

IN THE HIGH COURT OF LESOTHO

Held at Maseru

CIV/APN/102/2018

In the matter between:

MATHAI SETUKA

APPLICANT

And

MAHALI NKOTSI (MATSEPISO SETUKA)

1ST RESPONDENT

THABISO SETUKA

2ND RESPONDENT

LITJOTJELA MUNICIPAL COUNCIL

3RD RESPONDENT

MINISTRY OF LOCAL GOVERNMENT &

CHIEFTAINSHIP AFFAIRS

4TH RESPONDENT

MASTER OF THE HIGH COURT

5TH RESPONDENT

ATTORNEY GENERAL

6TH RESPONDENT

CORAM: S.P. SAKOANE CJ.

HEARD: 04 SEPTEMBER 2019

DELIVERED: 28 FEBRUARY 2022

Neutral Citation: Setuka v. Nkotsi and others [2022] LSHC 3 Civ (28 February 2022)

SUMMARY

Civil Procedure –preliminary points raised in lime – declarator for rights over immovable property – whether High Court has jurisdiction over land cases – point on lack of jurisdiction upheld.

ANNOTATIONS:

CITED CASES:

LESOTHO

Khoali v His Lordship Mr. Selebaleng (C of A (CIV) 23/20) (30 October 2020)

Lepholisa v Lepholisa and Another LC/APN/12/12

Masupha v Nkoe and Another LC/APN/165/14 (10 February 2016)

Moteane v Moteane and Another LAC (1995 – 1999) 207

Setuka v Nkotsi LAC (30 October 2020)

Shale v Shale CIV/APN/167/18 (07 May 2018)

Shale v Shale (C of A (CIV) 35/19 (01 November 2019)

STATUES

Land Regulations 2011

JUDGMENT

I. INTRODUCTION

[1] An order was issued dismissing this application on 4 April 2019. Written reasons were not filed. The applicant filed an appeal unbeknown to the court. That appeal was struck off the roll by the Court of Appeal on 30 October 2020¹ because the applicant had not filed the order. These reasons are filed to enable the filing of a proper appeal should the applicant pursue it.

[2] This is a ruling on the preliminary points of law raised by the 1st respondent herein. These include material non-disclosure and lack of

¹ Setuka v. Nkotsi LAC (30 October 2020)

locus standi, lack of jurisdiction, non-compliance with the rules and *lis pendens*. This is after the applicant filed an application seeking the following relief:

- “1. Declaring Mathai Setuka as the heir of his late father Josefa Setuka;
2. Directing 1st Respondent to vacate the house at Tsikoane that applicant’s father had built, and where 1st Respondent and applicant’s father cohabited;
3. Awarding household property at the house 1st Respondent cohabited with applicant’s father to applicant;
4. Interdicting the 1st and 2nd Respondents herein from interfering with an unnumbered field located at Tsikoane near Potloaneng bust-stop next to Lerallaneng, Ha Tsoku in the district of Leribe, which was ploughed by Applicant’s late father;
5. Directing the 3rd Respondent to proceed with Applicant’s application for a Form C in relation to the field at Tsikoane near Potloaneng bust-stop next to Lerallaneng, Ha Tsoku in the district of Leribe, which was ploughed by Applicant’s late father;
6. Further and alternative relief;
7. Cost of suit.”

[3] The court is enjoined to consider the first point of jurisdiction as it will, if upheld, be dispositive of the case.

II. SUBMISSIONS

[4] Mr. *Nyapisi*, counsel for the respondents, raises the preliminary point of lack of jurisdiction on the ground that the applicant seeks orders in relation to land. Therefore, this court does not have jurisdiction to

entertain the matter as it should be dealt with by the Land Court as the specialized court.

- [5] In response, Miss *Rakharebe*, for the applicant submitted that the main prayer before this court is of a declarator of heirship and inheritance to land which is part of his father's estate. She contends that inasmuch as the prayers include land they are not limited to land. Therefore, the court has jurisdiction to grant all the prayers inclusive of the one relating to land. She finds support in the case of **Lepholisa v. Lepholisa and Another** LC/APN/12/2012.

III. ANALYSIS

Lack of jurisdiction

- [6] It is trite law that when the issue of jurisdiction is raised, the court is bound to deal with it first. The reason being that a jurisdictional challenge, if upheld, is dispositive of the whole case. Hence, it is imperative to entertain it before other preliminary points.²

- [7] The preliminary point of lack of jurisdiction is indicative of the fact that there is more to the claim on heirship. On a proper examination of the

² *Shale v. Shale* CIV/APN/167/18 (07 May 2018); *Masupha v Nkoe and Another* LC/APN/165/2014 (10 February 2016); *Khoali v. His Lordship Mr. Selebeleng* (C of A (CIV) 23/20) [2020] LSCA 29 (30 October 2020)

pleadings and the prayers it becomes apparent that applicant's claim is founded on the assertion of heirship to landed property. The reliefs sought range from a prayer seeking the court to direct the vacation of a house at Tsikoane built by applicant's father, interdicting the interference with an unnumbered field and directing the Litjotjela Municipal Council to consider the application for a Form C.

[8] This being the case, the following *dictum* in **Shale**³ is apposite:

“[9] From the pleaded facts there cannot be any denying that the gravamen of the appellant's case in the court below was the assertion of title to landed property. He challenged the 2nd respondent's allocation to the 1st respondent and the consequential invalidation of the 1st respondent's certificates of title over the same land. The dispute is over land and title thereto. It did not matter that the assertion of title is through inheritance.”

[9] In the circumstances, the Land Courts have exclusive jurisdiction to entertain this matter as it is a dispute about rights to land.

[10] Allocation of land and acquisition of title thereto is governed by the **Land Regulations 2011**. The procedure for inheritance of title to land is provided for under regulations 43 and 44 in terms of which the determination of heirship is made by the allocating authority following submission of the name of the nominated heir by the family. This

³ Shale v. Shale (C of A (CIV) 35/19) [2019] LSCA 45 (01 November 2019)

regulatory framework essentially deprives the courts with the jurisdiction to declare heirship over immovable property.⁴

IV. DISPOSITION

[11] There is merit in the point of lack of jurisdiction raised by the respondents. This case belongs to the land courts.

[12] In the result the following order is made:

1. The preliminary point of lack of jurisdiction is upheld.
2. The application is dismissed with costs.

S.P. SAKOANE
CHIEF JUSTICE

For the Appellant: M. Rakharebe

For the Respondents: T. N. Nyapisi

⁴ Shale v. Shale CIV/APN/167/18 (07 May 2018) at para [14]; Moteane v. Moteane and Another LAC (1995-1999) 207