

**IN THE HIGH COURT OF LESOTHO**

**HELD AT MASERU**

**LC/A/17/2019**

**CIV/DLC/MSU/0021/18**

In the matter between

**MALEFETSANE TLALI**

**APPELLANT**

AND

**RETSELISITSOE PHOOFOLO**

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

**METOLONG AUTHORITY**

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

**THE CLERK OF COURT**

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

**Neutral Citation:** Malefetsane Tlali v Retselisitsoe Phoofolo and 2 Others [2024] LSHC 22 Civ (30<sup>th</sup> October 2024)

**CORAM : BANYANE J**

**HEARD : 28 MARCH 2024**

**DELIVERED : 30 OCTOBER 2024**

### **Summary**

Appeal-against decision of the District Land Court-claim by heir for compensation for expropriation of land allegedly belonging to his parents-whether non-compliance with Regulations 43 and 44 of **Land Regulations, 2011** governing inheritance is determinative and thus fatal to the claim-The effect of expropriation and inheritance discussed-appeal succeeds.

### **ANNOTATIONS**

### **Legislation:**

1. Metolong Authority Act 2010
2. Land Act 2010
3. Land Regulations, 2011

### **Cited cases:**

#### **Lesotho**

1. Makhutla v Makhutla LAC (2000-2004) 480
2. Moneuoa v Moneuoa LAC (2015-2016) 192

#### **South Africa**

1. Minister of Defence v Commercial Properties Ltd and others 1955 (3) SA 324 (N)
2. Minister van Waterwese v Mostert en Andere 1964 (2) SA 656 (A)
3. 7 Pretoria City Council v Modimola 1966 (3) SA 250 (A)
4. Fourie v Minister Van Laude en 'n Ander 1970 (4) SA 165 (0)

## **JUDGMENT**

**BANYANE J.**

### **Introduction**

[1] This is an appeal against the judgment of the District Land Court for the district of Maseru issued on 29 October 2019 dismissing the appellant's claim. The dispute between the parties pertains to monetary compensation for expropriation of certain pieces of land situated at Thaba-Bosiu, in the Maseru District.

1.1 On 30 October 2024, I issued an order upholding the appeal. These are my reasons for the order.

### **Background**

[2] Metolong Authority is a corporate body established by the Metolong Authority Act 2010. It is established to discharge Metolong dam and water supply programme intended to supply domestic and industrial water to various centers in Maseru

City and neighboring towns. The construction of the dam affected several pieces of land and things growing thereon (such as tree plantations) of the Thaba- Bosiu community. The land, subject matter of the dispute between the parties was also affected by the project. The protagonists' families laid conflicting claims of compensation for expropriation of the disputed land.

[3] It is common cause that on 14 June 2013, the appellant lodged his claim with Metolong Authority. The latter assessed his compensation to be the amount of M174 292,73. The appellant's mother died on 18 May 2015. On 01 May 2016, the appellant was nominated as heir to his parents' estate.

[4] It is further common cause that the appellant had lodged a claim in the High Court under CIV/APN/326/2016 against the 1<sup>st</sup> respondent and the Metolong Authority. On 04 December 2017, the matter was withdrawn with leave with Court. Following the withdrawal, the appellant took no further steps until 21 February 2018 when he filed the present claim in the District Land Court. On 22 May 2018, the 1<sup>st</sup> respondent received payment of M212 436.15 as compensation for expropriation of the disputed land.

### **Relief sought**

[5] In the Court below, the appellant sought the following reliefs:

- a) An order confirming him as the lawful owner of the site and/or forest situated at Phuthiatsana catchment, Thaba-Bosiu, Machache, In the district of Maseru
- b) An order confirming him as the lawful and rightful customary heir of his late parents' estate including the site, subject matter of this dispute.
- c) An order directing and compelling Metolong Authority to pay an amount of M174 292.73 as compensation in respect of the expropriation.
- d) An order interdicting and restraining the 1<sup>st</sup> respondent from interfering with him.

