

IN THE HIGH COURT OF LESOTHO
COMMERICAL DIVISION

HELD AT MASERU

CCA/0109/2023

LEFA CHAKA

APPLICANT

AND

JEREMANE RAMATHEBANE
COMMISSIONER OF POLICE
OFFICER COMMANDING MOHALE'S
HOEK POLICE STATION
ATTORNEY GENERAL

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

Neutral Citation: Lefa Chaka v Jeremane Ramathebane & 3
Others [2023] LSHC 248 COMM. (19 DECEMBER 2023)

CORAM: MOKHESI J

HEARD: 18th DECEMBER 2023

DELIVERED: 19TH DECEMBER 2023

SUMMARY

Civil Practice- *Jurisdiction of the High Court in mandament van spolie matters in view of the provisions of Section 18(1) of the Subordinate Courts Act, 1988 - value of the despoiled property in excess of the values prescribed for the Subordinate Court- dispute of fact found to exist - version of the 1st respondent found to be palpably implausible and far-fetched- applicant found to have made out a case for the relief sought.*

Annotation

Cases Lesotho

Letsie v Ntšekhe (2009-2010) LAC 423

Mbangamthi v Sesing-Mbangamthi LAC (2005 - 2006) 295

South Africa

National Director of Public Prosecutions v Zuma [2009]2 ALL SA 243 (SCA); 2009 (4) BCLR 393 (SCA); 2009 (2) SA 277 (SCA)

Statutes

High Court Act, 1978

Subordinate Courts Act, 1988

the Subordinate Courts Act No.9 of 1988

JUDGMENT

[1] Introduction

This application was brought on an urgent basis seeking a spoliatory relief and costs. The application is opposed.

[2] Background Facts

The parties concluded a written contract for sale of a tractor. The seller was the 1st respondent. The purchase price was set at M150,000.00 with the applicant set to pay a deposit of M110,000.00 before he could take possession of the tractor. The applicant duly paid the deposit and took possession of the merx. It is common cause that the applicant has yet to finish paying off the purchase price. The remaining amount of M40,000.00 is to be paid in instalments. The 1st respondent disputes that some payments were made in relation to the balance of the purchase price. He says that the applicant is in arrears. However, nothing turns on this, in this type of application. Critical for the determination of this matter is whether the applicant was in a peaceful and

undisturbed possession of the tractor and whether it was wrongfully removed from his possession.

[3] There are differing versions on how the applicant came to lose possession of the tractor. The applicant's version is that the tractor was working in Mohale's Hoek and was being driven by his driver who was forcefully despoiled of its possession by the 1st respondent by directing him to drive and park it at his residence.

[4] On the one hand the 1st respondent, as already stated, raised an objection regarding the lack of jurisdiction by this court to entertain a spoliatory relief in view of the provisions of Section 18(1) of the Subordinate Courts Act No.9 of 1988. The parties appeared before me while on duty. In view of the point *in limine* raised by the 1st respondent that this court lacked jurisdiction to hear and to determine this matter, I decided that the matter fell within the jurisdiction of this court. I gave ex tempore ruling on the issue, however, as it turned out the matter was allocated to me to deal with. So, the reasons for adjudging that the matter fell within the

jurisdiction of this court will be incorporated into this judgment.

[5] On the merits, the 1st respondent avers that his wife 'Mateboho Ramathebane was dissatisfied with the purchase as she wanted the tractor sold for M200,000.00, however, he managed to persuade her to accept the purchase price of M150,000.00. He however avers that the applicant did not pay him the balance of the purchase price and that he is in arrears in the amount of M20,000.00 and has failed to pay despite several demands. The 1st respondent states that he did not take the tractor by force as he was telephoned by one Tšeliso Leballo that the tractor was parked at his residence without his authority. The 1st respondent avers that per agreement with the applicant, he used the tractor's spare key to drive it to his residence.

