

**IN THE LAND COURT OF LESOTHO**

**HELD AT MASERU**

**LC/APN/94/15**

In the matter between

**THABISO THIBELI**

**APPLICANT**

**And**

**MAKHOSHOLO KHOSHOLO**

**1st RESPONDENT**

**COMMISSIONER OF LANDS**

**2nd RESPONDENT**

**LAND ADMINISTRATION AUTHORITY**

**3rd RESPONDENT**

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**JUDGEMENT**

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**CORAM: Banyane AJ**

**HEARD:09/10/19,30/10/19,28/11/2019**

**DELIVERED: 28/08/2020**

**SUMMARY**

*Conflicting claims of title to Land - applicant's claim based on allocation and respondent's claim based on inheritance - Lease issued on the basis of a chief's letter confirming lawful use - whether the lease erroneously or fraudulently issued - requirements of section 30 (2) of the Land Act 2010.*

*A Form C document - No evidence adduced to prove lawful allocation - Form C, where challenged is not conclusive on lawfulness of the alleged allocation - A decree of absolution from the instance issued.*

## **ANNOTATIONS**

### **Cases cited**

1. Majoro v Sebapo CIV/A/7/80
2. Maphokoane v Ramalitse CIV/APN/616/10
3. Mothibeli v Judicial Commissioner CIV/APN/170/06
4. Nyofane v Lelosa CIV/ A/18/80
5. Thabiso Tsoako and Others v Mapheku Pheku and Others LC/APN/174/2014.
6. Motumi v Shale C of A(CIV) 32/17
7. Komane and Another v City Express Stores (Pty) Ltd LAC/CIV/A/5/2002
8. Pule v Makhaola CIV/APN/124/04
9. Tlali Phakisi v Motlatsi Tlapane CIV/A/30/14

### **Statutes**

1. The Land Act No. 20 of 1973
2. The Land Act No.17 of 1979
3. The Land Act No.8 of 2010
4. The Land Administration Authority Act No. 9 of 2010
5. Land Court Rules 2012
6. Systematic Land Regularisation Regulations 2010
7. Oaths and Declarations Regulations of 1964

### **Books**

PQR Boberg; The Law of persons and the Family, 1977, Juta and Co.

PJ Schwikkard and SE van der Merwe: Principles of Evidence; 4<sup>th</sup> Edition, 2016.

## **Introduction**

**[1]** The dispute between the parties pertains to a certain piece of Land, identified as Plot number 14301-1130, situated at Lithabaneng, Maseru Urban area. It was registered in favour of the 1<sup>st</sup> respondent on the 06<sup>th</sup> June 2013 during the systematic regularisation project. The applicant is claiming title to this plot by virtue of a Form C allegedly issued in his favour on the 08<sup>th</sup> September 1978.

**[2]** The gravamen of the applicant's case is that the lease was erroneously and or fraudulently issued in favour of the 1<sup>st</sup> respondent. He instituted this proceedings seeking reliefs couched as follows:-

- a) Declaration that the applicant is the lawful allottee and holder of all rights and interests on the site with a Form C on plot number 14301-1130 situated at Ha Matala in the district of Maseru.*
- b) Cancellation of the lease number 14301-1130 purportedly registered in the names of the 1<sup>st</sup> respondent*
- c) Directing the 3<sup>rd</sup> respondent to register lease number 14301-1130 in the names of the applicant.*
- d) Ejectment of the 1<sup>st</sup> respondent from plot number 14301-1130.*
- e) Costs of suit against the 1<sup>st</sup> respondent and/or against all the respondents in the event of opposition hereto.*
- f) Further and/or alternative relief.*

**[3]** The matter is mainly opposed by the 1<sup>st</sup> respondent on grounds that the form C relied on as proof of title is invalid because it was issued when the applicant was eleven (11) years and minors cannot hold title to land; And that the applicant presented contradictory versions on his alleged acquisition of Rights over this Plot. The 3<sup>rd</sup> respondent filed its answer for the purpose of placing relevant facts before Court based on official records under its control. It only disputes error in

the issuance of the Lease but did not join the fray of allocation of the plot to either party.

