

IN THE HIGH COURT OF LESOTHO

CIV/APN/68/2014

In the matter between:

NKEKELETSE MAMOSA JONATHAN

APPLICANT

AND

‘MAMOSIUOA NTAHLI LEPHOLE

1ST RESPONDENT

(duly assisted by her husband)

THE EXECUTOR – THE ESTATE OF THE

2ND RESPONDENT

LATE ‘MAKEMUELE ‘NEHENG NTSANE

THIKHOI LYDIA JONATHAN

3RD RESPONDENT

‘MANTHOMENG MAMOSA MAJARA

4TH RESPONDENT

VUYELWA KOTELO

5TH RESPONDENT

SEOEHLA JONATHAN

6TH RESPONDENT

MOSA JONATHAN

7TH RESPONDENT

MASTER OF THE HIGH COURT

8TH RESPONDENT

ATTORNEY GENERAL

9TH RESPONDENT

JUDGMENT

CORAM : NOMNGCONGO J.

DATE OF HEARING : 5 May 2015

DATE OF JUDGMENT: 23 November 2017

[1] The applicant has approached court to seek an order in the following terms:

1. That the last WILL and TESTAMENT of the late **'Mantahli Leabua Jonathan** and its codicil be declared **null and void** and of no force or effect in so far as it relates to the residential plots situated at **Happy Villa Maseru Urban Area** originally described as **plot 567** under the old **Title Deed system** and **plot 12283 – 042** under the new lease system, in Maseru district.

2. That the respondents be directed to pay costs in the event of opposition of this application.

3. Granting applicant such further and/or alternative relief as this Honourable court may deem fit.

[2] In her founding affidavit she deposes that her son Seoehla was appointed her to estate of her late father in law Leabua Jonathan the former Prime Minister of Lesotho. She was to administer the estate on his behalf until he reached majority which maidentally he already has. The plot in respect if which she seeks the declaratory order is presumably part of that estate. Applicant says the plot identified as N0. 657 under the old Title Deed system and 12283 – 042 under the Deed system (*I think she is confusing the numbers 657 and 567*) was not held by her mother in law “with my husband in the share ratios explained by her. She goes further to say that the site was contributed or donated to a company, **Rakolo Investment (Pty) Ltd** by his late father-in-law (*par.*

23 of the founding affidavit)” She repeated this assertion in the next paragraph of the affidavit. In her own assertion, therefore the site belonged to a company which she has not cited in this application. She herself does not in any way lay claim to it and yet she seeks a declaratory order in respect of it.

[3] Now, it is trite that the relief is not available to a litigant who does not have an interest in the subject matter of the decision. It was held thus in **Adhro Investment Co. Ltd V Minister of Interior and Others 1961 (3) SA 283 (T)** that

“...Some tangible and justifiable advantage in relation to the applicant’s position, with reference to an existing, future or contingent legal right or obligation must appear to flow from the grant of the declaratory Order sought”

[4] The applicant in ***casu*** has failed to establish that she has any right to the plot in question and even if I were to give the order it would be of mere academic interest as she makes no claim to the plot.

[5] The application is dismissed with costs

T. NOMNGCONGO
JUDGE

For Plaintiff : Mr Teele

For Respondent: Ms Makau