IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

LC/APN/107/2015

LAND COURT DIVISION

In the matter between:-

MOTUMI SIMON RAMAISA **APPLICANT**

AND

PATRICT NTSOERENG **1ST RESPONDENT**
LANDS ADMINISTRATION AUTHORITY **2ND RESPONDENT**

JUDGMENT

Coram **: Hon. Mahase J.**
Date of hearing **: 17th March 2016, 12th Sept. 19 and 06th February 2017**
Date of Judgment **: 24th February, 2017**

Summary

Land Court Procedure – Land law – Dispute over a business site – Both parties claiming lawful ownership of the said site – Site fully developed – Parties having been engaged in this dispute for over this site for a period of 58 years – Preliminary objections raised by way of a special answer – Jurisdiction of this Court over this matter.

ANNOTATIONS

CITED CASES:

- **African Farms and Townships LTD v. Cape Town Municipality, 1963 (2) S.A. 555**
- **In re Anastassiades, 1955 (2) S.A. 220 (W)**
- **Argus Printing Publishing Co. LTD v. Anastassiades 1954 (1) S.A 72 (W)**
- **Lepholisa v. Lepholisa and Another, LC/APN/12/2012**

STATUTES:

- **Land Act No. 8 of 2010**

- **Land Court Rules No. 1 of 1978**
- **Deed Registry Act No. 12 of 1967**

BOOKS: **None**

[1] **Introduction**

Subject matter is a developed business site situated at Maputsoe in the Leribe district. Initially the dispute was between the parties' respective parents/fathers. The dispute is now between their respective sons.

[2] **Facts**

The applicant alleges that he sit eh customary heir of his late father, Rodwell Ramaisa. That he was appointed an heir to his late father's estate which includes the subject matter herein.

[3] The site in question was alleged issued to his father by the lawful or proper land allocation authority on the 8th February 1969. Subsequently this was registered in the Deeds Registry in his father's names under Deed number 9044 on the 15th October 1970.

[4] Attached to his originating application are annexures "A", "B" and "C" which are respectively proof of his appointed as an heir, Form C (Certificate of allocation) and the Title Deed.

[5] He alleges that the site is fully developed but he does not disclosed who has developed it. He further alleges that the 1st respondent is in unlawful occupation of this site because the 1st respondent is relying on a fraudulently and erroneously obtained Title Deed number 7391 registered in the names of

the 1st respondent's father on the 20th September 1968. Refer to annexure "D" herein attached.

[6] The applicant alleges further that despite demand, the 1st respondent refuses to vacate the site in question. It must be indicated at this juncture that even through the parties' fathers have been through different courts engaged in a dispute over this site, the applicant has not disclosed this fact in his originating application.

[7] The applicant further alleges that the first respondent and his late parents have been collecting rental from the site in question in the sum of M700.00 per month since January 1980 to date. He has however not provided any proof of this allegation.

[8] One must also indicate that according to annexures "C" and "D", the applicant's fathers title deed was issued in the year 1970 while that of the respondents father's was issued in the year 1968.

[9] **Relief**

The applicant has approached this praying that judgment be entered against the respondents as follows:

a) That deed number 7391 dated the 20th September 1968 (annexure "D") be cancelled by the 2nd respondent.
b) That 1st respondent be ejected from the above mentioned site.
c) That the first respondent be directed to pay occupational rental of M294,000.00 to the applicant.
d) Costs of suit

e) Further and/or alternative relief.

[10] The first respondent has, in his answer raised preliminary objections by way of a special answer in terms of Rule 66(1) and (2) (a) and (b) of the Rules of this Court.

[11] He alleges, and correctly so, that the same claim has since been determined and finalized by the Honourable Court in CIV/T/101/1975. To this extend he has annexed annexure "PN2", a judgment of the High Court per Justice Mofokeng (as he then was). This judgment is dated the 13 day of September 1979.

[12] There is nothing on record indicating that the applicant's father who lost the case to the first respondent's father ever noted an appeal to the Court of Appeal against this judgment. In terms of Rule 83(1) of the Rules of this Court, the above shown judgment is a final and binding judgment.

[13] The above applies to the Maputsoe Local Court case number of reference CC159/99 in which the first respondent, then 3rd defendant) was sued together with three other defendants by the applicant in this application (Motume Ramaisa) for ejectment of the four defendants from the site in question. In that case, exhibit "PN2" in this application was exhibited as evidence that the dispute in relation to the subject-matter herein had long been finally decided by the High Court. In other words the first respondent succesfuly pleaded the defence of re judicata judgment in CIV/T/105/1975 was delivered.

[14] As has been noted above, there has never been any appeal lodged by any of the parties to that CIV/T/105/1975. The applicant in his replication (which pleading is not provided for in the Land Court procedure) claims that it is false that the applicant's counsel was aware of the decision in CIV/T/105/1975.

[15] With the greatest respect, the above cannot hold water because some twenty four (24) years later, the applicant in the instant application sued or issued summons against some four defendants, one of which was the first respondent in this application. The subject matter was once more the subject matter herein. The now first respondent was then the third respondent.

[16] The applicant once more lost that case on the basis of the res judicata principle which the first respondent in this case had raised. The applicant's/plaintiff claim in the said local court had asked that Court to order that the defendants be ejected from the site in question. Refer to judgment of that Court dated the 15 September 1999 – (unfortunately it is not marked). It has been translated into English. It can therefore not be correct that the applicant's counsel was not aware of this judgment.