### **The Trial**

- [4]** Before commencement of trial, the parties in a pre-trial conference, identified two issues to be resolved; namely;
- a) The existence or otherwise of an error and/or fraud in the issuance of the lease to the 1<sup>st</sup> respondent
  - b) To whom is the site in dispute lawfully allocated?

### **Applicant's case**

- [5]** The applicant testified that he is fifty-two (52) years of age. He was born on the 09<sup>th</sup> April 1967. He described the site as situate below Seboka Primary school.
- [6]** He told the Court that the plot was acquired by his parents on his behalf and a certificate of allocation (form C) was issued in his favour. He handed in a form C dated 08<sup>th</sup> September 1978 to support his alleged allocation.
- [7]** His evidence is to the effect that, in 2013, he discovered that the 1<sup>st</sup> respondent is also claiming rights to this piece of land; that she was reportedly sub-dividing it in order to sell it. He then sought intervention of the chief about this matter. On the date appointed for the meeting, the 1<sup>st</sup> respondent was directed to refrain from her actions of interfering with the plot.
- [8]** He testified further that at one point he fenced the plot and erected poles to mark its boundaries but these were removed / cut down by

the 1<sup>st</sup> respondent and he confronted the 1<sup>st</sup> respondent about this. He did not however say when this was.

**[9]** He told the court that, when an announcement was made to the effect that the regularisation project was to be carried out in their area, he was out of town on work-related matters. When he came back and learned about it, he approached the chief, who directed his messengers to go to the site and take measurements. This was done and a letter to the Land Administration Authority (LAA) to support his lease application was then written. He subsequently filled his Lease application and tendered required documents in support.

**[10]** Under cross-examination he was asked about the list of witnesses attached to his originating application. The list shows that he would call one Thakane to testify that her father Peete sold the plot to him. His response was simply that the list does not reflect the true picture. No further explanation about inclusion of this Thakane on the list was proffered.

**[11]** It was suggested to him that at one point, he hauled the 1<sup>st</sup> respondent to the chief in order to negotiate the respondent into selling the plot to him and thus requested the 1<sup>st</sup> respondent to produce her inheritance documents. This he did because he had bought the site from “wrong people”. He denied this.

**[12]** It was suggested further that the plot is situated on what used to be Motamolane’s field; and that the surrounding plots were part of this field. His answer was that, he does not know.

### **Respondent’s case**

**[13]** The 1<sup>st</sup> respondent testified that she was born in 1950. She told the Court that the disputed plot is part of what used to be a field

belonging to Motamolane Ralitsebe. When he passed on, it was inherited by her husband Nkoebe in 2002. After her husband's death, it passed to her in 2008. She handed in two family letters in terms of which her husband Nkoebe was nominated as Motamolane's heir in 2002; and the other nominating her as heir to her husband's estate in 2008. Crucial is the 2002 letter, in which the description of Motamolane's estate is made. Its fair translation reads;

*"We as the family we put forth Nkuebe Khosholo as an heir to the late Motamolane Ralitsebe. He is a customary heir as it is according to the lineage of our Families; Khosholo, Ralitsebe, Maema and Moleleki. Nkuebe is of the Khoshololineage, Motamolane, from Ralitsebe's and Motamonane did not have any children.*

*Description of the property(inheritance)*

*A plot with structures (houses), and everything else.  
(family members signatures)".*

**[14]** The 1<sup>st</sup> respondent disputes the validity of the form C tendered by the applicant and averred that, in 1978 until mid-80's, the said Motamolane was still ploughing this field, so the applicant could not have been allocated this Land in 1978.

**[15]** She told the court that she was once summoned to the chief's place, apparently, at the instigation of the applicant who asked her, before the chief, to bring inheritance letter because he wanted to buy the plot from her since it appeared that he bought it from "wrong" people. This was before the lease was issued. According to her, she told him that she would produce the letter after the funeral of her father.

