

THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/360/2018

In the matter between:

**EXECUTRIX ESTATE OF THE LATE MAMOSOTHO
MOSIUOA – LMA LEPHATSA**

APPLICANT

AND

**TSOALOANE DOMINIC KIBITI
COMMISSIONER – TRAFFIC AND TRANSPORT
MASTER OF THE HIGH COURT
THE ATTORNEY GENERAL
ITHABELENG MOLEFI**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT**

IN RE:

TSOALOANE DOMINIC KIBITI

APPLICANT

AND

**EXECUTRIX ESTATE OF THE LATE MAMOSOTHO
MOSIUOA – LMA LEPHATSA
MASTER OF THE HIGH COURT
THE ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT**

Neutral Citation: Executrix Estate of the Late Mamosotho Mosiuoa – LMA Lephatsa v Tsoaloane Dominic Kibiti & 4 Ors CIV/APN/360/2018 [2021] LSHC125

JUDGMENT

Coram : Hon. Mr. Justice E.F.M. Makara
Date of Hearing : 13 February 2020
Date of Judgment : 21 October 2021

MAKARA J

Introduction

[1] These proceedings constitute of the main application in which the Applicant in the main seeks for a Court order in which it declares that the motor vehicle under consideration is his property. On the other hand, the 1st Respondent has lodged a counter application in which she is asking the Court to find that the motor vehicle forms part of the estate of the late 'Mamosotho Mosiuoa which she is assigned to administer and execute in accordance with the law. The latter passed on in February 2019.

[2] Both applications are respectively opposed. After the deliberations on the question of the ownership of the vehicle were concluded, the Court assured the counsel that due to the straightforwardness of the matter, they should return back for the judgment within few days. Unfortunately, this became one of the several judgments which became corrupted by what was described as a ransom virus. In the meanwhile, the Court desperately sought for the intervention of the IT experts within and outside the Judiciary. The hope was that they would be able to bring back to normalcy the noticeably twisted typed copies of the judgments. This has hitherto after months proven to be an impossible task hence I am now going through the rather torturous task of rewriting the same judgements. The experts have attributed the problem to the old age of the laptop or to the sophistry of the virus. Thus the delay in the writing of this judgment is profusely regretted.

[3] The matter has, from the onset been simplified by the fact that the material facts which have occasioned the litigation are of a common cause nature. These constitute of the description of the vehicle in that its registration numbers are MM4495 and was so registered in October, 2014 in the names of the Kibiti D T who is the Applicant in the main application.

[4] It should suffice to be recorded that the Applicant in the main has in addition to exhibiting the registration certificate also filed a record of the Standard Lesotho Bank statement that demonstrates transactions through which he paid for purchasing the vehicle. To complement the picture, he also provided the Court with the copies of the payments vouchers issued by the Lesotho Revenue Authority upon his payment of the requisite fees for the vehicle including the invoices for the moneys paid for its purchase from Japan.

[5] The counter application is primarily founded upon the argument that there is a somehow reliable circumstantial evidence that the vehicle actually belongs to the estate of the late 'Momosotho Mosiuoa. This is reasoned upon the explanation that in the background, the Applicant in the main bought the vehicle as the agent of the Late who gave him all the necessary moneys to pay for it. The said circumstantial evidence constitutes of the supportive affidavit deposed by those who say that they heard from the Late that this was the case.

Issues for Determination

[6] The stated factual scenario and the consequent points of divergences between the parties, projects that the standing question for the determination by this Court hinges in the main, upon whether the Applicant has on the balance of probabilities proven that the vehicle belongs to him. Conversely, the Court has to decide if the Respondent has likewise done so

Decision on the Standing Assignment

[7] Blessedly, there are sufficient statutory provisions and case law that are spot on which are instructive on the salient controversies in the matter. This commences with Section 8(2) of the –Road Traffic Act 1981 that provides:

The registering authority shall issue to the owner of a motor vehicle or trailer, a registration book (registration certificate) that bears the owner's name in the prescribed form and **this book, or duplicate thereof shall be proof of the registration of the motor vehicle or trailer, the name of the registered owner**, the allocation of the specified registration mark and number to the vehicle. (Court's emphasis).

