

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/403/2017

In the matter between:-

TSOTLEHO JOHANNES KOKOROPO

Applicant

And

STANDARD LESOTHO BANK LIMITED

1st Respondent

TEXAS OIL (LESOTHO) LIMITED (In liquididation)

2nd Respondent

THE LIQUIDATOR – TEXAS OIL (LESOTHO)

3rd Respondent

DEPUTY SHERIFF - `MIKA

4th Respondent

MASTER OF THE HIGH COURT

5th Respondent

THE ATTORNEY GENERAL

6th Respondent

JUDGEMENT

Coram : Hon. Justice T. E. Monapathi

Date of Hearing :

Date of judgement :

SUMMARY

The Applicant had not sought leave to sue Respondents in terms of Section 180 of Companies` Act 1967 as previously pronounced by the Court of Appeal having applied after a number of years, Condonation was refused.

1. What seems to be the origin of the dispute is a mortgage over Applicant`s land in over plot No. 14303-034, having covered 2 portions of his prayers not

one as Applicant says was the intention. The Applicant disputed this and suggested that only one portion should have been burdened in favour of Respondent. When foreclosure and execution resulted the sale of two (2) portions followed. This Applicant in the previous dispute before Makara J. The matter before Monapathi J resulted in an apparent decision in favour of the present Applicant. The present Respondent then took appeal to the Court of Appeal.

2. In this application the Applicant substantially sought an order declaring the notice of sale in respect of the sand plot and the public auction thereof having not been in according with the law and thereby being null and void. The second Respondent having been the highest bidder and accordingly acquired rights.

3. In opening the Court application the First and Third Respondents raised a point of law which is namely that there has been “fatally” no compliance with Section 180 of the Compliances Act 1967 which reads:

It is the above which Applicant says reliance thereto is “mischievous” as the said law was long replaced by Compliances Act 2017.

4. The Applicant`s case is that at the time the Fourth Respondent conducted a public auction the notice of sale was not in accordance with the law in terms of Rule 47 of the High Court Rules 1980. That notice of sale in execution fell short of describing the property as the law provides. This harks back to what essentially was as simply stated earlier as having sold two portions of the Applicant`s property where only one had been intended to be mortgaged, that is; “the referred notice of sale in execution herein only mentioned the plot number

of the immovable property and the location.” The full description of the property was not given at all.

5. It is on the issue of plea for condonation where the Respondents argued that condonation could not be granted by any strength of imagination where the challenged auction was done about ten years earlier. There are various attacks all which amount to substantially that the Applicants` case was futile and conduces to defeating finality to the case.

6. It could not be denied that the application had been initiated without first obtaining leave of Court. This was fatal in my view. A similar result would obtain even when resort was heard to the new Section 128 (1) of the 2011 Compliances ACT. That is why I agree that the Court of Appeal has clearly pronounced itself on the issue and on this issue alone I would dismiss the application.

7. I can safely conclude that the plea for condonation is without merit and is merely intended to circumvent the consequences of the Court of Appeal case in Cap (Civ) no. 2/2016

8. For the foregoing I dismissed the application with costs.

T. E. Monapathi

Judge