

IN THE HIGH COURT OF LESOTHO

HELD
CIV/APN/10/2022

AT

MASERU

In the matter between:
LIREKO MONICA KHOELI
APPLICANT

1ST

ONYX 357 BROADCASTING & DÉCOR (PTY) LTD
APPLICANT

2ND

AND

MOTLATSJI MAJARA
RESPONDENT

1ST

MABAKHATLA MAJARA
RESPONDENT

2ND

MAMAJONE MAJARA
RESPONDENT

3RD

ESTATE LATE MOKUENA AUTHOR MAJARA
RESPONDENT

4TH

MASTER OF THE HIGH COURT
RESPONDENT

5TH

ATTORNEY GENERAL
RESPONDENT

6TH

STANDARD LESOTHO BANK LIMITED
RESPONDENT

7TH

FIRST NATIONAL BANK LIMITED
RESPONDENT

8TH

Neutral Citation: Lireko M. Khoeli & Anor v Motlatsi Majara & 7 Ors (No.1)
[2022] LSHC 98 civ (5 May 2022)

RULING

Coram : Hon. Mr. Justice E.F.M.Makara
Heard : 5 May 2022
Delivered : 5 May 2022

MAKARA J.

Introduction

[1] At the commencement of today's hearing, the *mero muto* invited the counsel to enlighten it on the significance of its jurisdiction to preside over the matters. Secondly, it called upon them to do the same in relation to the issue of *locus standi* of the 1st Applicant in this case and lastly, though more importantly, on the readiness and suitability of the matter to be presided over by this Court without satisfying the mandatory procedural imperatives under rule 8 (19) of the High Court Rules¹. It provides:

When an application is made to court, whether *ex parte* or otherwise, in connection with the estate of any person deceased, or alleged to be a prodigal or under any legal disability mental or otherwise, a copy of such application, must, before the application is filed with the Registrar, be submitted to the Master for his consideration and report. If any person is to be suggested to the court for appointment of curator to property such suggestion shall also be submitted to the master for his consideration and report. There must be an allegation in every such application that a copy has been forwarded to the Master.

¹ L/N No.9 of 1980

[2] It was, in the cause of deliberations, resolved that the question concerning the compliance or otherwise with the Rule should be of the moment for the address and that the rest be deferred to the time when the merits would be traversed. It transpires from the papers placed before Court that the applications involved were filed without first having served the matter with the notification contemplated under the rule. Thus, the Court has to consider the consequential effect of the failure to satisfy that procedural rule.

[3] It is common cause *ex facie* the papers before the Court that the present application was scheduled for hearing today and this explains the sitting over the matter at this moment. Interestingly and incidentally it emerges that the Respondents happen to have filed their answers to the main application and complemented that by introducing their counter claim. This projects a scenario in terms of which the Court is seized with in the main and its counter claim. Here, it has to be highlighted that the Respondents have correspondingly stated that their matter is equally scheduled for hearing on the same date and time. This obtained without the existence of any instrument demonstrating that they have notified the Master with a notification in accordance with the rule. It is deserving to be under scored that the Respondents were similarly obliged to comply with the Rule by notifying the Master before instituting their counterclaim.

[4] In the premises the Court determines that both applications are defective for want of compliance with the rule. It is consequently ordered that the rule be complied with and that the matters are, for the reasons advanced removed from the roll. In the meanwhile the parties are, in tune with their consensus, directed to explore prospects for an out of Court settlement along the lines they have also subscribe to. There is no order as to costs.

**E.F.M. MAKARA
JUDGE**

For Applicants : Adv. T. Maqakachane inst. by Lephatsa Attorneys & consultants

For Respondent : Adv. M.E. Teele KC assisted by Adv. L.D. Molapo inst. by P. Masoabi Attorneys