

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/APN/344/2020

In the matter between:

LITEBOHO RAMAKHULA

1st APPLICANT

**`MAKALOSI ARIA RAMAKHULA
APPLICANT**

2nd

and

**THE CHAIRPERSON - MAFETENG URBAN
COUNCIL**

1st RESPONDENT

MAFETENG URBAN COUNCIL

2nd RESPONDENT

**MINISTRY OF LOCAL GOVERNMENT &
CHIEFTAINSHIP**

3rd RESPONDENT

MASTER OF THE HIGH COURT

4th RESPONDENT

ATTORNEY GENERAL

5th RESPONDENT

MONA DIANA RAMAKHULA

6th RESPONDENT

`MASETS`OANA RAMAKHULA

7th RESPONDENT

KALOSI RAMAKHULA

8th RESPONDENT

Neutral citation: Liteboho Ramakhula & Another v The Chairperson - Mafeteng Urban Council & 7 Others [2022] LSHC 134 CIV (29 June, 2022)

CORAM : F.M. KHABO J

HEARD : 9th JUNE, 2022

JUDGMENT : 20th JUNE, 2022

SUMMARY

Jurisdiction - Mandamus - Whether matter falls under the High Court in its ordinary civil jurisdiction or the Land Court - Court finds application to revoke on mandamus, and therefore, within the competence of this court.

ANNOTATIONS

Statutes and Regulations cited

Land (Amendment) Act, 2012

Land Act, 2010

Land Regulations, 2011

Cases cited

Lepholisa v Lepholisa LC/APN/12/2012

Mafube Investment Holdings (Pty) Ltd v Letoao and Others LC/APN/137/2014

Mwangi and Another v Masupha and Another LC/APN/170/2014

Shale v Shale C of A (CIV/35/19) LSCA 45

Tsela v P.S Ministry of Public Service CIV/T/53/15

Literature

Yvonne Burns, Margaret Beukes *Administrative Law Under the 1996 Constitution* 3rd ed., Butterworths, 2006

JUDGMENT

Khabo J.

Facts leading to litigation

- [1] The 1st Applicant is the son of the late Ts'eliso Tokonye Ramakhula and `Makalosi Aria Ramakhula, 2nd Applicant herein. It is disputed that 1st Applicant's father is the customary heir of the estate of the late Moroa Daniel Ramakhula and `Maselemeng Ramakhula, 1st Applicant's grandparents who passed on in 1979 and 1960, respectively. Part of the deceased estate is an unnumbered residential plot at Matholeng in the Mafeteng district. `Maselemeng predeceased her husband. 1st Applicant's grandfather, Moroa subsequently married one Mrs Mary Libeela Ramakhula in December 1960.
- [2] In his founding affidavit, 1st Applicant refers the Court to annexures '**LR2**' and '**LR3.**' The annexures are meant to prove that in the year 2014 the Ramakhula family council nominated 1st Applicant as the customary heir to the estate of his late grandfather Daniel Ramakhula. Also, that the Principal Chief referred him to the 2nd Respondent to confirm him as such. I observe, however, that the purported family council letter is authored in the first person by 1st Applicant's father but that is an interrogation for the merits in due course, so is the challenge raised about the signatories to "**LR2.**"
- [3] For present purposes, 1st Applicant avers that 1st and 2nd Respondents were requested to confirm his nomination as his grandfather's heir in terms of **Regulation 44** of the **Land Regulations, 2011 (Land Regulations)**. 1st Applicant goes on to say that an interview was held regarding his nomination by the family as heir. The outcome of that interview was an undertaking by the 2nd Respondent to engage in a vetting process regarding

the plot at Matholeng, thereafter cause his nomination to be published in a newspaper in accordance with the Regulations. The nomination has not been published despite numerous enquiries to 1st and 2nd Respondents in this regard.

Relief sought

[4] This court is invited to consider an order for a *mandamus* against 1st and/or 2nd Respondents as well as a declarator that 1st Applicant is the customary heir to the estate of his late grandfather. Prayers are in the following manner:

- (a) An order directing and compelling 1st Respondent and /or the 2nd Respondent to act in accordance with the ***Land Regulations***, especially regulation 44 thereof within a period of (14) days of this order;
- (b) An order declaring and confirming the 1st Applicant as an heir to the estate of the deceased Daniel Moroa Ramakhula as nominated by the Ramakhula family;
- (c) Costs of suit on an attorney and client scale in the event of opposition;
- (d) Leave to file ***viva voce*** evidence in the matter in the event there be unforeseen dispute of fact which cannot be resolved on papers;
- (e) Further and/or alternative relief.

Points in *limine*

[5] 1st and 2nd Respondents entered a notice of intention to oppose the matter but filed no further opposing papers. 6th, 7th and 8th Respondents applied for their joinder in the proceedings earlier, and it was granted by my brother Mokhesi J. In the answering affidavit deposed to by 6th Respondent the following points ***in limine*** against Applicants' claim are raised:

- (a) Jurisdiction;
- (b) Material non - disclosure; and
- (c) Misjoinder.

