

IN THE HIGH COURT OF LESOTHO

LAND COURT DIVISION

HELD AT MASERU

LC/APN/32/2014

In the matter between:-

RETS'ELISITSOE LIJANE

APPLICANT

AND

RAMARANE RASETSOTO

RESPONDENT

**Neutral Citation: Retselisitsoe Lijane v Ramarane Rasetso [2022] LSHC
191 LAN (16th August, 2022)**

JUDGMENT

Coram : Mahase J

Date of hearing : 17th Feb. 2017, 16th, 24th and 26th April 2018, 13th Feb 2019,
27th May 2020, 23rd Sept 2020

Date of Delivered : 16th August 2022

SUMMARY

Land Court – Applicant and first respondent in dispute over rights on estate – Estate having been bequeathed to the applicant's wife – Original owners having passed on – Applicant's mother having survived her husband – first respondent having fraudulently obtained a lease document in his names in respect of this estate – None disclosure of a material fact by the first respondent, that he had lost a case of ejectment against the applicant and his late wife – Effect of none disclosure of such a fact.

ANNOTATIONS

CITED CASES:

- **Motlamelle v. Tekateka 1979 (2) LLR 564**
- **Mbangamthi v. Phalatsi, LAC (1980 – 84)**

STATUTES

- **Land Act. No. 2010**
- **Legal Capacity of Married Persons Act No. 9 of 2006**

BOOKS

- **None**

[1] **Introduction**

Parties in this application are having a dispute over ownership rights in respect of a developed site/plot situated at Qoaling Ha Tsautse Matsoareng in the Maseru district.

[2] **Factual Background**

The applicant approached this Court seeking the following relief on an urgent basis

- That he be declared as the rightful owner of the site in question
- Costs of suits

Alternatively that:-

- The respondent compensate the applicant in the amount of M2,500,000.00 (two million, five hundred thousand only).
- Costs of suit.

[3] The applicant is the son in law of Rasetoto Rasetoto and ‘Matankiso Alice Lijane. He was married to the daughter of the said deceased persons; one Palesa Rasetoto. Both his parents in law and his wife Palesa have

predeceased him. Two children were born out of their marriage but their names have not been disclosed in this application.

- [4] The late elder brother of the first respondent predeceased his wife ‘Matankiso Alice Rasetso. Rasetso Rasetso passed on, on the 17th September 2004. After his death, the widow, ‘Matankiso Alice Rasetso made a will/letter through which bequeathed she all of the property she and her late husband had amassed during his lifetime to Palesa Rasetso. Refer to exhibit “A” annexed to the originating application.
- [5] The applicant’s wife has also passed on. She passed on after her mother, but before that, the respondent; Ramarane Rasetso had taken her and her husband (the current applicant) to the Maseru Local Court wherein his claim against them was that of ejection. He lost that case. He never noted an appeal to the Central Court. Refer to the copy of the judgment dated the 19th December 2005.
- [6] A second attempt by the respondent to have the applicant ejected/evicted from the site in question also failed. In fact, in a judgment of the Court; the Maseru Local Court dated the 18th July 2006, the matter was removed from the roll of cases in that Court. Refer to that judgment/order herein annexed to the originating application. They are marked exhibits “B” ad “C” respectively.
- [7] As already indicated above, all of the above cases were never challenged on appeal by the respondent. He elected to approach the registering authority in the year 2011; applied for issuance of a lease in respect of this site in his

names and that of his wife. This was duly issued on the 6th day of November 2013 during the regularization process well being aware of the two judgments of Court relating to ejectment, which he had lost.

[8] The respondent had applied for issuance of that lease number 13291 – 1758 because he does not recognize the marriage of his late brother to his late wife as being lawful. In fact, it is his case and that of his witness that their late brother Rasetoto Rasetoto has never married the late ‘Matankiso Alice Rasetoto.

