IN THE HIGH COURT OF LESOTHO

(HELD AT MASERU)

CRI/REV/0042/2017

In the matter between;

SEENYANE MOSOOANE	**APPLICANT**

AND

HIS WORSHIP MAGISTRATE HLABANYANE	**1ST RESPONDENT**
DIRECTOR OF PUBLIC PROSECUTIONS	**2ND RESPONDENT**
SENIOR CLERK OF COURT -	
MASERU MAGISTRATE COURT	**3RD RESPONDENT**

JUDGMENT

Coram	**:**	Honourable Justice E.F.M. Makara
Dates of Hearing	**:**	20 March, 2018
Date of Judgment	**:**	20 March, 2018

Summary

Application for review – Magistrate Court having found applicant guilty of occupying land unlawfully – the Accused having not challenged the finding of guilty on his part but the sending of the matter to the High Court for automatic review and the Magistrate to have revisited his earlier order following an order on automatic review – Magistrate Court having ordered D010 and or the chief to take appropriate action they may deem fit about the accused on the basis of his conviction – The Magistrate Court having sent the matter to the High Court for automatic review following its recognition that its order was inaccurate – High Court having ordered the Magistrate Court to make an appropriate order – Magistrate Court having made an order of vacation and demolition of the structures of the applicant.

Held:
There is nothing procedurally wrong with the conduct of the proceedings in the *court a quo.*

ANNOTATIONS

Cited Cases

1. Crown v Seenyane Mosooane CRI/T/MSU/151/14
2. Retail Motor Industry Organisation & Another v Minister of Water & Environmental Affairs & Another 2014 (3) SA 251 (SCA)
3. President of the Republic of South Africa v SARFU & Others 2000 (1) SA 1 (CC)
4. Manok Family Trust v Blue Horison Investment 10 (Pty) Ltd & Others

Statutes & Subsidiary legislation

1. The Land Act No. 8 of 2010

MAKARA J

Introduction

[1] This is a review application in which the applicant prays this Honourable Court to issue an order mainly that:

(a) The judgment in **Crown v Seenyane Mosooane**[1] handed down by the 1st Respondent be stayed pending finalisation hereof;

(b) The judgment in CRI/T/MSU/151/14 handed down by the 1st Respondent be reviewed, corrected and set aside.

[2] In the aforesaid trial, the Applicant was the accused facing a charge of occupying a land without proper authority and the 1st Respondent found him guilty. In *verbatim* words the trial court consequently ordered thus:

[1] CRI/T/MSU/151/14

1. Accused is found guilty of occupying land at Thuathe Mosenekeng without proper authority as charged;

2. Accused is sentenced to five years in prison or pay a fine of M5000.00. Two years in prison or M2000. is suspended is suspended for five years provided accused is not found guilty of a similar offence;

3. The lawful authorities in the area coded as D010 and/or the chief on the basis of this conviction to take appropriate action they may deem fit about accused. In the event that they say he vacates he should not be compensated.

[3] It subsequently emerged to the trial Magistrate that in making the last order he deprived himself judicial power to make an appropriate order. So, he referred the proceeding to this Court for its review intervention. The matter came before Monapathi J who ordered that the case be referred back to the Magistrate for him to consider making any one or more of the orders under S. 82 of the Land Act[2].

[4] In compliance with the order issued by the Monapathi J, the 1st Respondent ordered the Applicant to vacate the land and that the structures thereon be demolished. It is precisely this order which precipitated this vehemently opposed review application.

The Issue for Determination

[5] Thus, issue for determination is whether the Court *aquo* acted irregularly or not, by revisiting its earlier decision and

[2] No. 8 of 2010

making the last order relating to vacation and demolition of the structures.

