

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**CRI/A/0009/2017**

**CRI/T/MSU/0469/14**

**In the matter between:**

**MALEBONA MOHALE**

**1<sup>st</sup> APPELLANT**

**NKHAHLE MOHALE**

**2<sup>nd</sup> APPELLANT**

**AND**

**CROWN**

**RESPONDENT**

**JUDGMENT**

**Coram** : Honourable Justice E.F.M.Makara

**Date of hearing** : 3<sup>rd</sup> September 2018

**Date of judgment** : 3<sup>rd</sup> September 2018

**SUMMARY**

*Appeal from the Magistrate Court- Appellants having applied for an appeal of a land matter to the High Court sitting in its ordinary jurisdiction. The court raising the issue of jurisdiction mero muto.*

*Held: The High Court sitting in its ordinary jurisdiction declines to hear the matter.*

**ANNOTATIONS**

**Statutes:**

**Land Act no. 8 of 2010**

**Land (Amendment) Act No. 16 of 2012**

## **1. INTRODUCTION**

- 1.1 At the commencement of this proceedings it emerged that there was a concern on the jurisdiction of this Court to entertain the review brought before court by the appellant.
- 1.2 In this respect the court was referred specifically to the Land Act 2010 read in conjunction with the Land Act (Amendment) 2012. There was more emphasis on the effect of the word “all” introduced by the amendment of section 7.

## **2. THE CROWN**

The crown assigned it the interpretation that it was intended to delineate in clear terms the jurisdictional delimitations between the High Court exercising its normal powers in contradistinction to it sitting as a Land Court. According to it (Crown) the word “all” extended to the Land Court a criminal jurisdiction to hear in addition to civil cases, the criminal ones.

## **3. THE RESPONDENT**

The respondent counter argued that notwithstanding Section 74, the Land Court Rules issued by the Chief Justice pursuant to Section 76 of the Land Act, still retains the competency of this Court sitting in its ordinary capacity to hear a criminal dimension of land dispute-based cases.

## **4. CONSIDERATIONS BY THE COURT**

The court appreciates merits in the interpretation ascribed to the rules by the Appellant. This is because the reading of the rules seeks to bestow such jurisdictional powers upon this Court. This notwithstanding, a consequent and determinate issue would be whether the rules can competently assign jurisdiction over the Court. This holds true particularly when the Land Court dictates otherwise.

## 5. CONCLUSION

- 5.1 In resolving this controversy, the Court is of the view that the rules are ultra vires in purporting to maintain the jurisdiction of this Court to hear criminal cases concerning land matters and yet Section 74 indicates otherwise.
- 5.2 In the premises, this Court sitting in its ordinary status, declines jurisdiction to hear the matter. There is no order on costs.

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**E.F.M. MAKARA**  
**JUDGE**

**FOR APPELLANT :** ADV. N. Pheko instructed by Messrs T. Maieane

**FOR RESPONDENT:** ADV. L. Lithoko instructed by the office of the DPP