

IN THE LAND COURT OF LESOTHO

HELD AT MASERU

**LC/A/13/2021
CIV/DLC/MSU/0148/16**

In the matter between

SELLO MARTIN KHECHANE

APPELLANT

AND

SEMONKONG URBAN COUNCIL

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

Neutral Citation: Sello Martin Khechane v Semonkong Urban Council & Attorney General [2022] LSLC 232 Lc (30 June 2022)

CORAM: BANYANE J

HEARD: 02/06/22

DELIVERED: 30/06/22

Summary

Appeal against an order of absolution from the instance at the conclusion of trial (in respect of both the main and the counter-claim) - dispute involving encroachment and its extent - demarcations and extent of the land depicted on the title deed at variance with the lease document - surveyors giving conflicting interpretation of the title Deed diagram - requirements for a successful application based on encroachment discussed - mere production of a lease insufficient to proof the boundaries of land - survey records that preceded the

issuance of the lease and measuring of the land indispensable to the resolution of the dispute between the parties - Magistrate cannot be faulted for concluding that neither party sufficiently proved its claim or title to this land as well as encroachment. Appeal dismissed with costs.

ANNOTATIONS

Cases cited

1. Letsoso Mohasoa v Matekane Transport and Plant Hire (Pty) Ltd and 3 Others C of A (CIV) No.10/17
2. Smith v Basson 1979 (1) SA 559(W)
3. Rex v Saupaul 1949 (4) SA 978

Legislation

1. The Land Act No.8 of 2010
2. The Land Survey (amendment) Act No.15 of 2012

JUDGMENT

BANYANE J

Introduction

[1] This appeal arises out of proceedings commenced by the appellant in the Maseru District Land Court for an interdict against Semonkong Urban Council in relation to a portion of land allegedly a part of plot number No.25482-002, situated at Semonkong in the District of Maseru, to which he holds a lease. Council also lays claim to this portion of land and filed its counter-claim. The presiding magistrate ruled in favour of neither party and issued an order which in effect is absolution from the

instance at the conclusion of trial. The propriety of this decision is challenged before this court by the appellant.

Brief facts

[2] The facts giving rise to this appeal are brief and may be summarized as follows. The appellant (hereinafter Mr. Khechane) is a registered title holder of a certain piece of land identified as plot No.25482-002, situated at Semonkong in the District of Maseru, having acquired rights over same from Frasers Lesotho (Pty) Ltd through its transfer to him. This occurred in the year 2009. The transfer was preceded by conclusion of a sale agreement, after which, a lease was successfully applied for and registered in favour of Frasers. Prior to acquisition of the lease, Frasers had a title Deed. According to Mr. Khechane's narration of events that led to the launching of his claim in the court below, the respondent in this appeal (hereinafter Council) approached him sometime in 2010 with a proposal that it intends to construct a bus-stop on a portion of his land, a proposal he outrightly rejected. Despite his refusal, Council attempted to fence this land, an action which prompted him to seek police intervention, which did not however yield any fruits.

[3] Due to his failed attempts to have the dispute resolved out of court, he approached the Court below in the year 2016 seeking an order interdicting and restraining Council from interfering with this plot as well as an order directing Council to restore his poles which it removed. These reliefs are founded on his assertion that Council has no right, title or interest in this land.

[4] Council in response counter-claimed its right and interest on this portion of land. It attached a Form C dated or issued on 06th February 2005 as proof of its entitlement. The Form C describes the land as situated "North Frasers Store", measuring 128m x 94 m², 128m x 94m². It averred that this land has been earmarked for Semonkong public bus

stop. It is Council's assertion that when Mr. Khechane's predecessor(Frasers) applied for its lease, it encroached into the land designated as the bus stop and registered it as its own. It contends on this basis that the lease is unlawful to the extent of its inclusion of this bus-stop area. It thus sought cancellation of Mr. Khechane's lease and an order interdicting him from interfering with this portion of the land.

[5] The District Land Court identified two issues during a pre-trial conference held on 12/05/2017. They were framed as follows. a) whether there is an encroachment, if yes, its extent; b) the demarcations of Frasers' land per the title deed sketch/diagram. The learned magistrate's finding on the second issue is that the demarcations of Frasers' land per the title deed diagram does not tally with Mr. Khechane's total area of land per his lease document. On the first issue, she concluded that neither party brought crucial and sufficient evidence to establish their respective conflicting claims of title in this portion of land as well as encroachment, hence the impugned order.