On jurisdiction

- [6] In founding jurisdiction, Applicants aver that this court has jurisdiction to entertain this matter since the subject matter concerns *mandamus* and inheritance and that the parties herein fall under the court's powers. Conversely, Respondents urge this court to realise that it lacks jurisdiction to deal with this matter of *mandamus* which relates to rights, allocation and title to land. Respondents pray that the application be dismissed with punitive costs for want of jurisdiction.
- [7] They argue (rightly so) that issues of land are provided for in the ***Land Act, 2010*** and Land Regulations. During arguments, Respondents' Counsel referred this court to ***Section 73 of the Land Act*** to the effect that Land Courts were established to hear and determine disputes, actions and proceedings concerning land. It is their case that the High Court in its ordinary civil jurisdiction does not have jurisdiction over inheritance disputes in respect of land. Respondents cite commendable authorities such as ***Shale v Shale***¹ and ***Lepholisa v Lepholisa***.² There is no doubt that Respondents have the correct position of the law regarding the competency of this court and the Land Courts.
- [8] Respondents argue further that the moment succession touches on land affairs, Land Courts are afforded jurisdiction after compliance with the Land Regulations relating to inheritance. Moreover, the *mandamus* order will have a direct impact on the land in question as the said allocation will

¹ C of A (CIV/35/19) LSCA 45

² LC/APN/12/2012

affect ownership of such land. According to Respondents, this is a family matter and thereafter the Land Allocating Authority, whose decision would be taken up to the District Land Court by a dissatisfied party. Respondents inform this Court that a decision was made that allocation to 1st Applicant cannot be made because part of the land in question belongs to other title holders who lawfully obtained it.

Applicant's answer to the point on jurisdiction

[9] It is Applicants' case that this Court does have the necessary jurisdiction. Applicants acknowledge that the subject matter herein is land, but they make a qualification that present is not a land dispute; that through this application they seek 1st and 2nd Respondents to be compelled to perform their statutory duties so that whoever is aggrieved by their performance of such duties may take appropriate measures in terms of the enabling law. Applicants equally rely on creditable decisions of our courts such as *Mwangi and Another v Masupha and Another*³ as well as *Mafube Investment Holdings (Pty) Ltd v Letoao and Others*.⁴ Applicants argue that although this matter is about land it does not necessarily mean that it is a land dispute especially when the prayers do not concern a claim of title to land. The court is grateful to both counsel for displaying such manner of meticulousness.

The law

[10] My brother Mokhesi J. had occasion to revisit the requisites of a *mandamus* in *Tsela v P.S Ministry of Public Service*.⁵ In that case the learned Judge cited with approval the work of Yvonne Burns and Margaret Beukes in *Administrative Law Under the 1996 Constitution*.⁶ The position of the law

³ LC/APN/170/2014

⁴ LC/APN/137/2014

⁵ CIV/T/53/15

⁶ 3rd ed., Butterworths, 2006, 3rd ed., at page 525

is well relayed in that case; that the remedy of *mandamus* is appropriate where the administrator is compelled to perform his statutory duty. That it may be granted where the public official has a clear duty to perform the action ordered. The order may be granted against the administrator to perform a duty which falls clearly within the ambit of the enabling statute. In *casu* the enabling statute is the **Land Act, 2010** particularly its Regulation 44. In fact, **Regulation 44** should be read with **Regulation 43 (1)** which provides that:

Whenever an allottee dies intestate, the nearest relative or connection of the deceased or in default of any such relative, the person who at or immediately after the death has the control of the land formerly held by the deceased, shall within 6 months thereafter notify the allocating authority of the death.

The notice referred to above shall show, among other things, the names and particulars of the heir and whether he or she was nominated by the allottee or family members of the deceased allottee.

[11] Then Regulation 44 (1) provides that:

Upon receipt of the notice referred to in regulation 43(1), the Chairperson of an allocating authority having jurisdiction shall publish the notice in such a manner as he may consider reasonably adequate and most effective including the posting of the notice on the allocated land affected for the purpose of bringing it to the attention of all persons who may have claims or objections to claims and shall record the manner of such publication in the records of the allocating authority.

Analysis

[12] It is common cause that the High Court in its ordinary civil jurisdiction does not have power to determine land issues. It has been established through **Section 7** of the **Land (Amendment) Act, 2012** that land courts have unlimited jurisdiction in land matters. In ***Lepholisa v Lepholisa supra*** at para 16 the court said:

This court does not ... have jurisdiction to deal with disputes relating to claims based on inheritance and or succession; nor can it deal with matters regarding a declarator based on heirship. Such issues can be adjudicated upon by the High Court exercising its normal civil jurisdiction.

[13] Also trite is the fact that the same High Court does have the necessary jurisdiction to hear and determine *mandamus* applications where a statutory obligation exists as is the case in *casu*. At page 133 of the record as well as pages 148 to 150, is evidence that there is a long history regarding this site at Matholeng at least dating back to the year 2014.

Conclusion

[14] The availability of the *mandamus* remedy to Applicants remains to be interrogated and it is a question that falls within the competencies of this court. The point of jurisdiction is, therefore, dismissed. The jurisdiction of this court not being ousted, the points of material non - disclosure and misjoinder will be merged with the merits.

Order

[15] The following orders are made:

- a) The point in *limine* on jurisdiction is dismissed;
- b) Parties are, therefore, directed to have the matter set down for argument;

c) There is no order as to costs.

F.M. Khabo
Judge

For the Applicants : Adv., T. Lesaoana

For 6th, 7th and 8th Respondents : Adv., M. Lephatsa