The Case of the Applicant

[6] It is the case of the Applicant that the 1st Respondent acted irregularly by revisiting his earlier decision and making an order which is variant to the earlier one. He says by so doing, the 1st Respondent reviewed his own decision which is against the doctrine of *functus officio*. In addition, he states that the intention of the doctrine is to mediate between two competing interests, namely, finality or certainty on the one hand and flexibility and administrative efficiency on the other. In support of his point, he quoted a number of judicial decisions on the subject including **Retail Motor Industry Organisation & Another v Minister of Water & Environmental Affairs & Another[3]; President of the Republic of South Africa v SARFU & Others[4]; Manok Family Trust v Blue Horison Investment 10 (Pty) Ltd & Others**.

[7] Further, he contended that his occupation of the site was subsequently normalised and regularized by the lawful authorities of the area. This according to him resulted from the original order made by the trial court that the authorities were at large to intervene accordingly.

[3] 2014 (3) SA 251 (SCA) at 24
[4] 2000 (1) SA 1 (CC) at Para 44

The Case of the Respondent

[8] It was submitted by the Counsel for the Respondents that the 1st Respondent acted within the parameters of sections 65 to 68 of Part XI of the Subordinate Court Order, 1998 and that it is against the background of this provision together with the review order made by Monapathi J. that the Magistrate substituted his earlier order.

[9] The Respondents challenged the authenticity and accuracy of the dates of the regularisation of the lawful occupancy of the site by the applicant. This was in recognition of the fact that *ex facie* the form purporting to regularise or normalise his stay on the site, the regularisation seems to have been granted on the 16th June, 2017 yet it bears the date stamp of the 29th June, 2016. He expressed a suspicion that this could be attributable to the fact that there was a time when these forms mysteriously got lost.

[10] He concluded this issue by saying there is something fishy about this regularisation or normalisation especially because it was also not done in terms of section 26 of the Land Act which governs the process. Resultantly, he asked the Court not to consider what is the purported regularisation or normalisation and finally asked this Court to dismiss the application.

The Decision of the Court

[11] In analysing the facts of the matter and the submissions of both parties, this Court finds that there is nothing wrong with the substitution of the earlier order made by the c*ourt aquo* when he sent the matter to the High Court for automatic review. He just followed the procedure under the Subordinate Court Act.

Sections 66 and 68 (2) (b) of the Subordinate Court Order follows:

> All sentences in criminal cases in which the punishment awarded is a fine or imprisonment, including detention in a reformatory, industrial school, inebriate reformatory, refuge, rescue home or other institutions,
>
> (a) -----
>
> (b) -----
>
> (c) -----
>
> Shall be subject in the ordinary cause to, review by the High Court, but without prejudice to the right of appeal against such sentence whether before or after confirmation of the sentence by the High court.

S. 66 complements S. 68 (2) by providing thus:

> If, upon considering the proceedings aforesaid, it appears to the magistrate or the judge, as the case may be, that the same are not in accordance with justice or that doubts exist whether or not they are in such accordance,
>
> (a)
>
> (i) ……
>
> (ii) ……
>
> (iii) ……

(b) the judge may,

(i) alter or reverse the conviction or increase or reduce or vary the sentence of the court which imposed the punishment;

(ii) **where it appears necessary to do so, remit such case to the court which imposed the sentence with such instructions relative to the taking of further evidence and generally to the further proceedings to be heard in such case as the judge thinks fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or admitting such a person to bail, or, generally, touching any matter or thing connected with such person or the proceedings in regard to him as to the judge seems calculated to promote the ends of justice.** (Court's emphasis)

[12] Clearly, in the circumstances the trial court exploited sections 66 and 68 procedural avenues to rectify its earlier decision by automatically sending the matter to the High Court for review.

[13] The Court is not persuaded that the regularisation form is authentic, accurate and has legal basis. The contradictions inherent in it is that the form advanced to support the explanation bears a statement dated the 16th June 2017 while the date stamp bears the 20th June 2016. There has been no account about these rather irreconcilable differences of roughly eleven (11) months. Resultantly, this document is found to be invalid.

[14] In the premises, this Court declines to alter the judgment of the court *aquo* and dismisses the application.

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E.F.M. MAKARA
JUDGE

For Applicant : Adv. Selikane instructed by Mosotho Attorneys

For Respondent : Adv. Fuma of the DPP's Chambers