Evidence led

[6] Each party endeavored to prove its case by calling a number of residents in the area on which the site is situated. They testified about the history of Frasers' land and its demarcations per their knowledge. None of them, however, testified on Frasers' title documents. Expert evidence of surveyors was adduced. Each gave his own interpretation of the title deed demarcations and Mr. Khechane's lease document.

[7] Council's expert witness Mr. Pheello Ramoitubei' s interpretation of the sketch/ diagram attached to Frasers' title deed is as follows. For ease of reference, he segmented the title deed diagram into four parts and labelled them arears 1, 2, 3 and 4 and shaded each portion with a different colour. I must mention that this he did prior to hearing. According to the witness, some dimensions of these areas were not (perhaps due to the age of the map) clearly ascertainable and it appeared to him that

some sides had no beginning while others had no end points. Faced with this missing information, he used what he called an intelligent guess to identify fixed reference points. He concluded that the area shaded in purple which he named area 1 is the only portion of land that belonged to Frasers per his analysis. On it, there are shops and kraals and it is fenced and surrounded by a wall on both sides. He described it as a closed polygon figure and in his view, therefore constituted a site. It measured 265 yards by 90 yards, converted into meters is 19 942 sqm.

[8] In calculating the sizes of area 2, (shaded in blue), area 3 (shaded in brown), and area 4 (green-shaded), he guessed the measurements of these areas because as stated earlier some of their dimensions were unclear or feint on the sketch. He concluded that areas 2, 3 & 4 are simply reference points and not sites. This conclusion was reached despite the fact that there are certain developments on area 2 being two rondavels, a store and a windmill.

[9] Based on his analysis of the title deed sketch, he concluded that Mr. Khechane's lease area of 70 193 sqm triples the measurements of what, per his interpretation, was the size of Frasers' land. Notably, it was revealed through cross-examination that he was not in possession of the original sketch at the time he concluded that areas 2, 3 and 4 were not sites but only reference points. He was driven to concede that having seen the original title Deed sketch/diagram, he was able to establish that area 2 measured 200 x 220 yards (37 400 square meters) and area 3 measured 150x168 (21 070 square meters).

[10] On behalf of Mr. Khechane, Mr. Malataliana testified briefly about survey methods used in our jurisdiction. His interpretation of the title deed sketch is that areas (1-4) tally with the title deed measurements. Under cross examination he said the difference between the total area of the title deed (108 240) and lease area (M70 193) is 38 047.

Analysis of evidence in the court *a quo*

[11] At the conclusion of trial, the learned Magistrate was not persuaded that either party made out a case for the relief sought and issued an order of absolution as stated earlier. This conclusion was informed by the following analysis of evidence presented by the parties. For purposes of the discussion that follows, it is important to extensively reproduce excerpts from the judgement. She examined the evidence presented as follows;

“the appellant said that to his knowledge, he only bought areas 1,2 &3 which are the fenced homestead measuring 19 942 sqm, area 2 and area 3 (claimed by Council as a bus stop area) measuring 21 070. The total of the three arears is 72 283. According to him, area 4 was given to the public as stadium by Frasers. Those measurements of the lease could exclude the stadium which measures 37 458 sqm (measurements as supplied by Pheello Ramotobei). This was however never explicitly said so. The new survey, if any, was never presented before Court.”

11.1 She goes further to say;

“experts have testified as to the procedure of obtaining a lease. That said, the only evidence as to the obtaining of a lease, is the LAA file. Can the file explain the disparity between the measurements of the title deed versus those of the lease? The title deed measured 101 741 sqm while the lease 70 193 sqm. Mention was made of the fact that the lease document did not include the area of the stadium measuring 37 458 sqm. If that was so, it would explain the difference of about M37 000sqm. As per respondent’s calculations, area 4’s measurements total 37 458. The measurements of area 4 plus lease measurements are almost close to the title deed’s measurements. As shown, no such evidence was presented as to why if the title deed created the lease, and if the whole area belonged to Frazer’s, there was a difference in measurements.”