[8] The interpretation which this Court assigns to the provision is that, per its operation, it presents the names and particulars of the owner of any one of the items stated therein. Resultantly, this constitute a *prima facie* evidence of the owner of same. This receives reinforcement from Section 11 (2) of the Act that directs that upon changing ownership of a motor vehicle or trailer the registered owner shall within 7 days from the date of such transfer where the vehicle is registered with the registering authority in Lesotho, transmit to the registering authority a notice of transfer of ownership in the prescribed form, completed by the transferor

and the transferee, and shall be delivered to the transferee, not being a motor dealer.

[9] Thus, the stated position of the law and the mere acknowledgment that the vehicle is registered in the names of the Applicant, renders the Respondent to be obliged to rebut the legal presumption that in the circumstances, the Applicant is the owner of the vehicle. As it has already been stated, the Respondent has, in that endeavour sought to rely upon circumstantial evidence to demonstrate otherwise.

[10] The counter case introduced by the Respondent presents the challenge for the Court to explore the content of circumstantial evidence to test its applicability in sustaining her case at the requisite standard of prove on the balance of probabilities. In this regard, the Court has received guidance from several decisions which have cited with approval the jurisprudence in **leading** case of **R v Blom**¹. One such decision that attests to the development, is **Rex v Monapi Feleman**² where Kheola J as then was stated that in reasoning by inference, there are two cardinal rules of logic which cannot be ignored:

1. The inference sought to be drawn must be consistent with all the proven facts. If it is not, the inference cannot be drawn.
2. The proven facts should be such that they exclude every reasonable inference from them save the one sought to be draw. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct.

¹ 1939 AD 188

² CRI/20/ 82

[11] The next logical assignment would be to determine the correspondence of the counter claim with the stated requirements of circumstantial evidence. Here it emerges that the Respondent primarily premises her case upon some information communicated to her by one 'Mamosiuoa that the Applicant bought the vehicle as the agent of the Late whose funds were used for the purpose. It is found that 'Mamosiuoa could be telling the truth and that simultaneously this could be false. Perhaps, the existence of an independent evidence tendered by someone who could attest to the truthfulness of the information and even be available to be tested in the deserving manner. So, the story lacks the elementary requirement for its basis fact to be established. This goes further to introduce uncertainty about its truthfulness.

[12] Resultantly, the counter application is based upon the account which could accommodate a reasonably conjectured conclusion that the Vehicle has, at all material times, belonged to the Applicant and that he bought it from his own funds. This would lend support from the legal presumption that the property is his since it is registered in his names and has been in his possession even during the life of the Late.

[13] It should suffice to be recorded that the Court has determined that the judgment sought for by the Applicant in the matter, bears no practical consequences upon the 5th Respondent and, therefore, that for now the question of her misjoinder is immaterial.

[14] The Applicant in the main is found to have, on the balance of probabilities, proven that the vehicle is his property. On the other hand, it is found that there is no requisite counter evidence upon which the Respondent has established her claim.

[15] In the premises, the main application succeeds while the counter application fails. It is thus, ordered as follows:

1. The Executrix sale in relation to the motor-vehicle with Registration numbers: MM495; Engine numbers: B20B7052505; VIN: RD 15102513; HONDA CR-V is stayed;
2. The 1st Respondent is ordered and directed to release from her Executrix duties and from the property of the late 'Mamosotho Mosiuoa the motor-vehicle with Registration numbers: MM495; Engine numbers: B20B7052505; VIN: RD 15102513; HONDA CR-V forthwith;
3. The Respondents jointly are ordered to release to the Applicant the motor-vehicle with Registration numbers: MM495; Engine numbers: B20B7052505; VIN: RD 15102513; HONDA CR-V forthwith;
4. Costs of suit are awarded against the 1st Respondent only.

E.F.M. MAKARA
JUDGE

For Applicant/ 1st Respondent : **Adv. Potsane instructed by K.J. Nthontho Attorneys**

For 1st Respondent/Applicant : **Mrs Lephatsa of Lephatsa Attorneys & Consultants**