**[16]** Under cross examination, it was suggested to her that the letter of nomination by the family council does not include the disputed plot as part of Motamolane's estate; that the letter describes Land with

structures on it and not the disputed plot, which is vacant. Her response was that, "everything else" include all other unspecified property and the disputed piece of land falls within this unspecified property.

**[17]** Asked about whether Motamolane had a title document, she said, back then, there were no form Cs.

**[18]** It was suggested that the applicant fenced the plot without her interference. Her response was that the applicant had threatened to shoot her so she stopped going to the plot.

**[19]** It was suggested that she could not validly apply for a lease without a certificate of allocation and that the alleged nomination was not submitted to Land Allocating Authority. She responded that her husband could not get title documents because it was costly to get such documents from Maseru City Council (MCC), unlike during the Regularisation project. She added that the requirement for obtaining a lease under the project was a chief's letter confirming a person's rights on land, which was pointed out by land owners in the presence of the Chief's representatives.

### **Evidence on behalf of 3<sup>rd</sup> Respondent, the LAA**

**[20]** **Thandi Mosaase**, a customer services consultant of the 3<sup>rd</sup> respondent (LAA) testified on its behalf. She tendered records pertaining to the lease applications of the disputants and supporting documents for both applications. According to this witness, their records reveal that the 1<sup>st</sup> respondent's lease application was filed on the 15<sup>th</sup> August 2012 and the chief's letter verifying lawful use of the land was written on the 05<sup>th</sup> August 2012. The Lease was issued on 05<sup>th</sup> June 2013. The applicant's application on the other hand was

filed on the 02<sup>nd</sup> October 2012. The chief's letter was written on the 27<sup>th</sup> August 2012. Both letters were written by Chief Tseliso Matala.

**[21]** In the letter written in favour of the 1st Respondent, the dimensions of the plot are recorded thus; 80x90x80. In the applicant's letter, dimensions are; 79.8 x43 x40.4x44.2.

**[22]** She told the court that under the regularization Project, a chief's letter was sufficient as proof of 'title' and that the respondent's lease application was compliant with all requirements. She testified further that the survey during the project was done by the surveyors engaged by the LAA at no cost to the lease applicants. She told the Court that the applicant could not be issued a lease because one had already been issued to the 1<sup>st</sup> respondent in respect of the same site.

**[23]** She testified further that; where the basis for acquisition of land Rights is inheritance, such should be confirmed by the land Allocating Authority; in this case, the Maseru City Council (MCC), but this is a requirement under the sporadic Land Rights Registration.

**[24]** **Maloi Matela**, a surveyor at LAA also took the stand. He told the court that after an area is declared as a regularisation area; residents would be informed that a survey would be undertaken in their area. He confirmed that the disputed plot was surveyed during the project in 2011 or early 2012.

### **Arguments and Analysis**

**[25]** The applicant asks this court to order cancellation of the lease issued in favour of the 1<sup>st</sup> respondent on the ground that it was erroneously issued. To support this relief, it was contended on his behalf that; **a)** at the time of the purported nomination of the respondent as heir, the disputed Land had long been allocated to the applicant to which



he holds a form C, **b)**The 1<sup>st</sup> respondent nor her predecessor were ever allocated this land and do not have a certificate of allocation contrary to the Land Laws of the Country, *viz*, the Land Procedure Act No. 24 of 1967, The Land Act No. 20 of 1973 and the Land Act No. 17 1979, whichever is applicable to Motamolane's alleged title; **c)** the 2002 nomination was never submitted to the allocating authority in terms of the Land Act 1979,so was the 2008 nomination. **d)** the letter in terms of which the respondent's husband was nominated as heir does not describe the disputed Land, and families do not allocate Land; **e)** the measurements contained in the chief's letter do not tally with the dimensions of the plot on the ground. **f)** The LAA therefore erroneously relied on an unlawful document to issue a lease, *viz*, the chief's letter, because the land was never allocated to the 1<sup>st</sup>respondent and if issued on the basis of the inheritance letters, such do not feature under section 30(2) of the Land Act as proof of Lawful occupation.