[12] The learned Magistrate rejected Mr. Ramotubei’s conclusion that areas 2, 3 and 4 do not constitute sites and concluded that the surveyors’ evidence was unhelpful. She stated as follows;

“Title deed map were (sic) attached to the application. Semonkong 2, document drafted by Mr. Pheello Ramotubei, expert for Semonkong Council shows the total area of the map which he colour coded as being around 109 741.19 sqm. The different colours of the map show or actually tally with the fencing and walls that

divided the different areas of the whole site that is subject matter of the dispute. We know that the map has beginning and ends. And we know that, using the measurements on the map, without guessing any sites gives us the following measurements, 108 240 sqm. This was calculated by Mr. Malataliana, applicant's expert. That is the calculation that one gets anyway. The difference is 1501 sqm. The difference is negligible."

12.1 She remarked further that;

I spent days and sadly months trying to make sense of the evidence, regarding the creation of the lease. The fact that some evidence is false or unbelievable does not mean you reject all of it. The title deed and its map being vastly different from the new lease, that independent evidence was not brought to come and clarify this discrepancy. Council for the applicant, Advocate Kao's case is that all the areas in the subdivided map are theirs. In the same breath, he shows that the Frasers bequeathed the area, that is the stadium to the community, hence the lease measuring less than the title deed. No other map was presented before court, or survey diagram that led to the creation of the lease before court. If Frasers gave away part of the land, surely as Advocate Setlojoane stated, there ought to be subdivision. Even if that was not done, some proof of what occurred. On the other hand, Semonkong Council stated that only a portion of the map, named area A, measuring 19 942 square meters is owned by Frasers. That excludes area 2 which has at least two rondavels, a store and a house. Save for the explanation about the different types of survey, the evidence of the experts was not helpful. Expert for Council's evidence was contrary to the buildings on the map and the map itself.

[13] The learned Magistrate concluded that neither party favoured the court with sufficient evidence to prove their respective claims in that there are missing gaps in the evidence adduced, on aspects which she considered dispositive of the dispute before her. These pieces of evidence are that according to one of Council's witnesses Mr. Litsietsi Mathibeli who was the chairperson of Semonkong Urban Council in the year 2005, he instructed the secretary to write a letter to Frasers demanding return of the contentious portion of land because according to him, this portion of land was never allocated to Frasers but it was only authorised to use it for housing livestock(donkeys and horses) used to ferry merchandise to Frasers' Supermarket in order to avoid destruction of crops on

neighboring fields. According to this witness, the chief of the area successfully reclaimed the land from Frasers at some point and 'gave it' to certain German nationals to use as a show ground for agricultural produce. These Germans educated people of the area about proper farming methods. The witness testified that Frasers' agreed to give back the area.

[14] She lamented that this letter written by Council to which Mr. Botha, Frasers' representative responded in 2008, could have put the matter to rest but regrettably, it was not handed. The response was handed in as Exhibit A and it reads;

20 August 2008
The Chairperson
Semonkong District Council
Semonkong

Sir/Madam

RE: Proposed Bus stop Parking area in front of Frazer's shop in Semonkong

I am in receipt of a draft plan, done by yourselves to move the Bus stop area to the front of our shop.

In principal we have no objection to this plan. The only alteration that we would require is that a gateway be made in the suggested line market stalls to enable customers to reach our shop. Hope you find this in order.

Johan Botha
Financial Executive

[15] She noted that the evidence presented before court only shows that the contentious area was used to house animals that were used to ferry goods but none of the witnesses know anything about Frasers' title deed.

[16] As to the requisites of a final interdict (sought by Mr. Khechane), she stated that in order to establish a clear right, he ought to have called Mr. Botha (as he in fact indicated he would do so in cross-examination and

during pre-trial conference) to explain away ownership of the area concerned (area 3) as well as explain Semonkong' s request to build a bus stop on it.

[17] She further expressed her difficulty in fathoming what exactly happened before issuance of the lease, and the confusion discernible from presentation of Mr. Khechane's case. She says;

“Both sides did not deal with the fact that the new lease was in fact created with a new survey and if so, the surveyors that created the new lease were not brought before court or the survey maps. In fact, no one spoke of any new surveys having been done. If this is the case, I am unable to understand the reasoning behind this. Was it a case of Khechane now working to take area 4, his lawyer said the area was theirs, despite Khechane saying differently.”

17.1 She concluded that;

“While rejecting Council's expert witness evidence on the interpretation of the map, one would be looking at the evidence. (see Khechane's expert witness's testimony), that the lease encompasses the old Frasers title deed minus the area of the stadium in terms of the measurement as making sense. We know that that this is as we calculated the sum of the title deed versus the measurements of the lease. The difference is quite small. But no one testified as to how Khechane obtained the new lease and survey method used in order to factor in the new changes.”