[6] The application was opposed by the 1<sup>st</sup> respondent. In his answer, he raised certain preliminary objections that were later abandoned according to the record. The 1<sup>st</sup> respondent asserted that the land, the subject matter of the dispute, belonged to his parents and was accordingly inherited by him. He further denied that the appellant nor his parents ever used this land.

**Evidence adduced in the Court below**

[7] The record reveals that on 24 September 2019, the matter proceeded in default of appearance by the respondents. The appellant led evidence. The essence of his testimony was that his father Fusi Tlali owned the disputed land with tree plantation

growing thereon. He died in 1998. After his father's death, he was nominated as his heir. He testified that his parents' land was affected by the Metolong Authority project. Instead of compensating him, Metolong compensated the 1<sup>st</sup> respondent, who according to him was not entitled to receive compensation because the land never belonged to his parents.

### **The Judgment a quo (dated 15 November 2021)**

[8] The learned Magistrate dismissed the appellant's claim principally because of failure to comply with Regulations 43 and 44 of the Land Regulations 2011. The learned Magistrate identified the only issue to be whether the appellant proved his title to the disputed piece of land. The Magistrate held that the appellant failed to prove title to this land because although his claim was based on inheritance, he failed to adduce evidence establishing compliance with Regulation 43 and 44 of the Land Regulations, 2011. After quoting these provisions, the learned Magistrate concluded that:

“I reproduced provisions of these Regulations for the purpose of showing that they are mandatory for any legacy in form of landed property to be properly transferred, it ought to have undergone the process. Nomination by family council alone is not enough.”

### **Grounds of appeal**

[9] The appellant's complaint on appeal is that the court *a quo* erred and misdirected itself:

- 1) In holding that the appellant did not establish that he complied with the Land Regulations of 2011 while heirship was not an issue which the court was called to determine.
- 2) By dealing with what was not in issue before it. Resultantly it came to the wrong decision. The Court ought to have determined who, between the appellant and the 1<sup>st</sup> respondent is entitled to compensation of the disputed tree plantation.

[10] The appeal is opposed by the respondents. It is to be noted that the Authority did not file its answer in the Court below despite being given an opportunity to do so. In this Appeal, it filed a document in terms of which it sought to explain the circumstances under which payment was effected in favour of the 1<sup>st</sup> respondent.

### **Issue for determination**

[11] The sole issue arising from the grounds of appeal is whether the claim before the court *a quo* pertains to inheritance to land requiring compliance with Regulations 43 and 44 of the Land Regulations.

### **Submissions on Appeal**



[12] Advocate Mathe for Metolong Authority advanced a two-pronged argument. The first prong is that other than adducing proof of his nomination by the family, the appellant failed to prove his parents' title to the land in the form of a certificate of allocation (commonly known as a Form C) or a lease. The second dimension of his submissions is that the Authority has discharged its duty to compensate the affected family. Having compensated the 1<sup>st</sup> respondent, the Authority has no legal obligation to compensate twice for the same property.

[13] Advocate Masoeu for the appellant argued that the Court erred in determining the dispute based on the Land Regulations because they are inapplicable in the circumstances of this case.

### **Applicable Legal Principles**

[14] Inheritance, as a mode of property transfer, entails the distribution and transmission of an individual's accumulated assets to his/her heirs. Inheritance to land is governed by the Land Act 2010 and Regulations made thereunder. They both set out the procedure for the transmission of land rights and interests.