**[26]** The Authority (LAA) denies any fraud or error in the issuance of the lease and submits that, whilst it cannot determine the rightful allottee of the land in question, the systematic Land Regularisation Regulations were complied with.

26. 1 I propose to deal with the grounds advanced for assailing the lease. It is appropriate to first consider the legal Requirements for issuance of leases as set out in the Land Act 2010.

### **Issuance of leases**

**[27]** **Section 65** of the *Land Act 2010* provides that;

*Every registration of a lease under Regularisation shall be preceded by an adjudication of Rights relating to that land.*

27.1 *Rights adjudication* is defined as a process whereby evidence related to the claimant's right of possession of the Land parcel, *is collected and assessed (Regulation 2 of the Systematic Land Regularisation Regulations 2010).*

27.2 **Section 66**, deals with systematic adjudication. It provides that;

*Systematic adjudication shall be carried out in conformity with the Regulations for adjudication of interests in Land and the criteria under section 30(2) or any other criteria that may be determined during adjudication shall apply in the determination of Rights.*

Regulation 9 of the *Systematic Land Regularisation Regulations 2010* provides that a person claiming rights in a regularisation area shall produce evidence in accordance with section 66 of the Act.

27.3 **Section 30(2) reads;**

*Whenever a person to whom subsection 1 applies (i.e. a person holding Land other than Land held by a Lease, who is desirous of registering it or creating an interest in land held by him/her) lodges an application for a lease, that person shall produce the following;*

- a) *Evidence that he is qualified to hold land under section 6 of the Land Act 2010*
- b) *A description of the boundaries of the land in question (by reference to a plan or otherwise), and*
- c) *Any of the following documents;*
  - i. *A registered certificate of title issued by the Land Registrar under the deeds registry Act 1967;*
  - ii. *A registered deed of transfer or a certified copy thereof If the registered copy is lost*
  - iii. *An affidavit by the chief or other proper authority that the applicant lawfully uses or occupies the Land;*
  - iv. *An affidavit by three persons resident for over 30 years in locality in which the Land is situated to the effect that it is their personal knowledge that the applicant and his predecessors*

*have been occupying and using the Land for a period of at least 30 years;*

- v. A certificate of verification of title issued by the commissioner or an allocating authority in the prescribed form;*
- vi. Any other official document evidencing that the applicant is in lawful occupation of the Land.*

**[28]** It is common cause that both parties submitted their lease applications for the disputed plot during the Systematic Regularisation project in 2013. The applicant's lease could not be processed as there was already one in existence over the same plot. The undisputed records by the 3<sup>rd</sup> respondent reveal that both lease applications were supported by the chief's letter. The letter in favour of the applicant titled "*application for lease*" was written on the 27<sup>th</sup> August 2012 whilst a letter with similar effect, but titled "*proof by the chief on confirmation of rights to Land*" was authored in favour of the 1<sup>st</sup> respondent on the 15<sup>th</sup> August 2012. Both were written by Chief Tseliso Matala.

**[29]** The applicant's date of allocation as recorded in his letter and the lease application form, is 01/02/1980. It was contended on his behalf that this letter is in line with the provisions of section 30(2) of the Land Act 2010 because the chief certified that all the information contained therein is truthful.

**[30]** The impugned lease per the 3<sup>rd</sup> respondent's version, was issued on the strength of the chief's letter 'confirming Rights' of the 1<sup>st</sup> respondent on the plot. This letter is dated 15<sup>th</sup> August 2012 as stated above. Its fair translation reads;

*Ha Matala  
P.o Box 2401  
Maseru  
15-08-2012*

*The Manager  
Land administration authority  
P.o. Box 11856  
Maseru 100  
Lesotho*

*Sirs,*

*PROOF BY CHIEF ON CONFIRMATION OF RIGHTS TO LAND*

*I certify that Makhosholo Khosholo, whom I know as resident of Ha Matala. Confirm that she be assisted on her confirmation on her site residential/business which was allocated to her in the year 2005.*

*The site at.....*

*Measurements: 80\*90\*80*

*I, Tseliso Matala*

**[31]** It is plain from section 30(2)(c), in particular (iii)that; where evidence of title, Lawful use/occupation is supplied by a chief, this should be in the form of an affidavit.

