

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**LC/APN/030/2021**

In the matter between

**MANEO MATETE**

**APPLICANT**

**AND**

**MAFETENG URBAN COUNCIL**

**1<sup>ST</sup> RESPONDENT**

**LAND ADMINISTRATION AUTHORITY**

**2<sup>ND</sup> RESPONDENT**

**MINISTRY OF LOCAL GOVERNMENT &  
CHIEFTAINSHIP AFFAIRS**

**3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL**

**4<sup>TH</sup> RESPONDENT**

Neutral Citation: Maneo Matete v Mafeteng Urban Council & 3 Others  
(No.1) [2022] LSLC 129 Lan (13 June 2022)

**RULING ON PRELIMINARY OBJECTION**

**CORAM: BANYANE J**

**HEARD: 16/05/2022**

**DELIVERED: 13/06/22**

**Summary**

Concurrency of jurisdiction - Rule 9(2) of the Land Court Rules of 2012 - whether the decision of the Court of Appeal in **Moletsane v Thamae** removes adherence to the requirements of this rule - this Court holds that it does not - objects of the Land Act 2010 in creating the District Land Courts as well as prior decisions of the Court of Appeal on the interpretation of section 6 of the High Court Act of 1978 discussed and applied - jurisdiction declined.

## **ANNOTATIONS**

### **Cited cases**

1. Moletsane v Thamae C of A (CIV) 23 of 2017 [2018] LSCA 25
2. Nko v Nko LAC (1990-94) 312
3. Mapiloko v Fragmar C of (CIV) NO 42/17[2018] LSCA 14
4. Lesotho National Development Corporation v Maseru Business Machines (Pty) Ltd and Others C of A (CIV) 38/15
5. Mokemane v Mokhorro and Others LC/APN/30B/13
6. Mwangi & Another v Masupha LC/APN/170/14
7. Jaase v Jaase C of A (CIV) 62/17

### **Legislation**

1. The High Court Act No.5 of 1978
2. The Land Act No.8 of 2010

**BANYANE J**

## **Introduction**

**[1]** The dispute between the parties pertains to a certain land situated at Mafeteng and identified as plot No.064 72-580. It was allocated to the applicant in February 2011 subject to payment of a premium of M21 403.25, payable for a period of two years from the date of allocation. It is common cause that payment of this amount was effected sometime in 2020. A certificate of allocation has not been issued to the applicant due to Mafeteng Urban council's resistance to so on account of the applicant's failure to fulfil the conditions of allocation, i.e failure to pay the amount during the time prescribed in the allocation letter.

**[2]** Aggrieved by Mafeteng Urban Council's refusal to issue her with title documents, the applicant has approached this Court seeking an order declaring her as lawful title holder of rights and interests of this plot, an order directing Mafeteng Urban Council to grant her "lawful title" to the plot through issuance of a Form C in her names, and an order directing the Land Administration Authority (LAA) to issue a lease in her names.

**[3]** The first respondent opposes this application. He raises a preliminary objection of lack of jurisdiction on grounds that the matter ought to have been filed in the Mafeteng District Land Court.

**[4]** The applicant in turn impugns the answer on the basis that Mkhawana Attorneys have not been authorized to act for the first respondent in the matter and resultantly, the answer filed is a nullity.

**4.1** The latter point was, however, abandoned during argument. The only issue that remains to be addressed is the Jurisdictional challenge. The following were the parties' submissions in this regard.

### **Lack of Jurisdiction**

**[5]** The first respondent's counsel Mr. Molise contends firstly that both the District Land Court and Land Court have concurrent jurisdiction to

adjudicate over the matter and grant the reliefs sought. For this submission, he referred the court to the case of **Moletsane v Thamae C of A (CIV) 23 of 2017 [2018] LSCA 25**.

**5.1** Based on this submission, he contends in the second place that where concurrent jurisdiction exists, the matter must first be filed in the Lower Court. In other words, preference must be given to the District Land Court. He cited the case of **Nko v Nko LAC (1990-94) 312**.

**5.2** It is his further argument that since the Land Court has both review and appeal powers over the District Land Court proceedings and decisions, the original jurisdiction vests in the District Land Court to hear the matter.

**[6]** Mr. Ndebele counter-argued that the matter is properly before this Court. He also relied on **Malineo Moletsane v Thamae** (supra). His understanding of it, however, is that where concurrent jurisdiction exists, a party is entitled to choose the Court in which to pursue their claim. He submitted that the applicant has chosen the Land Court as the preferred forum, and she is entitled, on this authority, to do so.