[17] If indeed the applicant's story were to be believed in this regard, the applicant has himself to blame for having not brought this judgment to the attention of his counsel.

[18] The applicant's allegation that the matter is not re judicata because in CIV/T/101/1975 the wrong title deed number as opposed to what he says is the correct title deed number was in issue does not advance his case in any-

way for the simple reason that he has not only failed to launch an appeal against the High Court judgment in this case, but he has also never applied for a review or rescission of that matter at least in relation to the alleged wrong title deed. He cannot now be heard to raise this issue some twenty (20) years from 1975 or some sixteen (16) years later after his case was dismissed by the Maputsoe Local Court.

[19] This is because both judgments of the said two courts are final and binding by nature; not only because no appeal was even launched against them by the applicant's father after he had lost the cases. This is also because by operation of the law, to wit Land Act No. 8 of 2010, the rationale or objectives underlying the promulgation of this Act and the attended Rules is to achieve not only a speedy disposal of land matters but it is also to bring permanent finality to disputes over land rights, title or ownership.

[20] By having promulgated this Act and the Land Court Rules, the legislature has provided a firm mechanism through which matters or issues concerning disputes over land are not resuscitated indefinitely without coming to an end; even by later generations.

[21] To this extend, and for removal of doubt, Rule 83(1) (2), which deals with "final and binding judgment" provides as follows:-

> 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 claim,*

litigating under the same title, and has been heard and finally decided by a competent court"

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

(My underlining). The provisions of sub rule (2) are in mandatory terms.

[22] In brief, the applicant in the current application is opening the case or claim which has long ago been litigated by his and the first respondent's fathers as well as by him and the first respondent.

[23] If this Court were to proceed to hear this application, it would have ignored the noble rational or objectives for which the Land Act (supra) was promulgated, thereby also ignoring the defence of res judicata herein raised on behalf of the first respondent.

[24] This Court cannot ignore these important development and judgments of competent Courts which have already made final determinations in respect of the parties and the same subject matter herein. Were it to do so, then litigation with regard to the above would go on infinito/indefinitely.

[25] In any case, and as has already been correctly submitted by counsel of the first respondent, the applicant's father connected and or affirmed in annexure "PN1" that the subject matter herein belongs to the first respondent's father.

[26] It should also be indicated and or highlighted that the applicant has for reasons best known to himself, not disclosed in the originating application the above-shown two judgments of both competent courts, nor has he disclosed the existence and contents of annexures "PN1" and "E". This he failed to disclose at his own peril.

[27] Prayer (C):- Applicant has also claimed against the first respondent payment of rental in the sum of two hundred and ninety four thousand maloti (M294,000.000). This is allegedly rental of M700.00 per month which was collected by the first respondent's parents and by the first respondent, from January 1980- to date.

[28] This the applicant claims against the first respondent despite the fact that his father and now himself have always lost cases they had instituted against the first respondent's father and the first respondent.

[29] Whilst the applicant may not be faulted for alleging that this claim for payment of rental is incidental to the main claim in prayer (a); namely cancellation of the title deed number 7391 issued in 1968 in respect of the first respondent's father, this claim has, by any stretch of imagination long lapsed due to prescription and due to the fact that his father and himself have lost in all cases against the first respondent's father and the first respondent over this site. Had the applicant and his father succeeded on their claim against the first respondent's father and the first respondent, then and only then, he could claim for occupational rental of this business premises in terms of section 86; although they could be faced with the defence of prescription.

[30] Furthermore and regrettably, no evidence of any kind has been placed before this Court in support of the applicant's claim. To merely state, as he does that this is rental which has been collected by the first respondent's parents and the first respondents without proof, does not advance the applicant's case. The applicant will have to do more than he has done in order to proof the indebtness of the first respondent and his parents in this regard to him.

[31] For the above reasons and due regard being had to the surrounding circumstances of this application, the first respondent's preliminary objections raised by way of a special answer in terms of Rule 66 (1) (2) (a) and (b) and indeed in terms of Rule 66 (2) (e) are all upheld. Subsequently, the applicant's originating application is dismissed with costs to the first respondent.

[32] **Costs**

The first respondent has asked this Court to dismiss the applicant's application with costs on a higher scale of attorney and client. The underlying reason for this prayer is that the applicant has launched this application which is frivolous and so the Court has to show its displeasure by awarding costs on the higher scale.

[33] The first respondent has successfully raised a preliminary objection by way of special answer in terms of the Rules of Court. The objection raised is that of res judicata; in terms of Rule 66 (2) (b) and that of prescription in terms of Rule 66 (2) (e).

[34] The applicant knows and is aware of the two judgments mentioned above which relate to the same subject matter. The nonetheless, and with that knowledge not only failed to disclose the existence of these two judgments, but he went ahead to sue the first respondent as he did on the same subject matter.

[35] This is not frivolous but it is also an abuse of the Court process. That the said two judgments are in existence as well as the fact that they are both final and binding decisions by competent courts over the same claim is common cause.

[36] Instead of appealing against the said judgments, the applicant, and well aware of their existence and their nature, he filed a fresh originating application before the Land Court in 2015. In doing so he intentionally failed to disclose to this Court the existence of both judgments. In the premises, it is the considered view of this Court that this is a case which calls for an award of costs on a higher scale of an attorney client. It is accordingly ordered that the applicant should pay costs to the first respondent on such a scale.

M. Mahase

Judge

For Applicant:- Adv. Nteso

For 1st Respondent:- Adv. Masasa`