**[32]** In terms of Regulation 2 of the Oaths and Declarations Regulations of 1964, an affidavit includes a declaration, deposition or other document containing a statement or facts to the truth of which the deponent swears or affirms.

32.1 Regulation 3 provides that an affidavit shall be made on oath unless the person desiring to make the same is not able to understand the nature or recognise the religious obligation of an oath or has religious or conscientious objections to taking the oath, in any of which cases, the affidavit may be made on affirmation.

32.2 The form of words to be used in an affidavit which is sworn on oath shall be-

*I .....of ..... (setting out the name, address and description of the deponent) make oath and say as follows....."*

In an affidavit that is affirmed, the form of words are prescribed thus;

*I...of.....solemnly, sincerely and truly affirm and declare as follows;*

**[33]** The format/template of both these letters, which, I believe was drafted by the LAA officials for use by the chiefs, is by no means compliant with the Law as envisaged above.

**[34]** I should comment that, the LAA in carrying out its functions under section 5 of the Land Administration Authority Act of 2010 and in striving to achieve registration of Land rights to the Basotho nation through a speedy, inexpensive and simplified process, it should act with care. While entitled to employ any other criteria in Rights adjudication (as envisaged under section 66 of the Land Act), I am of the view that reliable methods of verification of Land Rights should be preferred over informal and inadequate methods. My view is premised on considerations discussed next.

**[35]** It is an irrefutable fact that applications for cancellation of leases issued during the Regularisation project are very common in the Land Courts. We often see situations where two people are "confirmed" (by letters) on the same piece of Land by one chief. (***Shalane Shale v Limema C of A CIV 53/2014 (12 May 2017)*** is one good example). The instant case is but one of the many disputes having the feature of two persons "confirmed" as holders of rights to one piece of land. Regrettably, these letters often lack particularity and or details on the mode of acquisition of rights by the person in favour of whom the letter is issued and the basis for verification, tion, to mention but a few.

**[36]** There is no doubt, in my view, that the scheme of section 30 (2)(c) (iii) that is, the requirement of an affidavit by the Chief, is designed to ensure that lease documents are issued on the basis of reliable information on oath. It is important therefore that; before a chief confirms or verifies a lease applicant as a holder of rights to land, there should be foundational basis. An affidavit is, in my view, reliable evidence for purposes of Rights Adjudication. I should add that the affidavit must show whether the verification is made on the basis of personal knowledge of the chief, derived from records in his office or documents presented by a lease applicant. In addition, the chiefs, in making the affidavits should be elaborate on how the lease applicant acquired the Rights to the land in respect of which the lease application is made. They should record whether acquisition was by allocation, inheritance, donation, sale etc. in short, there should be particularity on all aspects, relevant for Rights adjudication. Differently put, the affidavit should contain clear, sufficient, truthful and reliable information.

36.1 If the LAA adheres to requirements of this provision, or prepares a template that ensures that all the needed details are filled, perhaps we may avert the chaos caused by these 'casual letters', which in my view are often issued without any thorough inquiry into the alleged Right of a lease applicant. To fortify my conclusion by reference to the instant case, three factors are revealed in evidence. First; the applicant's testimony reveal that, the chief did not ask him to produce documentary proof of allocation but simply proceeded to issue the letter, second; the year of acquisition of Rights as recorded on each claimant's letter, differ from what they stated in their evidence; third; the letters do no state how each acquired the alleged right nor the basis for confirming either or both of them as lawfully user/ occupier of the disputed plot.