[9] Also that the said Palesa ‘Matankiso Lijana was not fathered by his late brother and as such she is not the biological child of his late brother. He alleges that as a result, it is improper and unlawful that the said ‘Mapalesa Rasetoto has authored exhibit “A” through which she has bequeathed his late brother’s estate to Palesa.

[10] However, the respondent has not formally challenged the existence and or the authenticity of exhibit “A” as well as the marriage of Rasetoto and Alice before any competent Court of Law. To that extent, exhibit “A” remains as being the last wishes of the late wife of Rasetoto Rasetoto. Also, this alleged “will” or letter or the last wishes of the late ‘Mapalesa Alice Rasetoto which remains valid until a competent Court of law as made a pronouncement on it remains operative.

[11] The issues pertaining to the marriage of the respondent’s late brother as well as the authenticity of exhibit “A” cannot be challenged in this Court, the Land Court. They should have been challenged in the High Court in its

original unlimited jurisdiction. The Land Court is a specialized Court with jurisdiction to hear and determine all disputes, actions and proceedings concerning land. To that extend, the issues pertaining to the said marriage and exhibit “A” cannot be dealt with by this Court.

[12] The applicant has alleged that in the two cases referred to above, which were launched in the Maseru Local Court at different dates, the respondent lost both cases to the applicant and his wife and later to the applicant. The respondent has not denied nor challenged the above fact. What he instead did was to apply for the issuance of a lease as already indicated above.

[13] In doing that, he relied on a document which he says was authored by the Rasetoto family; appointing an heir over the estate of his said late brother. Notably, and for obvious reasons, the applicant, did not form part of that meeting. This is despite the fact that the respondent knew about exhibit “A” and despite that the respondent had lost all cases which he had instituted against the applicant and his wife for ejection from the said site.

[14] In a nutshell, and without having challenged the authenticity of exhibit “A” and having twice lost the cases in the Maseru Local Court to reclaim the estate of his late brother, the respondent went ahead to fraudulently represent to his own chief and the Land Administration Authority (2nd respondent) that he is the lawful heir to the estate in question.

[15] This he did more than seven years or so after the death of his late brother and his late wife (‘Mapalesa), and six years since annexure “A” was written. The chief of Likalaneng Ha Ramohapi, who is the chief of the first

respondent has unfortunately authored annexure “RR4”, thereby involving himself in issues about which he had not investigated. He was not even called to testify in support of the respondent. Due to the existence of annexure “A”, the fact that he purported to refer the first respondent to the chief of Qoaling Mats’oareng with exhibit “A” does not advance the case of the first respondent in anyway.

[16] The first respondent has not even challenged evidence adduced by and on behalf of the applicant that it was his late parents in law who have developed the site in question whilst the respondent remained at Likalaneng, the original home of the Rasetsotos. Neither has he challenged evidence adduced by the applicant that whilst the applicant was away in Bloemfontein where he was employed, and without the applicant’s authority, the first respondent forcefully took away all the property he (first respondent) had found in the premises in question.

[17] Lastly, he has not challenged evidence that he ultimately savagely assaulted the applicant and forcefully took over his late parents’ estate in question. During the course of the trial, the applicant successfully applied for an amendment of the prayers by having the prayer that Court should declare lease for plot No. 13291 – 1758 a nullity and that the tenants renting out some flats situated in the area in dispute be joined in this application.

[18] The above-named prayers were not opposed. These tenants are indeed interested parties who would be affected by the outcome of this application, hence why they had to be joined herein.