17.2 And further that;

“Both sides have explanations about the fencing of the contagious area, so the fencing itself might not be the deciding factor. That said, Botha's letter shows that he cannot object in principal to the bus stop being moved to the area in front of their shop. The proposed bus-stop has permanent offices, police and management offices. There is no agreement presented before court or said to assist as to how long Frasers would be borrowing this site to the Council. Advocate Kao shows that the letter means nothing because no such transfer took place. None of the parties chose to bring Mr. Botha, He could have explained and corroborated Mr. Khechane as to how Frasers obtained the lease, which area was sold to Khechane, the letter and area 3/ the stadium.”

The appellant's complaint on appeal

[18] The essence of Mr. Khechane's complaint in this appeal is that the weight of evidence adduced in the court below favoured the granting of the main application. That having proven his title by production of a lease, the burden was upon Council to disprove his entitlement to the disputed area as well as the alleged encroachment, which it failed to do.

Submissions on Appeal

[19] Each party argued in this appeal that their claim ought to have been upheld by the Court *a quo*. Advocate Kao for Mr. Khechane contended that failure to call Mr. Botha was not fatal to his case nor was the letter he wrote demonstrating no objection to the bus-stop relocation. This is because, so he argued, no transfer of rights to Council in the contentious area took place pursuant to Mr. Botha's agreement so Frasers went ahead in 2009 and obtained a lease over areas 1, 2 and 3. He submitted that the Court erred and misdirected itself by failing to consider the fact that there never was any formal transfer of land to Council in terms of the Land Act and Regulations made thereunder and therefore Council has no basis for claiming the portion of land in question.

19.1 Mr. Setlojoane for Council submitted on the other hand that the Court erred in holding that there is no evidence of encroachment placed before it because the evidence of Mr. Ramoitubei, a surveyor called by Council was clear that area 1 measuring 19 942 sqm is the only area belonging to Mr. Khechane, hence he exceeded his boundaries by including the contentious portion of land as his own. His further contention is that the lease was issued contrary to the provisions of section 30(1) and (2)(a) and (b) of the Land Act of 2010 because its issuance was not preceded by a plan bearing the description of boundaries of the land, but a title deed with no description of boundaries of land belonging(then) to Frasers.

Consideration of the appeal

[20] I have given thoughtful consideration to the evidence canvassed in the court below against Mr. Khechane's contention that he proved his title to the disputed portion of land by production of the lease. The prominent issue that must then be decided in this appeal is whether mere production of the lease document is sufficient proof of the extent, dimensions or boundaries of his land. Allied to this issue are questions whether Mr. Khechane proved that his lease covers the disputed portion of land and whether therefore he proved that Council is encroaching on his land. Consequently, whether the factual findings of the court below are liable to be upset.

[21] I start the analysis from the premise that the disputants' respective claims in the Court below were based on the assertion that "this is my land; you are encroaching upon it". The Court had to determine whether either party encroached into land belonging to the other. If the encroachment be established, its extent. For consistency and avoidance of confusion, I will refer, in my analysis, to the contentious area as it was referred to in the court below. It was labelled area 3.

[22] It has been held that a person who claims relief consequent to an encroachment onto property must allege and prove; **a)** ownership of the property encroached upon; and **b)** that the encroaching party has erected a structure or building on the complaint's property. See **Smith v Basson 1979(1) SA 559(W)**. See also **Letsoho Mohasoa v Matekane Transport and Plant Hire (Pty) Ltd and 3 Others C of A (CIV) No. 10/17**.

[23] The disputants both claim to have rights on area 3(the disputed piece). According to Mr. Khechane, his agreement of sale and consequently his lease document covers not only areas 1, 2 but also the disputed area. It should be noted at this juncture that the original title document covered area 4 as well and it seems to be common cause that this area is used by the community as playground/football pitch. It is my

considered view that success or failure of either party's claim in the court *a quo* was dependent on proof that the disputed portion of land belongs to him/it.