**[37]** Both parties' letters, as I have already indicated, are not only compliant with the relevant provision, but also wanting in detail; although acceptable to the authority. The question whether the impugned lease should be cancelled, should not therefore be decided solely on the basis of these letters. The title documents and or means of acquisition of an alleged right of either party to the disputed land should be the decisive factor. This means, if the Court finds the applicant to be the Lawful allottee, then the impugned lease is irregular.

**[38]** I turn now to the next issue; the Rights of the disputants to the Land in question. That is; who lawfully acquired rights to the disputed plot?

**Who lawfully acquired rights to the plot in question?**

**[39]** The disputants claim to be "owners" of the disputed land on the basis of allocation and inheritance respectively. Both methods of acquisition of Land Rights are permissible in our Law. ***Motlatsi Phakisi v Tlapana CIV/A/30/14***, (para 20). As earlier stated, the applicant, on the basis of the Form C tendered, claims that he was allocated the Land in question and that the 1<sup>st</sup> respondent's family Council could not purport to nominate her husband nor the 1<sup>st</sup> respondent as heir to his land, and that; in any case, the purported letter of nomination does not describe this Land.

**[40]** Indeed the letter of nomination (at para 13 above) lacks specificity on the description of property that forms the estate of Motamolane. The only property specified therein is the Land with structures on it. This is followed by the words *... "and everything else"*. It is not immediately clear whether these words refer to movable property on the described plot or any other property, whether immovable or movable, amassed by the said Motamolane during his lifetime.

40.1 The 1<sup>st</sup> respondent did not tell the Court as to when and how Motamolane acquired this Land. she simply told the Court that “back then”, there were no Form Cs. She however crucially stated that the plot is part of Motamolane’s field and that in 1978 until mid-eighties, he (Motamolane) was still ploughing it. Whilst absence of a form C is not conclusive that land was never allocated to a party, an alleged allocation should be in accordance with the Law. ***Pule v Makhaola CIV/APN/124/04.***

40.2 It is true the 1<sup>st</sup> respondent did not supply documentary evidence or corroborating oral evidence to support her allegation that the Land was allocated to Motamolane. However this evidence that Motamolane was using the field during the stated period was never addressed by the applicant in his evidence. Under cross examination when it was suggested that the plot is on what used to be Motamolane’s field, he simply says he does not know.

**[41]** The applicant, on the basis of the Form C claims he has title to this land, by reason of which he is entitled to eject the respondent and have the lease cancelled. The onus is therefore on him to satisfy the Court that his alleged allocation had been a lawful one. ***Majoro v Sebapo CIV/A/7/80.*** The question is therefore whether there is evidence of the alleged Lawful allocation in favour of applicant, resulting in the issuance of the Form C, thus ruling out the possibility that the words “everything else” in the respondent’s nomination letter includes this disputed Land.

41.1 To answer this, one would have to refer to the provisions of the Land Act 1973, the operative Law at the time of the alleged issuance of the Form C. In terms of section 4, power to allocate Land is vested in the King in trust for Basotho Nation and exercisable by the chiefs.



41.2 In exercising his function of allocating Land under section 4, the chief was bound to act after consultation with a development Committee established for such area. (Section 6(2)).

41.3 With regards to the procedure of allocation, section 12(1)(a) read with 12(2) is clear that an application for allocation of land shall be in writing and should be lodged with the chief in whose area of jurisdiction the land is situate. The application in respect of land in a rural Area, should be in accordance with Form 'A' of the schedule. I observe that on this form 'A', the details required included the age of the applicant. This is suggestive that age of an applicant was of essence. Other details required on this form include; the purpose for which allocation was sought and the reasons in support of the application for allocation or grant of interest. The chief was then required in terms of section 12(3) to notify the applicant of the date, time and place of hearing of the application and the applicant would then be entitled to appear and make any representations or submissions, if he so wished, in support of his application.

41.4 In terms of section 12(6), a chief who acted without consultation with any development committee is guilty of an offence and any allocation made contrary to sections 6 and 9 shall be null and void.

