ordinarily, relief (c) is to be dealt with in the District Land Court except if it is a natural consequence which flows from e.g. cancellation of a lease.
- [26] Even all of the alternative reliefs sought do not fall within the jurisdiction of any of the Land Courts because they are not disputes concerning land.
- [27] In a nutshell, the main relief in this matter is the enforcement of the sale agreement between the parties herein. However, nowhere does the applicant allege that the ministerial consent for this kind of a transaction was ever sought and obtained. On the other hand, none of the parties has annexed to its papers, copies of the said lease, contrary to Rules of this Court.
- [28] This explains why the argument advanced on behalf of the first respondent is that the sale transaction which the applicant seeks to enforce as against the first respondent and through the offices of the second and third respondents, is unlawful for want of the ministerial consent either before or after the sale agreement was entered into and concluded between the parties.
- [29] It is submitted to this extend that since any disposal of title to Land requires ministerial consent, failure to acquire same renders the disposal unlawful and therefore unenforceable.

[30] As a matter of common cause, in the case in casu no such ministerial consent has been sought nor obtained before or post to the conclusion of this transaction whose purpose is the disposal of land by the first respondent to the applicant. The applicant has also not sought any relief whose effect would be to compel the first respondent to obtain a ministerial consent so that the disposal of the plot or land in question could then be effected should such a consent be obtained. How he hoped to compel the second and third respondents to issue to him a new lease in respect of this plot is not clear.

[31] Obviously, without compliance with all the necessary lawful formalities, it will be impossible for anyone to assist the applicant in this regard. This view is buttressed by the provisions of the then applicable law in the year 2008; namely the Land Act No. 17 of 1979, section 35(1) (b) (i) which reads in so far as it is relevant to this application that:

35 (1) “ *A lessee shall be entitled :-*

.....

(b) subject to obtaining the consent of the Minister:-

(i) to dispose of his interest... further on, it is provided in section 36 (5) that:-

(5) Any transaction conducted by a lessee without the consent of the Minister of a general consent shall be of no effect”.

[32] This issue has been laid to rest by the Court of Appeal of Lesotho in several cases some of which have been cited by counsel. Some need not be repeated.

- [33] The applicant has not dealt with the issue of the ministerial consent even though he wants to have the sale agreement to be enforced in his favour. In fact even as the applicant and the first respondent entered into the sale agreement on the 29th April, 2008, there was no documentary proof of any kind indicating that the first respondent had title or right over the plot/land in question.
- [34] Even though the first respondent is giving contradictory versions as to his entitlement of this plot (refer to sub paragraph 6.1 and 6.2) of his answer; it is clearly stated in annexure “A1” that the outstanding balance of M12,000.00 would be paid to him by the applicant when the seller had secured document to title. Why the applicant continued to go ahead with this agreement in the absence of any proof that indeed the first respondent was the lawful owner of this plot is not understandable?
- [35] In fact, a further reading of the first respondent’s answer, at sub-paragraph 6.1 clearly indicates that, when he entered into this sale agreement he did that being conscious of the fact that this transaction was unlawful, null and void for want of ministerial consent. Clearly he did not act in good faith towards the applicant. The applicant on the other hand, did not check whether or not the seller had a lawful/valid title to this plot.
- [36] The issue whether the said sale agreement is valid and enforceable in law should then be answered in the negative. This Court refrains from dealing with issues pertaining to final reliefs sought for the reason that although the sale agreement is in relation to the purchase of a plot/land, this Court has no jurisdiction to deal with this kind of contractual agreement. This can be dealt with by another court other than in the Land Court.

[37] In the premises, and for the reason that the ministerial consent was never sought and obtained before and post the conclusion by the parties of this sale agreement; and further due to the fact that, the seller had no title at all to dispose of this plot in April 2008, the applicant's application is dismissed with costs to the first respondent.

M. Mahase

Judge

For Applicant: Adv. P.T. Nteso

For first Respondent: Adv. S. Ratau

For second, third and
fourth Respondents: No appearance