[24] A date was appointed for an inspection of the area. All parties were in attendance as well as Land Administration personnel who had with them the "maps and necessary tools" to help the court. This appears from the minute of the learned magistrate where she has also recorded that *'parties agreed that Frasers' Title Deed which included the map was used or converted into the present lease and that the total area per the survey was 70 193m²'*. This agreement, per this minute, obviated the need for ascertainment of boundaries or demarcations of Mr. Khechane's land.

[25] This agreement, in my view, crippled and hindered proper adjudication of the dispute between the parties, resultantly leaving the court with uncertainty as to extent or boundaries of Mr. Khechane's land per the lease document and insufficient evidence to determine whether the disputed portion of land belongs to either party. I endeavour to explain below why ascertainment of the demarcations was indispensable in the resolution of the dispute between the parties.

[26] It is common cause that the area of property sold to Mr. Khechane (as shown on the lease) when read in conjunction with the description of Frasers' land as depicted on the title deed sketch/diagram differ. The lease area is less than the demarcations delineated on the title deed. Mr. Khechane as shown earlier lays his claims to areas 1, 2 and 3. The sum of areas 1 and 2 (19 942sqm and 37 400sqm respectively) of the title deed is 57 342 sqm. Adding the contentious area 3 (21 070sqm) to the number, one gets 78 412. It becomes obvious that this sum is greater than the lease area (70 193sqm) by 8 219 square meters.

[27] These calculations must be viewed in the light of the Form C document which Council attached to its counter-application as proof of its

allocation of the disputed area. It was issued in 2005, the same year in which the chairperson testified that Council wrote to Frasers to demand the land back and he agreed to hand it over. The size of this portion (per the Form C document) is 128m by 94m. This amounts to 12 032 sqm. One gets an impression that the form C relates to only a portion of area 3 because according to the title deed diagram, area 3 measured 21 071 sqm as shown above. In view of these calculations, one wonders why each party is claiming area 3 in its entirety when their title documents suggest otherwise.

[28] One would also ask; is Council intruding into Mr. Khechane's land or is Mr. Khechane overreaching the boundary line between land earmarked for a bus stop and his land? other questions that logically arise in the circumstances are as follows. **a)** is area 3 in its entirety covered by the lease? **b)** is it not possible that the lease has excluded a portion of this contentious area? if it has, why would it be left out? Could it be because Frasers had indeed "given back" the land after having received and accepted the proposal for construction of a bus-stop? If that be the case, is it not possible that certain adjustments to the original survey (covering areas 1,2,3 and 4) were made before issuance of the lease not only affecting area 4(the playground) but also area 3, resulting in reduction in size of the latter? I pose these questions to demonstrate the vital missing pieces of evidence in this case.

[29] The learned Magistrate observed that neither party adduced evidence to show whether the lease was a product of a second survey in terms of which an adjustment to the initial survey was made. Common sense dictates that the variance between the title deed sketch and the lease is suggestive that indeed there were some adjustments made. Mr. Khechane as shown above claims the contentious area as his. This he did without any supporting survey documents showing demarcations or boundaries of his land. The question to be answered is whether the lease document without the preceding survey, is by itself, proof that the

disputed portion is Mr. Khechane's land. In other words, is production of a lease, without more, suffices as proof that the disputed portion of land is covered under the lease or that the land covered in the lease is areas 1, 2 and 3 as contended by Mr. Khechane. I think not.

[30] I am of the view that in a dispute about encroachment and dimensions or boundaries of a site, the first essential is to get a map or survey plan because this survey plan describes the extent and boundaries of the land. In terms of section 30 of the Land Act 2010, issuance of lease is preceded by production of documents enumerated thereunder. These include a description of the boundaries of the land in question (by reference to a plan or otherwise). In terms of section 3 of the Land Survey Act (as amended), such survey plan would have been examined, authenticated or duly approved by the Chief Surveyor. This plan delineates or defines the boundaries of land in respect of which the application is made. It is worthy of note that the office of Chief Surveyor, not only approves plans, but also keeps or retains updated information on any subdivision or any changes in legal boundaries. The Court of Appeal in **Letsoho Mohasoa v Matekane Transport and Plant Hire (Pty) Ltd** (*supra*) said;

“...in our cadastral law, it is clear from section 3 of the Lands Survey (Amendment) Act, that, it is the functions of the office of the chief surveyor to administer land cadastre system which includes; retaining accurate information and maps on the land cadastre system registering land onto the cadastre, updating the cadastre with details of any consolidations, subdivisions or other changes in legal boundaries, providing maps or other information regarding the cadastre, resolve cadastre complaints and disputes with regard to land parcels boundaries. It was imperative in this kind of case, for the plaintiff to call this kind of expert evidence.