### **Discussion**

**[7]** Twin issues arise from the parties' respective arguments. They are whether the Land Court is obliged to entertain matters that fall within the jurisdiction of the District Land Court purely on the basis of concurrent jurisdiction or whether the court may refuse to hear a matter over which both the District Land Court and the Land Court have jurisdiction. Allied to this, is the issue whether the District Land Court has priority jurisdiction to hear the matter.

**[8]** The arguments turn on the question whether the decision of the Court of Appeal in **Moletsane v Thamae**, permits an applicant to choose

(without any restriction) which, between the two concurrent fora may hear a claim.

**[9]** The gist of Mr. Ndebele's argument is that an applicant as *dominus litis* is entitled to choose the forum in which to pursue his or her claim and once that election is made, this Court has no power to decline to hear it on grounds that the District Land Court has concurrent jurisdiction but must hear the matter. The essence of Mr. Molise's converse contention is that where concurrency of jurisdiction exists, the lower Court has priority jurisdiction and the Land's Court's jurisdiction is delayed.

### **The law on concurrency of jurisdiction and choice of Court**

**[10]** The starting point of the inquiry is that the Court of Appeal, has in several cases interpreted provisions of section 6 of the High Court Act of 1978 dealing with concurrence of jurisdiction. It is helpful to highlight some of these cases.

**10.1** In **Nko v Nko LAC** (supra), the Court of Appeal held that where a Subordinate Court is possessed with jurisdiction to decide a matter, an approach to the High Court must be in adherence to the provisions of section 6 of the Act, failing which, a plaintiff or applicant is barred.

**10.1.1** This decision was followed and applied in other cases by the Appeal Court. See for example **Mapiloko v Fragmar C of (CIV) No. 42/17[2018] LSCA 14** where it was also held that where concurrent jurisdiction exists, the general practice is to give first preference to the lower Court. A similar approach was adopted in **Lesotho National Development Corporation v Maseru Business Machines (Pty) Ltd and Others C of A (CIV) 38/15** where it was also held that where concurrent jurisdiction between the High Court and Subordinate Court exists, the Subordinate Court has priority jurisdiction.

**10.2** In **Jaase v Jaase C of A (CIV) 62/17**, the Court of Appeal held that in terms of section 6, jurisdiction may be acquired if necessary leave is acquired or assumed where the judge acting on his motion expressly or impliedly permits the institution or removal of a matter into the High Court. The Court there emphasised that proper administration of justice requires that the High Court excises its power in a manner that will resolve disputes between parties as expeditiously as circumstances permit. And that where it is legitimately within his or her power to do so, a trial judge should act in a way which will prevent unnecessary delay in the resolution of such disputes.

**10.3** The question that must then be answered is whether these authorities are applicable in land litigation. I answer this by reference to Rule 9(2) of the Land Court Rules. It reads.

"9 (2) pursuant to section 5 of the High Court Act 1978 and the Constitution of Lesotho, the Land Court shall have inherent jurisdiction over all matters that do not fall under exclusive jurisdiction of the District Land Court".

**10.4** Reference to section 5 has been identified as a patent error because it (section 5) speaks of the office of the Registrar whereas section 6 of the Act speaks to the practice and procedure through which matters falling within the jurisdiction of the subordinate courts may be adjudicated in the High Court, the latter provision having been interpreted in the cases referred to above.

**10.5** It seems that by reference to section 6 of the High Court Act, a similar mechanism of bringing disputes justiciable in the District Land Court to the Land Court must be adopted. In **Mwangi v Masupha LC/APN/170/14**, Sakoane J (as he then was), said;

'a careful examination and analysis of the land Act 2010 reveals that within their hierarchal relationship, the Land Court has concurrent jurisdiction with the District Land Court, but this court only excises that

concurrent jurisdiction upon leave being sought and granted in terms of Rule 9(2)'

**10.6** It was similarly held in **Mokhorro v Mokemane LC/APN/30B/13** that matters justiciable in the District Land Court can only be instituted in this Court through leave of Court or assumption of jurisdiction by a Judge.

**[11]** I agree with the construction of this rule as elucidated in these decisions because Rule 9(2), in my judgement, provides a machinery for bringing of actions and proceedings before this Court. It is a formula by which the jurisdictional power conferred by section 73 of the Land Act 2010 is to be exercised i.e pursuant to section 6 of the High Court Act.

**[12]** This machinery enables or allows an orderly adjudication of land disputes by these two courts, curbs forum shopping and enables them to function and function efficiently. I say this because, the practice as contained in this rule is that where both the Land Court and District Land Court have jurisdiction to entertain a given matter, such a matter must be brought before the Land Court through leave of Court or where the judge assumes jurisdiction to hear it. This is to say, a matter falling within the jurisdiction of the District Land Court cannot be instituted unless leave is sought and granted, or the judge assumes jurisdiction over the matter in line with the provisions of section 6 of the High Court Act. It is clear in this rule therefore that, land disputes must first be instituted in the District Land Court.