[6] At paragraphs 27 - 29 of his answering affidavit, he states that:

27. I deny that during the month of October 2023, the applicant paid me two (2) payments in cash amounting

to M2900.00 and M1500.00 on undisclosed dates. I deny receiving the sum of M4400.00 in October 2023 from the respondent (sic). As a matter of fact the applicant is dodging me. He has refused to come to a meeting. I have made it clear that I will not release the tractor unless he settles the arrears.

28. I deny receiving the sum of M4400.00 from the undisclosed "owner of the field." The correct position is that I have not received any monies from the applicant or anybody. In any event the fields in that area of Ha Manganane range between two (2) acres to five (5) acres. The current rate per acre is M550.00 it means that the highest any field owner can pay is the sum of M2750.00.

AD PARA 6

29. I am entitled to keep the tractor until the applicant would have paid the balance. However, I reiterate that I did not take the tractor by force. I am an old feeble man, who cannot risk his life by using brute force."

The 1st respondent is supported by Tšeliso Leballo in so far as the averments relate to him regarding how the tractor got to be in his possession. Mr Leballo does not, however, have knowledge of the contents of the conversation between the

applicant and the 1st respondent regarding the tractor or whether it took place at all.

[7] **Issues for determination**

- (i) Jurisdiction
- (ii) The merits

[8] **Jurisdiction**

It is common cause that the High Court, in terms of Section 2 of the High Court Act, 1978 has an unlimited jurisdiction to hear and determine any civil or criminal proceedings in Lesotho, however, this jurisdiction is qualified by the provisions of Section 6 of the same Act which stipulates that civil cause falling within the jurisdiction of the Subordinate Courts may be brought before or removed to the High Court by the judge acting on his own motions or upon leave being sought on application by the party, on notice that the matter be entertained by the High Court.

[9] In terms of Section 17 (1)(b) of the Subordinate Courts Act 1988, highest civil jurisdiction of the Magistrate Court is that of the Chief Magistrate which has been set at M25,000.00. Under Section 18 (1) the Magistrates Court have jurisdiction to hear applications for *mandament van spolie* but this jurisdiction is circumscribed by the civil monetary ceiling of M25,000.00. Commenting on these sections, the Court in **Letsie v Ntšekhe**¹ said:

“While it was true that the Subordinate Court had jurisdiction to adjudicate Spoliation disputes in terms of section 18(1) of Act No.9 of 1988, such jurisdiction was limited to the value of the despoiled property as provided in Section 17(1)(b) of that Act, that value of the despoiled if in excess of the values prescribed for the Subordinate Courts’ jurisdiction, entitles the High Court to assume jurisdiction. In terms of the High Court Act 1978, the High Court had unlimited discretion to assume jurisdiction in any matter.”

It is common cause that the value of the tractor the subject matter of these proceedings far exceeds the monetary ceiling of the Magistrates Courts. It is on this basis that this court ruled that it had jurisdiction to hear and determine this application.

¹(2009-2010) LAC 423

[10] **The merits**

It is evident that there is a dispute of facts regarding how the applicant lost possession of the tractor. This being motion proceedings, the applicant can, therefore, only succeed if the facts he avers, which have been admitted by the 1st respondent, together with the facts averred by the latter justify the orders sought. It will, however, be different if the 1st respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the Court will be justified rejecting it merely on the papers. **(National Director of Public Prosecutions v Zuma [2009]2 ALL SA 243 (SCA); 2009 (4) BCLR 393 (SCA); 2009 (2) SA 277 (SCA) at para. [26]).**

[11] The *mandament van spolie* is a remedy which seeks to restore possession of property to the applicant who was despoiled of it wrongfully. It is aimed at preventing self-help. The applicant must have been in a peaceful and undisturbed

possession of the property and, secondly, he must have been wrongfully deprived of its possession without his consent. (***Mbangamthi v Sesing-Mbangamthi LAC (2005 - 2006) 295***). At page 301 B - G para. [8] the Court in that case stated that:

*“It is well-established that all the person despoiled has to prove is that he had possession of the kind which warrants protection and that he was unlawfully ousted. Whether possession was lawful or illegal is irrelevant. See Yeko v Qana 1973 (4) SA 735(A) at 739 D - G. It is therefore not open to the respondent to contend, whether by way of defence or counterclaim, that an applicant has no right to possession of the property. The reason for this is due to the fundamental principles of spoliatory relief, that no-one is allowed to take the law into his own hands, and that conduct conducive to a breach of the peace should not be tolerated. The rights of the party despoiled are encapsulated in the maxim *spoliatus ante amnia restuendus*. The effect is that before any dispute concerning the legality of the right to property is resolved, or even considered, possession must be restored to the *spoliatus*. And it is by virtue of the very nature of a spoliation application, that a counter-application should not be countenanced.”*

[12] Going back to the parties' versions, the applicant states that he was despoiled of the possession of the tractor unlawfully and without his consent by the 1st respondent when he directed the applicant's driver to park the tractor at his residence. There is however no supporting affidavit of the said driver filed of record. On the one hand the 1st respondent avers that the tractor was parked at Tšeliso Leballo's residence without the latter's authority. The latter telephonically called him to ask him why his tractor was parked there. The 1st respondent states that he telephonically called the applicant who gave consent to him to drive the tractor to his residence. He took the spare key that was in his possession and drove the tractor away. Leballo filed a supporting affidavit in relation to matters which pertains to him.

[13] The 1st respondent however avers that he will not release the tractor because he is still owed the balance of the purchase price. That the applicant is in arrears in the amount of M20,000.00. He states that his wife was from the beginning

of the transaction dissatisfied with the purchase price as she considered it to be low. He avers that he is entitled to keep possession of the tractor until the applicant pays the balance of the purchase price. I am going to assume for the benefit of the 1st respondent that the tractor was parked at Tšeliso Leballo's residence.

[14] What, therefore, remains to be determined is whether it was removed by consent of the applicant. It is common cause that the parties have a sale contract in which an amount of M110,000.00 was paid as deposit and the tractor released to the applicant. The 1st respondent keeps the spare key to the tractor which ostensibly together with the tractor's registration documents to be released to the applicant upon the latter paying off the balance of the purchase price. I am going further to assume that the applicant has been erratic in paying the balance of the purchase price.

[15] On the version of the 1st respondent, the applicant has been giving him problems when it comes to paying the agreed instalments. By this, my understanding is that the relations

between the parties have been strained. It therefore boggles the mind in view of these developments how the applicant would agree to release the tractor into the 1st respondent's possession. To buttress the issue that there was no consent, the 1st respondent took possession of the tractor, but when requested by the applicant to release it to him, he raises an issue of the applicant's arrears and even maintains a stance that he will not release the tractor until he is paid the balance of the purchase price.

[16] What I can garner from the facts of this case is that the 1st respondent took advantage of the tractor spare key that was in his possession to take the tractor into his possession. Furthermore, I see no reason for his involvement in the issue of the tractor being parked unauthorised at Mr Leballo's place to the extent of taking it into his possession. He sold the tractor to the applicant. He should have referred Leballo's queries to applicant, but, because he has grievances relating to the inadequacy of the purchase price, at least from his wife, and the supposed erratic payments of

the balance of the purchase price by the applicant, he seized the moment and took the tractor into his possession to force the applicant into paying the balance. As I see it the 1st respondent wrongfully despoiled the applicant of possession of the tractor. His version is palpably implausible and far-fetched that I am justified in rejecting it merely on papers without having to resort to *viva voce* evidence.

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

- (i) The application succeeds with costs.

MOKHESI J

For the Applicant: Adv. J. Thamae instructed by Mosuoe & Associates Attorneys

For the 1st Respondent: Mr. Q. Letsika from Mei & Mei Attorneys Inc.

For the 2nd to 4th Respondents: No Appearance