- [19] However, all efforts to have them served with Court process have failed due to the fact that; firstly, they were never found at their rented places. Secondly, the first respondent refused to cooperate with the Deputy Sheriffs and the chief or headman of the area to disclose their whereabouts and/or where they could be found at their workplaces. Thirdly, most of them had no fixed work addresses as they did odd jobs.
- [20] The first respondent alleges that his late brother and Alice Rasetso were never formally married. This is why after the demise of Alice 'Mapalesa Rasetso, he (first respondent) unlawfully and fraudulently disposed the applicant of the estate/property which was amassed by the late Rasetso Rasetso and his late wife Alice 'Mapalesa Rasetso.
- [21] Evidence that the applicant had paid many cattle as lobola for Rasetso/Lijane remains a matter of common cause and unchallenged. The first respondent has himself also failed to challenge evidence that actually, the late Palesa Rasetso was the biological daughter of Alice and the late Rasetso Rasetso and that actually the late Alice 'Mapalesa wrote instructions whose effect is to the effect that all the property which she and the late Rasetso Rasetso have amassed be given to her daughter Palesa.
- [22] This, the applicant who married Palesa by customary law is entitled to even if there were no written instructions referred to above, due to the regime of their marriage. Further uncontroverted evidence is to the effect that both the late Rasetso and his late wife Alice, build and developed the property in question together.

- [23] This is the evidence tendered by the applicant and one Thabo Mokokoane who was the chief's secretary during the lifetime of the late Rasetso Rasetso. The applicant has produced exhibit "A" to prove that indeed, the said Alice 'Mapalesa Rasetso had bequeathed the property in question to Palesa who was the wife to him (applicant).
- [24] The existence and authenticity of the said document has not been denied nor challenged by the first respondent. Equally not challenged is a copy of the document showing the measurements of the property/site in question. It is the one which the late Alice 'Mapalesa Rasetso had intended to use in applying for issuance of a lease document in respect of this site, but she met her demise before she had completed this exercise.
- [25] The applicant's other evidence to the effect that the first respondent never visited his late brother and that he applicant first saw the first respondent after the death of his father in law, Rasetso Rasetso remains unchallenged.
- [26] The net effect of the applicant's above evidence is that there is no way in which the first respondent could know the affairs relating to the estate of the late Rasetso and the late Alice. Most importantly, the evidence of the applicant which is corroborated by that of Thabo Mokokoane to the effect that later on and after having failed to have the applicant ejected from that site unlawfully, the first respondent had the applicant attacked and severely injured as a way of coercing the applicant to vacate the premises in question is unchallenged. A report by the Thamae Police post was made about the

incidence. Refer to exhibit “B”, unfortunately, this report was never acted upon by the said police to date.

[27] The first respondent had once instituted ejectment proceedings against the applicant and his late wife, Palesa ‘Matankiso Lijana but he (first respondent) lost that case. That judgment of the Maseru Local Court dated the 3rd May 2006 was never appealed by the first respondent. So in terms of the law it remains extant. The first respondent filed another similar case at the same local Court. However, this was removed from the roll of that Court on the 18th July 2006.

[28] However, and despite the first respondent’s having failed to challenge all evidence adduced by the applicant against him (the first respondent) and well being aware and having knowledge of the existence of annexures “A” and “C”; he proceeded, unknown to the applicant to the L.A.A. (2nd respondent’s) offices to apply for issuance of a lease document in his own names. Refer to annexures “RR3” and “RR4” herein attached to the first respondent’s answer.

[29] The crux of the applicant’s case is therefore that the first respondent has fraudulently obtained the lease in respect of the plot in question because; firstly the first respondent has falsely withheld from the relevant authority, the fact that he lost a case of ejectment from the estate against the applicant and his late wife Palesa ‘Matankiso Lijane.

[30] Secondly, he deliberately failed to disclose to the said authorities that Palesa’s late mother, Alice ‘Mapalesa Rasetso who was survived by her

late husband Rasetso Rasetso had actually left some written instructions wherein she had bequeathed her estate to Palesa and to no one else.

[31] The first respondent has never formally approached a Court of law to challenge the authenticity of this letter or will. The first respondent also went further to deliberately fail to disclose to the relevant authorities and in his papers; even to this Court, that he has not ever been in occupation of the land in question; whether lawful or not, prior to the demise of his late brother and wife.