[31] Reverting to the facts of the instant case, no evidence from the Chief Surveyor's file was adduced. Parties opted to speculate that no subdivision or changes occurred without calling for such records. This despite the glaring disparity in the title deed area and lease area. The surveyors called by both parties were unhelpful in this regard as correctly pointed

out by the learned Magistrate. As things stand, we do not know if there are any recorded changes to the initial survey (as attached to the title deed).

[32] Absent these records, perhaps the LAA surveyors who attended the site inspection ought to have been led and examined on the contents of the lease in order to establish the boundaries of Mr. Khechane's land. This is because in order to determine whether there has been an encroachment, and consequently its extent, it is in my view desirable to get the land measured based on the survey plan or diagram that precedes issuance of the lease or site dimensions based on a cadastral map. Oral evidence cannot in my view conclusively prove such an issue because only the measuring of the land would verify or disprove the issue whether the portion claimed by Council is covered by the lease, if yes, whether it should not have as Council asserts.

[33] While it was entirely in the hands of the magistrate to decide whether she can understand and appreciate evidence without holding an inspection (see **Rex v Saupaul 1949(4) SA 978**), an inspection of Mr. Khechane's site and confirmation of its demarcations would have established whether the encroachment alleged by each party exists on the ground, if yes, to what extent. This was necessary because as stated earlier, the area of Frasers' land as depicted on the title deed sketch differs from the lease coverage with about 37 000 and also the total area of the lease is less than the total of three areas (1,2,3) per the title deed diagram.

[34] The last question to be answered is whether the findings of the court a quo should be upset in the circumstances. Faced with both the main application by Mr. Khechane and a counter-claim by Council, each bore the onus of proving their respective claim. I demonstrate briefly how each failed to do so. Council claimed that the land was taken back from Frasers in 2005. The erstwhile chairperson of council says he wrote to

Frasers to demand the land back and this was accepted by Mr. Botha on behalf of Frasers. The letter was however not handed in for one to have a fuller picture of its contents. The Magistrate was correct that the letter is an important document which could throw light upon the issue in controversy.

Notably, Council simultaneously attached in its favour, a Form C issued in 2005, yet Frasers' recorded response was only made in 2008. I must mention that neither validity nor contents of the Form C were interrogated in the Court below. But even assuming it was validly issued, it covers only a portion of the contentious area as discussed earlier. Absent Council's letter, the evidence adduced was insufficient on its "ownership" in the contentious area because its entitlement to the entire area 3 based on an erroneous interpretation of the title deed demarcations by Mr. Ramoitubei was rightly rejected by the magistrate.

[35] I proceed to Mr. Khechane's case. His assertion, it will be recalled, is that the lease covers areas 1,2 and 3. He relied on his say so. Absent **a)** Mr. Botha's evidence regarding Frasers agreement with Council on construction of the bus stop and **b)** an explanation why the lease document area differs from the title deed demarcations or **c)** at least evidence from the Chief Surveyor's office on any alterations to the original survey, and lastly **d)** the measuring of dimensions of his land, his assertion cannot amount to conclusive proof on his boundaries and consequently his title to the disputed area. In other words, mere production of the lease, without more, does not, in my view prove his title and consequently encroachment by Council on it.

Conclusion

[36] On the basis of the foregoing analysis, the inspection and measuring of Mr. Khechane's land based on his lease document was necessary in order to establish with certainty, its dimensions or demarcations and then discern whether the portion claimed by Council is covered in the lease or whether it is excluded. The result would then

reveal whether there is any encroachment by Council. I am in agreement with the learned magistrate that absent the letter addressed to Frasers by Council in 2005 as well as Mr. Botha's evidence with regards the agreement reached with Council, and any survey records preceding issuance of the lease, the Court did not have sufficient evidence to rule in favour of either party. The order of absolution was therefore properly made in my view. This means the applicant's right entitling him to the interdict sought had not been clearly established on the evidence adduced before court. The magistrate cannot be faulted for concluding as she did.

Order

[37] In the result, the following order is made;

The appeal is dismissed with costs.

P. BANYANE
JUDGE

For Appellant: Advocate Kao

For 1st Respondent: Advocate Setlojoane