**[13]** It seems to me that this rule is in harmony with the objects of the Land Act in creating the Land Courts. It is plainly clear from the Act that District Land Courts have been created in order to address the shortcomings of the Land Act 1979 in so far as resolution of land disputes is concerned.

**13.1** The main problem that the 2010 Act sought to remedy was delays in the disposal of land disputes due to centralization of Land Tribunal, and its

Limited Jurisdiction. Under the new dispensation (Land Act 2010), the District Land Courts are given jurisdiction to determine all disputes and proceedings concerning land except only a few which specifically fall within the exclusive jurisdiction of the Land Court. (For example, see section 52 of the Land Act). Clearly, resolution of Land disputes is made accessible at District level through creation of the District Land Courts. This creation is intended to achieve speedy disposal of land disputes.

**[14]** With this understanding in mind, I proceed to determine whether the remarks of the Court of Appeal in **Moletsane v Thamae** should be understood to mean that an applicant as the *dominus litis* has the right to choose, without observance of Rule 9(2), the forum in which he or she wishes to institute his or claim.

**[15]** My understanding of the decision in **Moletsane** is that it simply explains what concurrent jurisdiction entails. There is no doubt that per this decision, the concurrency of jurisdiction between the Land Court and District Land Court exists. Differently put, the Land Court retains jurisdiction in respect of matters not exclusively falling within the jurisdiction of the District Land Court.

**[16]** It must be noted, however, that the court did not address nor comment on the Rule 9(2) practice, understandably because no argument was made in that regard. In the light of Rule 9(2) and the objects of the Act, the import of the decision is not, as I see it, to eliminate the Rule 9(2) requirements. It follows, in my view that an applicant's entitlement to bring a claim in the Land Court must be done in accordance with Rule 9(2).

**[17]** The provisions of this rule, properly interpreted, in the light of the objects of the Land Act stated above, create a practice or procedure in terms of which the District Land Court is the Court of first instance. It follows in my view that since the object of the Act is to enhance access to

justice for land disputes and speedy disposal of same as stated earlier, all land matters (save for those falling within the exclusive jurisdiction of the Land Court) must therefore be brought in the District Land Court save only if there are exceptional circumstances justifying otherwise. What may constitute exceptional circumstances would be decided on case-by-case basis. By way of example where there are peculiar, or exceptional factual or legal issues raised which in the opinion of the Court warrant them being heard first in the Land Court.

**[18]** I am therefore of the opinion that the approach to the excise of concurrent jurisdiction in the cases of **Mapiloko v Fragmar and Nko v Nko** (supra) equally applies in land litigation. It follows that where a matter falls within the jurisdiction of the District Land Courts, preference must be given to the lower Court and the matter should be instituted in those Courts (in respective districts) unless this Court (Land Court) has granted leave to hear the matter or assumes jurisdiction in appropriate cases.

**[19]** One must also not lose sight of the fact that this Court has review and appeal powers over District Land Court decisions. Only two judges serve in this Court over and above their current workload of the High Court (ordinary jurisdiction) matters. If this Court continues to be saddled with fresh trials that would otherwise be conveniently dealt with in the District Land Courts, the Land Court will be rendered unable to speedily dispose of the appeals and reviews that come before it.

### **Conclusion**

**[20]** For reasons set out above, I conclude that this Court is not obliged to entertain matters that fall within the jurisdiction of the District Land Court purely on the basis that the Land Court has concurrent jurisdiction but where a party is of the view that a matter that falls within the jurisdiction of the District Land Court should more appropriately be heard in this Court, an application for leave must be made (pursuant to Rule

9(2)) setting out grounds why the matter must be heard in this Court. Only after leave has been granted may the matter be instituted in this Court. Alternatively, the Judge may, in appropriate case permit the institution of the matter in terms of this Rule.

**[21]** Considering that the disputed land is situated in Mafeteng, witnesses are possibly based in Mafeteng, and the fact that the case raises no difficult questions of fact or law, I conclude that this is not an appropriate case for assumption of jurisdiction and that the matter would be appropriately heard in the Mafeteng District Land Court. It must therefore be instituted in that Court.

**Order**

**[22]** In the result,

- a) The preliminary objection is upheld
- b) This Court declines to hear the matter and directs that it be instituted in the Mafeteng District Land Court.
  
- c) There will be no order of costs.

**P. BANYANE**  
**JUDGE**

For Applicant: Mr. Ndebele

For Respondents: Advocate Molise