[32] He has not disclosed to the said authorities and to this Court in his pleadings and in argument before this Court that when the late Alice 'Mapalesa Rasetso met her demise; having been predeceased by her late husband Rasetso Rasetso; the only remaining and surviving person close to her was their daughter Palesa 'Matankiso and her husband, the applicant in this application.

[33] All of the above, coupled with the fact that the first respondent has never disclosed to Court in anyway the fact that he once lost a case in which he had sued the current applicant and his late wife for ejection from the very estate/property now subject matter herein, has dealt a blow to his (first respondent's) case. He lost this case way back on the nineteenth December two thousand and six.

[34] It is a matter of common cause that both the applicant and his late wife, being citizens of this country qualify to hold title to land; in terms of section 6(1) of the Land Act of Lesotho.

[35] Regard being had to the surrounding circumstances and to the fact that the first respondent has not been candid to this Court and to the officials of the second respondent in the ways alluded to above, and also regard being had to the fact it is not his argument that the late Palesa Matankiso Lijane did not qualify to inherit from her own late mother and father; then the first respondent has no leg to stand on as against the right of the applicant to claim rights and ownership of this estate.

[36] There is more than ample evidence to the effect that actually, the said estate was jointly build and amassed by the late parents of Palesa ‘Matankiso during their lifetime.

[37] It is apposite to indicate that during the cause/course of this trial, the applicant applied successfully for the amendment of his originating application to add the relief/prayer that Court grants an order for cancellation of the lease document issued in the names of the first respondent, which is lease number 13291-1758 issued on the sixth November 2013; annexure “RB3”.

[38] This application was not opposed. In the circumstances and due regard being had to the surrounding circumstances herein it is observed that curiously, the first respondent took deliberate moves to fraudulently apply for the issuance of a lease document in his names over or in respect of property which was amassed by his late brother and his late wife Alice ‘Mapalesa, but without disclosing that this property had already been bequeathed to Palesa.

[39] This he (first respondent) did being well aware and alive to the fact that Alice had already bequeathed that property to their own child, Palesa 'Matankiso through exhibit "A". As a matter of common cause, the late Palesa was or remained the one and only surviving close person or relative of Rasetso Rasetso and his late wife Alice 'Mapalesa Rasetso.

[40] After the demise of Palesa, her lawfully wedded husband; the current applicant was the only person left related to Palesa. Palesa had herself inherited this property from her late mother. Being formally married to the late Palesa with whom he fathered two children, it stands to reason that in terms of the law of this country, he has correctly acquired rights and possession of the estate in question.

[41] Curiously, the first respondent did not only wait until after the death of his late brother's wife to issue Court process to eject applicant and his now late wife from the estate in question. He lost in that case. He has to date not noted an appeal against the judgment of the Court which issues that judgment.

[42] There is no doubt in the mind of this Court that in that case of ejectment, subject matter was the estate or the site which is also now subject matter before this Court. For removal of doubt, I quote the heading on the summons:-

"Defendant should vacate from the residential site at Ha Tsautse at the place of the deceased Rasetso who is the brother to plaintiff".

[43] Clearly, this judgment was in favour of the current applicant and his now late wife. However, the lease document issued in favour of the first respondent herein was issued some eight years after the said judgment of the Maseru Local Court; whilst that judgment is still extant.

[44] The first respondent has acted unlawfully and fraudulently in obtaining the lease in respect of this estate of his late brother by having withheld this crucial information from the second respondent's officials.

[45] It is for the above reasons that the applicant's application that he be declared the rightful owner of the site in question is granted. Also granted is the prayer that the lease in question issued in the names of Ramarane Rasetso; of number 13291-1758 is cancelled and another lease in the names of the applicant be issued.

[46] Costs are awarded to the applicant.

M. Mahase

Judge of the High Court

For Applicant - Adv. T. N. Habasia

For First Respondent- Adv. V.P. 'Mone