**[42]** Crucially, the applicant in his testimony did not give any details on how and by whom the Land was so allocated. That is to say, whether the procedure laid down under the Act was observed. He also did not bring any independent evidence by anyone who actually knows the history of the site and its alleged allocation to him. This is fatal because he was not personally engaged in the alleged allocation process due of his age at the material time.

[43] It is now settled that possession of a Form C is prima facie evidence that the land has been allocated to the person named therein but it is not per se conclusive proof that the allocation was effected in accordance with the Law. Where it is challenged, that is, where there is a dispute, a form C without further support cannot be conclusive proof. **Majoro v Sebapo** (supra), see also **Maphokoane v Ramalitse CIV/APN/616/10**, **Mothibeli v Judicial Commissioner CIV/APN/170/06**, **Nyofane v Lelosa CIV/A/18/80**, **Maphokoane v Ramalitse CIV/APN/616/10**, **Mothibeli v Judicial Commissioner CIV/APN/170/06**. If the Form C has not been rebutted at the conclusion of the case, it may be conclusive proof. **Mothibeli v Judicial Commissioner** (supra, at para 5).

#### **Capacity of a minor to hold title**

[44] The 1<sup>st</sup> respondent challenges the Form C produced by the applicant on the ground that Minors do not have the capacity to hold title to land in Lesotho. The applicant's Counsel, argue on the contrary that the Land Act 1979 did not prohibit the holding of title by a minor. The case of **Thabiso Tsoako and Others v Mapheku Pheku and Others LC/APN/174/2014** was cited in support. Sakoane AJ (as he then was) stated thus at para 34 of the judgement:

*"Unlike the Land Act 2010, which, in terms of section 6(1) prohibits children below 18 years to hold title except where the land is a gift or inheritance, there was no such express restriction under the Land Act 1979..."*

[45] It was submitted that what the Law does not prohibit, it allows, as such there was no impediment on the applicant to hold title under the Land Act 1979.

**[46]** It is true, as correctly submitted by the applicant's counsel that in both the Land Act 1973 and 1979, there is no express provision on age restriction to acquiring title to landed property. What is plainly clear from the quoted provisions (under para 41 above) is the procedure for allocation of land. My reading of these provisions, viewed against the details required on the prescribed application form, show that, the application had to be in writing, had to be made by the applicant himself, who would in the application, record his age on the slot provided and signed by the said applicant. The applicant would thereafter appear before the chief and his committee to motivate his application on the appointed date. Clearly a minor could not personally make an application and presentations envisaged under these provisions.

**[47]** Under our Customary Law, a minor could not hold landed Rights but under common Law, Property can be acquired by a guardian on behalf of the minor. **PQR Boberg; the Law of persons and the family, p641.** (p642). No argument was made on whether it was impermissible, under the Land Act 1973, for a parent or guardian to apply for allocation of land in favour of a minor. I thus refrain from reaching a conclusion on this question.

I move next to determine the other ground levelled against the validity of the Form C.

**[48]** The second challenge is that the applicant advanced contradictory versions on how he acquired his alleged Right, thus his story that he was allocated the plot is unbelievable. Reference was made to the List of witnesses in this regard, which reveals that he earlier claimed to have bought the plot from someone else.

- [49] With regards to the list of witnesses, it is correct that, when formulating his case, he attached a list of witnesses to be called at the hearing. Against the names of the witness, there is a brief description of the purpose for which the witness would be called. This is mandated by Rule 13(a) of the Land Court Rules of 2012.
- [50] The first witness on the List is one "Thakane". The purpose of calling her is captured thus: " *she will testify that her father Peete sold the site to the applicant*"
- [51] This person was never called at the hearing nor did the applicant proffer any explanation why she is included on the list and why it is stated that he (applicant) "bought" the Land from Peete. Even when he was taxed during cross-examination about inclusion of this person, he simply said "the list of witnesses does not reflect the true picture". Significantly, there was no mention of him acquiring the Land from Peete during his testimony.
- [52] I should add that an originating application and answer in land litigation are pleadings and constitute the foundation of a party's claim or defence before Court. The object of pleadings, as we know, is to ascertain definitely the question at issue between the parties and this object can only be attained when each party states his case before Court. ***Motumi v Shale C of A (CIV) 32/17, Komane and Another v City Express Stores (Pty) Ltd LAC/CIV/A/5/2002(para 7)***. This Court is left in the dark on the question why this person was included on the list. If the applicant's case is that his parents acquired the Land on his behalf in 1978 and was issued a Form C, he cannot in the same breath claim to have acquired it through sale directly to him.