[15] To my mind, the claim before the Court *a quo* concerns compensation arising from land expropriation but not the transmission of title to land. Expropriation is the dispossession of ownership or deprivation of property.<sup>1</sup> It has for a long time been generally understood to mean the process by which an owner is deprived of all or some of his rights in his property, which rights become vested in the state, or some other public personnel authorized to acquire those rights.<sup>2</sup>

[16] It seems to me that where land is expropriated, the individual's rights are thereby extinguished and vest in the state. In such a case, there is no transfer of rights/title contemplated by Regulation 43 of the Land Regulations because there is no title to inherit. The question of whose parents, between the protagonists, owned the rights in the disputed land could only be relevant to resolve the issue of who between them was entitled to receive compensation from the Metolong Authority.

[17] In **Makhutla v Makhutla**<sup>3</sup> the dispute concerned conflicting claims of compensation. After examining the relevant provisions of the Land Act 1979 (as amended) and the Constitution of Lesotho 1993, the Court of Appeal said the following:

---

<sup>1</sup> Minister of Defence v Commercial Properties Ltd and others 1955 (3) SA 324 (N) 327 G

<sup>2</sup> MD Southwood: the Compulsory Acquisition of Rights (Juta 2000), Minister van Water wese v Mostert en Andere 1964 (2) SA 656 (A) 666 , 7 Pretoria City Council v Modimola 1966 (3) SA 250 (A) ,Fourie v Minister Van Laude en 'n Ander 1970 (4) SA 165 (O) 169.

<sup>3</sup> LAC (2000-2004) 480

“[23] It follows from the foregoing that, as the law presently stands, there is no such thing as ownership of land in Lesotho. The Western concept of absolute ownership of land is foreign here and the best that the law allows is an interest in or over land which is akin to usufruct.

[24] There can be little doubt in my view that, by admitting that the deceased used the disputed field in his lifetime, the appellants in effect conceded that he enjoyed an interest or some form of usufruct in or over the land in question.

[30] Viewed in the light of the aforementioned considerations, there seems little doubt, in my view, that to qualify for compensation in terms of the Land tenure system of Lesotho as it presently stands, one does not have to be the owner of the land in question in the strict sense. It suffices if there is interest in or over such land which has not been lawfully revoked”.

[18] In **Moneuoa v Moneuoa**<sup>4</sup> the Court endorsed its decision in **Makhutla v Makhutla** and held that the purpose of compensation is for deprivation of the right of occupation and use of the land (in that case, a field) occasioned to the occupier of the land.

---

<sup>4</sup> LAC (2015-2016) 192

[19] It is abundantly clear in my view that the court *a quo* had to determine who, between the parties, the land belonged (in the sense explained in Makhutla) at the time of expropriation for purposes, not of transmissibility of title set out in Regulations 43 and 44 but to resolve the question of who was entitled to compensation.

[20] Regulations 43 and 44 have no application in the matter because, a) they govern inheritance to land; b) due to the expropriation, there was no interest/title in land that could be transmitted to the heir because the effect of expropriation is extinguishment of title as stated earlier. The only claim or right accruing was that of compensation for expropriation.

### **Disposal**

[21] The case seems not to have been understood in the Court *a quo* as the most fundamental issue was not interrogated, namely who between the appellant and the 1<sup>st</sup> respondent was entitled to receive compensation. The following questions ought to have been determined by the Court *a quo* in order to be able to decide this issue; namely, whether the expropriated piece of land belonged to the appellant's parents or 1<sup>st</sup> respondent's parents. If the right to compensation accrued to the appellant, the next question is whether the Authority has a legal obligation to compensate the appellant in circumstances where the 1<sup>st</sup> respondent has already been compensated for the same property.

## Order

[22] For reasons set out in this judgment, the following order is made:

- a) The appeal succeeds and the order of the Court *a quo* granted on 29 October 2019 is set aside.
- c) The matter is remitted to the Court *a quo* but before a different Magistrate to investigate and determine the real issues raised by this application; pointed out in paragraph 21 above.
- d) Each party to bear its costs of appeal

---

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

For Appellant : Advocate Masoeu

For 1<sup>st</sup> Respondent : In person

For 2<sup>nd</sup> Respondent : Advocate Mathe