**[53]** The applicant elected not to lead any evidence to clarify the discrepancy despite a further suggestion to him during cross-examination that he hauled the 1<sup>st</sup> respondent to the chief, before whom he stated that he “bought” the site from wrong people.

**[54]** Another important aspect that was raised on behalf of the applicant relates to the dimensions of the plot. It was contended that the dimensions depicted in the chief’s letter supporting his lease application are closer in correctness, to the actual dimensions after survey by the LAA, as opposed to dimensions recorded in the ‘chief’s letter’ written in favour of the 1<sup>st</sup> respondent.

**[55]** I have already expressed my view about these letters, however it is pertinent to consider the issue of dimensions. The dimensions appear as follows on the applicant’s letter in support of his lease application; 79.8 x 43 x 40.4 x 44.7. On the cadastral map they appear as follows; 47.7, 19.4, 28.6, 39.9. Of significance is the fact that the applicant makes no attempt to make comparison of the dimensions depicted on the Form C and the cadastral map. On his Form C, the dimensions appear thus; 30-10 (ft) x 60-36(ft) x 60-17(ft)x1. These (dimensions on the Form C) are not in my view self-explanatory as I will explain below. The applicant cannot therefore simply rely on the dimensions recorded in the chief’s letter, and ignore those reflected on his alleged title document.

**[56]** This Court does not possess expertise to interpret, without evidence, the recordings on the Form C, regard being had to the manner in which the dimensions are recorded. There is no knowing; how many sides does the plot described on the Form C have? What does the “minus/hyphen” sign in between the numbers signify? And importantly, do these correspond with the survey results, for the

Court to conclude in favour of the applicant that the Form C describes the disputed plot? Regrettably, no evidence was led to address these important aspects about the form C document.

## **Conclusion**

**[57]** As stated earlier, it is evident from the applicant's testimony that he is not conversant with the history of the disputed plot and how the form C on which he relies was issued. I conclude, on the basis of the above hanging issues about the Form C document that there is insufficient evidence to enable the Court to make an assessment of the lawfulness or otherwise of the alleged allocation and on whether or not the This Form C describes the disputed plot.

**[58]** Due to lack of any other form of evidence which supports the alleged allocation, I cannot therefore accept the form C as conclusive evidence of Lawful allocation. The applicant cannot therefore succeed to obtain the orders sought. In my view, a decree of absolution from the instance is an appropriate order under these circumstances.

**[59]** Absolution from the instance is an appropriate order where evidence adduced is insufficient for the finding to be made against the defendant. it does not preclude or bar the plaintiff/applicant from reinstating a later claim where sufficient evidence regarding the allocation will be presented. In other words, it is an appropriate order where, at the close of the case, when both parties have had the opportunity to present whatever evidence they consider relevant, the plaintiff has failed to discharge the normal burden of proof. It is not a positive finding that no claim exists against the defendant. **PJ Schwikkard and SE van der Merwe: Principles of Evidence; 4<sup>th</sup> Edition, 2016, Chapter 32 page 625-626).**

**Order**

**[60]** In the circumstances, I make the following order;

The respondents are absolved from the instance with costs.

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**P. BANYANE  
ACTING JUDGE**

For Applicant: Advocate Tsenoli

For 1<sup>st</sup> Respondent: Advocate Kao

For 3<sup>rd</sup> Respondent: Advocate Malunga